



ADF INTERNATIONAL

ECOSOC Special Consultative Status (2010)

UNIVERSAL PERIODIC REVIEW – SECOND CYCLE

**Submission to the 26th session of the
Human Rights Council's Universal Periodic Review Working Group**

October – November 2016, Geneva, Switzerland

ICELAND

Submission by:

Ewelina Ochab
ADF International
28, Ch. du Petit Saconnex
1209 Geneva, Switzerland

Web: www.adfinternational.org
Email: eochar@adfinternational.org

Introduction

1. ADF International is a global alliance-building legal organization that advocates for religious freedom, life, and marriage and family before national and international institutions. As well as having ECOSOC consultative status with the United Nations (registered name “Alliance Defending Freedom”), ADF International has accreditation with the European Commission and Parliament, the Organization for Security and Co-operation in Europe, and the Organization of American States, and is a participant in the FRA Fundamental Rights Platform.
2. This report focuses on the right to freedom of religion and right to education under international law, and Iceland’s shortcomings in promoting and defending these rights.

(a) Freedom of Religion

Conscientious Objection

Background

3. Article 63 of the Constitution of the Republic of Iceland (as revised in 1999¹) (the Constitution) provides that:

All persons have the right to form religious associations and to practice their religion in conformity with their individual convictions. Nothing may however be preached or practised which is prejudicial to good morals or public order.

4. Additionally, Article 65 protects everyone from any discrimination based on “sex, religion, opinion, national origin, race, colour, property, birth or other status.”
5. However, Article 64 of the Constitution indicates, “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.” This provision may mean that individuals do not have a right of conscientious objection if the requested/ordered act qualifies as a civil duty.

Freedom of Thought, Conscience and Religion under International Law

6. Freedom of thought, conscience and religion is protected under Article 18 of the International Covenant on Civil and Political Rights (ICCPR).
7. While conscientious objection is not expressly protected under any of the UN human rights treaties, it is indeed recognized by the UN as a right. Conscientious objection in the military was recognized by the Human Rights Commission in its 1989² resolution and re-confirmed as a right in subsequent resolutions. Furthermore, as confirmed by the Human Rights Committee in General Comment No.22, the legal basis of the right to conscientious objection is derived from freedom of religion in Article 18 of the ICCPR.³

¹ Constitution of the Republic of Iceland, available at <http://www.government.is/constitution/>

² Conscientious objection to military service (Resolution 1989/59), available at <http://co-guide.org/interpretation/conscientious-objection-military-service-resolution-198959>.

³ Human Rights Committee General Comment No. 22, available at <http://co-guide.org/interpretation/general-comment-22-article-18-iccpr>, 11.

8. As Iceland has never had a standing army, conscientious objection in the military has never been an issue.
9. However, the lack of any legal framework in relation to conscientious objection⁴ may contribute to the lack of adequate response for infringements on the religious freedom of medical staff (e.g., in the case of abortion). Iceland should recognize conscientious objection in the field of health care, and should pass legislation guaranteeing health-care providers the right to object to participation in or provision of services that go against their conscience.
10. Therefore, Iceland should review the provisions and take steps to ensure that individuals' religious freedom is protected especially in military (other than standing army) and medical services.

Choosing and Changing Religion

11. In Iceland, newborns are automatically registered to his/her mother's religion. This is irrespective of the religion of the father and father's wishes. As the wishes of the father are not respected, this practice should be reviewed and amended accordingly so as not to discriminate against the father and his religion and convictions.⁵
12. As asserted by the Human Rights Committee in its General Comment No. 22: "The freedom from coercion to have or to adopt a religion or belief and the liberty of parents and guardians to ensure religious and moral education cannot be restricted." The procedure to change one's religion should be reviewed, and relaxed in order to meet international standards.

(b) Right to Education

Homeschooling

Background

13. Article 76 of the Constitution protects the right to education: "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." The right to education is further elaborated in the Compulsory School Act No.91, of 12th June 2008, which came into force on 1st July 2008 (the 2008 Act). Article 2 of the Act provides that schooling in Iceland is compulsory between the ages of 6 and 16. Article 2 of the 2008 Act further adds that schooling in Iceland "shall be characterized by tolerance and affection, Christian heritage of Icelandic culture, equality, democratic cooperation, responsibility, concern, forgiveness and respect for human values." In compliance with Article 2, schools offer a compulsory curriculum for Christianity, ethics, and theology.⁶ Article 2 of the 2008 Act affirms, "Parents shall look out for the interests of their children at compulsory school age."
14. Under Article 46 of the 2008 Act parents who wish to homeschool their children are to apply for an exemption from compulsory education at school. Such exemption may be provided by a head teacher after consultations with the School Board and

⁴ State Party Report, CCPR/C/ISL/5

⁵ Digplanet, Freedom of Religion in Iceland, available at: http://www.digplanet.com/wiki/Freedom_of_religion_in_Iceland

⁶ United States Department of State, *2014 Report on International Religious Freedom - Iceland*, 14 October 2015, available at: <http://www.refworld.org/docid/562105988b.html>

specialist services. If such exemption is granted, children are to comply with evaluation and monitoring as established by the 2008 Act.

15. Requirements and restrictions in relation to homeschooling are very strict despite the fact that the 2008 Act aimed to relax the regulations. Parents wishing to homeschool their children are required to provide a full curriculum for consideration by the local government (prior to the approval of the application). During homeschooling, parents are required to submit evidence to show the progress made by their children. However, the biggest obstacle is the requirement that one of the parents be a qualified teacher (remaining under supervision in the development of the teaching plan and throughout the homeschooling).⁷
16. Until 2011, only one application for homeschooling was sent to the Ministry of Education.⁸ Iceland should review its provisions relating to homeschooling to ensure the established administrative requirements are not burdensome and do not discourage parents from homeschooling their children.

International Law

17. The right of parents to choose education for their children and to educate their children in accordance with their convictions is protected under international law. Article 26(3) of the Universal Declaration of Human Rights states, "Parents have a prior right to choose the kind of education that shall be given to their children."
18. Article 13(3) of the International Covenant on Economic, Social and Cultural Rights is equally explicit in guaranteeing the right to alternative forms of education. It reads:

The States Parties [...] undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.
19. Article 18(4) of the ICCPR provides that States must "undertake to have respect for the liberty of parents [...] to ensure the religious and moral education of their children in conformity with their own convictions."
20. Article 18(1) of the Convention on the Rights of the Child states, "Parents or, as the case may be, legal guardians have the primary responsibility for the upbringing and development of the child." Article 14(2) requires States to "respect the rights and duties of the parents [. . .] to provide direction to the child in the exercise of his or her right [to freedom of religion] in a manner consistent with the evolving capacities of the child."
21. While the 2008 Act was a positive step towards relaxing the law on homeschooling, it has changed little (if anything) in relation to homeschooling in Iceland. As the requirements for parents to be able to homeschool their children are very strict (e.g., the requirement for a parent to have a teaching certificate), many parents are prevented from homeschooling their children. In one reported case from 2011, a

⁷ Alex, Only One Child in Iceland Home Schooled, available at: <http://www.icenews.is/2011/07/01/only-one-child-in-iceland-home-schooled/#axzz3u6DD2h7s>

⁸ Ibid.

homeschooling application was rejected because the parent's teaching application was not accepted.⁹ Consequently, parents' right to choose their children's education and to educate them in accordance with their convictions may be infringed.

22. The 2008 Act and the requirements for homeschooling must be revised and amended in order for the domestic provisions to be compatible with international standards.

Education on Responsible Sexual Behaviour

23. Education on responsible sexual behaviour is incorporated into school curricula.¹⁰ It is a mandatory subject and starts at the age of 11 or 12.¹¹ For ages 13 to 16, the Ministry of Education introduced another subject of "Human Sexuality Values and Choices". Parents do not have the option to opt their children out of this lesson.¹²
24. In January 2013, the Icelandic Ministries of Education and the Interior commissioned and released a short educational film *Fáðu já* (Get Consent), and showed it in every primary and secondary school in Iceland.¹³ One of the creators of the film, Brynhildur Björnsdóttir, indicated the aim behind the film: "We wanted to convey the message that the key is to communicate and get consent, no matter what you want to do. Especially if you want to deviate from 'normal' sex."¹⁴
25. Iceland has to confirm whether the content of the video was age-appropriate, whether schools sought prior parental consent to screen the video and whether parents were given the option to opt their children out of having to watch the video.
26. Furthermore, in early 2015 it was proposed that education on responsible sexual behaviour would include "instructions about homosexuality."¹⁵ It was not confirmed whether parents were consulted with this proposal. The proposal aimed to improve the position of LGBT youth at schools and so protect them from prejudice and discrimination. It was proposed that:

(1) School employees receive instruction from representatives of Samtökin '78.¹⁶

(2) All students would be offered an appointment for counselling Samtökin '78 free of charge.

(3) Hafnarfjarðarbær started cooperation with Samtökin '78 for the development of curriculum for all grades of primary school.¹⁷

⁹ Ibid.

¹⁰ National Curriculum Guides, available at: <http://eng.menntamalaraduneyti.is>

¹¹ A Reference Guide to Policies and Practices. Sexuality Education in Europe. Available at: <http://www.sexarchive.info/BIB/SexEd/SexEd.html#3.13>

¹² Ibid.

¹³ Paul Fontaine, Icelandic Sex Education Film Released, available at: <http://grapevine.is/news/2013/02/01/icelandic-sex-education-film-released/>.

¹⁴ Gabriel Benjamin, Get Consent, available at: <http://grapevine.is/mag/articles/2013/08/02/get-consent/>.

¹⁵ Anisa Subedar, Iceland's Facebook War over Sex Education, available at: <http://www.bbc.com/news/blogs-trending-32455211>.

¹⁶ Samtökin '78 is an Icelandic organisation for "lesbian, homosexual, bisexual, asexual, pansexual, transgender and intersex people." Samtökin '78, About Us, available at: <http://www.samtokin78.is/about-us>.

¹⁷ Ibid.

27. While the aim of the schools to protect LGBT youth from discrimination and prejudice at schools is appreciated, introducing compulsory curricula incorporating “instructions about homosexuality” may infringe the rights of students and the rights of their parents to have their children educated in accordance with their religion or convictions.
28. Article 15 of the 2008 Act says that parents wishing to exempt their children from a particular subject (whether temporarily or in general) should ask the head teacher for an authorization. The head teacher may grant such authorization if the reasons provided by the parents are valid. Article 15 further indicates, “Parents shall nonetheless take care that the pupil catches up on what he/she might lose out on while he/she is exempt from school attendance.” It is not clarified what would constitute a valid reason and how much discretion the teacher has. Furthermore, it remains unclear whether parents can opt their children out of the responsible sexual behaviour curriculum.¹⁸
29. Iceland must ensure cooperation with parents and community and religious leaders, and must respect the religious values of the community. Education on responsible sexual behaviour should focus on encouraging healthy relationships and responsible decision-making, with an emphasis on abstinence and fidelity for youth. Young people must be informed about the risks associated with premature sexual activity and multiple concurrent partners. Parents must be ensured their right to opt their children out of educational programs that conflict with their beliefs.

(c) Recommendations

30. In view of the above, ADF International recommends the following:
 - Ensure the right to conscientious objection by virtue of Article 18 of the ICCPR;
 - Ensure the right to change one’s religion;
 - Ensure the father’s equal right to determine the child’s recorded religion;
 - Review the 2008 Act and amend it in accordance with international law;
 - Review and amend the requirements set out for parents intending to homeschool their children;
 - Promote and protect parents’ right to decide on their children’s education;
 - Review the education on responsible sexual behaviour program to ensure that it is age-appropriate and respects and protects parents’ right to decide on their children’s education;
 - Ensure that parents have an option to opt their children out of the education on responsible sexual behaviour if its content violates the religious values of the students and their parents.

¹⁸ (n 11)