“First Study Commission of IAJ-UIM

Questionnaire 2015

“The relationship between effective management of the courts and the delivery of justice by independent judges”

1. Please specify – in note form – your case allocation system (in particular who is responsible for case allocation and how it is done, whether account is taken of any special abilities or interests of the judge and how the appearance of impartiality or neutrality is maintained).

What are the advantages of your system? What are shortcomings of the system, especially regarding judicial independence?

In the district courts, the Court President is responsible for allocating cases to a chamber judges or, as is more common, specific judges. Similar system applies to the Supreme Court which also functions as the only appeal court in the country (operating in fluctuating chambers of 3 and 5 judges). It is stated in the Judicial Act that allocation should, as far as possible, be on a random basis. On the other hand, there is no scrutiny as to whether this is the case. Once a case has been allocated to a judge, it cannot, as a rule, be reallocated. The Judicial Act also postulates that the size of cases are to be taken into account in order to ensure even case-load between judges.

In bigger courts (District Court of Reykjavik), there are informal chambers providing for certain degree of specialisation (e.g. criminal division, civil division). Judges may request to move between these divisions depending (e.g. if a judge wants to do criminal cases). A final decision in this regard is, however, up to the Court President.

A judge is to recuse him/herself from a case ex officio in cases of conflict of interest or circumstances which call into question his/her neutrality (Fr. habilité). If a judge is uncomfortable handling a case, due to relations to one of the parties, without being legally obliged to recuse him/herself, he/she can ask to be taken off. If refused by the Court President, a request to this effect can be made to the Judicial Council.

The main shortcoming of the present system is that random allocation is by no means guaranteed. This means that there is little to prevent a Court President from hand-picking a judge to handle a case.

2. What measures to increase output and/or diminish handling time are in use or planned in your Courts?

How do these measures affect judicial independence?

Statistical reports, describing each judge’s record, are published annually by the President of each court. In bigger district courts, these reports are discussed at judges’ regular meetings creating a certain amount of peer pressure. Furthermore, each judge is to give the President a written explanation if a case is not dealt with in due time (2 years from the time a judge has been assigned to the case).

The district courts have on some occasions established informal chambers to deal with certain types of cases. This has, no doubt, contributed to conformity and increased efficiency. We consider that this measure should be used more in order to build up expertise and create institutional memory. However, it should also be ensured that judges do not become “locked-up” in a chamber
ICELAND

dealing with a limited variety of cases.

Recently, rules on civil procedures were reformed with the aim of increasing efficiency, inter alia by reducing formalities and strengthening the judge’s position vis-à-vis the parties.

In our opinion the scrutiny of reasonable handling time is proportionate and does not affect judicial independence. However, there are signs, inter alia in the Supreme Court (which now generally handles cases in divisions of three opposite to five, some years back), that an overemphasis on efficiency may risk having adverse effects on the quality of judgments.

3. Do you have performance appraisal, regarding quality or quantity of judicial work performed? What are the advantages of these measures? What are disadvantages/shortcomings, especially regarding judicial independence?

Apart from the above mentioned monitoring system which focuses on statistics, there is no appraisal system regarding performance or the quality of judicial work. The method using weighing cases when allocating them to judges is also very informal and rudimentary. This may, at times, give rise to criticism from individual judges that their case-load is too heavy compared to their peers.

Currently it is debated how and to what extent the Court President should take more active role in qualitative appraisal, e.g. by conducting appraisal interview with each judges. This is an ongoing debate which has raised number of questions regarding judicial independence. Some judges clearly see it as impermissible interference with their independence.

It should be noted that the Supreme Court may, on occasions, make observations concerning the handling of a case by the District Court, even reprimand the district judge responsible. However, it questionable whether this should be considered a system of quality control.

4. Please identify shortcomings of the actual working conditions? What are positive effects of measures taken, regarding working conditions?

Over the past few years the workload has increased rapidly due to the financial crisis of 2008 which hit Iceland hard. The number of cases, inter alia complicated civil and criminal cases, brought to the courts increased at the same time the judicial system was suffering from budget cuts. At present clerical and legal assistance remains limited. Research and development projects (e.g. with regard to electronic procedures) are almost non-existing.

The Judge Association has for number of years criticized the lack of possibilities for professional development and continuous education for Icelandic judges.

Question regarding the selection of the topic for 2016

The legal and actual position of courts in the State Budget Process. How can it be ensured that the needs of the court system are not disregarded in the budgetary process, which seems (perhaps increasingly) often to be the case?