2023 Questionnaire of the 4th Study Commission IAJ-UIM
"The Judicial Workplace and the intersection with judicial independence"

Answers from Iceland

1. Appointment to judicial office

According to Article 59 of the Icelandic Constitution, the organization of the judiciary can only be established by law. In 2016, the Icelandic parliament adopted the Act on the Judiciary No 50/2016, which entered into force on 1 January 2018. The Act determines the process for appointment to judicial office, which is the same for the District Courts (Héraðsdómstólar) and higher courts, i.e. the Court of Appeal (Landsréttur) and the Supreme Court of Iceland (Hæstiréttur), although the requirements for attaining higher judicial office are more stringent than for the district courts.

The Minister of Justice appoints District Court Judges, but Judges at the Court of Appeal and the Supreme Court of Iceland are appointed by the President of Iceland as proposed by the Minister. The Act on the Judiciary stipulates that beforehand the Minister of Justice shall obtain the opinion of an expert committee, The Evaluation Committee. The Committee is statutorily mandated to assess the candidates for the vacant posts and deliver its assessment report on their competences to the Minister of Justice. The Committee is composed in total of five experts: one nominated by the Judicial Administration (dómstólasýslan), one nominated by the Icelandic Bar Association, one elected by the Parliament, one nominated by the Court of Appeal, and one nominated by the Supreme Court, the last of which shall act as Chairman.

The Minister cannot appoint a candidate as a judge who has not been considered the most qualified by the Committee, either alone or among others. However, an exception to this rule is made if Parliament accepts the Minister's proposal to appoint such a candidate on the condition that the person fulfils the minimum requirements under domestic law for the appointment to a judicial post. This narrow exception has once been applied and it subsequently led to a finding by the European Court of Human Rights that Article 6(1) of the European Convention on Human Rights had been breached (case of Ástráðsson, Application no. 26374/18). Before that, the Supreme Court of Iceland had (cases 591 and 592/2017) found that when the Minister decides to propose to Parliament to depart from the Committee's opinion, as the law permits, the Minister's proposal must be based on an independent investigation of all the elements necessary to substantiate the Minister's proposal. The Minister should, at a minimum, compare the competence of the candidate he or she decides to put forward in his or her proposal to Parliament and the candidate or candidates considered most qualified by the Committee.

In principle, gender should not be taken into consideration in appointment to judicial office. However, in a landmark case from 1993 (case 339/1990), the Supreme Court found that when a minister appoints a person to a public position in a field, in which few women worked, and subject to a female applicant being at least as capable as a male applicant, it was inherent in the Act on Gender Equality, that the female applicant should get the position. The case did not concern a judicial appointment, but the same approach has been followed in judicial appointments.

2. Promotion within the judiciary

Judicial appoints are subject to the application process described in detail here above and this entails that a lower court judge does not have the opportunity to receive a promotion to higher judicial office. Rather, the person has to apply for position in the higher courts. The same applies to Court of Appeal Judges who wish to become Supreme Court Justices. As already described, the appointment of judges is, according to law, supposed to be based on merit, and thus unrelated to political affiliation of political partisanship. Transparency in the process is meant to be ensure by publishing publicly the assessment reports of the Evaluation Committee.

3. Workload within the judiciary

The workload of judges may differ at times, just as the case load of courts in general differs. The number of cases is one matter and the complexity of the case is another. Therefor numbers can be misleading and should be taken with a grain of salt. Thus, a District Court Judge may render judgment in 30 to 40 substantial cases every year, in addition to ruling several times on procedural issues. Court of Appeal Judges and Supreme Court Justices render judgments in a higher number of cases.

Generally speaking, a District Court Judge works alone and his or her workload is not allocated other colleagues. It goes without saying, however, that judges discuss cases and complex legal issues regularly, i.a. to ensure a similar approach to the same issues countered in many cases, and thus to avoid discrepancies in the judicial assessment. Court of Appeal Judges and Supreme Court Justices always work in sections of at least three judges in the former case and at least five judges in the latter case.

In principle, a case cannot be withdrawn from a judge. There are, however, a few exceptions, for example if for some reasons the judge does not try the case within a reasonable time or if a judge cannot do so because of an illness or some comparable unforeseeable situations. If so happens, it is the Chief Judge of a District Court or the President of either the Supreme Court or the Court of Appeal who is invested with the limited power to do so. In cases of District Court Judges, the judge concerned may appeal such a decision to the Judicial Administration.

If a judge is encountering trouble keeping up with the workload, the Chief Judge or President of the court in question may temporarily reduce the allocation of new cases to the judge concerned. This would be exceptional, as the general rule is that cases are distributed equally. The main instances where cases are reallocated to other judges are when the judge in question must go on a temporary leave due to severe health issues or some comparable unforeseeable situations.

4. Removal from judicial office

Under the Act on the Judiciary, judges are appointed for an indefinite period of time, subject nonetheless to retirement no later than at the age of 70.

In chapter V of the Constitution, Articles 59 to 61, the independence of the judiciary is emphasised. These provisions stipulate, among other things, that the judicial order is only to be decided by law, that judges are, in their work, only to be guided by law, and that judges may only be removed from office by the order of a court. The Act on the Judiciary includes detailed provisions on such removal.

According to Article 50 of the Act, a judge may be temporarily relieved of his or her duties if he or she has been subject to formal reprimand without subsequently improving, or if within three years from a formal reprimand, he or she acts in a way that justifies a new formal

reprimand. A judge will also be temporarily relieved of his or her duties upon not fulfilling the general requirements for holding office. The same applies if the police investigate the judge or if criminal proceedings are instigated against him or her, albeit only in instances where a subsequent conviction would be of such serious nature as to lead to the judge being considered no longer fulfilling the general requirements for holding office.

Once a judge has been temporarily relieved from duty, the Minister of Justice shall, except in cases where the judge is still subject to a criminal investigation or proceedings, instigate district court proceedings against the judge, demanding that the judge be removed from office. Such proceedings are subject to accelerated procedure and the court shall consist of three District Court Judges.