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**REPORT BY**

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COMMISSIONER FOR HUMAN RIGHTS,**

**ON HIS VISIT TO THE REPUBLIC OF ICELAND**

**4 - 6 JULY 2005**

**for the attention of the Committee of Ministers  
and the Parliamentary Assembly**

## CONTENTS

<b>INTRODUCTION.....</b>	<b>3</b>
<b>GENERAL OBSERVATIONS .....</b>	<b>4</b>
<b>1. JUDICIARY .....</b>	<b>5</b>
<b>2. PRISON SYSTEM .....</b>	<b>7</b>
<b>3. PRE-TRIAL DETENTION.....</b>	<b>8</b>
<b>4. HUMAN RIGHTS STRUCTURES.....</b>	<b>10</b>
<b>5. TREATMENT OF ASYLUM SEEKERS.....</b>	<b>12</b>
<b>6. INTEGRATION OF FOREIGNERS.....</b>	<b>14</b>
<b>7. GENDER EQUALITY AND VIOLENCE AGAINST WOMEN .....</b>	<b>16</b>
<b>8. NON-DISCRIMINATION.....</b>	<b>18</b>
<b>9. TRAFFICKING IN HUMAN BEINGS .....</b>	<b>19</b>
<b>10. DATA PROTECTION.....</b>	<b>20</b>
<b>FINAL OBSERVATIONS AND RECOMMENDATIONS .....</b>	<b>22</b>
<b>APPENDIX I :</b>	
<b>COMMENTS OF THE MINISTRY OF JUSTICE IN ICELAND .....</b>	<b>25</b>
<b>APPENDIX II :</b>	
<b>COMMENTS OF THE MINISTRY OF SOCIAL AFFAIRS IN ICELAND .....</b>	<b>27</b>

## INTRODUCTION

*In accordance with Article 3 e) of Committee of Ministers Resolution (99) 50 on the Council of Europe Commissioner for Human Rights, I visited the Republic of Iceland on 4-6 July 2005 for the purpose of preparing this report on the effective respect for human rights in the country. I was accompanied on my visit by Mr Lauri Sivonen and Mr John Dalhuisen, members of my Office.*

*I would like first of all to thank the Minister for Foreign Affairs and the Minister of Justice and Ecclesiastical Affairs as well as their Ministries for all the resources and help, including interpretation, they provided to ensure the success of my visit. I should also like to thank Ambassador Hörður H. Bjarnason, the Permanent Representative of Iceland to the Council of Europe, for invaluable help in connection with the visit. Lastly, I express my warm gratitude to the Icelandic authorities and civil society representatives I met during the visit for their frankness and exemplary co-operation.*

*During the visit, I held discussions with Mr. Davíð Oddsson, Minister for Foreign Affairs, Mr. Björn Bjarnason, Minister of Justice and Ecclesiastical Affairs, Mr. Jón Kristjánsson, Minister of Health and Social Security, and Mr. Árni Magnússon, Minister of Social Affairs. I also met the Parliamentary Ombudsman, Director of the Directorate of Immigration, Deputy National Commissioner of the Icelandic Police, Chief of Reykjavík Police, Director of the Centre for Gender Equality, Chairman of the Complaints Committee on Equal Status, Director for Public Prosecutions, Data Protection Commissioner, members of the Icelandic Delegation to the Parliamentary Assembly of the Council of Europe, a Supreme Court Judge, Director General of the Prison and Probation Administration, Ombudsman for Children, representatives of the National Church, Free Church and the Catholic Church, representatives of the Icelandic Human Rights Centre and the Human Rights Institute at the University of Iceland as well as representatives of trade unions and non-governmental organisations working in the field of human rights.*

*Furthermore, I visited the Reception Centre for Asylum-seekers in Njarðvík, the Police Station at Keflavik Airport, the Police Headquarters and its detention facility in Reykjavík, the Centre for Victims of Sexual Violence at the Emergency Department of the National University Hospital, and the Litla-Hraun Closed Prison. A member of my Office also visited the Icelandic Women's shelter. I extend my warm gratitude to the personnel of these institutions and facilities for having readily opened their doors to us.*

## GENERAL OBSERVATIONS

1. Iceland was one of the first ten states to ratify the Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights; hereafter “ECHR”) and therefore among the very first countries where the Convention entered into force on 3 September 1953. It is also a State party to the European Social Charter and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment as well as major UN conventions.<sup>1</sup> Iceland belongs to the European Economic Area (EEA) and the Schengen Agreement, and is member of the Nordic Council and the Organization for Security and Co-operation in Europe (OSCE).
2. The European Convention on Human Rights was incorporated in Icelandic law in 1994 and, in 1995, the Icelandic Constitution was revised with a series of new human rights provisions inspired by the ECHR. This has clearly enhanced the ability of Icelandic courts to refer directly to fundamental principles of human rights. The Supreme Court of Iceland has assumed the status of an ultimate authority for interpreting Icelandic legislation from the perspective of fundamental rights and the Constitution.
3. Iceland often identifies herself within the Nordic tradition of human rights protection. The ombudsperson’s institution is well established in Iceland, and during my visit the Icelandic authorities made frequent references to Nordic practice in legal matters. As a member of the EEA and the Schengen Agreement, Iceland closely follows EU developments in the field of human rights. It is in this spirit that I, too, will occasionally refer to Nordic and EU practices in my recommendations. Iceland has also taken significant steps in the development of new human rights control mechanisms, for example in the fields of gender equality and data protection, and I trust that the authorities will further strengthen such mechanisms while making exemplary use of their findings.
4. This report focuses on certain issues regarding human rights, identified during my visit, where further progress is still desirable such as some aspects of the judiciary, prison system, pre-trial detention, human rights structures, treatment of asylum-seekers, integration of foreigners, gender equality and violence against women, non-discrimination, measures against trafficking in human beings, and data protection. During my visit, I gained the impression that the Icelandic authorities had a very forthcoming attitude to discussing the situation with regard to all these issues and would endeavour to identify the means of improving the situation in these fields.

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<sup>1</sup> International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, International Convention on the Elimination of All Forms of Racial Discrimination, Convention on Elimination of Discrimination against Women, Convention on the Rights of the Child, and Geneva Convention relating to the Status of Refugees.

## 1. JUDICIARY

5. Iceland has a two-tier judiciary composed of eight district courts and the Supreme Court, the only appeals court in the country. The Labour Court and the Court of Impeachment are the only courts of specialised jurisdiction; there is no special administrative court. The Act on the Judiciary dates from 1998 (No. 15/1998). A Judicial Council of five members – four elected by District Court Judges and one by the Minister of Justice – supervises the district courts.
6. Justice appears to be dispensed with a high degree of efficiency in Iceland. There is no significant backlog of cases waiting to be judged and the pragmatic two-tier judicial system has contributed to reasonable processing times.<sup>2</sup> Nor do the few cases received at the European Court of Human Rights attest to any structural anomalies. I did hear, however, a measure of criticism that means-tested legal aid was rather limited which may discourage appeals in certain cases, for example those related to custody over children.
7. The Supreme Court of Iceland has a pivotal role in the judicial system. Due to the absence of administrative and constitutional courts and the fact of its being the only appellate jurisdiction in the country, all cases of major significance usually fall under its competence. After the incorporation of the ECHR in Icelandic law in 1994 (Act No 62/1994) and the revision of the Constitution with a series of new human rights provisions inspired by the European Convention in 1995 (Constitutional Act No. 97/1995), the Supreme Court has enhanced its status as the ultimate authority for interpreting Icelandic legislation from the perspective of fundamental rights.
8. During my visit, I was informed of a debate regarding recent appointments and the appointments procedure itself to the Supreme Court. Taking into account the particularly decisive status of the Supreme Court in Iceland, the mere existence of a debate on the issue merits attention. After all, a court of law of such capital importance must be perceived as being independent and impartial by the population whose interests it protects in line with Article 6 of ECHR. It is not my task to enter into a debate concerning individual cases, rather it is to consider the situation from a systematic point of view. It is for this reason that I limit myself to making observations regarding the appointments procedure as such.
9. According to the Act on the Judiciary, the Supreme Court of Iceland is composed of nine judges, commissioned for an indefinite period of time by the President of Iceland as proposed by the Minister of Justice. In addition to a number of criteria regarding the personal status and qualifications required of a Supreme Court Judge, it is stipulated that the Minister of Justice shall seek the opinion of the Supreme Court as regards the competence and qualifications of the applicants. The opinion of the Supreme Court as it regards the suitability of a candidate with reference to those criteria which pertain to his or

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<sup>2</sup> See also *European Judicial Systems 2002 – Facts and figures on the basis of a survey conducted in 40 Council of Europe Member States*. European Commission for the Efficiency of Justice (CEPEJ). Council of Europe Publishing, 2005.

her general conduct (item 5 of section 4 of the Act<sup>3</sup>) as well as career and knowledge of law (item 8<sup>4</sup>) is binding. An applicant who according to the opinion of the Supreme Court does not fulfil the criteria cited cannot be instituted in office. However, the Act on the Judiciary does not tie the hands of the Minister of Justice in any other way and the Minister is not bound to follow the opinion of the Supreme Court on other counts. Nor has the President of the Republic the right to commission anyone else than the person proposed by the Minister. This interpretation of the Act was confirmed to me by the Minister of Justice during my visit.

10. It is pertinent to note in this context that district court judges are appointed by the Minister of Justice after an evaluation committee<sup>5</sup> has provided the Minister with a written and reasoned opinion on the applicants. The opinion of the committee, however, is not legally binding on the Minister.
11. It is a fundamental principle of democracy that courts of law function independently from the legislative and executive branches of power. This postulate clearly informed the drafting of the ECHR and the Committee of Ministers of the Council of Europe has issued, in 1994, a recommendation<sup>6</sup> which clarifies how the appointments of judges should be carried out in order to safeguard the independence and impartiality of the judiciary in the spirit of Article 6 of ECHR.
12. As a first alternative, the recommendation posits an authority, which should be independent of the government and the administration, to take the decision on the selection and career of judges on the basis of merit, qualifications, integrity, ability and efficiency. The recommendation stipulates that the members of the authority should, for instance, be selected by the judiciary and that the authority should itself decide on its procedural rules. However, as the second alternative, the recommendation also takes into account those member states where constitutional or legal provisions and traditions allow judges to be appointed by the government as is the case in Iceland. In such a situation, the recommendation calls for guarantees to ensure that the procedures to appoint judges are transparent and independent in practice and that the decisions will not be influenced by any reasons other than those related to the objective criteria applied under the first alternative.<sup>7</sup>

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<sup>3</sup> “5. Has not committed any criminal act considered to be infamous in public opinion, or evinced any conduct detrimental to the trust that persons holding judicial office generally must enjoy.”

<sup>4</sup> “8. Is deemed capable to hold the office in the light of his or her career and knowledge of law.”

<sup>5</sup> The evaluation committee is appointed by the Minister of Justice and is composed of three members nominated by the Supreme Court, Icelandic Judges’ Association, and Icelandic Bar Association respectively. Section 12 of the Act on the Judiciary.

<sup>6</sup> Recommendation No. R (94)12 of the Committee of Ministers to member states on the independence, efficiency and role of judges (13 October 1994).

<sup>7</sup> According to the recommendation, these guarantees could be, for example, one or more of the following: a special independent and competent body to give the government advice which it follows in practice; the right for an individual to appeal against a decision to an independent authority; or the authority which makes the decision safeguards against undue or improper influences.

13. I am aware that during the last decade there has been an extensive debate, leading to substantial reforms, regarding the proper way to ensure the independence of the judiciary in the Nordic countries. While all Nordic governments continue to formally retain their authority to appoint judges, the thrust of the reforms has been to ensure the practical independence of the procedure from political decision-making through the decisive participation of an independent advisory body and the highest courts themselves in the process. In this way, the government consistently chooses not to depart from the advice issued to it even when, strictly speaking, it is under no legal obligation to do so. The fact that the highest courts often exercise their role by holding informal consultations with the government about the appointments by no means diminishes their crucial part in the appointment of judges to supreme courts. I encourage the Icelandic Government to review their current appointments procedure to the Supreme Court in the light of Recommendation No. R(94)12 of the Committee of Ministers and the recent reforms and practice in other Nordic countries in order to ensure the independence of the appointments in practice.

## 2. PRISON SYSTEM

14. While there are five prisons in Iceland, most of the inmates are accommodated at the Litla-Hraun closed prison in Southern Iceland. However, women convicts are held at the Kópavogur prison close to the capital. There is no specialized facility for under-aged prisoners partly because their number does not exceed occasional remand prisoners. Children are no longer sentenced to prison terms in Iceland: they follow alternative treatment programmes under the authority of the Child Welfare Office. At least as yet, Icelandic prisons are not overcrowded and there are no queues for serving one's sentence.<sup>8</sup>
15. I paid a visit to the Litla-Hraun prison which, during my visit, accommodated 60 inmates. Nine of the inmates were on remand and three of them had been placed in total isolation. None of the inmates was under-aged, but I was informed that children as young as 15 years' old were occasionally put in full isolation while on remand. The prison had 50 members of staff.
16. The conditions of total isolation were strict without any access to television, radio or press. Only the prison guards and the chaplain could be met during total isolation apart from, normally once weekly, access to health personnel. I was informed that, in average, total isolation lasted about ten days after which it was usually possible to relax certain conditions of the regime; the total length of isolation rarely exceeded one month. I was also told that the average length of isolation had begun to diminish over recent years.<sup>9</sup>

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<sup>8</sup> In some other member states visited by the Commissioner, persons sentenced to prison terms may have to wait before serving their sentences due to the unavailability of prison space related to overcrowding in prisons.

<sup>9</sup> The daily average number of remand prisoners in isolation in all Icelandic prisons had been 2.5 in 2004, 1.6 in 2003, 3.6 in 2002, 2.3 in 2001, 4 in 2000 and 3.8 in 1999. On the other hand, the aggregate number of days in prison on remand was 4163 in 2003, 5734 in 2002, 5515 in 2003 and 7030 in 2000 and 3670 in 1999.

17. On the whole, I found the prison environment, including opportunities for activities and work, quite satisfactory at Litla-Hraun. However, through my discussions with the Director General of the Prison and Probation Administration (PPA) as well as the Director of the prison, my concern regarding inmates' access to adequate mental health services, already noted by CPT previously,<sup>10</sup> was confirmed. Although considerable progress had already been achieved in the provision of health care to prisoners, access to specialised psychiatric care outside the prisons remained quite limited and conditional to "humanitarian" considerations by the mainstream health services. The Director General of PPA pointed out that one part of the solution to this serious issue could lie in the recently adopted prison reforms which included the establishment of a medical ward in the new correctional facility planned for Reykjavík (Hólmsheiði). Nevertheless, access to specialised psychiatric wards in hospitals would most likely still be needed in certain cases.
18. I am aware that a small number of suicides has indeed taken place in Icelandic prisons over recent years. There have also been concerns about inter-prisoner violence some of which may have been exacerbated by the limited availability of psychiatric care. Such considerations, albeit important, are not the main issue, however. The first principle in this case should simply be the fact that prisoners must have the right to adequate health care, including psychiatric care, during their detention. When such care cannot be dispensed within the prison system, it must be provided elsewhere and, when necessary, with adequate safeguards for the personnel and other patients involved. I urge the Icelandic authorities to ensure that prisoners have access to adequate psychiatric care in prisons or hospitals on the basis of their individual care requirements.
19. I also learned that, in addition to the new prison in Reykjavík, the penitential reforms included plans to close down two old prisons and to refurbish others in order to improve facilities and safety while providing separate sections for men and women in several prisons. Improved treatment of drugs dependence was also considered a priority. The general aim of the reform, however, was to diminish the number of recidivists (currently at 50 %) by further emphasis on measures preparing for the social reintegration and rehabilitation of inmates after release. I encourage the Icelandic authorities to carry out the prison reform as planned. The reform should improve the psychiatric care of inmates, enhance the rehabilitating function of the penitential system and, when successful, prevent future overcrowding in prisons as well.

### **3. PRE-TRIAL DETENTION**

20. The length of pre-trial detention is naturally related to the length of police investigations and court proceedings. When I visited the Litla-Hraun prison, I was informed that courts were usually able to pronounce a sentence in about three months which I deem quite exemplary. Yet there is an issue regarding pre-trial detention in Iceland which I found somewhat perplexing. When I asked several representatives of Icelandic authorities and

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<sup>10</sup> The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited Iceland on 3-10 June 2004. Although the report of the CPT has not yet been made public, the Response of the Icelandic Government to the report is already available.



judiciary about the decision-making procedure concerning the placement in isolation of remand-prisoners, I received conflicting replies, although most of my interlocutors ended up stating that the initial decision was taken by the chief of police and not a judge. To avoid any misunderstanding, I should first of all underline that I fully acknowledge the need to place certain suspects kept on remand in isolation for clearly-defined periods of time, when this is warranted by pressing investigative purposes or other imperative reason. Such cases should nevertheless be exceptional and concern serious, usually organised, crime. It is the question of who takes the decision about isolation, however, that preoccupies me most.

21. According to the Icelandic Code of Criminal Procedure (No. 19/1991) it is very clear that a judge takes the decision regarding the placing of a person on remand. However, it is less clear whether a court has anything to do with the initial decision to place a remand prisoner in isolation. Both the Code of Criminal Procedure and the Regulations on custody (No. 179/1992) seem to grant the authority for such a decision to “the person in charge of the investigation”, i.e. the police. It is true that every detainee placed in isolation in Iceland is now entitled to contest decisions regarding isolation before the courts including a speedy appeal to the Supreme Court as was confirmed to me by a Supreme Court Judge. Yet I firmly believe that even the initial decision regarding isolation should be made by a court to guarantee that the rights of detainees are respected from the outset. I recommend that the Icelandic authorities take measures to clarify the decision-making procedure regarding the placement of remand prisoners in isolation so that the final decisions are always made by a court for specified time periods rather than an investigative authority.
22. In this context, I would also like to note with concern that in Iceland children as young as fifteen-years’ old can be placed in isolation when they are detained on remand under the same conditions and facilities as adults.<sup>11</sup> I must emphasise that in the interest of children’s welfare, and Iceland is a State party to the Convention on the Rights of Children, the detention of children must indeed be the last resort and their vulnerable status must be taken into account when the conditions and length of their detention are determined. Therefore the placement of children in isolation while on remand presupposes an extremely careful consideration regarding the seriousness of the suspected crime, the absolute necessity of isolation for investigative purposes and the interests of the minor. This is another pressing reason why decisions regarding isolation on remand should always be made by a court to enable a careful weighing between the interests of the minor and the investigation. Since most minors put in isolation in Iceland are suspected of property

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<sup>11</sup> In 2005 (until September), every minor placed in pre-trial detention had also been put in isolation (total of 11 cases) while in 2004 there had been four cases of isolation of the total of six cases of minors on remand. In 2003, there had been no minors on remand at all while, in 2002, no minor had been placed in isolation although there had been two cases of minors on remand. The length of isolation varied between one and nine days per case while the total length of detention varied between one and 82 days. It should be noted that the same persons may have been placed on remand several times and therefore count as equally many cases. The suspected crime categories cited consisted of “property crimes/recidivist” (six cases), “theft” (four cases), “violent offence” (four cases), “robbery/property crime/recidivist” (two cases), and “robbery” (one case). Information provided by the Prison and Probation Administration. On the conditions of isolation see the section on prison system above.

crimes and theft I am not quite convinced that their isolation has been really necessary in every case. I urge the Icelandic authorities to review their current practice of placing children in isolation to ensure that isolation is only applied in cases of absolute necessity and that decisions are taken by a court with due respect for the welfare of the minor.

23. Furthermore, I am aware that under-aged inmates are placed together with other prisoners during pre-trial detention – partly on grounds that their separation could amount to *de facto* isolation – and that Iceland has made a reservation to Article 10 of the Covenant on Civil and Political Rights to this effect. Nevertheless, I encourage the Icelandic authorities to take measures in the context of the current penitential reforms so that prison facilities can be adapted to the special needs of children even when they are not totally separated from adult inmates.<sup>12</sup>

#### **4. HUMAN RIGHTS STRUCTURES**

24. Iceland has a parliamentary ombudsperson and an ombudsperson for children. Certain functions of an independent national human rights institution have been informally exercised by the NGO-based Icelandic Human Rights Centre and, especially in the field of research, by the Human Rights Institute at the University of Iceland. I met both ombudspersons and representatives of the Human Rights Centre and the Human Rights Institute during my visit.
25. The Parliamentary Ombudsman exercises control of state and municipal administrations and ensures that the rights of the public and the principle of equality are upheld in public administration. He acts on complaints addressed to him and also conducts examinations on his own initiative. The Ombudsman issues opinions as to whether the action of an administrative authority is contrary to law or accepted administrative standards but, as a non-judicial institution, his opinions are not legally binding. Nor does he have the authority to refer cases to prosecution or to courts. It may be useful to consider whether his authority should be enhanced by the power to initiate court cases, following the example of certain of his Nordic counterparts, since the Icelandic courts are entitled to review decisions of administrative authorities as to their legality and respect of procedure.
26. The Ombudsman for Children, who is appointed by the Prime Minister, fulfils a mandate to protect children's rights and welfare by exerting influence on legislation, government decisions, and public attitudes. She is not entitled to take up individual complaints, although she can issue general opinions which are not legally binding. In light of increased number of enquiries and the broad field of her work, I would encourage the Icelandic authorities to consider whether more resources could be put at the disposal of the Ombudsman for Children in order to enable her to carry out her functions effectively.
27. The Icelandic Human Rights Centre was founded in 1994 by nine civil society organisations working in various fields of human rights. The purpose and aim of the centre is to collect information on human rights issues in Iceland and abroad and to make this information accessible to the general public. In the main, the centre has assumed the

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<sup>12</sup> On the penitential reforms see the section on prison system above.

functions of a national human rights institution as set out in the Paris principles, though its powers, independence and financing are not established by statute and are therefore liable to fluctuate.<sup>13</sup> It is regularly consulted by international monitoring bodies and maintains an important human rights website in Iceland. The Human Rights Institute at the University of Iceland is an independent and apolitical research institution focussed on human rights issues.

28. According to the information I received during my visit, the Human Rights Centre has traditionally received substantial support from the Icelandic Parliament and Government and some of this funding has also been channelled to the Human Rights Institute. However, since 2005, the authority for the funding has been concentrated in the Ministry of Justice and the Ministry for Foreign Affairs while it has been made conditional on project-style work. This, in the opinion of both the Human Rights Centre and the Human Rights Institute, has resulted in a drastic cut in funding in comparison with the past. The Icelandic authorities pointed out to me that the change in the funding procedure had been made public well in advance, and that they considered the structural funding of independent human rights organisations from government sources highly problematic.
29. I must admit that I do not entirely share the concerns of the Icelandic authorities regarding the structural funding of independent human rights organisations. Furthermore, it is an integral part of my mandate to promote the work and, when needed, the establishment of national human rights structures. Ombudspersons and national human rights institutions perform a vital task for the protection of human rights. As for national human rights institutions, I take a pragmatic approach that institutions are well adapted to national conditions and do not necessarily expect that every country has such an institution exactly according to the Paris principles, even if this remains the objective. Iceland, along with every other Council of Europe member state, merits an effective national human rights body. I urge the Government to take measures to ensure that Iceland continues to benefit from the services of an independent national human rights institution either through supporting and developing existing structures or by the establishment of a statutory institution fully in line with the Paris principles.

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<sup>13</sup> The UN Paris principles encourage states to establish statutory national institutions with a wide mandate to promote and protect human rights. The institutions should be broadly representative of the society they serve and be adequately funded to sustain a stable infrastructure in order to be independent of the Government and not be subject to financial control which may affect their independence. Among their tasks, the institutions should advise the authorities on human rights questions, promote the harmonisation of national legislation with international human rights obligations, contribute to state reports to international monitoring bodies and co-operate with these, promote human rights through research and education while raising public awareness especially of the necessity to combat all forms of discrimination. The Paris principles have been laid out and endorsed by the UN General Assembly Resolution on national institutions for the promotion and protection of human rights (A/RES/48/134, 85<sup>th</sup> Plenary Meeting on 20 December 1993). They are also referred to in the Recommendation Rec(97)14 of the Committee of Ministers to member states on the establishment of independent national institutions for the promotion and protection of human rights (30 September 1997).

## 5. TREATMENT OF ASYLUM SEEKERS

30. Due to its geographical situation, Iceland has traditionally received few applications for asylum, although numbers have become higher during the last decade. In 2004, 76 persons applied for asylum (compared with 80 in 2003 and 110 in 2002). Of these, 69 cases had been processed by the time of my visit while 19 appeals had been made to the Ministry of Justice.<sup>14</sup> In the past, Iceland has granted asylum according to an annual quota of about 20-30 people in co-operation with UN High Commissioner for Refugees (UNHCR). Although in 2004 Iceland did not accept any quota refugees, during the time of my visit a selection process for receiving new quota refugees had been initiated. However, outside these quotas only one person has, since 1994, been granted full refugee status while several people have been granted protection on humanitarian grounds.<sup>15</sup>
31. The care of asylum seekers was in the hands of the Icelandic Red Cross until the beginning of 2004, when the Government concluded an agreement with the municipality of Reykjanesbær to set up a reception centre for asylum seekers in Njarðvík, close to the Keflavik airport and about 50 km away from Reykjavík. I visited the Njarðvík reception centre together with the Director of Immigration. The centre is an open one and can accommodate around 20 people while the average stay varies between three to six months. Asylum seekers are provided with daily necessities and a small weekly allowance of about € 26 (ISK 2000). Public transport costs within Reykjanesbær and those for the purpose of visiting authorities or health services in the capital are also taken care of. Social and psychological assistance is provided at the centre and long-term resident children can attend schools on an informal arrangement. Since the reception centre is quite far away from Reykjavík and the services and activities it offers, the Icelandic authorities should consider the extension of free transport to cover the capital region to diminish the possible feeling of isolation and extend the range of activities available to the residents of the centre.
32. The Act on Foreigners (No. 96/2002), which entered into force in January 2003, provides the legal framework for processing applications for asylum. The Act was amended in 2004 (No. 20/2004) while a Regulation on Foreigners (No. 53 of 23 January 2003) has also been issued to supplement the original Act. Currently, only the Directorate of Immigration, operating under the authority of the Ministry of Justice, is empowered to take a decision regarding asylum. The preliminary interview with asylum seekers is normally conducted by the border police who prepare an asylum report and forward the application to the Directorate of Immigration for decision. The interview takes place in the presence of a representative of the Icelandic Red Cross which has a special relationship with the UNHCR. Most applications for asylum are declined through an accelerated procedure when

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<sup>14</sup> In 16 cases the earlier decision had been confirmed on appeal while three cases were still being processed in August 2005.

<sup>15</sup> In 2004, protection status had been renewed for three persons; in 2005, there have been three renewals and two new permits by August.

they are considered manifestly unfounded or when an agreement on the territorial transfer of the application procedure applies.<sup>16</sup> In these cases the applicant is usually speedily removed from Iceland, although an appeal to the Ministry of Justice is possible from abroad, albeit without free legal aid.

33. In the substantive procedure, the Directorate of Immigration conducts another interview in the presence of a Red Cross representative. The Red Cross is usually able to provide some advice to the applicants and it can refer applicants to lawyers, yet free legal aid is not available at this stage. An appeal on the decision of the Directorate of Immigration can be lodged at the Ministry of Justice and at that stage free legal aid is provided for five hours. Finally, Icelandic courts may also review decisions of the authorities regarding asylum, although it is not quite clear to which extent they can enter the substance of the decisions since only few cases have so far reached the courts under the current legislation. In my opinion, it should always be possible to appeal asylum cases to an independent and impartial judicial body which should be empowered to consider the merits of each case.
34. While in Iceland, I was told that the quality of the applications for asylum often left a great deal to be desired. This naturally makes the work of the authorities dealing with the applications rather difficult. In my opinion, this difficulty could probably be overcome if the asylum seekers were systemically given free legal advice from the outset of the application process. In addition to improving the legal protection of asylum seekers, such an arrangement would most likely shorten delays and diminish the number of appeals to the Ministry of Justice which currently stand at around a third of the original applications.
35. Deportations of failed asylum seekers from Iceland have become frequent in recent years (46 were deported in 2002 and 31 in 2003). They are implemented by a special unit under the National Police Commissioner who has issued detailed procedural rules on deportations on 9 July 2003. During my visit to the Police Station at the Keflavik Airport, which operates under the authority of the Ministry for Foreign Affairs, I was informed that physical restraint was used during deportations when deemed necessary and in accordance with the rules. The use of medication for sedative effect, however, was not authorised. Although the Icelandic Red Cross is present when the deportation order is presented to the deportees, no third party observer takes part when they are carried out. The Icelandic authorities may wish to consider whether the Icelandic Red Cross should observe deportations to ensure the transparency of the operations.
36. I have a few remarks to make about the detailed provisions of the Act on Foreigners and its revisions as regards asylum seekers. The revision of section 20 has modified the grounds for expulsion to include the simple fact of staying illegally in Iceland while the revision of section 57 of the Act has made the possession of forged identity documents punishable by a fine or imprisonment regardless of whether the individual has applied for asylum or not. I

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<sup>16</sup> These agreements are the following: Dublin Regulation, Nordic Agreement on the abolition of passport control of 1957, and the Agreement between Iceland, the Faroe Islands and Smyril Line regarding the ferry *Norræna*. Officials of the Directorate of Immigration are on standby to process cases put forward by people arriving on the ferry *Norræna* to enable their return on the same ferry to Faroe Islands where they can apply for asylum according to the terms of the Agreement.

urge the Icelandic authorities not to apply these provisions in contravention of Article 31 of the Refugee Convention of 1951 which stipulates that Contracting States shall not impose penalties on account of illegal entry or presence of refugees under certain conditions.

37. I also note that section 45 of the Act expressly excludes foreigners who present a danger to state security or to society from the protection against expulsion to an area where the person may fear persecution capable of giving rise to the legal status of refugee. Here I must stress the absolute, incontrovertible nature of the guarantees set out in Article 3 of ECHR, which also prohibit the expulsion of a foreigner liable to be subjected to torture, inhuman or degrading treatment or punishment, even if he or she poses a threat to national security. I am well aware that the current international debate on counterterrorism measures has also touched upon the application of Article 3 to expulsions. Yet it is very clear that Article 3 belongs to the core provisions of the ECHR from which no derogation is possible under any circumstances and that its application must extend, for example, to cover expulsions and the use of evidence in courts as well.<sup>17</sup>

## 6. INTEGRATION OF FOREIGNERS

38. In recent years, the number of persons of foreign origin settling in Iceland has increased substantially. Thus, while in 1996 there were around 5000 foreign nationals in Iceland (1.9 % of the total population), this figure had doubled to above 10 000 in 2004 (3.6 % of the total population). Many of these people have arrived in Iceland to work in the fishing and fish processing industry. Icelandic citizenship can be granted to foreign nationals who have been domiciled in Iceland for seven years; the residence requirement is three years for spouses of Icelandic nationals and four for citizens of Nordic countries in general. Double nationality is also possible. Among current foreign citizens living in Iceland (apart from United States military personnel), the biggest groups are citizens of the following countries: Poland (17.9%), Denmark (8.4%), Former Yugoslavia (6.3%), Philippines (6.1%), Germany (5.1%), United States (4.8%), Thailand (4.6%), Lithuania (4%), Portugal (3.4%), and the United Kingdom (3.2%).<sup>18</sup>
39. The current Acts on Foreigners and Employment rights of foreign nationals entered into force in January 2003. Apart from citizens of Nordic countries, long-term foreign residents need residence permits which are issued initially for a one-year period. They must be granted before arrival in the country, unless “strong considerations of fairness” apply. After a period of three years, a permanent residence permit may be granted. The law on foreigners stipulates that a foreigner applying for a permanent residence permit must have attended a course in the Icelandic language. Nationals of EEA countries do not need work permits but for other foreigners work permits are granted to employers and not the employees themselves. Trade Union representatives explained to me that the granting of

<sup>17</sup> See, for example, par. 80 of the judgment *Chahal vs. United Kingdom* (15 November 1996, Reports 1996-V) of the European Court of Human Rights and *cf.* Decision of the UN Committee Against Torture (Communication No. 233/2003 of 20 May 2005 concerning Articles 3 and 22 of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) regarding the complaint of Mr Ahmed Hussein Mustafa Kamil Agiza vs. Sweden. The latter decision also refers explicitly to the Report of the Commissioner on his visit to Sweden, 21-23 April 2004 (CommDH(2004)13).

<sup>18</sup> According to Statistics Iceland 2004.

work permits to employers was related to specific Icelandic practice regarding health and social cover and that it was usually possible to change employment regardless of the fact that formally an authorisation of the employer was needed. Nevertheless, it would be preferable that work permits are granted directly to employees, although such permits could perhaps be limited to certain sectors of employment, if needed. This would decrease the risk of employees' becoming dependent on their employers.

40. Family reunification for foreign family members can be granted if support, medical insurance and housing have been assured. However, after the revision of Section 13 of the Act on Foreigners in 2004, the beneficiaries of this provision are defined as "foreigner's spouse, a partner in cohabitation or registered partnership over 24 years of age, the foreigner's descendants within 18 years of age supported by the foreigner, and the foreigner's or his spouse's relatives by ascent over 66 years of age supported by them". I must emphasise that the age limit of 24 for spouses and partners clearly limits the right of foreigners to family reunification in Iceland. The Icelandic authorities pointed out to me that residence permits to family members could often be granted on other grounds than those of marriage – e.g. employment or education – and I am pleased to note that the practical consequences of the age limit have remained fairly restricted. It should be noted that other more targeted measures should enable forced marriages and trafficking in human beings to be prevented. Accordingly, Iceland should rescind the age limit.
41. I also find the text of Section 13 of the Act highly confusing as regards its scope of application. The first paragraph begins by referring to "[t]he closest family members of an Icelandic national or a national of another Nordic country residing in Iceland, or those of a foreigner staying in Iceland" but then only refers to "foreigner's" family members when the definition and criteria for closest family members are spelled out. My confusion has probably been exacerbated by the Regulation on Foreigners where the reference to "foreigner" in the corresponding part of the text is absent and the statement by the Minister of Justice to the *Alþingi* on 9 February 2005 in which he explained that under the aforementioned Section "a foreign national married to an Icelandic citizen must have reached the age of 24 in order to obtain a residence permit on the basis of marriage". To ensure legal certainty, I recommend that this Section of the Act is redrafted to clarify the scope of application at the level of the law.
42. During my visit, I was told by civil society representatives that there was no general Government policy for the integration of foreigners and that foreigners' opportunities for learning Icelandic remained very limited even if competence in Icelandic was now required for obtaining a permanent residence permit. The authorities admitted that an overall policy had not yet been issued although the question was under discussion. I am aware of the commendable efforts of the Icelandic authorities and local communities in integrating quota refugees in the country as well as the existence of information centres for foreigners in certain municipalities. I recommend the same spirit for the mutual integration process between foreigners and Icelandic nationals in general. A clear Government policy for the

integration of foreigners is needed for the co-ordination and provision of services, including easily available opportunities for language learning, required for the smooth integration of foreigners in Icelandic society. Such efforts are also instrumental in preventing racism and anti-foreigner sentiments which have remained commendably low-key in Iceland.

## 7. GENDER EQUALITY AND VIOLENCE AGAINST WOMEN

43. Icelandic women were granted voting rights in parliamentary elections already in 1915. The first specific law on gender equality dates from 1976 while gender equality was enshrined in the human rights provisions of the Icelandic Constitution in 1995. The current Act on Equal Status and Equal Rights of Women and Men (Equality Act – No. 96/2000) was passed by the *Alþingi* in 2000 as well as a new act on parental leave. In 2004, the Government issued a four-year Action programme on gender equality. Iceland is a State party to the UN Convention on Elimination of Discrimination against Women (including its optional protocol), although the convention has not yet been directly incorporated into Icelandic law.
44. The considerable steps forward in terms of gender equality notwithstanding, the factual status of Icelandic women on the labour market continues to be clearly inferior to men in certain respects. Although women are highly educated and most of them work outside the home, their total income is still estimated to be only 2/3 of that of men. Women are also underrepresented in elected office (e.g. 19 of 63 members of *Alþingi* are women) and senior positions in the administration (e.g. 55 of 222 heads of state agencies are women). Furthermore, violence against women continues to be a serious problem.
45. The specialised state structures acting for the promotion of gender equality in accordance with the Equality Act of 2000 are the Equal Status Council, the Complaints Committee on Equal Status and the Centre for Gender Equality. I met with representatives of the Centre and the Complaints Committee. The Council has a mainly advisory role while the Centre is responsible for administering the Equality Act and providing counselling and educational services in the field of gender equality. The Complaints Committee has a mandate to rule on violations of the Equality Act through a predominantly written procedure. The Equality Act prohibits, inter alia, gender discrimination in terms of pay for equal-value and comparable work, recruitment and working conditions as well as dismissal. It should be noted that positive discrimination of temporary nature is not prohibited by the Act. The opinions of the Complaints Committee, however, are not legally binding and cannot be appealed to a higher authority, although just satisfaction can be sought in the courts. Furthermore, the Centre for Gender Equality is empowered to refer to courts cases that it deems to be of major significance to the public.
46. I was informed that the Complaints Committee received about twenty cases per year. Most of them come from the private sector but complaints are also received from the public sector. The Committee is authorised to request further information, and especially pay information, regarding each case from the parties concerned, yet it has no means of enforcing such demands. When the Committee is of the opinion that the provisions of the Act have been violated, it submits substantive requests for remedial measures to the parties



concerned. Although these requests are often followed in practice, they may also be ignored as has happened in both the private and, more surprisingly, public sectors. If a case is finally taken to a court on the basis of a violation of the provisions of the Equality Act, the court can only award a financial compensation to the victim of discrimination and impose a fine to the party found in breach of the Act. No change at the level of employment itself can be enforced through the courts as is often the case in other Nordic countries as well.

47. I find that the remedies available to victims of discrimination in working life in Iceland are rather limited, especially in cases where women have been repeatedly refused employment or dismissed from work in violation of the Equality Act. I encourage the Icelandic authorities to strengthen the position of the Complaints Committee by, for example, conferring it the right to impose fines when its requests for information or remedial measures are not heeded in practice or the ability to refer such cases to courts. I also urge the Icelandic authorities to set a good example in following themselves the opinions given by the Complaints Committee since otherwise its authority will be eroded. Enhanced transparency and standardisation of public recruitment procedures for improving the comparability of the merits of different applicants would be helpful. The increased transparency would, as has been noted by GRECO, also promote public confidence and encourage qualified applicants to seek government jobs.<sup>19</sup>
48. Although relatively few instances of violence against women, including rape and sexual assault, are reported to the police, the number of women seeking assistance at emergency wards and victim support services indicates that violence against women continues to be a serious problem in Iceland. This picture was confirmed to me during my visit to the Centre for Victims of Sexual Violence at the Emergency Department of the National University Hospital which has received 1154 victims (96% of them women) of sexual violence during 1993-2004. The Centre, which provides medical, social, legal and forensic services to victims of sexual violence, encourages victims to report the violence they have been subjected to to the police but leaves the decision to the victim. Although up to a half of the victims treated may finally decide to report their cases to the police, with whom the Centre has established a close working relationship, most of the cases do not lead to condemnations at court. The hospital staff do not have an obligation to report to the police cases of sexual violence which concern people above 17 years old.<sup>20</sup> At the Centre, I also learned of plans to extend its remit to cover all victims of domestic violence. I was very impressed by the multi-disciplinary professionalism of this centre of excellence and its ability to co-operate with different authorities in the interest of victims of violence. The centre clearly deserves sufficient resources and I invite the Icelandic authorities to give serious consideration to the extension of its scope to cover all victims of domestic violence.
49. The Icelandic Counselling and Information Centre for Survivors of Sexual Violence (*Stígamót*) registered 228 new clients in 2004 (91.7% of them were women) and gave a total of 2076 counselling sessions to all of its clients. The Centre estimates that 91.3 % of

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<sup>19</sup> *Evaluation report on Iceland - Second Evaluation Round*, adopted by the Group of States against corruption (GRECO) at its 19<sup>th</sup> Plenary Meeting (Strasbourg, 28 June – 2 July 2004), Greco Eval II Rep (2003) 7, p. 12.

<sup>20</sup> If a victim of sexual violence is under 17 years' old the Child Protection Service is notified. The decision to report a case to the police is taken together by the child, his or her parents and a child protection worker.

the new cases had not been reported to the police.<sup>21</sup> During my visit, I also heard allegations that sentencing practice for violent crimes against women, including rape, veered towards minimum sentences and that the possibility to apply restraining orders to perpetrators of violence was rarely exercised by the police and the courts. The Supreme Court Judge I met pointed out that sentencing practice in these cases was undergoing gradual change. I was also informed by the Icelandic authorities that the use of restraining orders was currently under review. I encourage the Icelandic authorities in their efforts to improve the awareness of professionals concerned of the different possibilities to tackle violence against women.

50. A member of my Office visited the Icelandic Women's shelter which had already been opened in 1982 among the very first of its kind in Nordic countries. The shelter had received 88 women and 55 children in 2004 for a combined period of 1568 nights while it had also given 443 counselling sessions and replied to 1612 phone calls on its 24-hour hotline. The shelter is run by a non-governmental organisation and is supported by the state and the city of Reykjavík. It is important to note that about a third of the clients of the shelter are foreign women. Foreign women often lack an extensive family or individual support network in Iceland and therefore may not have anywhere else to go away from violence apart from the shelter. It is also true that many foreign women are victims of violence perpetrated by their Icelandic partners and therefore fear that their residence status in Iceland is put at risk if they separate from them. I recommend that the Icelandic authorities take measures to ensure that foreign spouses, who have been victims of violence perpetrated by their partners, can continue their residence in Iceland after separation from their partners. The fact that certain victims of such violence may receive social benefits due to their vulnerable situation should not be used as grounds for declining an individual permit to stay in these cases. The special needs of foreign women should also be taken into account in the provision of information and services for victims of violence.

## 8. NON-DISCRIMINATION

51. During the past decade, measures to prevent and respond to direct and indirect discrimination in all its forms have gained an increasing degree of priority across Europe. New legislative frameworks and institutions entrusted with their enforcement have been established within the European Union and beyond in other Council of Europe member states. EU Council Directives on equal treatment<sup>22</sup> and Protocol 12 to the ECHR on non-discrimination have set new European standards in this field.

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<sup>21</sup> *Stígamót ársskýrsla 2004*. At the publication of this year report, 6.2 % of these cases had been reported to the police. Within the 6.2 % of reported cases, 0.4 % had led to an unconditional prison sentence and 0.4 % to a conditional prison sentence, 1.8 % had been dismissed by courts, 2.9 % were still in progress and the conclusions were not known for 0.7 % of the cases. The low level of reporting to the police contrasts with the level (almost a half) achieved by the Centre at the Emergency Department of the University Hospital. This may well be due to the fact that the Centre at the Hospital is also able to provide medical and forensic services which naturally help the victims and the police to bring a case forward.

<sup>22</sup> EU Council Directives 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

52. Iceland has taken a number of steps to address discrimination, including by enacting in 1995 an amendment to the Constitution guaranteeing equality and enjoyment of human rights for all, irrespective of sex, religion, opinion, national origin, race, colour, property, birth or other status. Although there are more specific provisions scattered in the Penal Code, Administrative procedures Act and the Equality Act relevant to the issue, courts can and have in practice referred directly to the Constitution to determine whether discrimination has taken place. The Parliamentary Ombudsman also plays an important part in efforts to stem discrimination. Iceland has signed Protocol No. 12 and is now considering its ratification. I encourage Iceland to ratify Protocol No. 12 to the ECHR and review safeguards against discrimination with reference to current European practice. In particular, the extension of low-threshold complaints bodies to other areas than gender discrimination could benefit the resident population. At the same time, care should be taken that anti-discrimination measures also cover other grounds than those specifically mentioned in the Constitution such as age, sexual orientation and disability.
53. During my visit, I was informed that religious education given in Icelandic schools put a particular emphasis on Christianity and the National Church of Iceland although it also provided factual information on other religions and ethics. It is important that all school pupils learn about different religions so that their capacity for mutual tolerance is strengthened. Therefore all forms of religious and ethical education given in schools should provide factual information about different religions.<sup>23</sup> I also recommend that the Icelandic authorities consider ways of adapting religious education in schools to meet the particular needs of pupils who belong to minority religions and the provision of an alternative, non-confessional, curriculum on religious and ethical education.

## **9. TRAFFICKING IN HUMAN BEINGS**

54. In Iceland, main concerns about trafficking have focused on the possibility that some dancers working in striptease bars may have been victims of trafficking and that Iceland was being used as a transit point for trafficking. In 2003, Iceland passed amendments to its Penal Code (Section 227(a)) to criminalise trafficking in human beings. Iceland has also signed, although not yet ratified, the Council of Europe Convention on Action against Trafficking in Human Beings. During my visit to Keflavik Airport, the police assured me that serious efforts were put into the surveillance of possible people smuggling at the airport. The Reykjavík police also informed me that a couple of years ago Icelandic municipalities had taken a hard line on establishments offering exotic dancing and banned some of their activities. This had led to a dramatic drop in the number of applications for work permits for exotic dancers afterwards. Services for victims of violence, nevertheless, still consider it possible that some of their clients are victims of trafficking.
55. Trafficking in human beings is a serious and complex human rights problem with a clear international dimension. It must be tackled effectively both at national and international level. No-one can afford to be complacent about it. I welcome the steps forward Iceland has

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<sup>23</sup> See also the *Conclusions of the seminar on religion and education: the promotion of tolerance through the education of religious facts* (CommDH(2004)9) organised by the Commissioner in Valetta, Malta, on 17 and 18 May 2004.

taken in detecting and criminalising trafficking in human beings. I urge the Icelandic authorities to remain vigilant against trafficking and encourage them to ratify the Council of Europe Convention against trafficking. In particular, I invite the Icelandic authorities to verify that their current legal provisions and services for the protection of victims of crime and their support can be effectively applied in cases of trafficking in human beings.

## **10. DATA PROTECTION**

56. In 2001, a new Act on the Protection and Processing of Personal Data, No. 77/2000, entered into force to implement the EU Directive 95/46/EC. The purpose of the Act is to promote the practice of personal data being processed in conformity with the fundamental principles of data protection and the right to privacy. The Act applies to any automated processing of personal data and to manual processing of such data if it is, or is intended to become, a part of a file. The Icelandic Data Protection Authority, which comprises a Board and a Secretariat headed by the Data Protection Commissioner, was established through the Act to monitor its implementation.
57. The Authority deals with specific cases on the basis of inquiries from public authorities or individuals, or cases taken up by the Authority on its own initiative. It must also be consulted on new legislation and regulations related to the protection of privacy. The decisions made by the Icelandic Data Protection Authority are final and may not be brought before any other administrative authority although they can be referred to courts. The Authority can impose fines on non-compliance and request police assistance to implement its decisions. The Data Protection Authority has also issued Rules on the Security of Personal Data (Nr. 299/2001) to clarify certain aspects of application of the Data Protection Act.
58. The Data Protection Commissioner pointed out to me that the small size of the population of the country and its propensity for informal sharing of knowledge presented a particular challenge to the efforts to protect personal data in Iceland as well as the occasionally unclear boundaries between right to privacy and freedom of expression. Police surveillance of telecommunications and the internet, medical data collection and electronic surveillance at public and work places had been recent issues which the Authority had worked on.
59. In recent years, the most controversial issue in the field of data protection in Iceland has most likely been the Act on a Data Base within the Health Sector of 1998 (No. 139/1998). The purpose of the Act was to regulate the establishment and operation of a data base containing health information from all Icelanders' health records, not traceable to individuals, in order to obtain knowledge for the improvement of public health and health services. A commercial licence to build and manage the health sector data base (HSD) was awarded by the Government to a private enterprise. According to the Act, health data can be obtained without the patients' consent and placed in the HSD while these data may also be linked to data kept in genealogical and genetic databases. However, people can specifically notify the Directorate of Health that they request that data on them will not be transferred into the HSD. The handling of the data is subjected to the conditions deemed necessary by the Data Protection Authority. Following an individual complaint, the

Supreme Court declared the Act partially unconstitutional on 27 November 2003. The Supreme Court reached the conclusion that the Act did not meet the requirements in Article 71, Paragraph 1, of the Icelandic Constitution to provide adequate protection against the risk of the data being traced back to the relevant individuals for the purpose of protecting their personal privacy. The Supreme Court found that the Act failed to give sufficient guidance to Government agencies to which it had entrusted supervisory functions related to the operations of HSD. The data base was not yet operational at the time of the judgment and this continues to be the case today.

60. The Minister for Health informed me that the Government intended to propose legislation to revise the Act on HSD. He assured me that the judgment of the Supreme Court would be fully taken into account in the new proposal for legislation. I would like to note in this context that the staff at the Centre for Victims of Sexual Violence at the National University informed me that no sensitive data regarding their clients were entered in the general records of the hospital while records with more restricted access were kept by the Centre itself.
61. It is clear to me that the compact nature of Icelandic society and the possibly elevated degree of informality in the exchange of information between people and even certain professionals require specific safeguards for the protection of privacy and data protection in particular. The Act on Data Protection and the establishment of the Data Protection Authority, inspired by EU legislation, are significant steps in this direction. I encourage the Data Protection Authority in its efforts to monitor the implementation of the Data Protection Act and urge the Icelandic authorities to intensify their work for raising awareness of data protection issues among public authorities, employers, professionals and the general public. Particular emphasis should be put on the respect for the confidentiality of personal data, the right of individuals to access and correct data held on them, and the right to object to the processing of personal data. I also encourage the development of institution-specific safeguards for data protection to suit the particular conditions of each institution.

## **FINAL OBSERVATIONS AND RECOMMENDATIONS**

62. Iceland has a long-standing and justified reputation as a country committed to guaranteeing a high level of respect for human rights. In order to assist the Icelandic authorities in their efforts to further promote the respect of fundamental rights and ensure that high standards are not weakened, I recommend, in accordance with Article 8 of Resolution (99) 50 of the Committee of Ministers, that the Icelandic authorities:

### *Judiciary*

- 1 Review the current appointments procedure to the Supreme Court in the light of Recommendation No. R (94)12 of the Committee of Ministers and the recent reforms and practice in other Nordic countries in order to ensure the independence of the appointments in practice.

### *Prison system*

- 2 Ensure that prisoners have access to adequate psychiatric care either in prisons or hospitals on the basis of their individual care requirements and that, when necessary, adequate safeguards are put in place for the personnel and other patients involved.
- 3 Carry out the planned prison reforms with an emphasis on improving psychiatric care for inmates, strengthening the rehabilitating function of the penitential system and the renewal of the prison estate.

### *Pre-trial detention*

- 4 Clarify the decision-making procedure regarding the placement of remand prisoners in isolation so that the final decisions are always made by a court for specified time periods.
- 5 Review the current practice of placing children in isolation to ensure that isolation is only applied in cases of absolute necessity and that decisions are taken by a court with due respect for the welfare of the minor.
- 6 Take measures in the context of penitential reforms so that prison facilities can be adapted to the special needs of children as remand prisoners even if they are not totally separated from adult inmates.

### *Human rights structures*

- 7 Consider whether the authority of the Parliamentary Ombudsman should be enhanced by the power to refer cases to courts and whether more resources should be put at the disposal of the Ombudsman for Children.

- 8 Ensure that Iceland continues to benefit from the services of an independent national human rights institution either through supporting and developing existing structures or by the establishment of a statutory institution fully in line with the Paris principles.

*Treatment of asylum seekers*

- 9 Provide free legal advice to asylum-seekers from the outset of the application process.
- 10 Apply the provisions of the Act on Foreigners concerning grounds for expulsion (in particular illegal presence in Iceland in Section 20) and the penalisation of the possession of forged identity documents (Section 57) in accordance with Article 31 of the Refugee Convention of 1951.
- 11 Ensure that foreigners are not expelled to a place where they may be liable to be subjected to torture, inhuman or degrading treatment or punishment, even when they are deemed to pose a threat to national security in line with Section 45 of the Act on Foreigners.

*Integration of foreigners*

- 12 Grant work permits directly to employees in stead of employers.
- 13 Rescind the age limit of 24 for obtaining a residence permit on grounds of marriage or cohabitation of Section 13 of the Act on Foreigners and clarify the applicability of this section to family members of Icelandic nationals.
- 14 Prepare and implement a Government policy for the integration of foreign residents and improve their opportunities for learning Icelandic.

*Gender equality*

- 15 Strengthen the position of the Complaints Committee on Equal Status by, for example, conferring it the right to impose fines when its requests for information or improvements are not heeded in practice or the ability to refer such cases to courts.
- 16 Enhance transparency and standardisation of public recruitment procedures for improving the comparability of the merits of different applicants.

*Responses to violence against women*

- 17 Consider extending the scope of the activities of the Centre for Victims of Sexual Violence at the Emergency Department of the National University Hospital to cover all victims of domestic violence.
- 18 Improve the awareness of all professionals concerned, including the police, prosecutors and the judiciary, of the different possibilities to tackle violence against women including restraining orders and victim support.

- 19 Ensure that foreign spouses, who have been victims of violence perpetrated by their partners, can continue their residence in Iceland after separation from their partners.

*Non-discrimination*

- 20 Ratify Protocol No. 12 to the ECHR and review safeguards against discrimination with reference to current European practice by exploring, in particular, the extension of low-threshold complaints bodies to other areas than gender discrimination.
- 21 Consider ways of adapting religious education in schools to meet the particular needs of pupils who belong to minority religions and the provision of an alternative, non-confessional, curriculum on religious and ethical education.

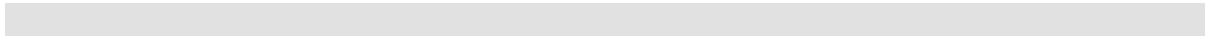
*Trafficking in human beings*

- 22 Ratify the Council of Europe Convention on Action against Trafficking in Human Beings and verify that the current legal provisions and services for the protection of victims of crime and their support can be effectively applied in cases of trafficking in human beings.

*Data protection*

- 23 Intensify efforts to raise awareness of data protection issues among public authorities, employers, professionals and the general public and encourage the development of institution-specific safeguards for data protection. Particular emphasis should be put on the respect for the confidentiality of personal data, the right of individuals to access and correct data held on them, and the right to object to the processing of personal data.

In accordance with Article 3 f) of Resolution (99) 50, this report is addressed to the Committee of Ministers and the Parliamentary Assembly.





## APPENDIX I

### COMMENTS OF THE MINISTRY OF JUSTICE IN ICELAND

The Ministry of Justice would like to make the following comments on the Commissioner's draft report.

#### **1. Recommendation 1**

It is recommended that Icelandic authorities review the current appointments procedure to the Supreme Court in the light of Recommendation No. R (94)12 of the Committee of Ministers and the recent reforms and practice in other Nordic countries in order to ensure the independence of the appointments in practice.

The Ministry of Justice is of the opinion that the procedure for the appointment of Supreme Court judges under Icelandic law ensures the independence of the appointments in practice. The procedure does not differ substantially from the procedures in other Nordic Countries, and has especially been designed with reference to legislation in Denmark and Norway. The fact that the Minister of Justice is not bound by the opinion of the Supreme Court if the applicants fulfill the criteria which pertain to his or her general conduct, career and knowledge of law is in no way unusual when the procedures in other Nordic countries are examined.

The Ministry would like to underline that the main aim of the Act on the Judiciary No 15/1998 was to strengthen the independence of the Courts. In the explanatory notes accompanying the bill, recommendation No R(94)12 is especially taken into consideration as well as recent Danish and Norwegian legislation.

It is furthermore underlined that stringent demands are made to the procedure for the appointment of Supreme Court judges in Iceland. This has clearly been illustrated in practise. For example, the Minister of Justice sought the opinion of the Supreme Court twice when preparing a proposal on an appointment of a Supreme Court Judge in October 2004.

The Ministry of Justice is of the view that the procedure for the appointment of Supreme Court judges under Icelandic law sufficiently ensures the independence of the appointments in practice. In paragraph 13 of the draft report it is pointed out that Nordic governments have ensured the practical independence of the procedure from political decision-making through decisive participation of an independent advisory body and the highest courts themselves in the process. As has been described the Supreme Court of Iceland has an active role in the procedure for the appointment of judges to the Court. This role is stipulated in Act No. 15/1998 on the judiciary. The Ministry of Justice is therefore of the opinion that steps have already been taken to involve the highest court in the appointment process and thus ensure the practical independence of the procedure.

## 2. Recommendation 13

It is recommended that Icelandic authorities rescind the age limit of 24 years for obtaining a residence permit on grounds of marriage or cohabitation of Section 13 of the Act on Foreigners and clarify the applicability of this section to family members of Icelandic nationals.

The Ministry of Justice objects to this recommendation. There is no indication in the report that this provision is in breach of the European Convention of Human Rights, nor is the recommendation supported by a reference to the case-law of the European Court of Human Rights or other sources.

It is and has been of utmost importance to Icelandic authorities that all international obligations are respected. As pointed out by the Commissioner at the outset of his final observations, Iceland has a long-standing and justified reputation as a country committed to guaranteeing a high level of respect for human rights.

The general aim of the amendments made to the Act on Foreigners by Act No. 20/2004 is to prevent persons from obtaining residence permits through illegal or criminal behaviour. More specifically, Section 13 is aimed at protecting those, who are particularly vulnerable to pressure or can easily be taken advantage of, against forced or forged marriages.

Prior to the changes made to the Act on Foreigners in 2004, Icelandic authorities had been aware of a considerable number of cases where there was strong evidence of abuse of the legislation, i.e. where the purpose of the marriage was solely to obtain residence permit for a family member. There had been several instances of suspected forced or false marriages in Iceland – somewhere between 50 and 80 cases had been dealt with by the police. In this respect Iceland is no exception from the other Nordic countries, and action was taken in order to avoid the escalation of such problems.

The Ministry of Justice would like to underline that the immigration authorities are very careful in implementing this rule in order to ensure that international obligations are complied with. The foreigner's spouse, a partner in cohabitation or registered partnership that is under 24 years of age and seeks a residence permit, does not automatically receive a denial due to his or her age. Each application is evaluated independently. All applicants who are under the age limit are interviewed by the Icelandic Directorate of Immigration and their family situation and relations reviewed.

The Commissioner for Human Rights states that other more targeted measures should enable forced marriages and trafficking in human beings to be prevented, and, accordingly, Iceland should rescind the age limit.

The Ministry of Justice does not share the Commissioner's opinion. The method chosen by the Icelandic Government, supported by the majority of Parliament, was to combat forced and

faked marriages by the age limit mentioned above. Whether the age of 21 or 24 or even other age limits are chosen is up to each State.

## APPENDIX II

### COMMENTS OF THE MINISTRY OF SOCIAL AFFAIRS IN ICELAND

The Ministry of Social Affairs in Iceland would like to make the following comments on the Commissioner's draft report.

#### 1. Recommendation 12

It is recommended that Icelandic authorities grant work permits directly to employees in stead of employers.

Under the first paragraph of Article 7 of the Foreign Nationals' Rights to Work Act, No. 97/2002, temporary work permits are granted to employers to employ foreign nationals in Iceland. A precondition for issuing of a work permit is a signed contract of employment for a specific period or project, guaranteeing the worker wages and other terms of service equivalent to those applying to domestic workers (*cf.* the Working Terms and Pension Rights Insurance Act, No. 55/1980). In this way, the employer is issued a permit to engage the foreign worker in question, once he has established that no suitably qualified person can be found in the country to fill the vacancy and that there is a shortage of workers in the relevant occupation. Sometimes, however, other specific reasons support issuing a work permit, e.g. when the foreign worker possesses particular specialization..

The main reason for this arrangement is that the Icelandic labour market is rather small with estimated workforce of 152.000 persons in October 2005, and homogeneous and therefore quite sensitive to changes. Granting temporary work permits enables the Government to ensure that immigration does not upset the natural balance between requests of jobs and job-offers in the labour market.

The employee in person receives a work permit as well as a residence permit, where dates of validity are stated. The foreigner himself/herself holds the documents. The foreigner has therefore clear information about his/her status regarding work. The foreign worker is also free to change jobs during the period by resigning his/her job in accordance with the provisions of the relevant collective agreement regarding notice. The new employer then has to apply for a permit to engage the foreign worker; the application must be handed in before the worker starts working for the new employer, and the same conditions apply to the issuance of the second work permit as to the first. It is fairly common that foreign workers who have been engaged

under temporary work permits change jobs during the period: in 2000, 659 new permits of this type were issued; in 2001 the figure was 646 and in 2002 it was 506.

## 2. Recommendation 14

It is recommended that the Government prepares and implements a policy for the integration of foreign residents and improve their facilities to learn Icelandic.

The Ministry of Social Affairs would like to inform that the Government has already taken the first steps in preparing a policy for the integration of foreign residents but as is stated in the draft report it is only in recent years that the number of persons of foreign origin has increased.

The *Icelandic Immigration Council* has been established with representatives from the Ministry of Social Affairs, Ministry of Justice, Ministry of Education and Culture, Ministry of Health and Social Security and the Union of Local Authorities, as well as a representative for immigrants living in Iceland. It was considered of extreme importance to include all the ministries in Iceland that are responsible for the welfare of immigrants in the country or are able to influence it. The *Immigration Council* shall work in close co-operation with local authorities, the social partners and NOG's. The activities of the council will focus on adaptation and on enabling the immigrants to participate actively in the Icelandic society.

In a nutshell the objective of the *Immigration Council* is twofold:

- I. To represent/introduce recommendations on immigration policy to the Government of Iceland and ensure it's implementation.
- II. To establish *service contracts* with different actors that are best suited to provide and implement programs and services as follows:
  - a) **First steps in Iceland;** secure that every immigrant has access to comprehensive and appropriate information about the Icelandic society and her/his rights and responsibilities in co-operation with the Office of Immigration and the Directorate of Labour.
  - b) **Statistical Information;** gather statistical information on immigrants in Iceland, taken into account stipulations regarding personal protection implemented in co-operation with Statistics Iceland.
  - c) Provide accessible information to immigrants already settled in Iceland, based on information from different actors. **Coordination and mediation of information.**
  - d) **Improved services of interpreters;** put forward a scheme with the aim that interpreters will be accessible for foreigners in all areas of Iceland.
  - e) **Services to the Local Authorities;** introduce regularly to the local authorities information regarding the needs and situation of immigrants and represent recommendations regarding the local authorities' role in the adaptation process with the main focus on comprehensive services to families.

- f) **Research and Pilot Projects;** support and encourage research and pilot projects regarding the situation of immigrants.

A *Committee for Refugees and Asylum seekers* has also been established with representatives from the Ministry of Social Affairs and Ministry of Justice, the same individuals as in the *Immigration Council* as well as members from the Ministry of Foreign Affairs and the Icelandic Red Cross. The committee works in close co-operation with the Directorate of Immigration.