

International Association of Judges:

First Study Commission 2009

Answers of ICELAND

“Ways to identify and classify criteria, objective and subjective, by reference to which the independence of the judiciary may be assessed.”

(1) Does your country’s judiciary include prosecutors (or equivalent)? If so, do prosecutors benefit from the same guarantees of judicial independence as other judges?

No. The judiciary of Iceland does not include prosecutors. Historically, till 1992 judges had investigating powers and could prosecute in minor cases. In most jurisdictions the powers of the chief of police and the chief judge were invested in the one and same official. The state prosecutor only met in court when major criminal offences were tried. After a case concerning a minor traffic offence was brought for the European Court of Human Rights, in which the defendant claimed that it was a breach of the Convention that the same official could investigate his case and prosecute and pass a judgement in court, a settlement was reached and the Icelandic Parliament passed Act no. 92/1989 on the separation of judicial and executive powers. Since, all criminal cases are brought to court by prosecutors. In minor cases the police can prosecute. The state prosecutor is independent and has a protection of tenure in office. There is a general consensus that this was a positive step to be taken and that it has strengthened the independence of the judiciary. Some years later the Parliament passed the Act on the Judiciary no 15/1998 by which further steps were taken to that end such as establishing the Judicial Council.

(2) How would you define “judicial independence” in the context of the political and social system of your country today?

The division of state powers between the legislature, the executive and the judiciary is an accepted principle and marks the basis of judicial independence. The constitution demands that judges shall be independent in their work, i.e. only obey the law. A judicial decision can only be overturned on an appeal to a higher court. The judicial system has autonomy to a certain extent. All this in combination with the ethical integrity of the judges is the essence of our judicial independence.

(3) *Which objective criteria would you identify as indicating that the judiciary of your country is independent and why?*

Constitutional and statutory provisions defining the status of the judiciary. In professional matters neither individual judges nor the judiciary as such takes orders from other powers. That is the essence of independence. Each judge is independent in his or hers work and in respect to the case at hand takes no order from others, not the executive, his peers or chief judge. An appointed judge has a lifelong security of office and can only be made to step down if found guilty in court of an offence or a serious breach of ethical norms. There is a clear distinction between the judiciary and the prosecuting powers. A judicial council and the heads of courts control administrative matters of the courts, cf. distributing funds. Applicants for offices in the judiciary are evaluated by an independent committee and in the case of an appointment to the Supreme Court of the Court itself.

However, there are some imperfections. The budget of the judiciary is decided by Parliament on the recommendation of the Ministry of Justice, which does in its preparatory work take a moderate account of the requests of the Judicial Council. Candidates for judicial offices are evaluated and recommended by an independent committee and the Supreme Court respectively, but the power to appoint judges is invested in the Minister of Justice who is not bound by these recommendations. There is an independent committee that decides the salaries of judges along with most other public officials. Recently the government has used the legislator to lower salaries of judges.

Judges, as any other citizens, have freedom of expression, generally it is however felt that judges should be very reserved in talking their mind in public, especially on political or legal matters.

(4) *Which subjective criteria would you identify as indicating that the judiciary of your country is independent and why?*

Generally there is a trust in the courts as such, they are considered to be independent, not corrupt and to apply to the rule of law. Public opinion varies of course and may be negative after a judgement is passed on a controversial or sensitive matter; and on rare occasions an appointment of a judge has been criticized as being political.

(5) *If you have to identify the three most important criteria for indicating judicial independence in your country, what would they be and why?*

The principle of the division of powers in a democratic state. - Checks and balances are important to guarantee that each state power executes their duties in the best manner.

The constitutional definition of the role of judges and their protection in office. – The duty of the judge is to take an objective approach to the issue at hand and solve a case in accordance with the rule of law. It is paramount to the health of a judicial system that judges are protected from parties that have interests in the outcome of a case, political or personal.

The autonomy of the judiciary. – Autonomy is by definition an essential element of any independent entity. History has shown that the judiciary has been strengthened by the establishment of Judicial Council. In Iceland it has, however, still to gain full independence in fiscal matters.

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