

Secretary to the Aarhus Convention Compliance Committee  
United Nations Economic Commission for Europe  
Environment Division  
Palais des Nations  
CH-1211 Geneva 10, Switzerland

**Sent by e-mail to [aaarhus.compliance@un.org](mailto:aaarhus.compliance@un.org)**

Reykjavík, 26 June 2020.

**Re: Communication to the Aarhus Convention Compliance Committee concerning compliance by Iceland with Articles 6, 8 and 9 of the Convention in connection with legislation on fish farming (PRE/ACCC/2019/168).**

Reference is made to “Observations on behalf of the Government of Iceland”, dated May 20, 2020 where the Icelandic government submitted observations explaining the government’s view that the controversial Act, no 108/2018, amending the Act on fish farming, did not breach the Aarhus Convention. The complainants do not agree with the government’s observation and wish to submit this letter detailing why.

**Breach of Article 6:**

*First*, the government holds that the legislative amendment was necessary since an annulment of an operating license would otherwise result in waste of value. This is the same reasoning as was stated in a statement accompanying the legislative bill, as described in the complaint. The Aarhus Convention, namely Article 6, does not leave any room for an assessment of opposing interests. The reason for the breach of the Convention has no bearing in the case and it is irrelevant whether there was a legitimate cause for the legislation. To the contrary, a damage to the environment is irreversible and the environment should always have the benefit of the doubt. Furthermore, if the government is worried about waste of value it can amend the Act, e.g. in a way where the operation of a fish farm can not start until after the Complaints Committee has rendered its verdict or the timeframe to submit a complaint has passed.

*Secondly*, the government holds that the Act does not breach the Aarhus Convention since the temporary operating licenses are “based on all the data and documentation gathered in the licensing procedure leading up to the annulled license.” The complainants do not agree with this. The procedure of environmental impact assessment is not a standard procedure where the operator needs to tick some boxes to get the operating license. It is a thorough review of

the impact of the environment where the public is guaranteed a chance to participate in the process. The government's observations, as well as the controversial Act, bring this fact to light. If there is an error in this process, there is an increased risk of an irreversible damage to the environment. Icelandic courts and the Complain's Committee are generally very cautious when annulling a governmental decision because of procedural error. There needs to be a significant error for such a decision to be annulled. The rules governing the issuance of operating licenses in cases like these need to be strict to encourage the operator to adhere to them in all aspects. If the operator can get a temporary license after the license has been annulled because of an error on his part and consequently fix his error, there is less incentive for him to abide by the rules. The "data and documentation gathered in the licensing procedure leading up to the annulled license" that the government refers to was flawed. The Icelandic Complain's Committee (Úrskurðarnefnd umhverfis- og auðlindamála) annulled it mainly because the environmental assessment was flawed. It is not acceptable to issue the temporary operating licenses on the bases of environmental assessments that have been declared flawed by an independent tribunal.

### **Breach of Article 8:**

In the government's observation regarding breach of Article 8 of the Aarhus Convention, the general legislative process is described. However, the government admits in its observation that an exemption was made when Act no 108/2018 was adopted, citing a need for an expedient process. In the complainant's view, this equals a confession of a breach of Article 8 as the Article leaves no room for exemptions regardless of a government's alleged need for an expedient process.

In these cases that prompted the new legislation there were no urgent public interests that can justify how the matter was handled by the government.

### **Breach of Article 9:**

In complainants' view it has no meaning that the licenses granted under Article 21(2)c are temporary. A decision to grant an operating license for fish farming is undoubtedly a decision that falls under the scope of the Aarhus Convention and such a decision is thus subject to a review procedure under Article 9, regardless of the license's duration.

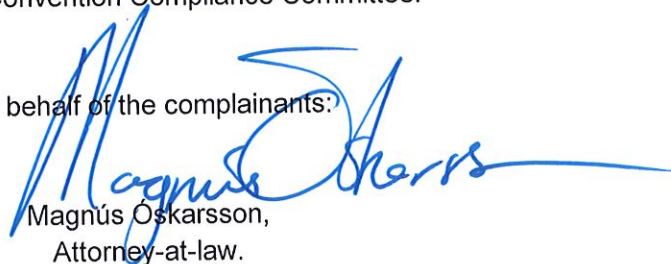
To bring a case to the Icelandic Domestic Courts the plaintiff needs to have a standing in the case, meaning that he needs to have legally protected interests in the case. Such interests are very hard to establish in cases regarding the environment as domestic case law on fish farming clearly demonstrates. To the complainant's best knowledge, all cases brought before domestic courts regarding fish farming licenses have been dismissed due to lack of legally protected interests.

**Conclusion:**

The complainants object to the government's observation as irrelevant for this case. Most of the government's observation revolves around justifying its breach by citing waste of value and need for an expedient process. Such observations are irrelevant in this case.

Finally, the complainants reiterate all its arguments made in the initial complaint and following letters and e-mails to the Aarhus Convention Compliance Committee.

On behalf of the complainants:



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Attorney-at-law.