Access to Courts for Civil Proceedings In Iceland

Sigurdur Tómas Magnússon

1 Introduction

This article will attempt to provide an overview of access to courts in Iceland. An attempt will be made to answer whether Icelandic court organisation, rules of civil procedure and procedural execution fulfil the requirements in Article 1 of Article 70 of the Constitution of Iceland and the European Court of Human Rights (hereafter ECTHR) on access to courts, with delimitation of subject matter in paragraph 1 of Article 6 of the European Convention of Human Rights (hereafter ECHR), which was enacted into law in Act No. 62/1994.

The article will discuss various aspects of legislation and procedural execution that can affect which parties can initiate lawsuits, which issues will come before the courts, how issues must be formulated for courts to accept them for substantive consideration, and how ready the court system is to deal with court cases. Numerous aspects fall under each of the above-specified items that will be discussed briefly below.

Human rights provisions of the Constitution and international conventions are intended to ensure minimum human rights. The discussion of access to courts will therefore not be limited to whether Icelandic legislation and procedural execution are in accordance with such minimum requirements. On the contrary, examination will be made of the extent to which it is appropriate to broaden the purview of courts and increase access to them beyond the requirements set for the Icelandic State by the Constitution and EHRC

In discussing access to the courts, it must be kept in mind that in most instances resolution of a dispute is costly, whether courts or other ruling bodies are called upon to resolve it. Legal provisions regarding access to courts can affect the cost of court cases, and where that cost lands. Improved access to courts can place a substantially increased financial burden on the State.

2 International Attitudes Toward Access to Courts

In the European Union and Council of Europe discussion of access to courts has had high priority in connection with the function of courts, efficiency of the legal system and just court procedure.

At a conference of European ministers of justice in London in 2000, the ministers agreed on the importance of bolstering the public's trust in the judicial system in each state. Subsequently, the Council of Ministers of the European Union passed a resolution on establishing a committee for the purpose of improving the efficiency and operation of the member states' legal systems for the sake of everyone being able to assert their legal rights effectively and thereby create increased confidence of the citizens in the legal system. The European Commission for the Efficiency of Justice (CEPEJ), among other things, has collected information on the judicial systems of the member states of the Council of Europe and compared the information. Out of this work has come the report *„European Judicial Systems 2002“*, which will be discussed in greater

detail below.[1] The commission has also released a report on case handling time and procedures for promoting that court procedure in each case is within a suitable and fore*See*able timeframe.[2]

The Council of Europe has contributed to improved access to courts by issuing various instructions on government legal assistance.[3] On its homepage, the council has established a major information utility on indigent plaintiff status and other aspects related to access to courts in particular member states.[4]

In this forum, the European Union has made special efforts to provide all the union's citizens with the same access to government legal assistance in another member state equal to that in their own states.[5] At the end of 2002 the European Commission announced a proposal for joint rules on *„payment order*" and procedures to create rules on small claims procedure.[6] The European Union has also put on the Internet a great deal of useful information on remedies for citizens in particular member states, and across borders, to procure indigent plaintiff status, resolve their cases before the courts and obtain satisfaction of their claims. [7]

The Council on Legal Procedure in Denmark recently issued a report on amendments to the Act on Civil Procedure regarding access to courts. This report explains various points in detail, such as court fees, legal costs, indigent status and other govermental and nongovernmental legal assistance, security for court costs as insurance and new procedural remedies, including small claims procedure. The report also discusses comparable points in the legislation of other states.[8]

A parliamentary bill for a new act on civil procedure introduced in Norway in the spring of 2005 contains various innovations aimed at promoting improved

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1 *See* the report in its entirety on the homepage of the Council of Europe, "www.coe.int".

2 CEPEJ (2004) 19 REV 1: *A new objective for judical systems: the processing of each case within an optimum and foreSeeable timeframe.*

3 Examples include the European Agreement on the Transmission of Application for Legal Aid (ETC No. 92) and later instructions related to this agreement, Resolution (76) 5 on Legal Aid in the Field of Civil, Commercial and Administrative Matters, Resolution (78) 8 on Legal Aid and Advice, Recommendation No. R (93) 1 on the effective access to the law and justice for the very poor. *See* the homepage of the Council of Europe for more details: "www.coe.int".

4 *See* the homepage of the Council of Europe: "www.coe.int".

5 *See* Council Directive 2003/8/EC, where the foreward to the directive describes its purpose as follows: „It aims to overcome the existing obstacles with regard to access to legal aid and to allow everyone to get legal aid in another Member State in the same way as in their own country. The purpose of this Directive is to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes ", which can be found at www.europa.eu.int.

6 Proposal of the European Commission, "Green Paper on a European order for payment procedure and on measures to simplify and speed up small claims litigation" wihch can be found at "www.europa.eu.int".

7 *See* the homepage "www.eurocivil.info" and "www.europa.eu.int".

8 *See Retsplejerådets betænkning nr. 1436/2004 om reform af den civile retspleje III* (Adgang til domstolene), which can be found at "www.jm.dk".

access to courts. For example, it includes provisions on small claims procedure and initiating class actions. The bill is based on a detailed report and draft bill from the Civil Procedure Committee (Tvistemålsutvalget). [9]

3 Access for Whom?

Discussion of access to courts raises the question of whether all individuals and legal entities should have equal access to courts, or whether access may be limited in some way or different groups afforded different access.

The provisions of paragraph 1 of Article 6 of ECHR, cf. Act No. 62/1994, are not intended to ensure that everyone and all legal entities can submit any kind of complaint to courts in a civil case, but only in those instances requiring stipulaton of someone's rights and obligations in civil law. ECTHR's judicial implementation has shaped the scope of this provision somewhat broadly. The provision thus covers any kind of judicial dispute between individuals. Although the provision refers to people, it has also been deemed to apply to a judicial dispute between other private parties, such as voluntary associations and any kind of company in business operations.[10] The provision has also been deemed to cover various kinds of disputes between individuals and other legal entities against the government, to the extent that the dispute regards governmental decisions affecting people's property rights and right to work.[11]

There will be a general discussion below on the access of various groups to courts, not taking solely into account paragraph 1 of Article 6 of ECHR or paragraph 1 of Article 70 of the Constitution.

3.1 Access for Individuals

Although courts have not got an exclusive right to rule on a dispute, and power to rule in numerous areas has been conveyed to the administrative authorities, the citizens almost always have the option of getting courts to make final rulings on a dispute. As previously mentioned, individuals may need to initiate a lawsuit or be defendants because of a dispute with other individuals or legal entities or because of a dispute with the State or its institutions.

There are special problems regarding individuals' access to courts, especially the status of those less wealthy, who cannot cope with the costs accompanying court proceedings and the inefficiency of not being able to conduct a case in a simple and inexpensive manner because of the relatively small interests at stake.

It can also develop that a number of unrelated people believe that they each have a comparable claim against the same party. Each of these claims can

9 *See* NOU 2001:32 Bind A. Ot.prp. nr. 51 (2004-2005). Om lov om mekling og rettergang i sivile tvister (tvisteloven).

10 *See* the judgement of the European Court of Human Rights in the case of *Tre Taktörer* AB vs. *Sweden*. 7 July 1989. In the judgement, the Swedish State was deemed to have violated paragraph 1 of Article 6 of the ECHR, regarding a company operating a bar.

11 Eiríkur Tómasson, *Réttlát málsmeðferð fyrir dómi*, pp. 35-39 and P van Dijk and G.J.H. Van Hoof, *Theory and Practice of the European Convention on Human Rights*, pp. 392-406.

involve such small interests that they do not justify initiating a complicated and dicey case even against financially strong companies. On the other hand, this can result in big companies getting away with perpetrating injustice. In the United States and other parts of the world, remedies have long existed for responding to this, called the *"class action lawsuit"*. Provisions of this kind have also been enacted in Norway and Sweden.

Legislation in the field of environmental affairs has strengthened the general public's right to affect the environment in various ways. Paragraph 4 Article 12 of Act No. 106/2000 on environmental impact evaluations authorises everyone to appeal rulings of the Planning Agency on environmental impact evaluations to the Minister for the Environment. A Supreme Court judgement on petitions for dismissal in a case arising out of an environmental impact evaluation because of the Karahnjukar Power Station Project confirmed that being a party to such an administrative complaint to the Minister for the Environment entitled people to submit the validity of the Minister's ruling to courts.[12]

3.2 Access for Legal Entities

The standing of various types of legal entities has been acknowledged under Icelandic law. Extremely dissimilar groups are involved, ranging from relatively informal associations to major limited liability companies traded on stock exchanges and the Icelandic State. These parties' situations are extremely different, and differing opinions can arise regarding particular groups' access to courts.

3.2.1 Access for voluntary associations

The development in Iceland in past decades of legislation on legal procedure has been toward expanding the access of various associations to courts, especially for the purpose of protecting the interests of particular association members or those of the associations generally. Paragraph 3 of Article 25 of the Civil Procedure Act, No. 91/1991 authorised an organisation or association of people to conduct a case in its own name for acknowledgement of members' specified rights or exemption from specified duties, provided that it was in accordance with the purpose of the organisation or association to protect the interests covered in the claim in the lawsuit.[13]

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12 *See* the Judgement of the Supreme Court of Iceland of 12 July 2002 in Case No. 231/2002. The issue was whether three individuals and the Iceland Nature Conservation Association had legally protected interests in appealing a ruling of the Minister for the Environment to the courts. The judgement of the Supreme Court of Iceland states: "Under the main rule of the first paragraph of Article 60 of the Constitution, one who has been a party in a case before the government generally enjoys the right to submit an issue to the courts of whether the law has been followed in the case's handling and resolution. In this regard it does not matter whether the inclusion of this party is based on the above-mentioned general rules of administrative law or on special rules like those stated in the second subparagraph of paragraph 4 of Article 10 and paragraph 4 of Article 12 of Act No. 106/2000."

13 *See* the Judgement of the Supreme Court of Iceland of 25 Oktober 2001 in Case No. 277/2001. The Confederation of Icelandic Labour filed suit against the Icelandic State for an acknowledgement that specified provisions of Act No. 34/2001 on fishermen's wage terms did not apply to three specified labour unions, and that the same provisions entailed an unlawful restriction of contractual freedom and the named labour unions' right to strike. The

There are various other ways to *See*k resolution of court cases involving relatively small interests of many parties. Thus, a voluntary association often financially supports a specific individual in claiming his rights, for the benefit of other association members in a similar situation. There are also instances of an agreement being reached between a voluntary association and another party that only one case will be tried regarding a dispute involving many parties against an undertaking that disputes with others will be resolved on the basis of the court holding. Such agreements often include a provision that parties will not plead that a claim has expired under the statute of limitations since it can take some time to obtain a final judgement.

3.2.2 Access for companies operating businesses

At first glance, one might suppose that there would be little need for concern over the access to courts of companies operating businesses since financially strong parties would be involved, having all the wherewithal for individuals and others in legal proceedings. Nevertheless, here it must be kept in mind that the finances of companies operating businesses vary greatly, and since these parties actually have no chance of acquiring indigent status, their possibilities to *See*k remedies in the courts can be limited.[14] Financial difficulties can also inhibit a company from claiming its rights if, upon filing of the case, security for court costs is demanded of the company on the basis of paragraph 1(b) of Article 133. A case shall be dismissed from the court if the plaintiff does not put up the amount of security ordered by the judge. Various aspects of courts' operations can affect whether going to court can be deemed desirable for companies, such as the fore*See*able case handling time and the ability of courts to resolve complex and specialised issues. Also, the main rules of civil procedure on public court procedure and even publication of judgements on the Internet can block going to court as a realistic option for resolving issues since sensitive commercial secrets are involved.

3.3 Access of the State and its Institutions

Human rights provisions are clearly not generally intended to ensure the State's interests vis-à-vis its citizens although such provisions are a necessary part of maintaining a democratic national structure. Although the author does not find an example of individual member states of the ECHR not having referred cases

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Supreme Court of Iceland deemed that the interests of wage earners within the relevant unions could, under paragraph 3 of Article 25 of the Civil Procedure Act, be transferred to the CIL and rejected the argument that the CIL could not invoke the provision to appeal based on the interests of wage earners within the member unions. On the other hand, the Supreme Court thought that the manner in which the CIL filed suit, drafting claims baldly referring to the interests of unions, contravened paragraph 3 of Article 25 since the provision did not entail a power of attorney to file suit for unions or associations but rather transferred to them inclusion in a case involving the interests of unspecified association members. The claims were also deemed to entail a legal question. The case was therefore dismissed.

14 Chapter XX of the Civil Procedure Act, No. 91/1991, does not specifically state that only individuals shall be offered indigent status, but the text in the act and the provisions of a regulation on the work of the Indigent Status Committee, No. 69/2000, discuss only individuals.

to the ECTHR, it can hardly be asserted that state companies, institutions or the other relatively independent phenomena under the auspices of the State cannot plead human rights provisions, such as paragraph 1 of Article 6 of ECHR. Because of the scope of paragraph 1 Article 70 of the Constitution being greater than that of paragraph 1 Article 6 of the ECHR, it appears possible that the Icelandic State or companies, institutions, independent committees and councils under its auspices, which are deemed to have standing, can build on the provision regarding access to courts. The Supreme Court's premises in its judgement of 17 March 2005, in Case No. 349/2004, indicate that the viewpoint about access to courts stated in paragraph 1 of Article 70 of the Constitution can apply to the State. In the case the Icelandic State was in the position of a property condemner wanting to overturn the conclusion of a condemnation compensation evaluation committee. The property owner appealed the matter to a district court, demanding property condemnation compensation in accordance with the ruling of a property condemnation compensation appraisal committee. The district court agreed to the plaintiff's demands, but the State appealed the case to the Supreme Court of Iceland, which decreased the condemnation compensation, with reference to the conclusion of the court-appointed appraisers. The judgement of the Supreme Court of Iceland states:

> Article 13 of Act No. 11/1973 stipulates that a property condemner, when there is an appraisal, can take control of the condemned value against payment of the appraised amount. Article 14 states an exception to this rule: An appraisal committee can, even though an appraisal is not finished, authorise a property condemner to take control of the value that is to be condemned and initiate the project occasioning condemnation. Article 17 of the act states that a court remedy can be sought on a dispute over the lawfulness of condemnation, including a dispute on the amount of condemnation compensation, however, concerning the latter not until there is a resolution from an appraisal committee. All limitations on people's access to courts must be clearly stated in the law. Article 17 of the act is clear authority for submitting a dispute on the amount of condemnation compensation to courts, and no distinction is made there between a property condemner and a property owner. The district court decision is affirmed that the appellant may submit this dispute to courts.

Experience has shown that in the general civil proceedings, the State is, in most instances, the defendant in the district court since the State has various remedies for asserting its goals other than filing a suit in the courts. On the other hand, there are no a general impediments to the State or its institutions being able to file a lawsuit, e.g., to collect money, eventhough other channels are most often available, especially attachment without a previous judgement or settlement. The legislature is in fact empowered to ensure the State and its institutions broad authority to appeal cases to the courts in areas where it becomes necessary or where there is some doubt that such authority exists.

The last two decades have *See*n an increased tendency to establish independent ruling committees within the administrative system or entrust agencies under ministries with final ruling authority on matters that previously were under the ministries. In some instances, decisions of lower-echelon administrative authorities can be appealed to special appeals committees at the

administrative level. A private party who is not satisfied with a final administrative decision may appeal it to courts, which, under Article 60 of the Constitution, have final ruling authority on the validity of such administrative decisions. In instances where an administrative appeals committee reverses the decision of a lower administrative authority, the question arises of whether that authority can appeal the higher authority's decision to the courts.

The Supreme Court of Iceland came to the conclusion in a judgement of 22 September 1998 in Case No. 297/1998 that the Competition Council commenced against a company and the Competition Appeals Committee concluded that the council could not appeal a decision of a higher administrative authority to courts. The Supreme Court's argument included the following:

> In this case there are opposing conclusions from two State administrative authorities, both working on competition affairs at a lower and higher level. Under the main rule of administrative law, a higher administrative level's resolution regarding construction of a law is binding under these circumstances on the lower administrative level, and the latter would not be able to appeal it to a still higher administrative level even though such legal authority were generally available. In that situation, the lower administrative level is obliged to abide by the conclusion of the higher administrative level that has reviewed the decision of the lower level on the basis of an appeal from a party with legally protected interests at stake. The lower administrative level can therefore only take initiative to have the ruling overturned if there is clear legal authority for appealing the issue to courts. It will not be agreed that Article 56 of Act No. 8/1993 contains such authority, and the appellant has not indicated other provisions of law that could contain this authority.

That a lower administrative level is often protecting the interests of a private party that has submitted a complaint or filed a charge, or even ample public interests, is an argument against this conclusion. It is completely uncertain whether these private parties have formal standing in the matter before the higher administrative level. Having only the decisions of a higher administrative level that are unfavourable to a lower administrative level subject to review by courts could lead to unilateral development since a lower administrative level can never test a view that a higher administrative level does not agree with.[15]

On the other hand, it is food for thought why the nonstatutory main rule of administrative law, which was deemed to imply that a lower administrative level required clear statutory authority to appeal a decision of a higher level to the courts, was allowed to weigh more heavily in the above judgement than the main rule on access to courts that the Supreme Court of Iceland built on, among other things, in the condemnation judgement referred to at the beginning of the section.[16]

The judicial practice that has developed of dismissing claims from court against independent ruling committees and other government authorities that

15 The new Competition Act, No. 44/2005, which entered into force 1 July 2005, does not change the precedent that the Supreme Court of Iceland set with the above-mentioned judgement, but provisions on appealing rulings of the new Competition Surveillance to the Competition Appeals Committee are now in Article 9 of the act.

16 *See* the judgement of the Supreme Court of Iceland of 17 March 2005 in Case No. 349/2004.

have made decisions at the final administrative appeals level when there are other parties at hand in a case as defendants and plaintiffs is also remarkable in light of the main rule on access to courts. The judgement of the Supreme Court of Iceland of 17 February 1997 in Case No. 63/1997 supports such a dismissal, based on the joinder of an independent administrative committee, as follows:

> The defendant Competition Council the plaintiff's opposing party in a case that the Competition Appeals Committee ruled on 27 November 1996. The Competition Council and plaintiff are required parties to a case on the validity of this ruling. The Competition Appeals Committee, which functions as a ruling committee on the administrative appeals level, has, on the other hand, no legal interests at stake in the resolution of this case that could support its joinder. Neither is there any procedural necessity of giving the committee an opportunity to be heard in the court proceeding that was filed to invalidate its ruling. The plaintiff's claims against the Competition Appeals Committee will therefore be automatically dismissed from the district court.

Similar conclusions can be found in more of the Supreme Court's judgements.[17] What especially argues against this conclusion is that it can be necessary for a higher administrative level, which is intended to formulate policy for the relevant division, to influence development of the law; in addition, the relevant governmental authority is in many instances intended to protect the general public's interests and other lawful interests, and it is therefore often useful and even necessary for it to present its views on the matter.

4 Limitations on Access to Courts

Comments on the current paragraph 1 of Article 70 of the Constitution in an exposition on the parliamentary bill to amend the Constitutional Act mentioned numerous limitations on access to courts in the act then in effect and stated that it was not the intention to make changes to the current law with this provision. start Microsoft Word The same understanding emerges, for example, in paragraph 1 of Article 24 of the Civil Procedure Act, which states that courts have the power to render judgement on any complaint that covered by a statute and domestic law unless it is excluded from their jurisdiction according to the law, an agreement, custom or its nature. Such a limitation to the main rule is also reiterated in the Supreme Court's judgement of 17 March 2005 in Case No. 349/2004, where it is stated that all limitations to people's access must be stated clearly in the law.[18]

17 *See*, e.g. the judgements of the Supreme Court of Iceland of 23 October 1997 in Case No. 429/1997 and of of 21 March 2002 in Case No. 306/2001.

18 *See* a similar argument in Judgement of the Supreme Court of Iceland of 18 December 2000 in Case No. 419/2000, which revolves around standing in a paternity case. The judgement of the Supreme Court of Iceland states that Article 70 of the Constitution entails an independent rule that people shall generally have a right to submit their issues to the courts, and that provisions in general law restricting this right must be construed, taking this into account.

It will be concluded from the judgements of the ECTHR construing the subject matter of paragraph 1 of Article 6 of the ECHR that the member states of the ECHR have been afforded some leeway to limit access to courts. As it emerges in the ECTHR judgement in Winterwerp vs. The Netherlands, which revolved around the joinder of a mentally unwell person, such limitations may not diminish the core of a person's right to access to courts.[19] In Ashingdane vs. The United Kingdom, the ECTHR deemed that such limitations on access to courts might not so narrow the possibilities of individuals and other private parties to have their day in court that the core of this right would be reduced. These limitations, in addition, would have to aim at a lawful goal and might not go farther than normal, keeping in mind the interests at stake in achieving this goal.[20] In Fayed vs. The United Kingdom, there was deemed to be the following condition for access to courts:

> A restriction must pursue a legitimate aim and there must be reasonable proportionality between the means employed and the aim sought to be achieved.[21]

Also such limitations must be sufficiently clear, as emerges in the ECTHR's decision in the case of Bellet vs. France.[22]

Many of the disputes regarding accessibility of courts that have been tried before Icelandic courts and the ECTHR have involved the cost of court proceedings, e.g., applications for indigent status. This article will not discuss such matters of opinion, but rather it will focus on other aspects of judicial legislation and court organisation that could affect access to courts.

4.1 Possible Limitations to Access Because of Procedural Provisions

The Civil Procedure Act and various other acts set requirements regarding the form of pleadings, the presentation of claims and facts of the case and various conditions on what complaints can be brought before the courts. Also, various acts set a statute of limitations for presenting specific issues to courts. The Civil Procedure Act also authorises demanding security for anticipated legal costs from an opposing party . Various defects in pleadings can result in dismissal, and various viewpoints underly this. In most instances a plaintiff can nevertheless re-file a case before a court after having it dismissed although this can entail a substantial increase in costs. The Statute of Limitations Act provides a six-month extension to the expiration period if it has passed when a case is

19 Judgement of the European Court of Human Rights in *Winterwerp vs. The Netherlands* of 24 October 1979, Article 61.

20 *See* the judgement of the European Court of Human Rights in *Ashingdane* vs. *The United Kingdom* of 28 May 1985, Article 57, and a detailed discussion of it in the article of Christos Rozakis, *The Right to a Fair Trial in Civil Cases*, Judicial Studies Institute Journal, Vol. 4 No.2 2004, p. 99. The author is a judge on the European Court of Human Rights.

21 Judgement of the European Court of Human Rights in *Fayed* vs. *The United Kingdom* of 21 September 1994, Article 65.

22 Judgement of the European Court of Human Rights in *Bellet* vs. *France* of 4 December 1995, Article 42.

dismissed from court since the running of the statute of limitations was stopped by the original lawsuit, cf. Paragraph 1 of Article 11 of Act No. 14/1905.

Because of the additional costs resulting from dismissal, unnecessarily strict form requirements or strict construction of such requirements could entail limitations to actual access to courts. In instances where a dismissal from court entails final preclusion of submitting a complaint to courts, there is even greater reason for caution.

4.1.1 Limitations on who can be parties to a court case

Paragraph 1 of Article 16 of the Civil Procedure Act states that a party to a lawsuit can be any individual, company or institution having rights or duties under national law. The capacity to be a party to a lawsuit is called standing; the reference in paragraph 1 Article 16 to national law makes it clear that the rules of law in a field of substantive law determine who can initiate a lawsuit because of a specified claim and to whom a specified claim will be directed. It follows from the provisions of Article 17 of the Civil Procedure Act that people who are not competent under the law to deal with claims in a case and impersonal parties require representatives to appear in lawsuits.

It can be supposed that extremely narrow construction of who has standing to initiate a lawsuit, and even the rules on compulsory joinder and joint participation in Articles 18 and 19 of the Civil Procedure Act, could entail such limitation to people's access to courts that it would be deemed a violation of paragraph 1 of Article 6 of the ECHR, cf. Act No. 62/1994, and paragraph 1 of Article 70 of the Constitution. Reference is otherwise made to the discussion in Section 4.1 on the extent to which the right to access to courts regards individuals.

4.1.2 Rules of form regarding pleadings

Paragraph 1 of Article 80 of the Civil Procedure Act has various rules regarding the form and substance of a summons, and corresponding rules on exposition are in paragraph 2 of Article 99. There are a myriad of examples from judicial proceedings that cases have been dismissed from court because of defects in the pleading of claims, description of the case's facts and other points discussed in paragraph 1 of Article 80. There must be strong requirements for pleadings. Nevertheless, the same requirements for detailed pleadings will not be made in both simple and complex cases.

In ex parte proceedings the function of the judge will be somewhat special since there is no one to move for dismissal. The judge must attend to form requirements for pleadings and dismiss claims having no foundation in the law but otherwise take care not to defend a defendant that does not bother to conduct a defence. In such a case the important requirement must be made for pleadings that the documents presented and the pleadings in the summons are in accord.

It must be generally deemed that carefully drafted pleadings streamline overall court procedure and promote reaching a careful and well-grounded conclusion. There is also a danger that the quality of pleadings and court procedure as a whole declines if requirements for carefully drafted pleadings are relaxed.

4.1.3 Complaints submitted to courts

The legislature has broad, although not unrestricted, leeway to shape court organisation and demarcate the tasks delegated to courts. Below various limitations will be explained on which complaints will be laid before the courts, whether because of provisions on courts' jurisdiction in the narrow sense, the necessity of legally protected interests, that complaints have been excluded from jurisdiction temporarily or completely or because of the statute of limitations.

There have been deemed to be various limitations to people's authority to *See*k court review of administrative decisions. Since there has recently been considerable discussion of the review of administrative decisions by scholars in Iceland, no further account of this topic will be made here.[23]

4.1.3.1 Jurisdiction of particular courts and procedural paths

The conclusion of paragraph 1 of Article 24 of the Civil Procedure Act states the main rule that courts have the power to render judgement on any complaint covered by a statute and domestic law. The paragraph's conclusion says that if a complaint does not belong before the courts, a judge shall dismiss the case from court.

The provisions of paragraph 1 of Article 24 will not be understood to say that there are general restrictions on basing arguments on foreign procedural rules in court cases in Iceland since paragraph 2 of Article 44 of the act directly provides for parties to a case being able to plead a foreign rule of law.

The jurisdiction of Icelandic courts on the whole and of particular courts is restricted in various ways in Icelandic legislation. The roots of various restrictions can be traced to international conventions or attitudes in Iceland regarding who should fall within the jurisdiction of domestic courts in particular areas of law. In a judgement of the Supreme Court of Iceland of 15 September 1995 in Case No. 299/1995 an Icelander filed a suit against the United States Embassy in Iceland that was dismissed from court on the grounds that under the main rules of international law, a state will not be subject, without its consent, to the jurisdiction of another state's courts, as the plaintiff sought to accomplish with his lawsuit, and the case will not therefore be tried before Icelandic courts.

International civil procedure and venue clauses in agreements can determine whether complaints fall within the jurisdiction of Icelandic courts. Provisions excluding complaints from the jurisdiction of Icelandic courts must nevertheless be narrowly construed, especially when domestic parties are involved, as was done in the judgement of the Supreme Court of Iceland of 21 October 2004 in Case No. 131/2004, where a clause regarding the jurisidiction of English courts in a submitted security interest agreement was not deemed to prevent its being the basis of a suit in Iceland.

The division of labour between courts and rules on different channels for court cases do not constitute a limitation, per se, on access to courts. On the

23 *See* Ragnhildur Helgadóttir, *Vald dómstóla til að endurskoða stjórnvaldsákvarðanir* (Power of the courts to review government decisions), Tímarit lögfræðinga, 1st vol. 2005 and Róbert R. Spanó, *Kröfugerð í málum gegn ríkinu og stjórnskipuleg valdmörk dómstóla* (Preparing complaints in cases against the State and limits to administrative power), Tímarit Lögréttu, 1st vol. 2005, pp. 32-33.

other hand, it may be that narrow construction of the jurisdiction of Icelandic courts will preclude parties from claiming their rights in Iceland as well as abroad and can be deemed a forbidden limitation on access to courts.

It must also be kept in mind that agreements entail ceding of general courts' legal protection; likewise, arbitration agreements can be deemed to be non-binding if they are very extensive, and such agreements are always construed narrowly with regard to paragraph 1 of Article 24 of the Civil Procedure Act and paragraph 1 of Article 70 of the Constitution.

4.1.3.2 Legally protected interests –- Legal question

In Iceland as well as abroad courts have deemed their purview to be dealing only with disputes that parties to the lawsuit have legally protected interests in submitting to courts.[24] The main rule requiring legally protected interests is based on the condition in paragraph 1 of Article 24 of the Civil Procedure Act that courts' jurisdiction is limited to complaints that a statute and domestic law cover, and paragraph 1 of Article 25 of the act that courts do not resolve legal questions. The main rule also entails the condition that a complaint shall be so couched that its resolution will have actual value for the parties' legal status.

Courts have only been deemed capable of dealing with interests that rules of law cover, as is clearly stated in a judgement of the Supreme Court of Iceland of 6 September 1995 in Case No. 237/1995, which said that courts' jurisdiction did not extend to rules of ethics.

The conclusion in the judgement of the Supreme Court of Iceland of 20 June 1994 in Case No. 270/1994 was in accordance with traditional requirements on the necessity of legally protected interests. This suit was filed to obtain acknowledgement that the EEA Agreement entailed assignment of constitutional power, and that such assignment would only be done by giving the plaintiff an opportunity, as a voter in parliamentary elections, to be a party to the suit. The Supreme Court of Iceland confirmed the district court's ruling of dismissal, in part on the basis of the following argument:

> Under paragraph 1 of Article 25 of Act No. 91/1991, the courts' views on legal matters will not be demanded, except to the extent necessary to resolve a certain claim in a court case. The plaintiff's claim is not legally protected in the meaning of paragraph 2 of this provision and therefore actually entails a request for a court opinion unrelated to resolution of a certain complaint.

In the judgement of the Supreme Court of Iceland of 17 February 2003, in Case No. 568/2003, it was not deemed to be necessary to file suit against two municipalities that had been parties to an appeal to the Ministry for the Environment of a ruling by the Planning Agency on an environmental impact evaluation of the Karahnjukar Power Station. The argument supporting that conclusion states:

24 In Norwegian law, this rule derives from Articles 53 and 54 of the Civil Procedure Act (Tvistemålsloven).

> The interests referred to by the two municipalities in their appeals to the Minister for the Environment pertain limitedly to this power station, but rather primarily to construction and operation of an aluminium smelter in the East Fjords. These interests will not be deemed individual, direct and legally protected interests in a resolution of a demand regarding the validity of the Minister for the Environment's ruling on an environmental impact evaluation of the Karahnjukar Power Station. The lack of joinder of the aforementioned municipalities in this case will therefore not prevent a substantive judgement on an alternative claim of the plaintiff.

The viewpoint that citizens do not have ready access to fair court procedure argues for proceeding cautiously in dismissing cases on the basis of a lack of legally protected interests even though this point was among those specifically mentioned in comments on paragraph 1 of Article 8 in an exposition of the aforementioned parliamentary bill on amendment of human rights provisions of the Constitution. In reading judgements from the last several decades dealing with legally protected interests, the conclusion can be drawn that courts have become rather more cautious in dismissing cases with non-traditional complaints on this basis. As an example of a traditional view, the aforementioned judgement of the Supreme Court of Iceland of 20 June 1994 in Case No. 270/1994 on the EEA Agreement can be mentioned. As an example of new attitude, the judgement of the Supreme Court of Iceland of 30 January 2004 in Case No. 481/2003, where tobacco manufacturers were deemed to have legally protected interests in an acknowledgement that the companies were authorised, despite the provisions of paragraph 3 (1) of Article 7 of Act No. 6/2002 on tobacco prevention, to disseminate specified facts regarding tobacco products to a tobacco store in Iceland, on the one hand, and, on the other, that another company would be permitted to publish specified text in Icelandic mass media, with reference to subparagraph 3 of the same provision. Judgement of the Supreme Court of Iceland of 15 November 2001 in Case No. 417/2001 can be mentioned, on the other hand, where a plaintiff was deemed to have legally protected interests in testing an act on a data base in the healthcare field.

The requirement of legally protected interests can result in a complaint being created directly for the purpose of getting courts to answer questions on statutory construction or the constitutionality of an act. An example worth mentioning of success in this regard is the judgement of the Supreme Court of Iceland of 19 November 1997 in Case No. 457/1997, wherein an appellant challenged the constitutionality of the fisheries management system. Such an attempt was less successful in the judgement of the Supreme Court of Iceland of 16 November 2001 in Case No. 423/2001, wherein a plaintiff wanted to test the constitutionality of the fishermen's deduction, but the case was dismissed from court since the complaint was deemed actually to be a legal question. A more pressing question is whether the main rule requiring legally protected interests is actually suitable since it can be a matter of chance whether it is possible to challenge the constitutionality of a law easily, and the rule can even create a temptation for citizens to violate the law for the purpose of testing its construction or constitutionality in court.

In this regard, a judgement of the Supreme Court of the Denmark of 12 August 1996[25] can be pointed out; 12 individuals filed the suit to test the constitutionality of the Maastricht Treaty. As citizens of Denmark, the plaintiffs believed they had sufficient legally protected interests at stake. The parties were deemed to have legally protected interests, and the ruling dismissing the case from the lower court was reversed. The judgement, among other things, stated:

> Der er således ikke realistiske processuelle alternativer til sagsøgernes anerkendelsessøgsmål, hvis sagsøgerne skal have mulighed for at opnå en dansk retsafgørelse af spørgsmålet om grundlovens grænser, og det må indgå med betydelig vægt ved afgrænsningen af begrebet retslig interesse. Domstolen må derfor nødvendigvis slække på det - i forhold til udenlandske forfatninger - strænge og rigoristiske aktualitetskrav, der hidtil sædvanligvis har været opstillet i retspraksis.

4.1.3.3 Lawsuit filing deadlines

Lawsuit filing deadlines are very common in Icelandic legislation, especially in instructions on how administrative decisions of various kinds will be submitted to courts. These deadlines vary, and their length, for the most part, depends on how urgent it is for the government or parties to an administrative case to obtain a ruling on the final validity of an administrative decision. Article 60 of the Constitution states, in fact, that no one *See*king a court ruling on a dispute over the limits of an administrative office can avoid obeying a government order in the short run by appealing the issue to a court. Nevertheless, a government authority's most propitious course is most often to postpone further measures when it is clear that the validity of its ruling will be submitted to a court.

There are various examples of relatively short filing deadlines. Thus, under paragraphs 1 and 2 of Article 85 of the Judgement Enforcement Act, No. 90/1989, a district court judge's resolution must be demanded regarding particular decisions taken by a district commissioner on implementation of an enforcement measure before taking it further. Under paragraph 1 of Article 92 of the act, a demand for a district court judge's resolution regarding an enforcement measure must be submitted to the court within eight weeks of the completion of the measure. The deadline for appealing a district court judge's ruling to the Supreme Court is two weeks, and there has been very strict enforcement of an appeal being received by the relevant district court within this period.[26]

It is clear from a judgement of the ECHR in Stubbings and others vs. The United Kingdom that too short a filing deadline can constitute a violation of people's right to access to courts although the parties filing that case actually had nothing to show for their trouble.[27]

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25 U 1996.1300 H.

26 *See* the judgement of the Supreme Court of Iceland of 8 January 1992 in Case No. 505/1992, where an appeal to the Supreme Court was dismissed since the district court judge did not receive it until the day after the filing deadline expired. The appellant pleaded that the district court's office was closed when he brought the complaint there between 16:00 and 17:00 on the day that the filing deadline expired.

27 *See* the judgement of the European Court of Human Rights in *Stubbings and others* vs. *The United Kingdom* of 22 October 1996, which dealt with a deadline for commencing a suit for

Several judgements of the Supreme Court of Iceland have discussed motions for dismissal based on the expiration of case filing deadlines. In these cases it was argued that the filing deadlines for lawsuits in the acts involved were not in accordance with paragraph 1 of Article 70 of the Constitution and paragraph 1 of Article 6 of the ECHR.

Judgement of the Supreme Court of Iceland of 15 May 2001 in Case No. 155/2001, with reference to the district court's premises, upheld the court's ruling dismissing a suit filed by a male to invalidate a confirmation of paternity. The five-year deadline had expired, under paragraph 3 of Article 53 of the then current Children's Act No. 20/1992, to file suit for invalidation of a court confirmation of paternity. The district court's premises disagreed that the aforementioned provision of the Children's Act violated paragraph 1 of Article 6 of the ECHR and Article 70 of the Constitution; the court's supporting argument included the questionable logic that case filing deadlines do not restrict people's right to submit issues to courts. Actually, the district court judge's premises also mentioned that the act's case filing deadlines should give each person ample time to present his doubts in court regarding a child's paternity.

The judgement of the Supreme Court of Iceland of 22 April 2002 in Case No. 156/2002 confirmed a district court ruling dismissing a suit to invalidate a ruling of the State Internal Revenue Board on the payment of value-added tax. The six-month deadline in paragraph 5 of Article 29 of the Act on value-added tax, No. 50/1988 was deemed to have passed. The Supreme Court did not agree either that the provisions were unclear or that the deadline was so short as to violate paragraph 1 of Article 70 of the Constitution or paragraph 1 of Article 6 of the ECHR. The Supreme Court's judgement actually confirmed that statutory provisions on case filing deadlines can be so unclear and the period so short as to violate the right to access to courts.

The Supreme Court judgement of 15 June 2000 in Case No. 73/2000 confirmed with the appeals procedure a district court judgement refusing to dismiss a case from court. The defendant's motion to dismiss was based on the case's having been filed too late under the provisions of Act No. 37/1992 on a special charge for illegal marine catches; paragraph 4 of Article 10 of the act stated that a dispute on the obligation to pay the charge could be submitted to a court, provided that this was done within 30 days of a ruling committee's ruling under Article 6 of the act. The case was based on the argument that Regulation No. 190/1997 had an insufficient legal support, but the committee had not thought that its jurisdiction covered ruling on that point. The district court judge deemed that the plaintiff had the right to submit this dispute to courts and was not bound by the aforementioned case filing deadline. The conclusion confirms that such case filing deadlines must be construed narrowly.

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damages because of alleged sexual abuse; in the United Kingdom there was a six-year period to file a suit in such cases, and the beginning of the period was based on the victim's being 18 years old. The Court of Human Rights did not deem that the period entailed a violation of paragraph 1 of Article 6 of the ECHR since there were not comparable periods for commencing a criminal case because of such a violation, and following conviction it would be possible to demand damages. Reference was also made to shorter periods for commencing such cases in some of the member states of the convention.

It is impossible to state a universally valid rule about how long case filing deadlines must be not to be deemed violations of the right to access to courts. The conclusion must be determined by whether such provisions build on lawful perspectives and a comparison of the interests of the government or others in there being no delay in filing a lawsuit and, on the other hand, the interests of those deeming there to be a violation of their rights to submit the dispute to courts. It can be important whether the dispute is so complex and extensive that it cannot be expected that the filing of a suit will be prepared within the period provided.

4.1.4 Security for court costs

Under paragraph 1 of Article 133 of the Civil Procedure Act, upon filing a suit a defendant can demand that the plaintiff to pay amount of security for costs if either the plaintiff resides abroad and people residing in Iceland are not exempt from putting up such security in their home country, cf. subparagraph (a) of the provision, or it can be shown to be likely that the plaintiff is incapable of paying court costs, cf. subparagraph (b). Authority to demand court costs because the plaintiff lacks the capacity to pay was an innovation in Act No. 91/1991. If the plaintiff does not pay the amount of security for costs that the judge has ruled, the case shall be dismissed from court. The underlying logic of subparagraphs (a) and (b) is that it can prove difficult for a defendant to get awarded court costs paid even though he wins the suit.

Court costs security, either upon filing of a suit or upon appeal, has become common in countries other than Iceland. The ECTHR has got several cases testing whether such statutory provisions and their employment violate paragraph 1 of Article 6 of the ECHR. In Aït-Mouhoub vs. France the ECTHR deemed that the judge's decision to make the plaintiff pay the amount of security for costs in the amount of FRF 160,000 in two suits against policemen violated of Article 6 of the ECHR. The court decision, among other things, was intended to ensure payment of fines because of false accusations. Reference was made to the fact that Aït-Mouhoub had been refused indigent status, and that the judge had known of his difficult financial circumstances. [28] Tolstoy Milioslavsky vs. The United Kingdom[29] had a somewhat different tone; there the judge's decision on security of GBP 124,900 for court costs because of an appeal was not deemed a violation of paragraph 1 Article 6. The ECTHR's argument included that the plaintiff had had ready access to the lower court; the amount of security had not exceeded the planned cost of the other party, and the decision of the appellant court on security for court costs had been based, among other things, on the appeal's lack of a substantive basis.[30]

It is rather common for there to be a demand for court costs upon filing a lawsuit on the basis of both subparagraph (a) and subparagraph (b) of paragraph

28 *See* the judgement of the European Court of Human Rights in *Aït-Mouhoub* vs. *France* of 28 October 1998.

29 *See* the judgement of the European Court of Human Rights in *Tolstoy Milioslavsky* vs. *The United Kingdom* of 13 July 1996.

30 *See* Eiríkur Tómasson**,** *Réttlát málsmeðferð fyrir dómi* (Fair court procedure), pp. 55-57.

1 of Article 33 of the Civil Procedure Act. The Supreme Court of Iceland, in construing the provisions, has justifiably deemed that it should be taken into consideration that exceptional rules are involved that burden the plaintiff and may curtail his right to access to courts, cf. judgement of 27 March 1998 in case No. 118/1998.

Taking into consideration the ECTHR judgement in Tolstoy Milioslavsky vs. The United Kingdom and comments in the aforementioned exposition accompanying the parliamentary bill that became Act No. 91/1991, which discussed the defendant's expenses because of groundless and purposeless filing of lawsuits, it can be supposed that a judge may give some consideration to complaints in determining court costs security. A judge having to rule on court costs security in the first stages of a lawsuit, however, has some difficulty since his substantive position on the case at this stage can disqualify him from handing down a substantive judgement in the case.

Taking into consideration the Supreme Court's utterances in the aforementioned judgement that the provisions of Article 133 of the Civil Procedure Act were an exceptional rule that had to be construed narrowly with respect to people's right to access to courts, courts must proceed carefully in making plaintiffs put up such security, especially when a complaint involves important non-financial interests of individuals. It is also proper to moderate the amount of such security although it must be taken into account as well how much in court costs is likely to be awarded to the defendant if he wins the case since the purpose of such security is to pay these costs.

4.2 Limitations entailed in court organisation and procedural execution

As mentioned above, paragraph 1 of Article 6 of the ECHR places a major obligation of initiative on member states to the agreement to ensure access to just court procedure. It is unnecessary to do more than examine the report of the European Human Rights Commission in the case of Jón Kristjánsson[31] and the impact it had on the development of court organisation in Iceland[32] to *See* what significance the ECHR has had. Although the ECHR was not at all intended to pour court organisation and procedural provisions of all the member states into the same mould, numerous judgements of the ECTHR regarding paragraph 1 of Article 6 of the convention have resulted in the member states institutionalising various fundamental points regarding the independence of and access to courts.

31 *See* reference No. 5. In the wake of the report of the European Human Rights Commission came a revolution in Icelandic court organisation and procedure with the enactment of the Act on the separation of the judiciary and executive powers in districts, No. 92/1989, and ended, at least for the time being, with enactment of The Court Act, No. 15/1998.

32 Actually, it is generally asserted that legislation in the field of court organisation and procedure is more diverse than in most other legislation in Europe.

4.2.1 Case handling time

Courts' case handling time is one of the factors substantially affecting actual access to them. Paragraph 1 of Article 70 of the Constitution and paragraph 1 of Article 6 of the ECHR direct a right to just court procedure within a suitable time. Judgements of the ECTHR have persistently criticised ECHR member states for unsuitable case handling time, and the court is literally drowning in cases because of the slow functioning of courts in member states, which has in turn resulted in the ECTHR's court procedure taking too long. In evaluating whether a violation of paragraph 1 of Article 6 is deemed to be involved in particular instances, more aspects than the overall case handling time are important. Whether a complaint is simple or complex and, finally, whether the parties rather than the courts or the government are to blame for delay is deemed important to the significance for parties of obtaining a quick resolution.[33] It is also important whether the handling of the case has been postponed or has proceeded steadily. No case of this kind has been received by the ECTHR from Iceland.

CEPEJ released a frame plan in 2004 with the name *"A new objective for judical systems: the processing of each case within an optimum and foreSeeable timeframe"*.[34] Procedures for measuring case handling time were explained therein, along with reasons for delays in court procedure, methods to get control of case handling time through improvements in legislation, increased allocations of funds, better utilisation of funding, better organisation and the setting of goals. Emphasis is laid on the close relationship between case handling time and other factors like the number of cases, funding and quality of judicial execution, i.e., the quality of court procedure and court resolutions. Emphasis is laid on each state finding a balance between funding that can be allocated to the court system and its utilisation, on the one hand, and goals on fair court procedure, on the other. There is also emphasis on each particular case being handled at the speed suitable to it, and that the case handling time be fore*See*able .

The CEPEJ's report *"European Judicial Systems 2002, Facts and figures on the basis of a survey conducted in 40 Council of Europe Member States"*[35] contains a comparison of funding of courts and indigence cases, the number of cases and case handling time in 2002. This information creates a somewhat trustworthy basis to compare efficiency in the member states' court systems.[36] It is nevertheless necessary to keep steadfastly in mind that a comparison between dissimilar systems of justice is subject to various defects, e.g., definitions are different as are the tasks of courts, court organisation and legislation on procedure.

The conclusions of the report are extremely favourable to the Icelandic court system with regard to cost, efficiency and case handling time.

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33 *See* Eiríkur Tómasson, *Réttlát málsmeðferð fyrir dómi* (Fair court procedure), starting at page 120.

34 CEPEJ (2004) 19 REV 1.

35 CEPEJ (2004) 30.

36 CEPEJ (2004) 30.

Even though the case handling time in Iceland is, on average, shorter than in most neighbouring countries, it is a long way from being acceptable in all instances. The case handling time in each category of cases and even in each case must be appropriate, based on the interests at stake. Authorisation for expedited handling certainly exists in Chapter XIX of the Civil Procedure Act, but it is solely reserved for filing suits because of a government decision or acts or a strike, shut out or other measures related to a labour dispute; in addition, it is subject to various conditions. This authority therefore does not suit the needs of private parties requiring fast resolution by courts.

There is an urgent need to enact provisions on more types of court procedure along with the current court procedure rules, e.g., speedier court procedure with shorter deadlines for cases with little tolerance for waiting, simpler and speedier handling for simpler cases and, finally, less expensive court procedure for cases involving small stakes.

It may be that such amendments will call for increased expenditures in the court system, but this cost can be met, for example, with higher court fees for those desiring speedier court procedure. The outcome would be a more flexible and more modern justice system, that would serve diverse interests in society.

4.2.2 Number of judges and other employees

Case handling time, to a great extent, is determined by the interplay of the number of cases and the number of those in court jobs each time although other factors also affect this, such as how complex and extensive cases are and the industriousness and work conditions of court employees. The working procedures of attorneys also matter considerably. There have been great fluctuations in the number of cases in Iceland in recent years. Thus, the overall number of cases went from 15.459 in 1998 up to 40.780 cases in 2002 but down to 23.163 cases in 2005.

4.2.3 Premises, equipment and the use of information systems

Courts' working conditions matter considerably regarding judges' productivity. In this regard, the building and various kinds of the equipment can be mentioned. The same applies to access to information systems as well as a law library, law reporters and other databases in electronic form. It can be stated that the computerisation of courts in Iceland, more than any other factor, has promoted major increases in productivity in the court system and a substantial shortening of case handling time since 1992, with concomitantly better access to courts.

4.2.4 Allocation of funds to courts

Since funding must, to a great extent, determine the number of court employees, it is clear that the length of case handling time depends for the most part on political funding decisions. Nevertheless, the internal organisation of courts and the sensible utilisation of funding in the court system is certainly also of great importance. Statutory provisions on court organisation and rules of court procedure can also greatly affect the utilisation of funding and case handling time.

4.2.5 Quality of court remedies

The quality of court remedies is certainly one of the important factors regarding access to courts in a broader sense. Requirements for judgements and rulings supported by cogent argument are always increasing. It can be supposed that a well-reasoned judgement will be more useful than one that is poorly reasoned. It can also be supposed that the more carefully structured judgements are the more citizens will think it worth their while to look to courts to resolve disputes, but it must be kept in mind that court procedure is not the only recourse for resolving a dispute. Thus, slack logic can actually limit people's access to courts. On the other hand, the quality of judgements and rulings is difficult to measure. Attempts have been made to measure the quality of district court judges' resolutions by checking how high a proportion of judgements is confirmed at a higher judicial level, but this methodology can be criticised. Various factors can affect the quality of judicial solutions, and several will be mentioned below.

4.2.5.1 Qualifications of judges and lifelong education

The quality of court resolutions, to a substantial degree, has to be determined by judges' qualifications. Judges' qualifications are determined by their education, professional experience and background. In a period of rapid changes of legislation, the business environment and society as a whole, judges' lifelong education is extremely important. Paragraph 2 of Article 24 of the Act on courts, No. 15/1998, states that judges are obligated to endeavour to maintain their knowledge of laws, and they shall, in so far as possible, be given an opportunity for sabbaticals and support for continuing education. The general offering of lifelong education in the field of law has never been greater, both in Iceland and abroad. Judges in Iceland have access to lifelong education symposia for Nordic judges under the auspices of SEND.[37]

4.2.5.2 Expertise and specialisation of judges

The criticism has been heard from specialists in individual areas of the law, and even from other professional fields, that general courts can hardly be trusted to deal with complex and specialised disputes since the judges lack expertise. For clear reasons, judges schooled in the law cannot, except in exceptional instances, be specialists in professional fields outside the law, but the procedural remedy of calling in specialised co-judges is still a substantial improvement, making Icelandic courts somewhat well prepared to deal with disputes in various specialised fields.

Law, as an academic subject, is always expanding, and no single lawyer manages to follow academic discussion any more in all of its fields. It is therefore not realistic to demand that judges have great knowledge in all fields of law. Judges should primarily have a broad general knowledge of the law and expert knowledge in the handling of court cases and procedures for resolving disputes.

37 SEND stands for Samarbejdsorganet for efteruddannelse af nordiske dommere; the Judicial Council is a member of this collaboration, and Icelandic judges have, to a considerable extent, utilised the continuing education offered by SEND.

4.2.5.3 Qualifications of attorneys

As previously mentioned, law as an academic subject and the tasks of attorneys have been transformed in the last decade with an influx of court rules from the EU and the expansion of Icelandic companies abroad. Icelandic attorneys have monitored this development with increased specialisation, and each year well-educated lawyers, with advanced degrees from numerous foreign universities and even professional experience in the international arena. Since lawyers in specialised areas of the law will not be called into court as specialised co-judges, it will severely test attorneys' knowledge and skill in conveying their expertise when specialised legal questions are involved. The old phrase that the judge knows the law is therefore hardly pertinent any more; rather, it will be the attourneys who *See* to it that the judge has sufficient material to build on. Such a division of labour and interplay of attourneys and judges are necessary to ensure that a judgement will be based on a proper professional foundation.

4.3 Complex legal system - Information for the public

One potentially important aspect regarding people's actual access to courts is that the court system be as simple as possible, and that it also be relatively transparent. In De Geouffre de la Pradelle vs. France[38], the ECTHR concluded that it was a violation of the human right of access to courts under paragraph 1 of Article 6 of the ECHR if the legal system is too complex or difficult for the common citizens to understand.

Icelandic court organisation is more transparent and the procedural rules simpler than is common in many other places Although there can be ambiguity in particular areas as to which way to conduct a court case, e.g., whether to file a general civil suit or a point of controversy under the procedural provisions on bankruptcy, enforcement of judgement or forced sale, it is far from the case that the court system is so complex as to violate paragraph 1 of Article 6 of the ECHR.

One related aspect that can be of equal importance regarding actual access to courts is active information dissemination. Available remedies for resolving a dispute will be of little use if no one knows of them. Purposeful instruction on the law and rights must begin in compulsory schools and be made a required course in upper secondary schools. New and old remedies available for protecting one's rights generally and in particular areas of the law should also be publicised energetically on the Internet, in other mass media and in instructional booklets.

5 Conclusion

Logically, the answer to how good general access is to the legal system has to be determined by an integrated evaluation of numerous factors of court organisation, procedural law and procedural execution as well as court fees,

38 Judgement of the European Court of Human Rights in *De Geouffre de la Pradelle* vs. *France* of 16 December 1992.

possibilities of indigent status, courts' efficiency, simplicity and transparency of the legal system and procedural rules, flexibility of courts, numerous procedural remedies and various procedural hindrances.

Considering the judgements of the ECHR that have been handed down on the scope of paragraph 1 of Article 6 of the ECHR and the procedural protection that the provision provides, it can hardly be asserted that there are major flaws in Icelandic legislation and procedural execution in the field of civil procedure in this respect. As related above, there are quite a few points that could be go either way if tested before the ECTHR.

On the other hand, there is no reason not to set the goal higher regarding service of the courts and access to them than the minimal requirements made in paragraph 1 of Article 70 of the Constitution and paragraph 1 of Article 6 of the ECHR.

Access to Icelandic courts may clearly be improved substantially and make the courts made much more functional and modern remedies for individuals and companies to protect their rights. Various innovations have been adopted in the procedural legislation of neighbouring states over the past several years, and most of them are aimed at creating more and more diverse procedural channels for individuals and companies and making the court system more flexible, efficient and speedier so that funds allocated to it are better utilised. It is natural to consider which of these innovations can be utilised in Icelandic procedural legislation.

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