

1 July 2011

# Screening report

## Iceland

### Chapter 23 – Judiciary and fundamental rights

**Date of screening meetings:**

Explanatory meeting: 11-12 January 2011

Bilateral meeting: 10-11 February 2011

## I. CHAPTER CONTENT

According to Article 2 of the Treaty on European Union, the Union is founded on the principles of human dignity, freedom, democracy, equality, the rule of law and the respect for human rights. These principles are common to the Member States and need to be complied with by candidate countries. Article 3 (2) of the Treaty on European Union and Article 67 (1) of the Treaty on the Functioning of the European Union establish an area of freedom, security and justice.

EU policies in the area of the judiciary and fundamental rights aim to maintain and further develop the Union as an area of freedom, security and justice. The rule of law principle and the right to a fair trial, as enshrined in Article 6 of the European Convention on Human Rights (ECHR) and Article 47 of the Charter of Fundamental Rights of the European Union, provide that the judiciary must be independent and impartial. This requires a firm commitment to eliminating external influences over the judiciary and to devoting adequate financial resources and training. Legal guarantees for fair trial procedures must be in place. Likewise, Member States must fight corruption effectively as it represents a threat to the stability of democratic institutions and the rule of law.

Article 83 (1) of the Treaty on the Functioning of the European Union establishes the competence of the Union to draw up minimum rules concerning the definition of criminal offences and sanctions in the area of corruption. The 1995 Convention on the Protection of the EC's Financial Interests and the 1997 Convention on the Fight against Corruption involving Officials of the EC or the Member States imply that "effective, proportionate and dissuasive" criminal law penalties are required to fight corruption. A solid legal framework and reliable institutions are required to underpin a coherent policy of prevention and deterrence of corruption.

According to Article 6 of the Treaty on European Union and the case-law of the Court of Justice of the European Union, the Union respects fundamental rights, as guaranteed by the Charter of Fundamental Rights of the European Union and as they result from the constitutional traditions common to the Member States, as general principles of EU law. Thus, they are binding on the Union institutions in the exercise of their powers and on the Member States when they implement EU law (Article 51 of the Charter of Fundamental Rights of the European Union). The protection of fundamental rights covers traditional civil rights, such as the right to life, the prohibition of torture and degrading treatment, the right to security and liberty imposing strict limits on pre-trial detention, the freedom of religion, the freedom of speech and the freedom of association and assembly. The European Union also protects the fundamental right to private life and guarantees the protection of personal data, in particular through the directive 95/46/EC of the European Parliament and of the Council on the Protection of Individuals with regard to the Processing of Personal Data and on the Free Movement of Such Data, the Framework Decision 2008/977 **on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters and the directive 2002/58/EC** concerning the processing of personal data and the protection of privacy in the electronic communications sector (directive on privacy and electronic communications). The *acquis* also contains guarantees to secure equality. There is a general prohibition of discrimination on a variety of grounds; equality between men and women must be ensured; cultural, religious and linguistic diversity is to be respected. Furthermore, the rights of the child need special protection; the contents of these rights may be drawn from the UN Convention on the Rights of the Child ratified by all Member States. According to Article 21 of the Charter of Fundamental Rights of the EU, members of national minorities shall not be discriminated against. Finally, the *acquis* in the field of fundamental rights contains a number of important judicial guarantees.

The EU citizens' rights include the right to vote and stand as a candidate in elections to the European Parliament and in municipal elections; the right to move and reside freely within the European Union; and diplomatic and consular protection.

## **II. COUNTRY ALIGNMENT AND IMPLEMENTATION CAPACITY**

This part summarises the information provided by Iceland and the discussion at the screening meeting.

Iceland indicated that it accepts the *acquis* regarding judiciary and fundamental rights. Iceland stated that it already implements almost all of the *acquis* in the field of judiciary and fundamental rights and that it does not expect any difficulties to implement the entire *acquis* by accession.

### **II.a JUDICIARY**

The Icelandic judiciary consists of a Supreme Court, eight District Courts, the Labour Court and the Impeachment Court. The judiciary is also competent for the review of the constitutionality of legislation and the judicial review of administrative decisions.

The Labour Court, which has five judges, one of which is appointed by the trade unions and one by the employers' associations, is competent for disputes concerning collective work agreements and other work related issues. The Impeachment Court is composed of 15 members: 8 elected by the Parliament (Althingi) for a period of 6 years; the 5 senior Supreme Courts judges; the Chief Judge of Reykjavik District Court and the Professor of Constitutional law at the University of Iceland. The Impeachment Court is competent for criminal actions brought by the Parliament against current and former government ministers. Currently, one case is pending in the Impeachment Court, but is still in its initial stages.

#### **Independence**

Article 2 of the Constitution provides for the separation of powers in Iceland. Article 61 of the Constitution specifies that in the performance of their official duties, judges shall only be guided by the law. They cannot be removed from office except by a judicial decision or when they reach the age limit. Judges also cannot be transferred against their will, except in the case of a re-organisation of the judiciary. Article 24 of Act No. 15/1998 confirms the principle of the independence of judges; when resolving a case, judges are only bound by the law and shall never be subject to the authority of another person; a judicial decision cannot be revised, except by appeal to a higher court. Article 70 of the Constitution provides for everyone's right – be it in civil, criminal or administrative cases – to have his case decided upon by an independent and impartial court, following a fair trial and within a reasonable time.

The independence of prosecutors is ensured by the Code on Criminal Procedures (Act No. 88/2008).

Judges have permanent tenure until reaching retirement age. The rules for the appointment of judges have been changed in May 2010. Criteria for the appointment as judge are set out in Article 12 of Act No. 15/1998 and further defined in Rules No. 620/2010 on the work of the committee examining the qualifications of applicants for judicial office. The criteria relate to the merits of the applicant, including education and experience, integrity, competence and job efficiency. These criteria are examined for each applicant by a committee consisting of five members. Two members are appointed by the Supreme Court (one of them is also the chair), one by the Judicial Council, one by the bar association and one by the Parliament. The committee can

take into account all published work of the applicant, even if not submitted by the candidate. Interviews with the applicants are only optional and generally not used.

According to Article 4 a, para. 3 of Act No. 15/1998, the most suitable candidate is appointed as judge by the Minister of Interior (previously Minister of Justice, now merged with another ministry and renamed Minister of Interior). However, the provisions provide for an exception to this rule: the Minister of Interior can appoint a candidate from the list of suitable candidates, who meets all the requirements but has not been ranked the most suitable candidate, if the Althingi adopts such a motion by the Minister. The purpose of this rule was explained by the need to appoint a candidate who might not be the best qualified one, but who has expertise in certain areas which are needed for the post.

Judges of the Supreme Court are appointed by the President upon recommendation of the Minister of Interior, who is bound by the ranking established by the evaluation committee. Again, derogations are possible by recourse to the Parliament.

According to Article 20 of the Code on Criminal Procedure the Public Prosecutor is the head of prosecutorial powers in Iceland. He and the Deputy Public Prosecutor are appointed by the Minister of the Interior for an indefinite period of time. In order to be appointed they shall meet the same criteria of eligibility as required of Supreme Court judges for appointment to office. Other prosecutors are appointed by the Minister of Interior and shall meet the same criteria of eligibility as required of district court judges for appointment to office. However, they are only appointed for a period of 5 years at a time. The Minister of the Interior established an ad hoc competence committee to evaluate the applicants for prosecutors' posts in the same way as provided for in the Act on the Judiciary. This is however not a law bound procedure.

There is no regular official assessment of the performance of judges or an official career system in place. Decisions regarding the transfer of judges are made by the Judicial Council following the procedure set out in Act no. 15/1998. Complaints regarding the performance of judges are handled by the Committee on Judicial Function, which can also launch cases ex officio. Judges can be permanently removed from office only by a judgement of the District Court of Reykjavik.

Temporary removal is possible in case of loss of general qualifications required, criminal investigations or criminal actions brought against the judge that would deprive him of the general qualifications, or if the judge has been admonished twice in three years or if he has not heeded the admonition. In all cases of temporary removal, the Committee on Judicial Functions must be consulted in writing and legal action must be brought against the judge within two months.

The Judicial Council consists of five members. Two are elected by district court judges from among their group and two by the chief judges of the district courts from among their group. One – who is not an active judge – is appointed by the Minister of Interior to serve as chairperson. The members are appointed for five years and cannot serve for more than two terms. The Judicial Council has mainly administrative functions, which include the control of the financial affairs of the district courts, issuing rules on the harmonisation of the judicial practice, determining the number of judges and staff at each district court, collection of statistical data, representation of the district courts towards other authorities, judicial training and the preparation of proposals for legal amendments concerning the district courts.

### **Impartiality**

Article 70 of the Constitution and Article 24 of Act No. 15/1998 provide for the impartiality of courts. Rules for preventing conflicts of interest are in the Acts on Criminal and Civil Procedure, as well as in Act No. 15/1998.

## **Professionalism/Competence/Efficiency**

No formal training for entering the judiciary is required, but judges have to meet high standards to be appointed; this includes qualification as lawyer. Continuous training is provided.

The average duration for civil cases was between 300 days in 2006 and 262 days in 2008, the average duration of criminal cases between 71 days in 2007 and 54 days in 2008. There is no significant backlog of cases.

## **Judicial reform**

In May 2010, the Act on the Judiciary (Act No. 15/1998) was amended by Act No. 45/2010, changing the rules for the appointment of judges as set out above. A temporary increase of the number of judges has been decided by the Parliament in February 2011, which will be reduced again as of January 2013. Discussions on merging all eight District Courts into one court and on the possible establishment of a Court of Appeal are ongoing. A working group for the establishment of an Appeal Court for civil and criminal cases has been set up.

## **II.b ANTI-CORRUPTION**

### **Domestic legal framework**

Under articles 109 (1) and 128 (1) of the General Penal Code (GPC), active and passive bribery of Icelandic public officials constitutes a criminal offence. Similarly, under articles 109 (2) and 128 (2), active and passive bribery of foreign public officials constitutes a criminal offence. Active and passive bribery in the private business sector (Art. 264 a GPC) and active and passive trading in influence (Art. 109 (2) (3) GPC) are punishable acts, too. Legal persons can be held liable for the actions of their representatives.

The Government Employees Act (No. 70/1996) provides the legal basis for codes of ethics for public officials, employees of the Parliament and employees of the courts. It also contains rules on whistleblower protection. The Act on the Government Offices of Iceland (No. 70/1996) sets out the basis for codes of ethics for government offices.

Conflict of interest cases are dealt with both in general legislation on administrative procedures, in special legislation (e.g. for judges) and in codes of conduct, providing rules for disqualification in certain cases. Iceland does not have rules on asset declarations of public officials, but only for members of parliament.

The Act on the Finances of Political Associations (No. 162/2006), amended in September 2010, stipulates which information from the accounts of the political organisations and candidates shall be made public, provides rules on donations (maximum yearly donation ISK 400.000) and establishes publication obligations on the names of donors contributing more than ISK 200.000. Donations from unknown donors must revert to the Treasury. The Icelandic National Audit Office audits the compliance of donations and election campaign expenses with the Act. Public funding of political parties is subject to prior fulfilment of the organisation's statutory duty to disclose information to the Icelandic National Audit Office. Certain violations of the Act constitute a criminal offence.

Article 47 of the Act on Public Procurement (No. 84/2007) stipulates that certain criminal offences, including corruption, lead to exclusion from public procurement.

Proceeds from corruption (and other criminal acts) can be confiscated. The burden of proof can be reversed in certain circumstances. Also confiscation from third parties is possible under certain

conditions. The Act on Measures against Money Laundering and Terrorist Financing (No. 64/2006) imposes reporting obligations on persons engaged in activities that may be abused for money laundering or terrorist financing. The Act on Criminal Liability of Legal Persons for Bribery and Terrorism (No. 144/1998) defines the liability of legal persons.

The Special Prosecutor currently deals with 82 cases. A total of three cases concerning the collapse of the banks have been referred to the courts.

### **EU instruments**

Icelandic legislation is not fully in line with the Convention on the Protection of the Financial Interests of the European Union and its protocols, as well as with the Convention on the Fight against Corruption involving Officials of the European Union or Officials of the Member States of the EU. Amendments to the General Penal Code are needed to ensure that it includes EU officials under the term of public official, to adapt jurisdiction and to establish criminal liability for heads of businesses.

Iceland is ready to participate in the contact-point network against corruption established by Council Decision 2008/852/JHA without legislative changes.

As regards the Council Framework Decision 2003/568/JHA on Combating Corruption in the Private Sector, Icelandic legislation already renders active and passive bribery in the private sector – excluding non-profit organisations – punishable offences (Art. 264 a GPC); the same applies to instigating, aiding and abetting (Art. 22 GPC) corruption. Liability of legal persons is provided for under the GPC and the Act on Criminal Liability of Legal Persons for Bribery and Terrorism (No. 144/1998).

As part of the EEA agreement, Iceland has already implemented the Directives 2004/17/EC<sup>1</sup> and 2004/18/EC<sup>2</sup> through the Act on Public Procurement, rendering corruption offences a reason for exclusion from public procurement. Iceland has also implemented the Council Directive 2005/60/EC on Prevention of the use of the Financial System for the purpose of Money Laundering and Terrorist Financing as part of the EEA agreement.

### **International legal framework and institutions**

Iceland has ratified the Council of Europe (CoE) Criminal Law Convention against Corruption, the UN Convention against Transnational Organized Crime and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Preparations for accession to the UN Convention against Corruption are in its final stages.

Iceland has signed the CoE Civil Law Convention against Corruption and the CoE Additional Protocol to CoE's Criminal Law Convention against Corruption.

## **II.c FUNDAMENTAL RIGHTS**

### **General**

The protection of fundamental rights in Iceland is based on the Constitution. The European Convention for the protection of Human Rights and Fundamental Freedoms, as amended with

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<sup>1</sup> Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts

<sup>2</sup> Directive 2004/17/EC coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors

Protocols 11 and 14, as well as additional Protocols 1, 4, 6, 7 and 13 has been enacted in Icelandic legislation by Act No. 62/1994. Thus, their provisions apply directly as domestic law in Iceland.

## **Human rights**

- ***Human dignity***

Human dignity is a basic principle in Iceland. It is enshrined in all fundamental rights legislation and aims at recognising the value of every person and promotes equal rights. Article 65 (1) of the Constitution stipulates the principle of equality and non-discrimination.

- ***Right to life and to the integrity of the person***

Article 69 (2) of the Constitution stipulates that there is no capital punishment in Iceland. Prison sentences are provided for under Article 211 of the General Penal Code (GPC) for the killing of another person.

Article 71 of the Constitution covers both, mental and physical integrity. This right may only be limited by statutory provisions if it is urgently necessary for the protection of the rights of others. The integrity of a person is also provided by several provisions of the GPC (Article 194, rape; 226, deprivation of freedom; 227a, trafficking in human beings).

The Act on the Affairs of People with Disabilities (No. 59/1992) aims at enabling persons with disabilities to lead a normal life. The Act on Artificial Fertilisation and use of Human Gametes and Embryos for Stem Cell Research (No. 55/1996) prohibits nuclear transfer for reproductive purposes (cloning). Rights of the patient regarding the consent to medical treatment and the refusal of treatment are set out in the Patient's Rights Act (No. 74/1997).

Iceland has ratified the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine and two of its Additional Protocols (on the Prohibition of Cloning Human Beings and on Transplantation of Organs and Tissues of Human Origin). Iceland has signed the Convention on the Rights of Persons with Disabilities and its Optional Protocol and two Additional Protocols of the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (on Genetic Testing for Health Purposes and on Biomedical Research).

- ***Prohibition of torture and inhuman or degrading treatment or punishment***

Torture and inhuman or degrading treatment or punishment is prohibited by Article 68 (1) of the Constitution. The GPC makes acts against life and limbs, including physical torture, and the abuse of power by public officials punishable acts.

The Code on Criminal Procedures ensures the respect of the rights of arrested persons and remand prisoners in connection with police investigations. Complaints against police officers for alleged criminal violations in the course of their work are submitted to the Director of Public Prosecutions, who is responsible for investigation of such cases.

Act No. 49/2005 on the Execution of Sentences covers the rules on the treatment of prisoners. Rights of the patient regarding the consent to medical treatment and the refusal of treatment are set out in the Patient's Rights Act (No. 74/1997). The Child Protection Act (No. 80/2002) protects the rights of children. The Act on Foreigners contains a non refolement provision.

Iceland has ratified the European Convention against Torture, the UN Convention against Torture and the International Covenant on the Civil and Political Rights (ICCPR). Act No. 15/1990

specifies how Icelandic authorities are to assist the Committee for the Prevention of Torture when it examines the conditions of persons deprived of liberty in Iceland.

The Althingi Ombudsman has, at his own initiative, undertaken the examination of certain aspects of the prison system and submitted opinions.

- ***Prohibition of slavery, servitude, and forced or compulsory labour***

Article 68(2) the Constitution stipulates that no one may be required to perform compulsory labour. According to judicial interpretation, this also includes prohibition of slavery and servitude, even if not specially mentioned.

Article 225 of the General Penal Code makes it a criminal offence to force another person to act or refrain from acting by using physical violence or to threaten to use physical violence against him/her or his/her relatives. Under article 226 of the GPC it is punishable to deprive another person of his/her freedom. Article 227a of the GPC criminalizes human trafficking.

Iceland has ratified the International Labour Organisation (ILO) Conventions No. 29 (Forced Labour), 105 (Abolition of Forced Labour), 138 (Minimum Age) and 182 (Worst Forms of Child Labour), the ICCPR, the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on Elimination of Discrimination against Women (CEDAW), the Convention on the Rights of the Child, the European Social Charter of 1961 and the UN Convention against Transnational Organised Crime and its Protocol on Human Trafficking. Iceland has signed the European Social Charter of 1996 and the CoE Conventions on Action against Human Trafficking and on the Protection of Children against Sexual Exploitation and Sexual Abuse.

Aspects related to labour law are dealt with in chapter 19 – Social Policy and Employment.

- ***Respect for private and family life and communications***

Under Article 71 of the Constitution “Everyone shall enjoy freedom from interference with privacy, home and family life.” This right may only be limited by statutory provisions if it is urgently necessary for the protection of the rights of others. Bodily or personal search or a search of a person’s premises or possessions may only be conducted in accordance with a statutory law provision and following a judicial decision. This shall also apply to the examination of documents and mail, communications by telephone and other means and to any other comparable interference with a person’s right to privacy.

The right to privacy is also protected in Chapter XXV of the GPC. Chapter X of the Code on Criminal Procedure sets out the rules for bodily and personal search and chapter XI the rules for telephone tapping and comparable measures.

Iceland has ratified the ICCPR, the CoE Conventions for the Protection of Individuals with regard to Automatic Processing of Personal Data and for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, as well as the Hague Convention on the Civil Aspects of International Child Abduction. It has signed, but not yet ratified, the Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data regarding supervisory authorities and trans-border data flows.



- ***Right to marry and right to found a family***

Article 71(1) of the Constitution protects the right to family life and according to the provision it also applies to the right to marry and the right to found a family. The Marriage Act (No. 31/1993) addresses inter alia the inception and termination of marriage and the financial affairs of spouses. It aims at complete equality between husband and wife. Following the abolition of the Act on registered partnerships in 2010, the Marriage Act now also applies for same sex marriages. Marriages in Iceland can be performed by both, the State authorities and religious organisations.

Iceland has ratified the ICCPR and the CEDAW.

- ***Freedom of thought, conscience and religion***

Article 63 of the Constitution establishes the right to form religious associations and to practice religion in conformity with individual convictions. The right can be limited to protect good morals or public order.

Article 64 of the Constitution states: "No one may lose any of his civil or national rights on account of his religion, nor may anyone refuse to perform any generally applicable civil duty on religious grounds." The same article also provides for the right to remain outside religious associations and not to pay any personal dues to any religious association of which a person is not a member. In its paragraph 3, the article stipulates that "A person who is not a member of any religious association shall pay to the University of Iceland the dues that he would have had to pay to such an association, if he had been a member. This may be amended by law." This fee paid to the University of Iceland by those who stand outside religious organisations was abolished by Act No. 70/2009. Nevertheless, the respective amount of money is now paid into the State budget.

In practice, all registered religious organisations receive State funding depending on their size. The Evangelic-Lutheran Church receives a higher amount due to additional services it has to provide also to non members (burials, marriages). The State levies a certain amount of money from all citizens, from which this funding is paid.

Legal Acts and provisions intended to further ensure the right to freedom of thought, conscience and religion include the Act on the Protection of Personal Data (No. 77/2000), the Act on Registered Religious Associations (No. 108/1999), article 65 of the Constitution, article 11 of the Administrative Procedure Act (No. 37/1993), articles 125, 180 and 233 a of the GPC, article 24 of the Primary School Act (No. 91/2008), and article 1 (2) of the Patients' Rights Act (No. 74/1997). Iceland ratified the ICCPR and the ICESCR.

- ***Freedom of expression including freedom and pluralism of the media***

Article 73 of the Constitution stipulates: "Everyone has the right to freedom of opinion and belief. Everyone shall be free to express his thoughts, but shall also be liable to answer for them in court. The law may never provide for censorship or other similar limitations to the freedom of expression." The article also provides for the limitations of the right to protect public order or security of the State, for the protection of health or morals, or for the protection of the rights or reputation of others.

Limitations of the freedom of expression are foreseen in articles 229, 233a, 234, 235 and 236 of the GPC, aiming at the protection of the rights and reputation of others, and article 210 of the GPC, aiming at protecting morals.

The Act on the Right of Publication of Printed Matter (No. 57/1956) requires a publisher of a work that is printed in the country to identify himself/herself on each copy of the work as well as

also the editor of the work and the printer. The publisher and the editor shall have legal residence in the country and they can be held responsible for what is published in a paper. The Codes on Criminal Procedure and on Civil Procedure include provisions prohibiting the disclosure of the identity of an anonymous author or source of a publication. Chapter IV of the Broadcasting Act (No. 53/2000) contains provisions on the obligations of broadcasters, *inter alia* on the respect of democratic principles, right of counterstatement, appeals pursuant to those provisions, obligations relating to the safeguard of the public interest and on the protection of minors.

A draft bill has been submitted to Althingi in order to implement the EU's Audiovisual Media Services Directive. This law was adopted in April 2011, after the bilateral screening meeting. Iceland has ratified the ICCPR.

- ***Freedom of assembly and association, including freedom to form political parties and the right to establish trade unions***

Article 74 of the Constitution protects the positive and negative right to assembly and association.

The freedom of association (including political associations and trade unions) is guaranteed to all persons residing or dwelling in Iceland, irrespective of their citizenship. No age limits are set for the establishment of associations except for those with business purposes or those that can undergo certain financial obligations.

Limitations to this right as set out in article 74 (1) of the Constitution concern associations furthering unlawful objectives. This is also sanctioned by Article 100 b of the GPC. Although article 74(2) of the Constitution protects the negative freedom of association, membership may be made obligatory by law if this is necessary in order to enable an association to discharge its functions in the public interest or on account of the rights of others.

Pursuant to article 74(3) of the Constitution, police may ban public gatherings in the open if it is feared that riots may ensue. Based upon the Police Act the Police can resort to measures in the interests of public peace and quiet or public order.

Iceland has ratified the ICCPR, the ICESCR, the European Social Charter (1961) and ILO Conventions No 87, concerning Freedom of Association and Protection of the Right to Organise, and No 98, concerning the Right to Organise and Collective Bargaining.

- ***Treatment of socially vulnerable and disabled persons and principle of non-discrimination***

Article 76 of the Constitution stipulates: "The law shall guarantee for everyone the necessary assistance in case of sickness, invalidity, infirmity by reason of old age, unemployment and similar circumstances. The law shall guarantee for everyone suitable general education and tuition. For children, the law shall guarantee the protection and care which is necessary for their well-being."

A minimum level of substantive rights is ensured by article 65 of the Constitution on non-discrimination, the Act on Social Security (No. 100/2007), the Act on Social Assistance (No. 99/2007), the Act on the Affairs of Persons with Disabilities (No. 59/1992), the Act on Municipalities' Social Services (No. 40/1991), the Compulsory School Act (No. 91/2008), the Patients' Rights Act (No. 74/1997), and the Act on the affairs of the elderly (No. 125/1999).

Iceland has ratified the ICCPR, the ICESCR and the European Social Charter (1961). Iceland has signed the Convention on the Rights of Persons with Disabilities and its Optional Protocol.

Aspects related to people with disabilities, anti-discrimination as well as to social inclusion and social protection are dealt with in chapter 19 –Social Policy and Employment.

- ***Right to education***

Article 76(2) of the Constitution guarantees the right to suitable general education and tuition. This right is further regulated in the Preschool Act (No. 90/2008), the Primary School Act (No. 91/2008), the Secondary School Act (No. 92/2008), the Higher Education Act (No. 85/2008), and the Act concerning education and recruitment of teachers and school administrators in preschools, primary schools and secondary schools (No. 87/2008).

Iceland has ratified the ICESCR and the Convention on the Rights of the Child.

Aspects related to cooperation in the field of education policies, EU programmes and access to education of EU citizens are dealt with in chapter 26 – Education and Culture.

- ***Right to property***

Article 72 of the Constitution protects the right of private ownership.

Expropriations are only possible if three conditions are met: the expropriation is in the public interest, it is provided for by the law and full compensation is paid. The details of the procedure are regulated in the Act on Procedure of Expropriation (No. 11/1973). Fines and confiscation of goods or proceeds acquired through criminal activities are not considered as expropriations and no compensation is paid. Legal provisions on expiration and prescription can discontinue ownership if certain conditions are met.

According to article 72 (2) of the Constitution, the right of foreigners to own real estate or business shares in Iceland can be limited by law. However, no such limitation applies to citizens of the EEA Member States.

- ***Gender equality and women's rights***

Article 65(2) of the Constitution provides: "Men and women shall enjoy equal rights in all respects." This right is further elaborated upon in the Act on the equal status and equal rights of women and men (No. 10/2008). The objective of the Act is to continue making progress towards gender equality and to give women and men equal opportunities. The Act prohibits discrimination of all types, direct or indirect, on grounds of gender. The Act contains definitions of direct and indirect discrimination.

The Centre for Gender Equality, a government-related body, is tasked to work against gender-based wage discrimination and other gender-based differences in the labour market. The Gender Equality Council advises the Minister of Welfare and the Director of the Centre for Gender Equality in policy making where gender equality is concerned.

The Complaints Committee on Gender Equality consists of three lawyers nominated by the Supreme Court of Iceland and appointed by the Minister of Social Affairs and Social Security. It is competent for cases concerning alleged violations of the Act on the equal status and equal rights of women and men, on which it delivers rulings that are binding for the parties involved. Such rulings can only be overturned by a court of law.

Gender based violence constitutes a criminal offence under articles 70(3) and 233 b of the GPC. Act No. 122/2008 is the legal basis for restraining orders.

Iceland has ratified the CEDAW and the UN Convention on Transnational Organized Crime and its Protocol on Human Trafficking.

Iceland stated that gender equality has been a major policy aim of any recent government as far as legislation is concerned. The focus is very much on implementation of existing legislation.

Employment aspects of gender equality are dealt with in chapter 19 – Social Policy and Employment.

- ***Rights of the child***

According to Article 76(3) of the Constitution, the law shall guarantee the protection of children and ensure the care which is necessary for their well-being. This right is further elaborated upon by the Act in respect of Children (No. 76/2003), the Child Protection Act (No. 80/2002), and Chapter X of the Act on working environment, health and safety in the workplace (No. 46/1980).

An Ombudsman for Children has been established under Act No. 83/1994. The Ombudsman's role is to further the wellbeing of children and to look after their interest, rights and needs vis-à-vis public as well as private parties in all stages of life. The Government Agency for Child Protection monitors child protection committees and provides them with guidance and advice in matters pertaining to family protection and the resolution of child protection cases. Child protection committees are the basic units for child protection in Iceland; they support families in accordance with the main objectives of the Child Protection Act. They are responsible for child protection services at the local level. Each committee is composed of 5 members. There is a mandatory reporting system whereby public and professional stakeholders are obliged to notify to the local child protection committee if a child's welfare is in any way compromised.

The Children's House is responsible for cases in which it is suspected that the child has been subject to sexual harassment or abuse. It is a child-friendly, interdisciplinary and multiagency centre whereby different professionals work under the same roof in the investigation of child sexual abuse cases. Children and their guardians may, with a reference from a child protection committee, obtain all the services in one location, free of charge. In cases involving police investigations, the location of interviews is decided by a judge. However, child protection committees can request other services provided by the Children's House.

Iceland has ratified the ICCPR and the UN Convention on the Rights of the Child.

Aspects related to social inclusion and social protection are dealt with in chapter 19 – Social Policy and Employment.

### **Procedural safeguards**

- ***Liberty and security***

Article 67 of the Constitution provides: "No one may be deprived of his liberty except as permitted by law. Any person deprived of his liberty shall be entitled to be informed promptly of the reasons for this measure. Any person arrested by reason of suspicion of criminal conduct shall be brought before a judge without undue delay. If he is not released at once, the judge shall, within 24 hours, issue a reasoned decision on whether he shall be detained on remand. Detention on remand may only be ordered due to a charge subject to heavier sanctions than fines or punitive custody. The right of a person detained on remand to refer the decision on his remand to a superior court shall be guaranteed by law. A person shall never be detained on remand for longer than necessary; if the judge deems that he may be released on bail the amount of bail shall be determined by a judicial order. Any person deprived of his liberty for other reasons shall be

entitled to have the legality of the measure reviewed by a court as soon as possible. If his deprivation of liberty proves to have been unlawful he shall be released forthwith. Any person deprived of his liberty without valid reason shall have a right to compensation.”

The Code on Criminal Procedure (CCP) sets out the rules for deprivation of liberty as well as the rights of the defendant in criminal cases. According to article 90, the police can arrest a person if there is a reasonable suspicion that the person has committed a crime that is punishable by law and if the arrest is necessary in order to prevent the person to continue committing crimes, in order to ensure the person's presence before a judge, in order to ensure the person's safety or the safety of others, or to prevent the person from destroying evidence. Arrests are also possible under certain circumstances in the case of a riot, if the person refuses to identify himself, if the person has been summoned by the police to give testimony as a defendant or by the court to give evidence in a criminal case but did not appear, or if the person has disappeared from pre-trial detention without permission. Article 93 of the CCP provides for an arrested person to be informed of the reasons behind his/her arrest. According to article 94 of the CCP, an arrested person shall be brought before a judge within 24 hours if he/she has not been released after giving a statement. This period can be extended in exceptional circumstances to 30 hours. Decisions on arrest and pre-trial detention can be appealed against by the defendant before the Supreme Court.

The conditions for pre-trial detention are set out in article 95 of the CCP. There must be reasonable suspicion that the defendant has committed a crime punishable by law and has reached 15 years of age. Detention must be necessary to prevent the defendant from complicating or impeding the investigation, from absconding or hiding to avoid prosecution, from continuing committing crimes, or to ensure the safety of the defendant or other persons. Further rules on pre-trial detention are set out in articles 97 and 98 of the CCP.

As regards young offenders, there is an agreement between the prison authorities and the Government Agency for Child Protection that the latter shall try to find appropriate treatment facilities for children under the age of 18 instead of prison. The general rule regarding young offenders at the age of 18-21 is to have them serve their sentence in open prison. These measures are currently under revision in order to find a permanent solution for young offenders and to ensure that they do not serve prison sentences together with adult offenders.

Deprivations of liberty are also possible under certain circumstances according to other legal acts. These include chapter III of Act on Legal Competence on involuntary confinement, article 33 of the Act on Foreigners (which stipulates that a foreigner that has been obligated, by a decision, to leave Iceland can be arrested and committed to custody, by judicial decision in accordance with the CCP), and Act No. 19/1997 on Health Security and Communicable Diseases (which authorises the deprivation of liberty in relation to health security).

The European Convention on Human Rights, as amended with protocols 11 and 14, and including protocols No. 1, 4, 6, 7 and 13, has been enacted into domestic law in Iceland, by Act No. 62/1994. Thus, its provisions apply directly as domestic law in Iceland. Iceland has ratified the ICCPR and the Hague Convention on Civil Procedure.

- ***Right to a fair trial***

The right to a fair trial is protected by the Constitution in articles 69 (1) (the principles of *nullum crimen sine lege* and *nulla poena sine lege*) and 70 (fair trial).

Article 70(1) of the Constitution provides for court hearings to be public. Exceptions are set out in article 8(1) of the Code on Civil Procedure (No. 91/1991) and in article 10(1) of the Code of Criminal Procedure (No. 88/2008) and relate to cases where sensitive matters are involved, especially when children's or victim's interests are at stake.

The presumption of innocence is guaranteed by article 70(2) of the Constitution. Everyone charged with a criminal conduct shall be presumed innocent until proven guilty. The burden of proof rests with the prosecution authorities (Art. 108 CCP). In practice, the judge of the case in question evaluates whether or not the prosecution has presented its case in the manner that the charges are considered to be proven beyond reasonable doubt (Art. 109).

In criminal cases, costs of the proceedings, including lawyers' fees, are covered by the State. However, convicted persons are required to reimburse the treasury. If it is sufficiently clear that a convicted person has no assets or income to cover the legal costs, the claim can be waived.

In civil cases, parties can benefit from free legal aid under certain conditions: the applicant's case must give sufficient grounds for legal proceedings, the applicant must be in a difficult financial position, and the resolution of the case must have substantial bearings on the applicant's private interests.

According to article 28 (1), an accused person is entitled to information on the charges made against him/her before his/her statement is taken. Article 63 (5) of the CCP sets out the obligation for the police to provide a qualified interpreter if the defendant does not have sufficient command of the language. The same applies to criminal proceedings in court. Costs of interpretation in all criminal proceedings are not part of the case legal costs and therefore are to be covered by the State (Art. 63 (5) and 216 (2) of the CCP). However, in civil proceedings, the cost of interpretation is part of the legal costs (Art. 10 (2) and Art. 129 (1) of the Code on Civil Procedure).

Article 70 (1) of the Constitution protects the right of having reasonable time for the preparation of the defence. Article 165 (2) CCP provides for the possibility of an adjournment of the court hearing upon request of the defendant in order to prepare the defence or to gather further evidence. The right to defend oneself in person or through legal assistance of one's choosing is protected by Article 6(3)(c) of the ECHR and Article 29 of the CCP. A defendant is at all stages of criminal proceedings permitted to appoint, at his/her own cost, a lawyer to represent his/her interests (Art. 32(2) of the CCP). The police and judges are required, on certain occasions which are listed in Art. 30 and 31 of the CCP, to appoint a counsel for the defendant. Art. 33(3) of the CCP provides that before the appointment or designation of a counsel, a defendant should be granted the opportunity to nominate a counsel to take the post, and normally the defendant's wishes should be observed in that regard. Both the prosecution and the defendant are entitled to call witnesses for testimony before the court (Art. 138 (1) of the CCP). A defendant in criminal proceedings shall be granted the opportunity to question a witness who has been summoned in proceedings against him/her (Art. 122 (2) of the CCP).

The ECHR, as amended with protocols 11 and 14, and including protocols No. 1, 4, 6, 7 and 13, has been enacted into domestic law in Iceland, by Act No. 62/1994. Thus, its provisions apply directly as domestic law in Iceland. Iceland has ratified the ICCPR and the Hague Convention on Civil Procedure.

### **Protection of minorities and cultural rights**

The fundamental principle of equality is protected by article 65 of the Constitution.

Iceland has signed the Framework Convention for the Protection of National Minorities of the Council of Europe of 1995 and preparations for the ratification are in progress. The European Charter for Regional or Minority Languages has not been signed.

The Icelandic authorities also reported that a Parliamentary Resolution on an action plan on immigrant issues was adopted in May 2008. Over 90 actions were agreed to improve the

integration of immigrants and facilitating their participation in Icelandic society whilst pursuing their cultural traditions. Four actions in the action plan aim specifically at combating prejudice and discrimination: Campaign against prejudice and antagonism; education and awareness-raising against prejudice and antagonism; civics instruction (information package) for immigrants; educational and awareness-raising material on gender equality issues. The Development Fund for Immigration Issues seeks to enhance research and development projects in the field of immigration issues, with the goal of making it easier for immigrants to adjust to Icelandic society and of improving society's preparedness to accommodate immigrants.

### **Measures against racism and xenophobia**

Article 65 of the Constitution provides for the general principle of equality and non discrimination. Articles 125, 180 and 233(a) of the GPC prohibit hate speech, insults against lawfully existing religious communities and discriminating against a person in the course of doing business. Article 70.1.7 of the GPC lays down provisions on determining the penalty for crimes based on racism or other such motive or impulse.

A new draft bill on the Media was submitted to Althingi in November 2010, prohibiting incitement of hatred in the media based on race, sex, sexual orientation, religion, nationality, opinion or cultural, economical or social status in the society.

The Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law has not yet been fully transposed into Icelandic law. Iceland has ratified the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the ICCPR and the ICESCR. Iceland has signed the Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

### **The EU Fundamental Rights Agency**

Iceland does not participate in the work of EU's Fundamental Rights Agency.

### **Protection of personal data**

Iceland has ratified the Council of Europe Convention No. 108 on the Protection of Individuals with regard to Automatic Processing of Personal Data. The Act on Personal Data Protection (No. 77/2000) entered into force in 2001 and transposes the European Data Protection Directive (95/46/EC). Both the Directive and the Icelandic act apply to the private as well as to the public sectors, and both contain the same limitation of scope as regards processing of personal data that concern public security, national defence, State security and the activities of the State in areas of criminal law.

The Data Protection Authority (DPA) is set up as an independent authority in the sense that it does not have to obey orders from a higher administrative authority. It has a board of directors and is administratively subject to the Minister of Interior. The Minister of Interior appoints five persons to the board. The chairman and the vice-chairman are appointed without nomination and shall be lawyers meeting the conditions to become district court judges. The Supreme Court and the Icelandic society for Information Processing each nominate one candidate. The Minister of Interior decides on the remuneration of the board members. In 2010, the Data Protection Authority received more than 1.200 cases. All decisions of the Authority can be appealed to the courts. The Data Protection Authority is administratively subject to the Ministry of Justice. Iceland stated that the administrative connection between the Ministry and the DPA is limited to the fact that the yearly financial budget for the DPA is allocated through the ministry, which is

responsible for supervision of the DPA only in regard of the budget. This connection has ramifications in relation to its independence.

The Act on Personal Data Protection has a broad scope of application. It covers all personal data in the sense of information that can be traced to an individual. Processing is defined as any operation or set of operations performed on personal data. All processing must meet the criteria of article 8 of the Act on Personal Data Protection (processing only allowed if consent of the data subject or other conditions are met). Article 9 sets out the additional criteria to be met for the processing of sensitive data. The latter are defined as all data revealing race or ethnic origin, political opinions, religious or philosophical belief, trade union membership, health or sexual life. Article 7 of the Act on Personal Data Protection contains the finality principle. Data must only be collected for a specific, explicit and legitimate purpose. It must not be further processed in a way that is incompatible with those purposes.

The data subject has the right to access own data, to obtain rectification and to object. The data subject can complain to the Data Protection Authority.

According to article 29 of the Act on Personal Data Protection, personal data can be transferred to EU and EEA countries under certain restrictions provided in the rules. According to article 30, personal data cannot be transferred to other third countries, unless special conditions are met. For some exemptions in this regard to be in line with the *acquis* the requirements of Directive 95/46/EC must be applied implicitly. Legislation can be dependent on explanatory notes at times.

The data protection legislation requires adjustment in certain areas in order to be in line with the *acquis*.

## **II.d EU CITIZENS RIGHTS**

### **Right to vote and stand as a candidate in elections to the European Parliament**

The Icelandic authorities indicated that implementation of this right requires amendment of the legislation.

### **Right to vote and stand as a candidate in municipal elections**

The Act on General Elections of Municipal Government (No. 5/1998) regulates the election of the representative bodies of the municipalities: Elections are direct, universal, free and secret; equality between men and women is ensured; elections are held every four years; the act contains rules on voting rights and eligibility to stand for election; those eligible to vote are also eligible to stand as candidates. Nordic citizens have voting rights after three years of residence in Iceland. Other foreign citizens have voting rights after five years of residence in Iceland.

### **Right to move and reside freely within the European Union**

As part of the EEA agreement, Iceland has transposed Directive 2004/38/EC on the right to move and reside freely within the European Union into Icelandic legislation. Relevant legal acts are the Act on Foreigners (No. 96/2002), the Regulation on Foreigners (No. 53/2003) and the Act on the Foreign Nationals Right to Work (No. 97/2002).

### **Diplomatic and consular protection**

The Icelandic Foreign Service provides diplomatic and consular protection for Icelandic Citizens on the basis of the Act on the Icelandic Foreign Service (No. 39/1971). Iceland has missions and embassies in 8 countries of the European Union and in 13 countries outside the EU. Iceland stated



that it already provides access to diplomatic and consular protection, which upon accession would become available for EU citizens as foreseen by the *acquis*.

Iceland participates in the Nordic cooperation with Denmark, Finland, Iceland, Norway and Sweden, based on the Treaty of Helsinki from 1962.

Iceland has – on an ad-hoc basis – participated in EU cooperation.

### **III. ASSESSMENT OF THE DEGREE OF ALIGNMENT AND IMPLEMENTING CAPACITY**

Iceland's standards as regards the functioning of the judiciary are high and the country has reached a very high level of alignment with the EU *acquis* in the area of fundamental rights. Iceland has also demonstrated that it has the necessary administrative capacity to enforce legislation in this area effectively. The Commission will closely follow the implementation of the new rules on appointing judges and prosecutors. The limited tenure of prosecutors other than the Public Prosecutor and the Deputy Public Prosecutor needs to be reviewed. The Commission will also closely monitor the full implementation of the recent amendments to the anti-corruption framework as well as the ratification of the pending related international agreements.

#### **III.a JUDICIARY**

Iceland's judiciary is of a high standard and the judicial system is well established. Constitutional and legal provisions ensure the independence and the impartiality of the judiciary and their implementation is good. Professionalism and competence of judges in Iceland is generally good. Continuous training is provided. Iceland's judiciary shows high efficiency and steps for further improving its efficiency are under discussion. There is no significant backlog of cases.

The Commission will closely monitor the implementation of the new rules on appointing judges and prosecutors. The appointment of prosecutors other than the Public Prosecutor and the Deputy Public Prosecutor for a period of only 5 years needs to be reviewed.

#### **III.b ANTI-CORRUPTION**

The legal framework to combat corruption is in place. Recent legal amendments providing for the setting up of codes of ethics for all public employees and government offices and amended rules on the financing of political parties have completed the legal framework.

As part of the EEA agreement, Iceland has already aligned itself with a number of EU instruments. Additional measures are needed upon accession for full alignment with the Convention on the Protection of the Financial Interests of the European Union and its protocols (in particular as regards jurisdiction and the criminal liability of the heads of businesses) and with the Convention on the Fight against Corruption involving Officials of the European Union or Officials of the Member States of the EU. It is expected that Iceland will have no problems in ensuring full compliance of the General Penal Code with the Council Framework Decision 2003/568/JHA on Combating Corruption in the Private Sector.

Icelandic legislation is not fully in line with the Convention on the Protection of the Financial Interests of the European Union and its protocols, as well as with the Convention on the Fight against Corruption involving Officials of the European Union or Officials of the Member States of the EU. Amendments to the General Penal Code are needed to ensure that it includes EU officials under the term of public official, to adapt jurisdiction and to establish criminal liability for heads of businesses.

Iceland has adopted relevant international instruments against corruption. The Council of Europe Civil Law Convention against Corruption as well as of the Additional Protocol to the Criminal Law Convention against Corruption are not ratified.

The Commission will also closely monitor the full implementation of the recent amendments to the anti-corruption framework, in particular in view of avoiding conflicts of interest, as well as the ratification of the pending related international agreements.

### **III.c FUNDAMENTAL RIGHTS**

#### **General**

Iceland has a comprehensive system for the protection of fundamental rights, provided for by its Constitution and legal and institutional framework; a high level of implementation is ensured. Iceland has ratified the majority of international agreements regarding the protection and respect of these rights. Overall, no significant problems can be noted in ensuring the protection and respect of fundamental rights.

#### **Human rights**

The Icelandic Constitution provides for the protection of human rights and the level of implementation is very high. No problems can be reported in this area.

Human dignity is a basic principle and is enshrined in all fundamental rights legislation. The Icelandic Constitution prohibits capital punishment, torture and inhuman or degrading treatment. It protects mental and physical integrity and from compulsory labour. No problems in the enforcement of these rights have been reported.

The right to privacy is also fully protected as well as the right to family life and the right to marry and found a family. No problems in the enforcement of these rights have been reported.

The right to form religious associations, to practice religion in conformity with individual convictions and to remain outside religious associations and not to pay any personal dues to any religious association of which a person is not a member is also guaranteed.

Freedom of expression, positive and negative right to assembly and association for all persons residing in Iceland, irrespective of their citizenship is also guaranteed in the Constitution. Limitations to this right as set out in this article concern associations furthering unlawful objectives. No problems in the enforcement of this right have been reported.

No problems in the enforcement of the protection of socially vulnerable and disabled persons as well as of the principle of non-discrimination have been reported. The same applies to the right to suitable general education and tuition as well as to the rights of children.

The right of private ownership is guaranteed. This also applies to citizens of the EEA Member States. Expropriations are only possible if three conditions are met: the expropriation is in the public interest, it is provided for by the law and full compensation is paid.

No problems in the enforcement of equality between men and women have been reported.

## **Procedural safeguards, protection of minorities and cultural rights, and measures against racism and xenophobia**

The Icelandic Constitution provides for adequate procedural safeguards and the level of implementation is very high. No problems can be reported in this area.

The Icelandic Constitution together with the country's legal framework provide for the protection of the right to liberty and security. The same applies to the protection of the right to a fair trial.

The fundamental principle of equality is protected by Article 65 of the Constitution. Protection of minorities is ensured in Iceland. The Constitution and the General Criminal Code provide for measures against racism and xenophobia. Some further efforts are needed to fully bring Icelandic legislation in line upon accession with the Council framework decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law.

### **The EU Fundamental rights Agency**

Iceland will participate in the Agency's work upon accession. No problems are foreseen in this area.

### **Protection of personal data**

The independence of the Data Protection Authority needs further strengthening. In particular the rules on the appointment of the members of the board of directors by the Minister of Interior raise concerns. The data protection legislation requires adjustment in certain areas in order to be in line with the *acquis*. Some exemptions with regard to the transfer of personal data to third countries as set out in Directive 95/46/EC are said be applied implicitly rather than being specifically laid down in the law.

Iceland has not yet ratified the Additional Protocol to the Council of Europe Convention No. 108 on the Protection of Individuals with regard to Automatic Processing of Personal Data.

## **III.d EU CITIZENS RIGHTS**

### **Right to vote and stand as a candidate in elections to the European Parliament**

Upon accession Iceland needs to have adopted legislation that would allow EU citizens to vote and stand as candidates in elections to the European Parliament. It is expected that Iceland will have no difficulties in adopting and implementing this part of the *acquis*.

### **Right to vote and stand as a candidate in municipal elections**

EU citizens already have voting rights in municipal elections, but the different treatment between citizens of Nordic countries and those of other Member States is a matter of concern. In order to bring the law of Iceland in line with the *acquis*, requirements on minimum residence periods for EU citizens need to be revised and Directive 94/80/EC fully transposed. Upon accession Iceland would have to amend its legislation ensuring equal voting rights in municipal elections for all EU citizens. No difficulties are expected with the adoption of this part of the *acquis*.

### **Right to move and reside freely within the European Union**

As part of the EEA agreement, Iceland has already transposed Directive 2004/38/EC, ensuring the right of EU citizens to move and reside freely within the country.

## **Diplomatic and consular protection**

Iceland already provides access to diplomatic and consular protection for EU citizens as foreseen by the *acquis*.