

22 January 2024

Iris Bjargmundsdottir
Ministry for the Environment and Natural Resources
Reykjavik, Iceland

Magnús Óskarsson
Attorney-at-law
Reykjavik, Iceland

Dear Ms. Bjargmundsdottir,
Dear Mr. Óskarsson,

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 (ACCC/C/2019/168)

After careful review of the parties' submissions concerning the above communication, the Compliance Committee has identified a number of questions upon which it seeks clarification from the Party concerned and the communicants in writing. To this end, please find enclosed the questions prepared by the Committee for your attention.

In accordance with the Committee's usual timeframe, the Party concerned and the communicants will have four weeks to prepare their written replies to the Committee's questions. The Committee would accordingly be grateful to receive your replies to the enclosed questions on or before **19 February 2024**. Thereafter, please send any comments you may have on the other party's replies within two weeks of their receipt (i.e. by 4 March 2024, if the replies are received on 19 February 2024). Please send your replies to aarhus.compliance@un.org, copying the other party.

In addition, having considered the information received from the Party concerned and communicants to date, the Committee is of the view that it is in a position to commence its deliberations on the substance of the above communication without holding a hearing. Before doing so, however, the Committee has asked me to write to seek the view of each party on whether you consider there to be a particular reason why a hearing is needed prior to the Committee commencing its deliberations on its draft findings in this case.

I would be grateful to receive your views by **5 February 2024** on whether you consider a hearing in this case is needed. If you consider a hearing would indeed be necessary, please provide a brief explanation (maximum one A4 page) of the reason for this in your reply. If the Party concerned and the communicants are each of the view that a hearing is not needed, the Committee will commence its deliberations on the substance of the communication in closed session at its upcoming eighty-second meeting (Geneva, 20-23 February 2024).

Alternatively, if by 5 February 2024 either the Party concerned or the communicants have informed the secretariat that they are of the view that a hearing is required in this case, the Committee will consider the explanation provided as to why a hearing is needed and if, after taking into account that explanation, the Committee determines that indeed a hearing should be held, the hearing will be scheduled for one of its upcoming meetings. The final decision on whether to hold a hearing rests with the Committee.

Please do not hesitate to contact the secretariat if you have any questions regarding the above.

Yours sincerely,



Fiona Marshall
Secretary to the Aarhus Convention Compliance Committee

Cc: Permanent Mission of Iceland to the United Nations Office and other international organizations in Geneva

Enc.: Questions from the Committee to the communicants and the Party concerned

Questions to both parties:

1. Please provide an update regarding the allegations made in the communication submitted on 25 February 2019 in relation to article 21(2)c of the Fish Farming Act, as amended, including whether:
 - a. Article 21(2)c of the Fish Farming Act remains in force;
 - b. Any further temporary operating licenses have been granted under article 21(2)c of the Act since the submission of the communication;
 - c. There are any other updates you consider relevant for the Committee's assessment of the allegations in the communication.
2. Did the public have an opportunity to comment on the new operating licences, including to comment on the report on alternatives issued on 16 May 2019, prior to the new operating licences being granted on 27 and 29 August 2019?

Question to the communicants:

3. Were the temporary operating licences themselves subject to a positive EIA screening determination under article 6 of Law 106/2000? If not, on what legal basis do you consider that the temporary operating licences (as opposed to the original operating licenses) are themselves subject to article 6 of the Convention?

Questions to the Party concerned:

4. Please provide, in Icelandic, the full text of Act 71/2008 on Fish Farming, and an English translation of the following provisions of the Act:
 - a. Article 10;
 - b. The full text of article 21, including article 21(2)c.
5. Please provide an English translation of the relevant paragraphs of the Reykjavik District Court's judgments in E-252/2019 and 253/2019 in which the Court sets out its reasons for rejecting the plaintiffs' claims in each case. (Due to length, it is not necessary to provide an English translation of the full text of each judgment).
6. Do you agree with the communicants' statement that, in accordance with the caselaw of the Supreme Court, a legal instrument or administrative decision that is no longer valid cannot be annulled by the courts?¹
7. Do you accept that, once the temporary operating licences ended on 27 and 29 August 2019, there were no longer any domestic remedies through which the temporary operating licences could be challenged?
8. On page 5 of its response dated 20 May 2020, the Party concerned states that "the Complainants who brought the initial operating licenses before the ÚUA were invited to submit their opinion on the draft of the temporary operating licenses."

¹ Letter from communicants dated 1 November 2019, p. 3.

Please provide further details regarding the opportunity to comment on the draft of the temporary operating licences:

- a. Were all members of the public who submitted comments during the public participation on the original licenses notified of their opportunity to comment on the temporary operating licences?
 - b. What was the timeframe for members of the public to submit comments on the draft text of the temporary operating licences?
 - c. In addition to the draft text of the temporary operating licences, were members of the public provided with any documentation regarding the potential environmental effects of the temporary operating licences?
 - d. Is there a document setting out how members of the public's comments on the draft text of the temporary operating licences were taken into account in the final text of the temporary licences? If so, please provide the text of that document to the Committee, together with an English translation of the relevant parts thereof.
9. Please confirm whether you agree with the communicants' factual submission, at pages 7-8 of the communication, that the 2018 amendments to the Fish Farming Act introducing article 21(2)c:
- a. Were prepared by the Ministry of Agriculture and Fisheries;
 - b. Were passed into law by Parliament the day after the Ministry presented the bill to Parliament; and
 - c. Therefore did not follow the normal legislative procedure set out on pages 3-4 of the Party concerned's response dated 20 May 2020, including that they were prepared without any public participation procedure.
10. Regarding access to review procedures to challenge temporary operating licenses granted pursuant to article 21(2)c of Act no. 71/2008 on Fish Farming (the Fish Farming Act):
- a. Do you agree that such temporary operating licenses cannot be challenged before the Environmental and Natural Resources Board of Appeal (ÚUA)?
 - b. Please explain the legal grounds on which environmental NGOs have standing to challenge the temporary operating licenses before the domestic courts.
 - c. Building on your answers to question (b) above, please explain how such requirements for standing are in compliance with article 9 of the Convention, and in particular the following sentence of article 9 (2):
"To this end, the interest of any non-governmental organization meeting the requirements referred to in article 2, paragraph 5, shall be deemed sufficient for the purpose of subparagraph (a) above. Such organizations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above".