

A Few Developments in Constitutional and Administrative Law and Practice in Iceland since the Financial Crisis of 2008

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1. From Prosperity to »New Iceland«

»God bless Iceland« were the concluding words of a televised speech of the then prime minister, Mr Geir H. Haarde, to the Icelandic nation on the 6th of October 2008. In the speech, the prime minister notified the nation of the »economic catastrophe« that had hit the banking sector. In the days before and after, the three main banks of Iceland, Landsbankinn, Glitnir and Kaupthing bank, would become insolvent, and as a result of that, the Icelandic economy would collapse. These were uncertain times for the Icelandic people and many of them would suffer hardship in the following years. This followed what had been prosperous times in Iceland and the contrast between the two eras was felt by the people.

On the 26th of January 2009 the government, led by Mr Haarde, tendered its resignation and in the Parliamentary election that followed a new government was formed, with a coalition of the left-wing parties, led by Ms Jóhanna Sigurðardóttir. Her government ran the country until the spring of 2013. During this time, there were loud voices demanding change, including the need for a new, transparent and an accountable government. There was deep mistrust towards politicians and government in society. Many people believed that the people running the banks must have engaged in criminal activity and the government had failed in surveilling the financial institutions and intervene in time to prevent or minimize the damage from the crisis. People referred to these demands for change as the need to build »New Iceland.«

Many protests occurred in front of the Parliamentary building during the years between 2008 and 2012. The early protests, which were mostly peaceful but not entirely, became known as the »Kitchenware Revolution« (Ice. Búsáhaldabyltingin) because people would bring kitchen implements with them and bang them loudly. In these protests the people demanded, among other things, a new government and a new constitution.

One of the big topics in Iceland during the last years concerned the Icesave bank debt. Icesave were savings accounts in Landsbankinn, collected via branches in the United Kingdom and the Netherlands before the bank went bankrupt. The debate in

Iceland concerned to what extent the Icelandic government (and the Icelandic people) were responsible for repaying the lost savings beyond the set minimum guaranteed by directive 94/19/EC on Deposit Guarantee Schemes. The Icelandic government negotiated two deals with the governments of the United Kingdom and the Netherlands, which had paid their citizens the lost savings and taken over their claims against Iceland. Parliament passed two laws on the two deals. The President of the Republic, Mr Ólafur Ragnar Grímsson, refused to sign them, which according to our Constitution meant that national referendums were needed to decide the fate of the two laws. In the former referendum, that took place on 6th of March 2010, 93% of the people voted against the negotiated deal and 2% were in favour of it. In the latter referendum, that took place on 9th of April 2011, majority of the people also voted against the newly negotiated deal. Later the dispute was taken before the EFTA Court, which in 2013 acquitted Iceland of the charge of having violated EEA law.

Against this background, some new laws have been enacted in several fields and cases litigated relating to various aspects of the financial crisis. In what follows, I will mention a few developments that have taken place, mainly in the fields of constitutional and administrative law and practice since the financial crisis of 2008.

2. The Experiment of Bottom-Up Constitutional Law Making

In 2010, the government organized a national assembly of 950 randomly selected citizens to discuss what values and themes our constitution should be founded upon. Also, Parliament enacted law on a Constitutional Assembly that would be entrusted with the task of revising the Constitution. According to the law, 25 individuals would be directly elected by the people to the Assembly. The election took place on 27th of November 2010 and 522 people ran for the 25 available spots. However, the Supreme Court ruled on 25th of January 2011 that the election was null and void because of serious faults in the election process. Following that, Parliament appointed the elected assembly members with a Parliamentary resolution to a Constitutional Council (those that took the appointment). The Council had more or less the same role as had been envisioned for the Constitutional Assembly.

In preparation for the work of the Constitutional Council, a constitutional committee and lawyers assisting it prepared material for possible changes to the Constitution and a commentary on the Constitution. The Constitutional Council finished its draft for a new constitution on 29th of July 2011.

A non-binding constitutional referendum was held in Iceland on 20th of October 2012 where voters were asked whether they supported that six particular proposals on general subjects should be included in the new Constitution. This was done to elicit the opinion of the people towards the new draft. The result of the referendum was that all proposals on general matters were supported.

Parliament did not vote on the draft Constitution before the Parliamentary election in 2013. This had been needed for the new Constitution to become a reality because of rules in the Constitution on how it can be amended. Instead, a temporary provision, with a period of validity until 2017, was added to the Constitution that allows for a simpler procedure for amending it. A new government led by Mr Sigmundur Davíð Gunnlaugsson, took over after the election and a new Constitutional Com-

mittee was appointed. It has been working on limited changes to the Constitution. What will be the fate of its proposals is at this time uncertain.

3. A Parliamentary Investigation and the Indictment of the Former Prime Minister

In December of 2008, Parliament enacted an ad hoc law to establish a three person Investigative Committee, which was tasked with investigating the events leading up to the collapse of the main banks and the financial crisis, both in the public and private sector. A Supreme Court Justice was its chairman and the Parliamentary Ombudsman and an economist were its other committee members. The report was published on 12th of April 2009 in nine volumes. Among its conclusions were that the former prime minister, the minister of foreign affairs, the financial minister, and the minister of economic and business affairs had made »mistakes« and acted »negligently«, in the special meaning of those terms according to the law on the committee.

A special committee of members of Parliament reviewed the report and made a report on the 11th of September 2010 with various recommendations, including the need for a stronger separation of powers and making Parliament more independent from the executive branch. The committee was not unanimous in its stance on whether former ministers should be indicted for violating the law on ministerial responsibility.

On 28th of September 2010 Parliament agreed with 33 votes against 30 that the former prime minister, Mr Haarde, should be indicted and the Court of Impeachment (Ice. Landsdómur) convened. The former minister of foreign affairs, financial minister, and minister of economic and business affairs were not indicted. A special prosecutor was appointed by Parliament. The person appointed is the current State Prosecutor.

The judgment of the Court of Impeachment in the case of *Althingi v. Geir H. Haarde* was rendered on 23rd of April 2012. The majority of the court acquitted him of a charge of not fulfilling his duties as head of government to prevent or minimize damage resulting from the financial crisis, but found him guilty of a charge of not holding a meeting of ministers on the events leading up to the collapse of the banks, but Article 17 of the Icelandic Constitution requires a meeting of ministers on important subjects. The minority wanted to acquit him of all charges.

This is the first and only time the Court of Impeachment has been convened and a minister indicted for violating the law on ministerial responsibility in Iceland. The judgment addresses many interesting points in the fields of constitutional and administrative law and is in my opinion a rich source for academic research in these fields.

Since the Investigative Committee of Parliament, two other investigative committees have been appointed to investigate other sectors than the first committee investigated of the financial sector. They were appointed after a general law on parliamentary investigative committees was enacted.

4. Tackling Household Debt, Economic Stability and Litigating the Lawfulness of Consumer Loans

In 2008, capital restrictions were introduced in Iceland and, eventually, the Central Bank was tasked with deciding on exemptions and investigating and either fining violators of the restrictions or forwarding the case to a new office of a Special Prosecutor (see below). It is envisioned that the capital restrictions may be lifted this year.

As a result of the economic crisis, loans sky rocketed because many of them were directly connected to the rate of inflation. Unemployment increased, many were forced to take a pay-cut and prices in the country increased. To meet this dire situation, Parliament introduced various remedies, including debt relief and mitigation, as well as founded the Debtors's Ombudsman.

During the course of last years there have been numerous court proceedings on various aspects of consumer loans. These cases have been on, among other things, whether or not a loan in Icelandic Kronas can be directly indexed to (change in accordance to) foreign currency according to Icelandic law. The Supreme Court said no. That raised the issue of whether the low interest rates of these loans should be maintained or also nullified because it was premised on the loan being directly linked to foreign currency. If the latter, the question arose what interest rate the loan should bear. The Supreme Court said the low interest rate should be nullified and came up with a solution for what interest rate it should bear. To address the situation that arose because of the unlawful loans, that affected a large portion of households in the country, Parliament enacted law with rules on how to recalculate the loans. In another judgment, the Supreme Court said the new law could not be applied retroactively. There have also been court cases on whether or not bank loans and the lending procedures have violated consumer rights provided for in EU directives applicable in the EEA.

5. Prosecution of Bankers

In 2008, Parliament enacted law on the office of a Special Prosecutor that was tasked with handling cases in relation to events leading up to the collapse of the banks where it was suspected that a criminal offense had taken place. In January 2016, it merged into a newly formed office of a Municipal Prosecutor. The Special Prosecutor has indicted several individuals relating to financial institutions in high profile court cases. In some of these cases, former managers and employees of financial institutions have been sentenced to years in prison for violating rules on market manipulation, insider trading, and exceeding their mandate (»self-dealing«).

6. Some Legislative Reforms

Some legislative reforms have taken place in the last years or are in progress. An act on the organization of the ministries from 1969 was replaced with a new one in 2011. Before the new act, there was some controversy on who had the final say, i.e. Parliament or the executive branch, in organizing what subject matters belonged to what

ministry. According to the new act, it is the executive branch that decides on the issue in the form a presidential decree. The new act also emphasizes coordination between ministries, enacts into written law the powers of ministries to organize, instruct and surveil lower authorities, and addresses some internal organizational matters of the ministries.

A new Information Act was also introduced in 2012. It takes into account some changes that have recently occurred in Denmark and the Council of Europe's Convention on Access to Public Records from 18 June 2009. The new act has wider scope. Now private bodies that the government owns 51% or more in fall within it. The concept of an internal/working document is clarified, a wider duty to write down oral information is introduced, as well as a soft duty to make public records and information increasingly more available to the public on the initiative of the government.

It can also be mentioned that a new act on municipal authorities was introduced in 2011. Currently, drafts are being worked on for a new act on the Parliamentary Ombudsman with a provision for whistle blowers and changes to the general act on Parliamentary investigative committees in light of the experience from the three investigative committees that have been appointed.

Many of things mentioned above, as well as others not mentioned, deserve in my opinion special attention and academic research and coverage.