

## ICELAND

### Follow-up Jurisprudence Action by Treaty Bodies

CCPR, CCPR/C/SR.2564/Add.1 (2008)

HUMAN RIGHTS COMMITTEE

Ninety-third session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)\* OF THE 2564th MEETING

Held at the Palais Wilson, Geneva,

on Wednesday, 23 July 2008 at 11.25 a.m.

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FOLLOW-UP TO CONCLUDING OBSERVATIONS ON STATE REPORTS AND TO  
VIEWS UNDER THE OPTIONAL PROTOCOL

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Follow-up progress report of the Human Rights Committee on individual communications  
(CCPR/C/93/R.5)

40. Mr. SHEARER, Special Rapporteur for follow-up on communications, introduced the Committee's progress report on individual communications.

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45. Turning to the case pertaining to the allocation of fishing licences in Iceland, he said that a long response had been received from the Government, in which it asked whether minor adaptations to the fisheries management system would suffice or whether more radical changes were required. He recalled that the Committee had called for radical changes. The State party had pointed out that the implementation of the Committee's Views would require a radical overhaul of the fisheries licensing system. It had stated that the system could not be dismantled in six months, but that it would take the Committee's Views into account in the context of a long-term reassessment of the system. The author had not yet responded to the State party's comments, and since the deadline for doing so had not yet been reached, the dialogue could be considered ongoing.

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53. Mr. O'FLAHERTY said that Iceland's responses on the fisheries management case had been encouraging, and he felt it reasonable for a State party to seek clarification from the Committee. He recalled that the Committee had merely requested a review of the fisheries management system, and had not stated whether the reform should be major or minor. The State party's response to the Committee's request for compensation to be granted to the author had identified a potential problem of a surge in cases. He wondered whether in some circumstances the Committee should request symbolic compensation. He expressed concern that in certain cases the Committee's recommendation to grant compensation was not wholly appropriate. He

wondered whether the Special Rapporteur or the secretariat could present a paper on the question of remedies, so that the Committee could consider them in a more calibrated and systematic manner in relation to each individual communication.

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The meeting rose at 1.05 p.m.

## VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

187. In July 1990, the Committee established a procedure for the monitoring of follow-up to its Views under article 5, paragraph 4, of the Optional Protocol, and created the mandate of the Special Rapporteur for follow-up to Views to this effect. Mr. Ando has been the Special Rapporteur since March 2001 (seventy-first session).

188. In 1991, the Special Rapporteur began to request follow-up information from States parties. Such information had been systematically requested in respect of all Views with a finding of a violation of Covenant rights; 429 Views out of the 547 Views adopted since 1979 concluded that there had been a violation of the Covenant.

189. All attempts to categorize follow-up replies by States parties are inherently imprecise and subjective: it accordingly is not possible to provide a neat statistical breakdown of follow-up replies. Many follow-up replies received may be considered satisfactory, in that they display the willingness of the State party to implement the Committee's recommendations or to offer the complainant an appropriate remedy. Other replies cannot be considered satisfactory because they either do not address the Committee's Views at all or relate only to certain aspects of them. Some replies simply note that the victim has filed a claim for compensation outside statutory deadlines and that no compensation can therefore be paid. Still other replies indicate that there is no legal obligation on the State party to provide a remedy, but that a remedy will be afforded to the complainant on an *ex gratia* basis.

190. The remaining follow-up replies challenge the Committee's Views and findings on factual or legal grounds, constitute much-belated submissions on the merits of the complaint, promise an investigation of the matter considered by the Committee or indicate that the State party will not, for one reason or another, give effect to the Committee's recommendations.

191. In many cases, the Secretariat has also received information from complainants to the effect that the Committee's Views have not been implemented. Conversely, in rare instances, the petitioner has informed the Committee that the State party had in fact given effect to the Committee's recommendations, even though the State party had not itself provided that information.

192. The present annual report adopts the same format for the presentation of follow-up information as the last annual report. The table below displays a complete picture of follow-up replies from States parties received up to 7 July 2008, in relation to Views in which the Committee found violations of the Covenant. Wherever possible, it indicates whether follow-up replies are or have been considered as satisfactory or unsatisfactory, in terms of their compliance with the Committee's Views, or whether the dialogue between the State party and the Special Rapporteur for follow-up to Views continues. The notes following a number of case entries convey an idea of the difficulties in categorizing follow-up replies.

193. Follow-up information provided by States parties and by petitioners or their representatives subsequent to the last annual report (A/62/40) is set out in annex VII to volume II of the present annual report.

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Iceland (1)	1306/2004, <i>Haraldsson and Sveinsson</i> A/62/40	X A/63/40				X
...						

**Annex VII**

**FOLLOW UP OF THE HUMAN RIGHTS COMMITTEE ON INDIVIDUAL COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

This report sets out all information provided by States parties and authors or their counsel since the last Annual Report (A/62/40).

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<b>State party</b>	<b>ICELAND</b>
<b>Case</b>	<b>Haraldsson, 1306/2004</b>
<b>Views adopted on</b>	24 October 2007
<b>Issues and violations found</b>	Discrimination in business of commercial fishing quotas - article 28.
<b>Remedy recommended</b>	An effective remedy, including adequate compensation and review of its fisheries management system.
<b>Due date for State party response</b>	2 June 2008
<b>Date of reply</b>	11 June 2008
<b>State party response</b>	The State party provides a detailed response to the Committee's Views, which is only summarized below. The State party provides detailed information on the development of fishing rights in the State party with a view to shedding some light on the framework in which the State party may take action on its Views (copies may be provided from the secretariat upon request). It submits that it cannot infer from the Views how far it should go for its measures to be considered "effective". It asks of the Committee whether minor adaptations and changes in the Icelandic fisheries management system will suffice or whether more radical changes are needed. In any event, it is of the view that caution is required and that overturning the Icelandic fisheries management system would have a profound impact on the Icelandic economy, and in some respects it would appear to be impossible to wind down the system e.g. by recovering the quota

for the State, unless the State treasury were prepared to pay some sort of compensation to the persons affected by the confiscation. It could not however be rule out that the State could act on the basis of the third sentence in Article 1 of the Fisheries Management Act which stipulates that the issue of catch entitlements does not form a right of ownership or irrevocable jurisdiction over harvest rights. In short there are numerous considerations that need to be taken into account before any decisions can be made on alterations of the system. The State party submits that the manifesto of the current Government includes a decision to “conduct a study of the experience of the quota system for fisheries management and the impact of the system on regional development” but that this is a long-term plan and the system cannot be dismantled in six months. The State party submits that there are no grounds for paying compensation to the authors as this could result in a run of claims for compensation against the State; such claims are untenable under Icelandic law. To ensure equality, the State would have to compensate all those who found themselves in a similar situation and it would constitute an admission that anyone who possesses or buys a vessel holding a fishing permit would be entitled to allocation of catch quotas. This would have unforeseeable consequences for the management of the State party’s fisheries resources, protection of the fish stocks around Iceland and economic stability in the country.

**Author’s response**

The State party’s submission was sent to the authors on 12 June 2008 with a deadline of two months for comments.

**Committee’s Decision**

The Committee welcomes the fact that the State party is currently conducting a review of its fisheries management system and looks forward to being informed of the results as well as the implementation of the Committee’s Views. It also looks forward to receiving the authors’ comments in this regard and considers the dialogue ongoing.

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## VI. FOLLOW UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

230. In July 1990, the Committee established a procedure for the monitoring of follow-up to its Views under article 5, paragraph 4, of the Optional Protocol, and created the mandate of the Special Rapporteur for follow-up on Views to this effect. Ms. Ruth Wedgwood has been the Special Rapporteur since July 2009 (ninety-sixth session).

231. In 1991, the Special Rapporteur began to request follow-up information from States parties. Such information had been systematically requested in respect of all Views with a finding of a violation of Covenant rights; 543 Views out of the 681 Views adopted since 1979 concluded that there had been a violation of the Covenant.

232. All attempts to categorize follow-up replies by States parties are inherently imprecise and subjective: it accordingly is not possible to provide a neat statistical breakdown of follow-up replies. Many follow-up replies received may be considered satisfactory, in that they display the willingness of the State party to implement the Committee's recommendations or to offer the complainant an appropriate remedy. Other replies cannot be considered satisfactory because they either do not address the Committee's Views at all or relate only to certain aspects of them. Some replies simply note that the victim has filed a claim for compensation outside statutory deadlines and that no compensation can therefore be paid. Still other replies indicate that there is no legal obligation on the State party to provide a remedy, but that a remedy will be afforded to the complainant on an *ex gratia* basis.

233. The remaining follow-up replies challenge the Committee's Views and findings on factual or legal grounds, constitute much belated submissions on the merits of the complaint, promise an investigation of the matter considered by the Committee or indicate that the State party will not, for one reason or another, give effect to the Committee's recommendations.

234. In many cases, the Secretariat has also received information from complainants to the effect that the Committee's Views have not been implemented. Conversely, in rare instances, the petitioner has informed the Committee that the State party had in fact given effect to the Committee's recommendations, even though the State party had not itself provided that information.

235. The present annual report adopts the same format for the presentation of follow-up information as the last annual report. The table below displays a complete picture of follow-up replies from States parties received up to the ninety-sixth session (13-31 July 2009), in relation to Views in which the Committee found violations of the Covenant. Wherever possible, it indicates whether follow-up replies are or have been considered as satisfactory or unsatisfactory, in terms of their compliance with the Committee's Views, or whether the dialogue between the State party and the Special Rapporteur for follow-up on Views continues. The notes following a number of case entries convey an idea of the difficulties in categorizing follow-up replies.

236. Follow-up information provided by States parties and by petitioners or their representatives subsequent to the last annual report (A/63/40) is set out in annex IX to volume II of the present annual report.

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Iceland (1)	1306/2004, <i>Haraldsson</i> and <i>Sveinsson</i> A/62/40	X A/63/40, A/64/40				X
...						

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## Annex IX

### Follow-up of the Human Rights Committee on individual communications under the Optional Protocol to the International Covenant on Civil and Political Rights

This report sets out all information provided by States parties and authors or their counsel since the last annual report (A/63/40).

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<b>State party</b>	<b>Iceland</b>
<b>Case</b>	<i>Haraldsson, 1306/2004</i>
<b>Views adopted on</b>	24 October 2007
<b>Issues and violations found</b>	Discrimination in business of commercial fishing quotas – article 28.
<b>Remedy recommended</b>	An effective remedy, including adequate compensation and review of its fisheries management system.
<b>Due date for State party response</b>	2 June 2008
<b>Date of State party response</b>	26 February 2009 (the State party had also responded on 11 June 2008.)
<b>State party response</b>	<p>On 11 June 2008, the State party had provided a detailed response to the Committee's Views, which is only summarized below. The State party provided detailed information on the development of fishing rights in the State party and submitted that it could not infer from the Views how far it should go for its measures to be considered "effective". It asked the Committee whether minor adaptations and changes in the Icelandic Fisheries Management System would suffice or whether more radical changes were needed. In any event, it was of the view that caution was required and that overturning the Icelandic fisheries</p>

management system would have a profound impact on the Icelandic economy, and in some respects it would appear to be impossible to wind down the system e.g. by recovering the quota for the State, unless the State treasury were prepared to pay some sort of compensation to the persons affected by the confiscation. The State party submitted that the manifesto of the Government at the time included a decision to “conduct a study of the experience of the quota system for fisheries management and the impact of the system on regional development” but that this was a long term plan and the system could not be dismantled in six months. The State party submitted that there were no grounds for paying compensation to the authors, as this could result in a run of claims for compensation against the State; and such claims are untenable under Icelandic law. To ensure equality, the State would have to compensate all those who found themselves in a similar situation and it would constitute an admission that anyone who possesses or buys a vessel holding a fishing permit would be entitled to allocation of catch quotas. This would have unforeseeable consequences for the management of the State party’s fisheries resources, protection of the fish stocks around Iceland and economic stability in the country.

**Author’s comments**

On 10 August 2008, the authors responded in detail to the State party’s submission. They argued that despite the State party’s claim that compensation may have to be paid to fishing operators if the foundation of the fisheries management system is removed, the provision of the Constitution referred (s 75.1) to does not provide for compensation for such restriction, as in cases when ownership rights according to the section are restricted. They referred to a decision of the Supreme Court, which they claim supports their view. They claimed that they were disappointed by the State party’s reply, which contained no plans, or even suggestions, on how to make the Icelandic fisheries management system conform with article 26. The authors understood the Committee’s suggested remedy of “review” to mean an obligation on the State party to revise and change the system and regarded the State party’s long term plan as of no value in achieving this goal. As to the effect that it would have on the economy, the authors stated that if all catch entitlements were put up for sale in order to comply with article 26, supply would be

greatly increased, and their prices would accordingly fall, as dictated by the laws of supply and demand, and thus would not

have such a profound effect on the economy as anticipated by the State party. As to the claim of a run of claims for compensation from others in the event that the authors were granted compensation, they argued that the danger of compensation liability to others was not a valid reason for denying compensation to them. Others seeking relief would have to do so through the courts and each case would be considered on its merits. They also argued that if the system was itself made lawful before others sought redress, there would be no compensation, as a remedy would have already been provided. Finally, they informed the Committee that on 8 May 2008, the Supreme Court informed them that their request to reopen the case on the basis of the Committee's Views had been denied.

On 6 August 2008, the Committee received a response from the Icelandic Liberal party, an opposition party represented in the Icelandic Parliament. The Liberal Party supported the Committee's Views and stated that it has been campaigning against the fisheries management system since 1998. Upon adoption of the Committee's Views, the Liberal Party submitted a draft parliamentary resolution advocating compliance with the Views. Parliament has not yet had the opportunity to comment on the proposal.

**State party further response**

On 26 February 2009, the Minister of Fisheries and Agriculture responded to all the information provided to date. He affirmed the commitment of the current Government to honour the promises made by its predecessor set out in its reply to the Views on 11 June 2008. He referred to the collapse of the majority coalition Government at the end of January and the taking of office of the current minority Government on 1 February 2009. Elections had been scheduled for 25 April 2009. He also informed the Committee of the effect of the global financial crisis on the State party, which had necessitated the intervention of the International Monetary Fund (IMF). Given the financial, economic and political circumstances, he requested, on behalf of the State party, the Committee's understanding of the need for a longer time frame to fulfil its commitments.

**Committee's Decision**

The Committee considers the dialogue ongoing

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