

## **Incorporation case study: Iceland**

Like Scotland, Iceland must adopt new legislation before an international human rights treaty becomes part of national law and is directly enforceable in courts. Iceland has directly incorporated the ECHR and the UNCRC into domestic law.

### **Legal effect**

The ECHR was fully and directly incorporated into Icelandic law in 1994. The UNCRC and its first and second Optional Protocols were fully and directly incorporated in 2013 following years of piecemeal children's rights law development. In legal hierarchy, the ECHR and UNCRC rank at the level of regular statute. Human rights protections are also contained within the Icelandic Constitution, updated in 1995 to include a chapter on fundamental human rights. This was done partially to facilitate for the incorporation of the ECHR by ensuring that domestic law was in line with the international standard. The Constitution is the supreme law in Iceland and provides the highest level of human rights protection.

### **Enforcement by duty-bearers**

With a focus on UNCRC incorporation, the state has taken clear measures to implement treaty rights. E.g., an Ombudsman for Children oversees implementation of UNCRC, ensuring that duty-bearers give full consideration to rights of children. A Minister of Social Affairs and Children develops and links economic policy and child policy. The government has increased funding for realising children's rights, e.g., by establishing the Children's Cultural Fund. No national action plan on human rights exists, but the National Action Plan on Child Protection 2019-2022 is based on the UNCRC. Legal aid is available and state-funded free legal services are provided in child protection cases. The state organises Child Assemblies and consultations for children to feedback on how well their UNCRC rights are being realised by duty-bearers. Issues remain: A lack of adequate and intersectional data collection is a barrier to identifying gaps in enforcement and in developing effective policy.

### **Enforcement in courts**

Following incorporation, the ECHR has been used by domestic courts extensively, mostly invoked on its own or together with the Constitution to interpret other statutes. Provisions of the UNCRC have been relied upon in cases involving a child's right to be heard (art 12 UNCRC). In 2017, the Supreme Court enforced art 12 when a child's views were not taken into account in a custody case, sending the case back to the District Court. UNCRC rights have yet to become mainstreamed in Icelandic courts. Courts have also enforced economic, social and cultural rights derived from the Constitution, ruling them justiciable.

### **Awareness and ownership of rights**

Incorporation processes have increased rights-holders' awareness of and engagement with their rights. Children and young people report having varying understandings of their rights. Education on UNCRC rights varies between schools, age groups and municipalities, creating an imbalanced awareness among rights-holders. A state-wide policy should be adopted. Children take ownership of their rights by partaking in public children's forums and consultations, where they can democratically make their ideas and concerns heard by duty-bearers. The Barnaping 2019 started a bi-annual consultation process, which is mandated by law and overseen by the Ombudsman. Results are taken into account in Parliament, giving the process legitimacy and value in the eyes of rights-holders. Younger children and children facing multiple discrimination due to characteristics like ethnicity, disability, or

sexuality feel that their rights are not respected by duty-bearers as much as those of other children.