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Equality in the Icelandic Legal and Social Concept

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Abstract

For over a decade, Iceland has been ranked first among countries around the world in the field of equality between women and men, both in the legal and social aspects. But such a spectacular achievement is not the result of legal regulations developed today or even in the last few decades. This is the final achievement of consistent, over a century of work – especially of women – for the proper and equal treatment of people, regardless of gender, and other differentiating factors. And although it is probably not realistic to create an ideal model, the Icelanders managed to work out a very difficult thing. Coexisting at the intersection of great attachment to tradition and the church, they noticed the subjectivity of each individual, as well as the right of this individual to be an equal subject of human rights and liberties. So, what is the concept of equality shaped in contemporary Iceland, and what legal and social processes have Icelanders undergone to achieve such exemplary standards? Pointing it out is the aim of this article.

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Streszczenie**Równość w islandzkiej koncepcji prawno-społecznej**

Islandia od ponad dekady plasuje się na pierwszym miejscu wśród krajów całego świata pod względem równości kobiet i mężczyzn tak w porządku prawnym, jak i społecznym. Ale tak spektakularne osiągnięcie nie jest wynikiem regulacji prawnych kształtowanych współcześnie a nawet w ostatnich kilku dekadach. Rezultat ten to efekt finalny konsekwentnej, ponadwiekowej pracy – zwłaszcza kobiet – na rzecz właściwego, równego traktowania ludzi, bez względu na płeć oraz inne czynniki różnicujące. I chociaż zapewne nie jest realne stworzenie modelu idealnego, Islandczykom udało się wypracować rzecz bardzo trudną. Koegzystując na styku ogromnego przywiązania do tradycji i kościoła, dostrzegli podmiotowość każdej jednostki, a także prawo tej jednostki do bycia równoważnym podmiotem w aspekcie korzystania z praw i wolności człowieka. Jak kształtuje się zatem koncepcja równości we współczesnej Islandii oraz jakim procesom prawno-społecznym poddali się Islandczycy, żeby osiągnąć tak wzorcowe standardy?

✱

I. Introduction

Contemporary Iceland is generally perceived as a liberal country, providing forecasts for the so-called good life. Good both economically and from the perspective of the rights and liberties of an individual. It provides numerous jobs, decent working and pay conditions, and provides employees with the 'care' of trade unions². Moreover, on the one hand, it is a country very tolerant of social diversity³, and on the other hand, it is strongly associated with

² However, the actual shape of this care is not without its drawbacks.

³ Marriage law is regulated by Hjúskaparlög, No. 31/1993; <https://www.althingi.is/lagas/150a/1993031.html> (18.10.2020), the first article of which states that it does not apply to civil partnerships, but the 2010 amendment added Art. 141, according to which persons who are established partnerships may be considered married. This view has made marriages and partnerships legally equated, provided that the latter are legally confirmed by the Icelandic National Registry. In the same year, Iceland legalized same-sex marriage, thus supplementing the existing legislation on both same-sex partnerships (1996) and the adoption of children by same-sex couples (in 2000, same-sex adoption was granted gender in relation to the child of one

the church, which has the national status. The enormous progressiveness of Icelanders coexists with a strong attachment to tradition. In 2012, a referendum was held which put to a vote, inter alia, the issue of excluding the mention of the state church from the constitution (49% of entitled took part in the voting)⁴. The referendum eventually consisted of six questions⁵, the first of which concerned the issue of whether the draft should constitute the basis of the new Icelandic constitution (support was expressed by 73% of voters), and the remaining five concerned the so-called “socially sensitive” matters (the already mentioned exclusion from the constitution of the mention of the state church, as well as the inclusion of the principle of equality of elections and public ownership of natural resources, more frequent elections to the parliament and issues related to granting the right to call for a referendum)⁶. The proposed solutions – with one exception – met with the approval of the referendum participants. However, they did not agree to the removal of the state’s status from the church⁷.

Iceland’s international position⁸ is also specific in a certain aspect, and therefore interesting. Iceland is not a member state of the European Union but is in the Schengen area. While Iceland applied for EU membership in 2009, the state suspended its accession applications with the change of government in 2013. The suspension lasted until 2015 when an official government communique stated that Iceland should not be considered a candidate for the European Union. Moreover, Iceland is a party to the Agreement on the European Economic Area (EEA), the European Free Trade Association (EFTA), and a signatory to the Dublin Regulation on Asylum Policy. Since 1972, it also has a bilateral free trade agreement with the EEC. Therefore, it is bound

of the partners, and in 2006 it was also extended to “foreign” children); Lög um ættleiðingar; No. 130/1999; <https://www.althingi.is/lagas/150a/1999130.html> (18.10.2020).

⁴ T. Mroziuk, *Konstytucja 2.0. Islandzka lekcja pisania ustawy zasadniczej „od dołu”*; <https://klubjagiellonski.pl/2018/01/28/konstytucja-20-islandzka-lekcja-pisania-ustawy-zasadniczej-od-dolu> (18.10.2020).

⁵ H. Fillmore-Patrick, *The Iceland Experiment (2009–2013): A Participatory Approach to Constitutional reform; DPC Policy Note. New Series #02*, Sarajevo 2013, p. 14; <https://tiny.pl/t66c8> (18.10.2020).

⁶ Ibidem, p. 14.

⁷ Ibidem.

⁸ M. Grzybowski, *Islandia. Zarys systemu ustrojowego*, Białystok 2020, pp. 201–218.

by separate (extra-EU) legal acts with other Community countries, although a significant part of EU regulations is in practice applied in Iceland⁹. Iceland has signed most of the Human Rights Conventions under the UN system, although some of them have not been ratified¹⁰. The provisions concerning the legal position of an individual in the state are regulated in both one and last chapter of the constitution and include 15 articles¹¹.

Interestingly, at the stage of adoption, the Icelandic constitution did not have a separate chapter dedicated to individual liberties and rights. It was only after joining international structures and international agreements that “forced” the Icelandic government to add appropriate regulations to the constitution.

The article aims to show how, in a country strongly associated with the church and tradition, is it possible to shape a civil society based on the prin-

⁹ https://eeas.europa.eu/headquarters/headquarters-homepage/15864/iceland-and-eu_en (14.10.2020).

¹⁰ A detailed list of international documents binding Iceland in the field of human rights protection is available on: <https://indicators.ohchr.org> (20.10.2020). According to the information contained therein, it looks as follows: 1) International Covenant on Personal and Political Rights (ICCPR): signature 1968, ratification 1979; 2) Second Optional Protocol to the ICCPR of 1967: signing 1991, ratification 1991; 3) International Covenant on Economic, Social and Cultural Rights (Economic Pact; ICESCR): signature 1968, ratification 1979; 4) Optional Protocol to the Economic Pact (not signed / ratified); 5) Convention on the Elimination of All Forms of Discrimination Against Women: signature 1980, ratification 1985; 6) Optional Protocol to the mentioned convention: signature 1999, ratification 2001; 7) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); signature 1985, ratification 1996; 8) Optional Protocol to the above (OPCAT): signature 2003, ratification 2019; 9) Convention on the Rights of the Child: signature 1990, ratification 1992; 10) Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OPAC): signature 2000, ratification 2001; 11) Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography: signature 2000, ratification 2001; 12) International Convention for the Protection of All Persons from Enforced Disappearance: signature 2008, ratification – none; 13) Convention on the Rights of Persons with Disabilities (CRPD): signature 2007, ratification 2016; 14) Optional Protocol to the Convention on the Rights of Persons with Disabilities: signature 2007, ratification – none. The following two documents were not signed: 1) the Optional Protocol to the Convention on the Rights of the Child on the Communication Procedure (OPCP – 2011; entered into force in 2014); 2) the International Convention on the Protection of the Rights of All Migrant Workers and Member of Their Families (OHCHR – 1990).

¹¹ M. Grzybowski, *Systemy konstytucyjne państw skandynawskich*, Warsaw 2010, p. 36.

ciple of equality. From the perspective of this study, the Art. 65 of the Icelandic constitution is the starting point for further deliberations: “Everyone is equal before the law and enjoys human rights irrespective of sex, religion, beliefs, nationality, race, color, property, birth or any other characteristic of origin. Men and women enjoy equal rights in all areas”.

II. Legal Solutions to Equality Issues

The first convention, signed in 1966 and ratified in 1967, is the Convention on the Elimination of All Forms of Discrimination. For many years, Iceland has placed great emphasis on equal rights, both in law and in the broadly understood social space. This is reflected, among other things, in acceptance:

- the rights of sexual minorities (which directly translates into the legalization of same-sex marriages and partnerships, or even granting adoption rights to same-sex couples);
- religious minorities (the possibility of establishing religious associations; and it should be remembered that it is a country with a constitutionally sanctioned state religion);
- origin (in this matter, the provisions of the Act on equal treatment apply, irrespective of race and ethnic origin)¹²;
- equal rights of women and men [not only in everyday life (marriage law) but especially in the professional sphere].

Legal actions aimed at equalizing the legal and social position between women and men were taken in Iceland at a time when the island was dependent on the Danish crown¹³, and continued also when it gained autonomy, but remained connected with Denmark by a personal union. The suffragette movement, commonly associated with Great Britain and the United States of America, was developing in parallel in Iceland¹⁴. Although in the history of

¹² Lög um jafna meðferð óháð kynþætti og þjóðernisuppruna; No. 85/2018; <https://www.althingi.is/lagas/150a/2018085.html> (18.10.2020).

¹³ M. Grzybowski, *Systemy konstytucyjne...*, p. 23.

¹⁴ <https://grapevine.is/news/2015/06/19/historic-icelandic-woman-honoured-on-100th-anniversary-of-suffrage> (18.10.2020).

the Icelandic elections single women entered the polls as early as 1863, 1874, 1882, 1884, 1886, 1888¹⁵, and in 1908 they sat in the commune authorities¹⁶, many sources mention Ingibjörg H. Bjarnason (1867–1941)¹⁷ when it comes to women's voting rights in Iceland. Indeed, Bjarnason was the first woman in the Icelandic parliament (1922)¹⁸. In 1894, she started her activity in the women's movement, which resulted in granting women the right to vote in a much wider range than it had been so far. It was thanks to her efforts that in 1907 women could vote in local elections, and in 1915 they gained active election rights in parliamentary elections – however, the age census limited access to elections for women under 40 years of age¹⁹. In 1930, she founded the women's organization *Kvenfélagasambands Íslands*, which is still active in the field of women's equality²⁰.

Currently, equality between women and men in the Icelandic legal order is implemented based on the provisions of the Act on Equal Status and Equal Rights for Women and Men.²¹ It follows from the act itself that Icelandic law, both at the stage of its creation and application, presupposes equality between women and men in all social areas. It is the will of the Icelandic legislator that all people have equal opportunities to use 'their own energy' and

¹⁵ <https://kvennasogusafn.is/index.php?page=kosningarettur-kvenna> (16.10.2020).

¹⁶ For more information about shaping of electoral rights and political and social activity of women in Iceland see: <https://www.weforum.org/agenda/2017/11/why-iceland-ranks-first-gender-equality> (17.10.2020).

¹⁷ On October 31, 1941 (the day after Bjarnason's death), the president opened the parliamentary session with a speech in memory of Bjarnason. The speech is available on the parliament's website: <https://www.althingi.is/altext/raeda/?rnr=62<hing=58> (18.10.2020).

¹⁸ In 2017, for the second time in history, a woman became Prime Minister: Katrin Jakobsdóttir. More information about the elections: <https://strajk.eu/islandia-ma-druga-w-historii-kobiete-premiera-z-lewicy> (19.10.2020).

Statistics on women in parliament: <https://www.althingi.is/english/about-the-parliament/women-in-parliament-> (19.10.2020).

¹⁹ <https://kvennasogusafn.is/index.php?page=ingibjoerg-h-bjarnason> in accordance to: <https://utulethule.pl/islandia-jest-z-kobieta> (19.10.2020).

²⁰ A. Yates, *Althingi. Althingi and Democracy. History of Althingi. The Role of Althingi. Althingi Administration. Parliament House. Institutions of Althingi*, Reykjavik 2018, pp. 6–11; https://www.althingi.is/pdf/Althingi2018_enska.pdf (21.10.2020).

²¹ *Lög um jafna stöðu og jafnan rétt kvenna og karla*; No. 10/2008; <https://www.althingi.is/lagas/150a/2008010.html> (18.10.2020).

have the same opportunity to ‘develop skills’. To implement these statutory regulations more effectively, the Office for Gender Equality was established under the supervision of the Minister of Social Affairs and Equality. The activities of the Office concern in particular:

- monitoring the implementation of statutory provisions;
- giving advice;
- identifying and taking specific actions to improve gender equality;
- fighting stereotypes about the role of women in society²².

At the government level, these activities are carried out under the auspices of the Minister of Finance who, in consultation with the Minister for Gender Equality, is responsible for developing a gender budget plan that will be taken into account when drawing up the budget proposal. The draft budget determines its impact on the goals of equality between women and men.

Additionally, the basic requirement imposed on employers employing 25 people and more is the adoption of annual gender equality plans, which are subject to control at three-year intervals. The effect of the mentioned audits is obtaining both special and necessary certificates confirming compliance with the equality requirements²³. Women and men working for the same employer must receive equal pay for the same or equivalent work. This means that their wages should be determined in the same way, and the criteria underlying the wage determination cannot (although the legislator uses the term ‘should not’) include discrimination based on sex. If, on the other hand, such differences do occur, the employer must demonstrate that they result from factors other than gender²⁴. The employer’s task is also to harmonize family and professional life by taking the necessary measures to enable women and men to coordinate their duties, including those toward the family. This

²² Ibidem, Art. 4.

²³ The transitional provisions to Act No. 10/2008 regulate the deadlines by which individual companies (with a distinction made on the basis of the number of employees) had to obtain these certificates. Enterprises employing between 90 and 149 people have the most time (until the end of 2020). For more information see: Transitional provisions, point VI in connection with *Lög um breytingu á lögum um jafna stöðu og jafnan rétt kvenna og karla* No. 10/2008, með síðari breytingum (jafnlaunavottun); No. 56/2017; <https://www.althingi.is/altxt/stjt/2017.056.html> (18.10.2020).

²⁴ Ibidem, Art. 19 in connection with Art. 25.

is done taking into account both the needs of the employer and the personal situation of employees²⁵.

The 2020 report²⁶ indicates that Iceland has been leading the global statistics on equality between women and men continuously for 11 years. The second place is taken by Norway (also without changes in the ranking position), the third by Finland (in the two-year perspective it has jumped one place higher in the statistics), followed by Sweden (it fell by one position), Nicaragua (no changes), New Zealand (one position up), Ireland (two stitches up), Spain (up 21 places), Rwanda (three points down) and Germany (4 places up)²⁷. The strong position of women in Icelandic society is also the result of their extensive solidarity in this matter. The echo of the 1975 strike, in which the vast majority of Icelandic women, i.e. 90%, took part, has gone down in history. They were women of various social and professional positions. On October 24, 1975, they unanimously departed from their daily activities and in protest of their unequal social position with men, went out into the streets and filled cafes. In the small island community (in 1975, the entire population of Iceland was inhabited by about 220,000 people), this paralyzed the entire country²⁸. The result of this one-day strike was spectacular from the national perspective. Enough to win a woman in the presidential election in 1980²⁹. Vigdis Finnbogadóttir obtained little below 34% of the votes but thus beating the male opponent. The specificity of the election of the Icelandic head of state allowed her to hold this position for three consecutive terms (in total, she held the post of president for four terms). She did not have a counter-candidate twice (1984 and 1992), and in 1988 she received 94.6% of votes³⁰. Of course, it remains far-reaching specula-

²⁵ Ibidem, Art. 21.

²⁶ The Global Gap Index; <https://www.weforum.org/reports/gender-gap-2020-report-100-years-pay-equality> (17.10.2020).

²⁷ Ibidem. For whole Report see: http://www3.weforum.org/docs/WEF_GGGR_2020.pdf (17.10.2020).

²⁸ <https://historiamniejznanaizapomniana.wordpress.com/2016/10/24/strajk-islandz-kich-kobiet-w-1975-roku> (17.10.2020).

²⁹ Ibidem.

³⁰ <http://www.islandsbloggen.com/2015/06/35-ar-sedan-vigdis-finnbogadottir.html> and <https://forsal.pl/swiat/aktualnosci/artykuly/7759057,islandia-zdecydowane-zwyciestwo-obecnego-prezydenta-w-wyborach.html> (21.10.2020).

tion as to whether she would be able to hold the office for subsequent terms, and if so, how many of them – but the fact is that she is constantly held in high esteem by Icelanders who see her as the best president in history³¹. It is also a fact that she ceased to perform its function as a result of its resignation from further standing in the presidential election. From the social point of view, it was a very important time for the empowerment of women in Iceland, at the same time expressing a great social tolerance (Vigdís Finnbogadóttir was the first single woman in Iceland to adopt a child, but also the world's first female president).

It was also in Iceland that the first women's movement (in 1983) was formed, which turned into a political party. The *Kvennalistinn* (Women's List) was the women's response to their negligible visibility in politics – only 6% were in local councils, three were in parliament, but there was not a single woman in the whole government. *Kvennalistinn* had a very wide programme, covering not only the position of women in society but also, inter alia, referring to the rights of non-heteronormative people, paternity leave, reduction of nuclear weapons, heavy industry, and increasing peace in the world. As a result, the party entered parliament in the representation of two women with 8.4% support³². Women's List functioned for 17 years and finally ended its activity in 1999. As a result of the involvement of members of the Women's Party, public awareness of the roles women play in society has increased. This was reflected directly in the percentage indicators:

- Women's participation in the city council increased from 20% to over 53% (from three to eight women);
- The share of women in local government has increased from 6% to 25%;
- The number of female members increased from three to sixteen³³.

If we look at the historical process of shaping the social position of women in Iceland, three main stages could be identified. The first would be before the arrival of Christianity on the island, the second would involve the arrival of Christian monks on the island, and the third would begin in the already mentioned 1970s and beyond. It is worth underlining, that in the

³¹ <http://www.islandsbloggen.com/2015/06/35-ar-sedan-vigdis-finnbogadottir.html> (21.10.2020).

³² <http://kvennalistinn.is/losningabarattanireykjavik1983> (21.10.2020).

³³ <http://www.visindavefur.is/svar.php?id=73705#> (21.10.2020).

first stage, a woman in Iceland had a very strong social position. Admittedly, she was subject to her father's will to marry, and then to some extent to her husband's power, but – compared to other countries – she had quite a lot of freedom to function. She was entitled to a divorce (which she could have asked equally with her husband), in case of which she could regain her dowry, and she took over the household during the absence of her husband (and these lasted quite long during fishing periods). If the woman was widowed, she could remarry³⁴. The position of women weakened significantly when Icelanders were baptized (although, as Mateusz Mazzini points out, it should be born in mind that it was in 1000 – therefore, the one Christianized were in truth settled newcomers. There is no point to look for the indigenous Icelandic population at that time)³⁵. Only at the beginning of the 20th century did women gain their right to the priesthood³⁶, but they did it so successfully that today the Icelandic church is headed by a female bishop – Agnes M. Sigurðardóttir, the first woman in the history of the national church to be elected bishop³⁷.

Although in the Icelandic legal order a lot has been done for equality, especially in terms of the egalitarian perception of the social role of women, changes in these optics are still alive, and work on verifying these optics (sic!) brings new updates in the law. Iceland clearly shows that it treats equality between women and men as one of its domestic policy priorities. The direct effect of many years of work in this matter is, among others, an amendment to the criminal law. On March 23, 2018, the parliament amended the general penal code, in the part dedicated to sexual crimes (Chapter XXII)³⁸ stating that consent to sex is valid only if it was given freely. This change is the result of efforts by the European Institute for Gender Equality, which is seeking

³⁴ E. Konopka, *Sagi islandzkie: czego o współczesnej Islandii możemy się z nich dowiedzieć*, <http://miedzykulturowa.org.pl/czytelnia/artykuly/sagi-islandzkie-czego-o-wspolczesnej-islandii-mozemy-sie-z-nich-dowiedziec> (21.10.2020). Compare: M. Mazzini, *Islandia znaczy równość*, "Tygodnik Przegląd", 22.01.2018; <https://www.tygodnikprzeglad.pl/islandia-znaczy-rownosc> (21.10.2020).

³⁵ M. Mazzini, *Islandia znaczy...*

³⁶ Ibidem.

³⁷ <https://kirkjan.is/kirkjan/biskup-islands> (21.10.2020).

³⁸ Almenn hegningarlög; No. 19/1940; <https://www.althingi.is/lagas/150a/1940019.html> (21.10.2020).

to harmonize the laws on rape in all European countries³⁹ and is spectacular enough as it shifts the burden of proof from the raped person to the accused. Now it is up to the accused to prove that the intercourse took place with the consent of the other party⁴⁰.

III. Final Remarks

The legal aspects of recognizing that women are worth as much as men should not be debatable. The Icelandic legislator seems to understand perfectly well that woman = human being, and also does a lot to ensure that the actions of the state have a very clear vector in this matter. The Icelandic legislator goes much further in interpreting the term equality than the Polish legislator does. Recognition of the subjectivity (including legal) of civil partnerships and LGBT+ people is an example of the practical functioning of the call of the Council of Europe for Diversity, Human Rights and Participation, that is: 'All different, All equal'⁴¹. And, as Włodzimierz Karol Pessel points out, the foundations of this liberalism can probably or even should be sought in the Lutheranism prevailing on the island, based on *sola scriptura*⁴². The last presidential election (June 2020) has shown that Icelanders use their rights in a very conscious and responsible manner. Over 66% of eligible voters managed to vote. And although it is fewer voters than in 2016, it is still a very high result compared to European countries⁴³. In such an open and legally aware society, there are favorable circumstances for changes that are obvious on the one hand (when adopting human legal standards), and on the other hand – despite every-

³⁹ <https://feminoteka.pl/jedna-wspolna-definicje-m-in-gwaltu-proponuje-europejski-institut-ds-rownosci-plci> (21.10.2020).

⁴⁰ <https://feminoteka.pl/islandia-zmienia-prawo-dotyczace-gwaltow-musi-byc-wyrazna-zgoda-na-seks> (21.10.2020).

⁴¹ https://europa.eu/youth/tr/article/63/5961_pl (21.10.2020).

⁴² W.K. Pessel, *Czy Islandia jest skandynawska? Próba nakreślenia wzoru kultury islandzkiej*, [in]: *Islandia*, eds. R. Chymkowski, W.K. Pessel, Warsaw 2008, pp. 247–278, <https://depot.ceon.pl/handle/123456789/15699> (21.10.2020); D. Wapińska, *Ewolucja konstytucji nordyckich*, Rzeszów 2018, pp. 73–75.

⁴³ <https://forsal.pl/swiat/aktualnosci/artykuly/7759057,islandia-zdecydowane-zwycie-stwo-obecnego-prezydenta-w-wyborach.html> (21.10.2020).

thing – groundbreaking (recognition of same-sex marriages). Such a trajectory of actions clearly shows that mental transformations are more difficult than effective legal solutions. Law can become either a defective tool or insufficient measure if mental blockages will prevail. The full aspect of the equality of individuals, and therefore both ‘in’ and ‘before’ the law, requires full respect for the principle that, in terms of humanity, the equality of individuals is objective. Iceland creates a legal and social model that gives both female and male citizens a real opportunity to function equally in the family and the public-professional space. And the solutions it adopts may constitute an exemplary model of creating legal solutions guaranteeing equality both on paper and in practice.

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