



Justice in Iceland

Judge Tómas Magnússon



On April 1, 2004, Green Bag Contributing Editor Dan Currell visited Judge Sigurður Tómas Magnússon in his chambers in Reykjavík, Iceland. Judge Magnússon sat on the District Court of Reykjavík, and was at the time Chief of the Administrative Council of the District Courts for Iceland. There are 47 judges in the Icelandic judiciary, arranged in a system of local District Courts and a single Supreme Court. There is no intermediate court of appeal. Iceland's total population is 290,000, about half of whom live in the capital, Reykjavík.

– *The Editors*

How is the District Court system structured?

There are 21 District Court judges in Reykjavík, and there is a community nearby with 7 judges. Outside of that, there are ten other judges. Those ten are located in six small courts in west Iceland, the Westfjords, the northwest, northeast, and east parts of the country, and the southern part of the country.

Do they ride circuit?

That happens. But we are limited to three towns in each district – there are only three

towns in each district that they have to go to. So for example in Akureyri, the third largest town, there are three judges, and those judges also sometimes sit in Húsavík.

We are talking about towns of 10,000 people, and often less. In those towns, is there a separate courthouse, or does the court just meet in a town hall?

After 1992, we began to focus on having separate buildings for the courts, because we were eager to separate the executive power and the judicial power. Before 1992, the system in Reykjavík was very different from the



system outside of Reykjavík. In Reykjavík we had four courts – a civil court, a criminal court, a special criminal court dealing with narcotic crimes and a court that was dealing with bankruptcy cases.

But in the countryside there were individuals who worked as sheriff, prosecutor, and judge. They had deputies, but the same person was the chief of all three things – he was prosecutor and judge, and he also collected the taxes. The districts were very small – from 1,000 to 20,000 people. It was a very old and simple system, but everyone in Iceland knew that we had to change it.

After the European Commission on Human Rights gave its opinion in 1992 that this was not acceptable under the European Convention on Human Rights, then we had to change the system. So after that we separated executive and judicial power. Now we have eight district courts with judges doing nothing but solving legal disputes.

The judges in this building – this courthouse here in Reykjavík – what do they do?

About six are doing criminal cases, and about 15 doing civil cases.

What is a typical civil case?

Mostly contracts – business matters. On average each year we have perhaps 1,200 trial-level civil cases, and about 2,000 criminal cases. But we also have many small claims cases, too. Very simple cases.

Of the criminal docket, how many of those cases are murder?

One to five a year. In 2000 there were five murder cases – that was the highest for a single year.

And from the District Court, litigants can appeal directly to the Supreme Court. Does the Supreme Court have to consider an appeal, or is the appeal discretionary?

If the value of the case is over a certain limit, you have a right to appeal to the Supreme Court. Under that limit, the Supreme Court can consider whether or not to hear the appeal. The limit is very low – about 400,000 Icelandic Kronar [about \$6,000], and the Supreme Court hears every case appealed over that limit.

And how long does it take to go through the whole judicial process?

In the district courts the average time is about seven months for civil cases, but for criminal cases it takes one to three months. In the Supreme Court it is about six to nine months for civil cases, but less than three months for criminal cases.

To go to trial, or to finish the case entirely?

To finish the case. In many cases you can go through the whole process within a year.

And you try to get to trial within a certain time?

As soon as possible. It depends on workload. I think it is two or three months in most of the cases.

When does the initial hearing after arrest occur?

In 24 hours.

Do you have juries?

We have no jury at all. Most cases are heard by one judge, but we can also have three judges. If the accused denies and the question of guilt depends mostly on the testimony of the accused and witnesses, we must have three judges. In complex civil and criminal cases there are three judges and two of them can be specialists – for example, plumbers, engineers, or medical doctors. These expert judges are not lawyers.

These people serve as expert witnesses?

No, they aren't expert witnesses in the American sense – we have no expert witnesses per

se. These specialists are called by the court, and they play almost the same role in the procedure as the full-time judges.

When did that system arise?

It was in 1936. It is a seventy-year-old system, and we are very happy with it. We take advantage of their knowledge in court, and the lawyers know that the court has access to this knowledge.

What is the role of the Administrative Council of the District Courts?

The District Courts are not directly under the jurisdiction of the Ministry of Justice – so in this respect the Icelandic courts are highly independent. "Althingi" (The Icelandic Parliament) decides the whole budget for the District Courts but the Administrative Council decides the budget for each Court. The Administrative Council decides how many judges are working in each district, and we move the judges between districts to balance workload. For example, we can tell judges to work for three months in a certain area instead of one month if the workload is heavy. We handle all the statistics, and education of judges. So we deal with issues like that.

We think the Icelandic court system is rather efficient because cases move quickly through the courts. Each judge finishes more cases than in most of the other European court systems, and our system is not expensive for the taxpayers compared with other court systems.

What kinds of things has the Administrative Council been working on lately?

Lately we have been talking about budgeting, to get more money. We would like to hire more staff – maybe not more judges,

but legal assistants and other court staff.

about cases, and they can get them here.

Is that so you can move cases faster?

They can if they come to the court.

Yes, there are always ways to move cases faster, but the workload of Icelandic judges has gone up 40% in the last two or three years, so most of the judges are tired at the moment.

Yes. And we are planning now to publish most of the cases on the Internet. Most of the cases – not all cases, not family cases or cases with children involved.

Why do you think there is more work?

You're concerned about privacy. But aren't there privacy issues in publishing even typical civil cases?

It is difficult to say, and there could be many reasons. A simple explanation may be the increase in the number of advocates. The civil cases have increased very certainly after 1998 – there has been a great increase in those kinds of cases. There have been ups and downs in the economy in Iceland, and when the economy goes down we get more bankruptcy cases and all kinds of small claims cases. Maybe in the future there will be fewer civil cases – we don't know. The criminal cases are going up a little bit each year, but we do not have enough policemen and prosecutors to work with more cases.

We are planning to remove all the names and places from the criminal cases and very delicate personal information from civil cases. The Supreme Court has now taken out names of witnesses in all the criminal cases – there are no names published.

European lawyers sometimes tell me that their law is becoming more Anglo-American. For example, Dutch lawyers have told me that their contracts used to be short, but now they are long and complicated, like English or American contracts. Is that happening here?

Are some of the cases formally reported? Are all of them reported?

I know the contracts are becoming more and more detailed and more cases have similarities with cases in American courts.

Only the Supreme Court cases are formally reported, and in fact they are now all on the Internet. But in this court we can read all the old district court judgments.

How so?

Internally.

Yes, but there are a lot of them.

Some of our advocates get their education and ideas from America – so we have some unusual or non-traditional cases. Advocates have tried cases here, like tobacco cases and cases claiming lack of oxygen during childbirth. Cases that are similar to the cases we hear about in America. And in some instances those cases have been successful here. But because of the Hollywood films and American soaps, most Icelandic people will know more about American courts than

So if I were a lawyer and practicing in Reykjavík, I could easily access all the Supreme Court cases. And are there some published cases from the District Court?

No, not published. But lawyers can find out

Icelandic courts.

One of the features of the American system is that most cases don't go to trial – they are settled if they are civil cases, or plea bargained if they are criminal cases. I get the sense that it's different here.

We have no plea bargaining, not at all.

But surely there isn't a trial in every case? Is some kind of settlement reached sometimes?

The criminal cases are not formally “settled”. But in small cases, like traffic cases, you can finish it in a simple way – the prosecutor will come with a suggestion of punishment and the accused agrees to it, and if the judge thinks that this is the right punishment then the case is over. That is only in the small cases – not in imprisonment cases.

It's hard to imagine the American system working without plea bargaining.

I think people in Iceland find it strange that you can just come to an agreement on punishment, that's not part of our thinking. And maybe if we get many more criminal cases in Iceland we would have to do something to help to speed up the cases. But radical changes like that are not necessary now.

Does the media cover the judicial system closely?

The courts have gotten more attention in the media after the system changed in 1992, because now we have a lot of courthouses. If the press has to fill the newspapers it is very easy to go to the courthouse to get some news, especially in criminal cases. For example, it is very popular right now

to criticize sentencing for sexual violence and assault.

Why is that interesting?

People say that judges aren't proportional between rape and theft and other crimes. I think it's good for the courts that people talk about the court decisions and have interest in what we are doing.

Does the legislature get involved in sentencing? It certainly has in the United States.

I think for some years now politicians' focus has been on harder punishment. So there have been some changes in the sentencing, for example in narcotics cases, where the maximum punishment was changed from ten to twelve years. The legislature has set the minimum and maximum sentences for certain crimes. But the sentences here in Iceland are rather low. For murder it is from 12 to 16 years standard, though it is possible to get life imprisonment for murder. There is no death penalty here in Iceland.

When was the death penalty abolished?

It was 1928, but the last execution was in the year of 1830. But in other areas – for example, for rape the standard sentence is two to four years. But we believe it is difficult to be a criminal in Iceland, because we believe the police get most of the criminals, though not necessarily all of them.

What's the theory of prisons here? In the United States I think the theory is that we are reforming prisoners, but in most cases we're really just locking them up.

The law talks about reforming criminals, but it is very difficult because it costs a lot of

money to do that, and people don't always agree on this. Some people say they should have a hard time in prison, but other people say that we have to reform them. I think the reality right now is that we lock them up but the prison authorities are doing the best they can in building up reforming plans.

How many prisons are there here?

The biggest prison – “Litla-Hraun” near Reykjavik – has about 80 prisoners, but we also have two or three smaller prisons;

one for women, and one in the countryside where you get some white collar criminals and younger criminals.

So the total prison population here is?

110 people.

110 people, against a population of 290,000. I think the United States has more people in prison than you have people.

Yes. Many more. *GB*