



United Nations  
Aarhus Convention Secretariat  
Compliance Committee

ÁTVINNUVEGA- OG  
NÝSKÖPUNARRÁÐUNEYTIÐ

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Reference: ANR19060264/15.09.08

Subject: Communication concerning compliance by Iceland (PRE/ACCC/C/2019/168).

### **Introduction**

Referral is made to a letter from the Aarhus Convention Compliance Committee of 8 October 2019 where questions were submitted as regards communication PRE/ACCC/C/2019/168.

It has come to the Party's attention that reference to one of the court cases in Iceland's written statement to the Compliance Committee of 28 June 2019 was misspelled. The correct case numbers are E-252/2019 (misspelled as E-525/2019) and E-253/2019. As it is evident from the content of the written statement that reference is indeed made to the aforementioned cases, the Party trusts that this clerical error has not had any adverse effects on the Communicant's chance to reply to the questions of the Compliance Committee.

Following are the Party's replies to the questions from the Compliance Committee:

### **Questions to both parties:**

#### **1. What is the current status of cases Nos. E-252/2019 and E-253/2019?**

First hearing was held on 26<sup>th</sup> August 2019. On 27<sup>th</sup> August and 28<sup>th</sup> August 2019, Arctic Sea Farm ehf. and Fjarðarlax ehf. were granted new operating licenses by the Icelandic Food and safety Authority (hereafter "MAST") in accordance with the regular procedure provided for in Act No 71/2008, on fish farming (hereafter "the Act"). On 19<sup>th</sup> September 2019 the District Court of Reykjavík ruled in cases Nos E-252/2019 and E-253/2019 and dismissed the plaintiffs's claims on the grounds of lack of legally protected interest.

The principle of legally protected interests is a fundamental principle in the Icelandic civil procedural law. The principle limits a court's purview to disputes in which parties to a lawsuit have legally protected interests. The principle also entails the condition that a claim shall be so couched that its resolution will have actual value for the parties' legal status. The principle is stipulated in Article 24(1) and 25(1) of the Civil Procedure Act No 91/1991. Article 24(1) stipulates that courts' jurisdiction is limited to claims that a statute and domestic law cover, and Article 25(1) of the Act provides that courts do not resolve legal questions. Arctic Sea Farm ehf. and Fjarðarlax ehf. were granted new operating licenses on 27<sup>th</sup> and 28<sup>th</sup> of August and the temporary operation licenses were cancelled simultaneously. The Court ruled in each case that the plaintiffs did not have legally protected interests in an annulment of the ministerial decision of 5<sup>th</sup> November 2018 to issue temporary operation licenses to Arctic Sea Farm ehf. and Fjarðarlax ehf. since the temporary operating licenses were no longer valid.

The time limit for appeals of dismissals by a District Court are two weeks, *c.f.* Article 144 of the Civil Procedure Act. The Party has not received any information on such appeals to the Court of Appeals and therefore concludes that the plaintiffs have opted for not exhausting the available

legal remedies for their cases.

**2. What are the main allegations that have been made to the court in each case? Who are defendants in each case?**

***Case No E-252/2019***

Plaintiffs: Laxinn lifi, association, Náttúruverndarsamtök Íslands, Akurholt ehf. Geiteyri ehf. Veiðifélag Laxár á Ásum, Ari Pétur Wendel, Víðir Hólm Guðbjartsson, Atli Árdal Ólafsson and Varpland

Defendants: Arctic Sea farm ehf. and the Icelandic Government.

***Case No E-253/2019***

Plaintiffs: Laxinn lifi, association, Náttúruverndarsamtök Íslands, Akurholt ehf., Geiteyri ehf., Veiðifélag Laxár á Ásum, Ari Pétur Wendel, Víðir Hólm Guðbjartsson, Atli Árdal Ólafsson and Varpland.

Defendants: Fjarðarlax ehf. and the Icelandic Government.

The claim in both cases was that the Minister's decisions of 5 November 2019 to issue temporary operating licenses to Arctic Sea farm ehf. and Fjarðarlax ehf. would be annulled.

The plaintiffs alleged that the legal requirements for issuing the temporary operating licenses had not been fulfilled. The provisions for granting operating licenses to a fish farm are laid out in Chapter III of the Act. In this context the plaintiffs referred to several substantive and procedural requirements in Chapter III of the Act, which are mandatory, both for an applicant and the respective national authorities, before an operation license is issued to a fish farm.

The plaintiffs alleged that the ministerial decisions to issue the temporary operating licenses were based on insufficient facts. The applications had not fulfilled substantive and formal legal requirements of the Act. Furthermore, the Environmental Impact Assessments (hereafter EIA) had been flawed. A fish farming operation is required to have a valid EIA and since that had not been the case, the applications should have been rejected. The plaintiffs also pointed out that the applications did not include various documentations and certifications required by the Act.

The plaintiffs alleged that the Minister was disqualified to issue the temporary operating license as the Minister had spoken publicly about the matter and expressed the opinion that it was necessary to find ways to prevent suspension of the fish farming operations. Suspension of the operations would lead to fiscal damages, not only for the fish farming operator but also the municipalities where the operations were located.

The plaintiffs alleged several deficiencies in the procedure leading to the ministerial decisions. In their view the obligation to ensure sufficiently the facts of each case before issuing the licenses had not been fulfilled and an evaluation of the social interests at stake and the interests had not been conducted. Moreover, the right to be heard and the rule of reasoning had not been respected in the procedure.

The defendants alleged that all legal requirements had been fulfilled. Article 21C, which stipulates the requirements for the issuance of a temporary operating license, is only applicable in cases where an operating license has been revoke. Ministerial decision on the issuing of an operating license under the Article can be based on the same material gathered for the revoked license. Therefore, both substantial and formal requirements were fulfilled under the procedure.

The defendants point out that the previously granted licenses were revoked by a reason of flaws in the EIA. The fish farming operations had undergone EIA although the Environmental and Natural Resources Board of Appeal (hereafter "ÚUA") later concluded that discussions on alternatives in the environmental reports was insufficient. Although the EIA had been ruled flawed it covered an EIA for the operations could therefore be relied on for the issuing of the temporary operating licenses. Article 21C(2) is constructed in such a way that it allows for deficiencies in applications that need to be rectified and requires licensees to rectify such.

The defendants also point out that requests were submitted to ÚUA to defer the legal effects of the ÚUA rulings. ÚUA dismissed the request on grounds of lack of legal competence to defer the legal effects of its rulings. The defendants highlight that ÚUA acknowledged a great interest to be at stake and referred *i.a.* to means for the Minister to defer the legal effect of a decision by MAST to suspend the operation (*c.f.* Article 21C(1) where it is stated that MAST is obliged to

suspend the operation of a fish farm with an invalid operating license).

On allegations regarding the legality of Article 21C(2) the defendant alleged that the Act had been passed through the legislating procedure of the Parliament and that the substantive matter of Article 21C(2) does not violate any rights protected under the Icelandic Constitution.

The defendants alleged that the procedure leading to the ministerial decision of issuing the licenses fulfilled the procedural rules in the Act on Administrative Procedures No 37/1993. The plaintiffs were given the opportunity to submit comments on the matter before the licenses were issued. The defendants also point out that Article 21 of the Act on Administrative Procedure does not require administrative decisions to be reasoned but provides for the right of a party to a case to demand reasoning. Nevertheless, written statements accompanied the ministerial decisions of 5 November 2018, in which reasons for the decisions were stated. The plaintiffs deny that the rule of reason was violated and refer to the reasoning in the written statements which demonstrate that the cases were investigated before the temporary operating licenses were issued.

The defendants point out that the plaintiffs seem to overlook the very nature of Article 21C(2) and the procedure it provides for. The merits of their case concern allegations regarding non-fulfilment of the regular procedure for granting operating license for fish farm operations provided for in the Act. The defendants stress that Article 21C(2) is only applicable to cases where an operating license for fish farm has been revoked. An operation applicable for receiving a temporary license under Article 21C(2) has therefore undergone the regular procedural requirements of the Act and national authorities did consider them to have met the required conditions. The purpose of Article 21C(2) is not to issue licenses for new fish farming operation. The purpose of the Article is to facilitate means for fish farming operations which licenses have been revoked, to either bring the matter of annulment before a court or of to rectify the shortcoming of the revoked license.

**3. What are the possible remedies if the plaintiffs' claims in cases Nos. 525/2019 and E-253/2019 are successful? Could the court overturn the temporary operational licenses? Could the court rule Article 21C of the Act on Fish Farming unlawful in these proceedings?**

If the plaintiff's claims had been successful, the Court could have annulled the ministerial decisions of 5 November 2018 to issue the temporary operation licenses and the licenses could have been revoked.

Icelandic courts have the power to review whether laws are constitutional. The Court reasoned that Article 21C(2) is lawful and Constitutional. The Court also stated that Article 21C(2) as amended by Act No 108/2018, was constitutional, its main purpose being to stipulate confined conditions for the issuance of a temporary operation license for a fish farming operation, in cases where fish farming operation licenses have been revoked and where it is deemed necessary in order for operators to rectify flaws of previously granted licenses or to bring the matter of annulment before a court.

**4. If the temporary operating licenses issued to Fjarðarlax ehf. and Arctic Sea Farm ehf. on 5 November 2018 were granted for the maximum period of 10 months, they would presumably have expired on 5 September 2019. What is the current status of these operating licences? Are the fish farms currently in operation and if so, under what legal basis?**

On 27<sup>th</sup> August and 28<sup>th</sup> August 2019 Arctic Sea Farm ehf. and Fjarðarlax ehf. were granted operation licenses by MAST in accordance with the Act on Fish Farming No 71/2008.

**Question to the Party concerned:**

**6. Please comment on the statement of the communicants that it will take approximately 18 months before the court of first instance issues its decision in cases Nos. E-525/2019 and E-253/2019 and a decision by the court at the second instance would take an additional 12 months.**

According to information provided by the Icelandic Judicial Administration a civil court proceeding before the District Court of Reykjavík takes 351 days on average. According to information received from the Appeal Court the average of time for civil proceeding before the court is 10 to 12 months.

On behalf of the Minister of Fisheries and Agriculture



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Encl.: