Reopening of criminal cases in Iceland

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1 Introduction

The institutional structure and conditions for reopening of court cases in Iceland have in recent years raised issues appertaining to fundamental constitutional questions on the functions and role of the judiciary and its independence. As a response to criticism of the system, changes have been made in the last few years concerning both the structure and conditions for reopening cases. In 2013, the authority to decide on applications for reopening of cases was transferred from the Supreme Court to an administrative Committee on Reopening Cases and in 2020 the Committee was replaced by a special Court on Reopening Cases. While the institutional structure has in recent years repeatedly undergone fundamental reforms, the conditions for reopening of cases have been subject to minor changes, all with the aim of enhancing such a possibility.

The following section provides an overview of the historical background of the system for reopening of cases in Iceland, the development of the institutional structure the past decade and the drivers for the changes made. Next, the conditions for reopening of cases are explained and the practice analyzed. At the time of the writing, the newly established Court on Reopening of Cases had not commenced. Hence, case analysis is limited to Committee decisions and their judicial review. In the last section, the institutional and substantive changes are assessed in light of their objectives.

2 Historical background and development of the institutional structure

2.1 Supreme Court

For the second half of the 20th Century decisions to reopen criminal cases were made by the Supreme Court of Iceland. The Supreme Court was founded under Law No 22/1919, and first commenced in February 1920. Pursuant to Article 30 of the Law, the Minister of Justice had the power to decide, based on a proposal put forward by the Supreme Court, whether to reopen cases decided by the Court. Thus at least formally, the power to reopen cases was in the hands of the executive. This system was amended in three steps in which the power to reopen both civil and criminal cases was transferred to the

Supreme Court. The transfer of the power to the Supreme Court was considered to reflect "the status of the judiciary in the society".[1] The first step was taken by the adoption of the Law on Criminal Procedure No 27/1951, with respect to reopening of criminal cases decided at district and Supreme Court level. Secondly by the Supreme Court Act No. 57/1962 with respect to civil cases decided by the Supreme Court. Finally, by the enactment of Law on Civil Procedure, No. 91/1991, according to which the power to decide on the reopening of civil cases decided at district court level was vested in the Supreme Court. From thereon, the institutional structure for reopening of criminal cases remained unchanged until 2013, when the Committee on Reopening of Cases took over the functions of the Supreme Court.

2.2 The Committee on Reopening of Cases

The Committee on Reopening of Cases (*Endurupptökunefnd*) was established by Law No 15/2013, amending Law no 15/1998 on the Judiciary (now law No 50/2016). According to the explanatory notes to the Bill, the overall objective of the amendment was to enhance trust in the judiciary by ensuring impartiality and transparency of the decision making on reopening of court cases. In the view of the legislator, it was not appropriate to have the Supreme Court deciding on the reopening of cases it had adjudicated on. These concerns were based on general considerations for the integrity of the judicial system and not individual cases. As concerns transparency arguments, the explanatory notes mention that decisions of the Supreme Court on reopening of cases were not made public and very limited information on the number of applications and rate of acceptance was available.[2]

Although individual decisions of the Supreme Court are not mentioned in the preparatory documents to the law, the changes should be considered in light of the controversial *Guðmundur and Geirfinnur* case,[3] which was under scrutiny by a ministerial working group when the Bill was presented to the Parliament. The *Guðmundur and Geirfinnur case* concerned the disappearances of two men, Guðmundur Einarsson and Geirfinnur Einarsson in Iceland in 1974. Police investigation proved unsuccessful in finding the bodies. Four people confessed to the murders while in custody and in judgment of the

[1] Parliamentary Gazette 1961, Section A, pp. 420–421.
[2] Parliamentary document 1044, Session 2012–2013. The Bill was a first introduced in the Parliamentary Session 2010–2011 and again 2011–2012. Also, it is apparent from the explanatory notes to current law on Criminal Procedure No 88/2008 that considerations about the role of the Supreme Court had been raised. In the notes reference is made to observations on whether it is appropriate to have the Supreme Court deciding on reopening of cases in light of the fact that it could possibly have to adjudicate on the case later, and whether special committee should rather be established for the task. However, no proposals to that effect were put forward, cf. Parliamentary document 252, Session 2007–2008.
[3] Judgment of the Supreme Court of 22 February 1980 in Case 214/1978.

Supreme Court in 1980 they were found guilty of assaults leading to the death of Guðmundur and Geirfinnur.[4] Two other persons were convicted of perjury. Two requests for reopening of the case from one of those convicted for the assault were turned down by Hæstiréttur, cf. decisions of the Supreme Court, 15 July 1997 and 18 March 1999, and one request of a person found guilty for perjury, cf. decision of the Supreme Court, 22 June 2000. In 2011, the Minister for the Interior appointed a working group for the task of assessing the *Guðmundur and Geirfinnur case* in general, but with a particular focus on the investigation of the case and new documents put forward. In the report of the working group of 21st March 2013, it was concluded that the Supreme Court had lacked comprehensive overview of failures in the investigation of the case. Moreover, psychological experts that carried out an assessment of the confession for the working group, concluded that the confessions of the convicted were beyond reasonable doubt unreliable or false. Following the publication of the report, requests for reopening of the case were sent by the convicted or their descendants to the newly established Committee for Reopening of Cases. As further described below in Chapter 3, the Committee accepted the applications for reopening the case as concerns the conviction for the assaults and in following proceedings the Supreme Court accepted the public prosecutors claims for acquittal.

The explanatory notes to the Bill establishing the Committee on Reopening of Cases provide limited guidance on the rationale for establishing an administrative committee.[5] The notes do not include a meaningful comparison of different means to achieve the intended objectives or analysis of possible constitutional issues. Reference is made to the Norwegian model as an example for the committee (*Gjenopptakelseskommisjonen*)[6] without providing explanations on how the functions and powers of the Committee differ from the Norwegian model. Soon after the law was passed, doubts were raised on the constitutionality of certain aspects of the system. This related to the absolute limits imposed by the law on the powers of the judiciary to review decisions by the Committee, as well as rules providing immediate and direct effect of Committee decisions on the validity of the respective judgments.[7] As further explained below, the value of those doubts was later confirmed by the Supreme Court.

According to the Law on the Judiciary the Committee was an independent administrative body. Its role was to rule on applications

[5] Parliamentary document 1044, Session 2012–2013.
[6] See the article by Stridbeck/Haugen Moen, Gjenåpning av straffesaker i Norge 2021.
[7] See in particular Kristín Benediktsdóttir. 'Endurupptökunefnd' in Bergdís Bára Tryggvadóttir et al. (eds), *Afmælisrit: Tryggvi Gunnarsson sextugur* (Codex, 2015) 554–557.

for reopening of cases decided by the District Courts, the Appeal Court and the Supreme Court. As confirmed by the judgment of the Supreme Court, the Committee formed a part of the executive.[8] In its functions, the Committee was accordingly subject to the law on administrative procedures No 37/1993 as well as general rules and principle of administrative law. However, pursuant to the law, case proceedings followed the procedural rules laid down in the law on criminal procedure. Moreover, the independent nature of the Committee meant that it could not be instructed by the Minister and that its decisions could not be appealed to the Minister.

The Committee was composed of three members, to be appointed for six years by the Minister of Justice. In order to safeguard the independence of the Committee, all appointments were based on nominations. One member and a deputy was nominated by the Supreme Court, one by the Judicial Administration and one was elected by the Parliament. All Committee members were required to have a law degree and the chairman, who was chosen by the Minister, had to fulfill requirements for becoming a Supreme Court judge. Committee members could not be parliamentarians, employees of the government of Iceland, judges or other employees of the judiciary. Service on the Committee was not a full-time occupation and was paid per hour. This meant in practice that all members of the Committee had other functions, typically in the academia or as practicing lawyers.

Decisions of the Committee were reached by majority voting. The law required that decisions were reasoned and made public.[9] If an application for reopening of a case was granted by the Committee, the previous judgment retained its validity until a new judgment was delivered, cf. Article 231(1) of the Law on Criminal Procedure. Prior to 2016, this rule was different. In criminal cases, previous judgment would be invalid, in full or partly, unless the Committee decided to prolong its effect up until a new judgment was rendered. The amendment was made following a judgment of the Supreme Court in case no 628/2015. The Court found prior rule to be in violation of Article 2 of the Constitution on separation of powers as the Committee was an administrative body and a part of the executive branch.

Pursuant to the Article 54(7) of the Law on the Judiciary, decisions of the Committee to reject reopening of cases were final and could not be reviewed by the judiciary. It can be derived from the explanatory notes to Law No 15/2013, that this was an important part of the reform of the system, according to which the Committee was to replace the Supreme Court. However, this rule was challenged in a case

[8] Judgment of 25 February 2016, in case No 628/2015.
[9] The decisions are published online, available at https://www.stjornarradid.is/gogn/urskurdir-og-alit-/$LisasticSearch/Search/?SearchQuery=&Ministries=&Committee=Enduruppt%c3%b6kunefnd&Year=.

brought before the District Court of Reykjavík for annulment of a negative decision of the Committee in a criminal case.[10] In the part of the proceedings on admissibility of the annulment claim, the District Court rejected claims for dismissal that were based on Article 54(7). In its reasoning the Court held that an absolute exclusion of judicial review of decisions of the Committee would violate both Article 60 of the Constitution, according to which all disputes regarding the competences of the authorities shall be settled by the judiciary, as well as Article 70 of the Constitution, which guarantees the right to a fair trial in criminal cases before an independent and impartial court of law. In this regard, the Court referred to the explanatory notes to the Bill for amending the Constitution that was passed as law No 97/1995.[11] According to the notes, Article 70 of the Constitution should be interpreted to the effect that final administrative decisions should be subject to judicial review, at least as concerns their form and procedure and the legitimacy of the grounds on which decisions are based. This part of the decision of the District Court was not adjudicated at a higher level. It was however indirectly confirmed by the Court of Appeal in the substantive part of the proceedings. In its judgment the Court confirmed the assessment of the Committee and upheld its decision.[12]

In at least three other criminal cases, the Supreme Court consistently held that in exercising its judicial review function pursuant to Article 60 of the Constitution, the Court should review the legality of a decision of the Committee. In its assessment, the Court carried out full review of the decisions of the Committee, including the Committee's assessment of evidence and the application of the law to the facts of the case. In this regard, the approach of the Supreme Court is apparently different from the more restrained review of the Norwegian Supreme Court.[13] The Supreme Court dismissed all three cases on the grounds that the conditions for reopening under the law were not fulfilled:

The first case was a retrial case following a decision of the Committee to reopen a case in which the applicant was convicted by the Supreme Court for causing the death of a person out of negligence, cf. Article 215 of the General Penal Code, No 19/1940.[14] Contrary to the findings of the Committee, the Supreme Court concluded that the applicant had not put forward sufficient new evidence that could reasonably have had substantial significance for the outcome of the case if it had come to light before

[10] Decision of the Reykjavík District Court of 25 January 2017.
[11] Parlimantary document 389, Sessions 1994–1995 and 1995–1996.
[12] Judgment of the Appeal Court of 25 January 2019, in case 306/2018.
[13] See, Judgment of the Norwegian Supreme Court, 29 March 2012 Court in case HR-2012-669-S.
[14] Decision of the Committee on Reopening of Cases of 31 August 2015 in case 11/2015.

judgment was delivered, cf. Article 211(1)(a) of the Law on Criminal Procedure (now Article 228(1)(a)).[15]

The second case was also a retrial of a criminal case.[16] In the previous judgment, the accused had been convicted for a criminal offence at both District Court and Supreme Court level. The Committee accepted the application for reopening the case based on the grounds of substantial defects in procedure, which should have resulted in a dismissal of the case before the Supreme Court, cf. Articles 211(1)(d) and 215(1) of the Law on Criminal Procedure (now Articles 228(1)(d) and Article 232(1)).[17] In its reasoning, the Supreme Court made its own assessment of the procedural defects, which it did not consider substantial and rejected that they would have affected the outcome of the case. The conditions for reopening the case were thus considered not fulfilled and the case was dismissed accordingly.

The third case was a retrial of a case concerning parallel administrative and criminal proceedings for tax law offences.[18] The decision of the Committee for Reopening of Cases to accept the application for the reopening of the case was based on grounds of substantial defects in procedure, which influenced the outcome of the case, cf. Article 228(1)(d) and Article 232(1) of the Law on Criminal Procedure.[19] The assessment was primarily based on a judgment of the ECtHR, according to which the judgment of the Supreme Court in the case concerned was found in violation of Article 4 of Protocol 7 of the European Convention on Human Rights (ECHR) on the right not to be tried or convicted twice for the same offence.[20] The Committee also based its finding on a recent decision of the Supreme Court, in which the Court acquitted an individual with reference to the reasoning of the ECtHR.[21]

In its reasoning for dismissal of the case, the Supreme Court first noted that by becoming a member to the ECHR the states did not assume an obligation under international law to ensure the reopening of cases following a judgment of the ECtHR. Also, the Court argued that Icelandic law did not entail an explicit provision allowing for the reopening of a case following a judgment of the ECtHR. Based on the res judicata principle, the Court rejected that provisions allowing for reopening of courts' cases could be interpreted broadly. As concerns Article 228(1)(d) of the Law of Criminal Procedure specifically, the Court noted that the preparatory documents to the Bill accepted as law 28/2008 did not indicate that the legislator intended to give judgments of the ECtHR special weight. Accordingly, Article 228(1)(d) could neither be construed to the effect that it allows for reopening a case following a judgment of the ECtHR nor could it be applied per analogy. In addition, the Court noted that the judgment in the original case had been rendered by an impartial and independent court. The Supreme Court had specifically analyzed the procedure under Article 4 of

[15] Judgment of 20 February 2019 in case 601/2015.
[16] Judgment of 25 February 2016 in case 628/2015.
[17] Decision of the Committee on Reopening of Cases of 25 June 2015 in case 17/2013.
[18] Judgment of 21 May 2019 in case 12/2018.
[19] Decision of the Committee on Reopening of Cases of 12 April 2018 in case 74/2012.
[20] Judgment of 18 May 2017 in Case 22007/11, Johannesson and Others v Iceland.
[21] Judgment of 21 September 2017 in case 283/2016.

Protocol 7 of the Convention and concluded that it was not in violation of the provision. Finally, the Court referred to Article 2 of Law No 62/2004 on the European Convention on Human Rights, which stipulates that judgments of the ECtHR do not have binding legal effect in Iceland. By this rule the legislator had underpinned that irrespective of given legal effect of ECHR into Icelandic law, the Icelandic legal system was a dualist system. If the Court would interpret the law broadly, and thereby take on the role of the legislator, the Court would violate Article 2 of the Constitution, on the division of powers, and Article 61 of the Constitution, according to which judges shall be guided solely by the law.

Following the decision of the Supreme Court in case 12/2018, the Committee rejected two applications of reopening cases which referred to the judgment of the ECtHR in Case 22007/11 and consequent cases of the Supreme Court which have followed the reasoning set out in ECtHR's judgment regarding parallel administrative and criminal proceedings for tax law offences.[22]

2.3 The rationale for the establishment of a Court on Reopening of Cases

As the case law explained above illustrates the Supreme Court reviewed decisions of the Committee without much restrain. Arguably, a fundamental objective of the law establishing the Committee was thereby undermined. In light of this, a governmental Bill proposing that the Committee should be replaced by a special court on reopening of court cases was put forward in the Parliamentary year of 2017–2018[23] and again 2018–2019.[24] Despite a relatively broad consensus on the establishment of a specialized court, the Bill did not pass through the legislative process. The main hurdle was the proposed composition of the Court. According to the proposed Bills, the majority of the bench deciding a case would be composed of judges of the Supreme Court, the Appeal Court and the District Courts. An amended Bill presented to the Parliament in the year 2019–2020,[25] proposing a different composition of the bench, was finally accepted as law in May 2020 and entered into force 1 December 2020, cf. Law No 47/2020.

The explanatory notes to the Bill comment that establishment of a special court that forms a part of the judicial branch eliminates any doubts with respect to the legitimacy of the system under Article 2 of the Constitution. Furthermore, it is noted that exclusion of judicial review of decisions of the new Court would not be in violation of Article 60 of the Constitution. The explanatory notes thus reveal the intention of the legislator to ensure the independence of the judiciary

[22] See case 1/2019 and case 3/2018, both from 1 July 2019.
[23] Parliamentary document 627, Session 2017–2018.
[24] Parliamentary document 70, Session 2018–2019.
[25] Parliamentary document 685, Session 2019–2020.

and to strengthen confidence and trust in the impartiality of the decision-making procedure. In this regard, it was also emphasized that transparency would be ensured as the reasoning and decisions of the Court on Reopening of Cases would be made public. The explanatory notes also state that the proposed structure has taken into consideration the system in Denmark, i.e. Den Særlige Klageret.[26]

3 The functions and composition of the Court on Reopening Cases

The Court is a special court in the sense that its functions are limited to deciding on applications for the reopening of cases. The functions of the Court are the same as of the Committee as it extends to both criminal and civil cases decided by the District Courts, the Appeal Court and the Supreme Court. The process of reopening criminal cases is now solely determined by the Law on Criminal Procedure.

The Court is composed of five judges appointed by the Minister of Justice. Three of the judges shall be judges from the Supreme Court, the Court of Appeal and the District Courts, respectively. Each court nominates two candidates from its serving judges, one woman and one man. The Minister decides which candidate will be appointed as a judge at the Court or as a deputy judge. Two judges and deputy judges are appointed following an open application procedure and upon recommendations of the Assessment Committee for Judicial Appointments. Applicants shall fulfill legal requirements applicable for judges at the Supreme Court, and they cannot be serving judges, former judges or employees of the judiciary. As with the former Committee, service on the Court is not a full-time occupation and judges shall be paid per hour. The new Court is situated at the Judicial Administration.[27]

The judges are appointed for five years. Each judge can only serve for one term. The judge appointed by the Supreme Court shall be the president of the Court on Reopening of Cases and serve as a Chair in the cases he/she sits on. In other cases, the judge appointed by the Appeal Court or the District Courts serves as a chair. Three judges sit on the bench in each case, two of which shall be the judges appointed on the basis of an open selection procedure. The third judge shall not hold a position as a judge at the court level the case under scrutiny was decided. This means, as an example, that if an application concerns a case decided by the Supreme Court, the judge nominated by the Supreme Court shall not sit on the bench. By this, it is ensured that a judge does not decide on reopening of a case from its own

[26] See the article by Toftegaard Nielsen, Genoptagelse af straffesager. Danmark, 2021.
[27] The Judicial Administration is an independent agency responsible for the joint administration of courts in Iceland, see homepage at https://www.domstolar.is/en/.

court. The rules on the composition of the Court on Reopening Cases and the bench in individual cases were crafted to accommodate concerns about the impartiality and trustworthiness of the Court raised under the legislative process of the Bills, introduced but not finalized in the two prior Parliamentary sessions. The rules explained above are a compromise in the sense that the Court is still to be composed in majority of judges of the regular courts. The explanatory notes to the Bill that was passed as law do not explain why the concerns raised were not accommodated by appointing only individuals from outside the judiciary. In general, there is however a consensus on the compromise reached.

The rulings of the Court on Reopening of Cases are final and cannot be reviewed by the regular courts. As the Court forms a part of the judiciary the exclusion of review of its decisions does not violate Article 60 of the Constitution. If the Court accepts an application the previous judgment in a criminal case is invalid, in full or partly, unless the Court decides to prolong its effect up until a new judgment is rendered.

4 Conditions for reopening

According to the Law on the Judiciary, a reopening of a criminal case follows conditions stipulated in the Law on Criminal Procedure, cf. Article 54(2). These conditions have applied irrespective of who has been given the authority to decide on applications of reopening of cases, i.e. the Supreme Court, the Committee on Reopening Cases, or the Court of Reopening Cases. In the last decades the legal requirements to have a case reopened have been subject to some amendments, all with respect to enhancement of such a possibility. The conditions for reopening a criminal case, whether it is a judgment of a district court, the Appeal Court or the Supreme Court, are set out in Article 228 of the Law on Criminal Procedure.

4.1 Standing

Primarily it is only the convicted person and the Director of Public Prosecution that have a standing to request a reopening of a case. One exception exists. According to Article 228(1) of the Law on Criminal Procedure those who can request for a reopening of a case are those who considers that he or she has been wrongly convicted, convicted for a far more serious offence than that which he or she committed or the decision on punishment evidently wrong. In the year 2015 the standing was extended also to relatives in situations

where the convicted person is deceased, if the general conditions are met and special circumstances obtain, cf. Article 228(5).[28]

The Director of Public Prosecution may apply for a reopening of a case if the defendant was acquitted or convicted of a far lesser offence than he or she was charged with, and certain other conditions are met, cf. Article 228(3). Furthermore, the Director of Public Prosecution may apply for reopening of a case to the advantage of a convicted person if he or she considers that certain circumstances obtain, cf. Article 228(4). In practice the Director of Public Prosecution has used the latter authorization to request for a reopening of a case, in all circumstances were the convicted persons had received heavier sentence than he or she would have, if information of another district court's judgments would have been known at the time of the judgment.

With respect to application of reopening of a criminal case, there is no time limit or limits on the number of times one can make such an application. The oldest judgment the Committee on Reopening of Cases accepted for reopening of was from 1980, *case of Guðmundur and Geirfinnur*.[29] On one occasion the Committee agreed on reopening of a case, in which it has previously denied. The decision made a reference to a District Court's judgment, which had found that the Committee had erred in its previous evaluation of conditions and rejection of reopening the case.[30]

4.2 General conditions

The general conditions for a reopening of a criminal case are the following, and it is sufficient that one of the conditions are met, cf. Article 228(1) of the Law on Criminal Procedure:

a. new material or information has come to light of which it may reasonably be argued that it would have been of substantial significance for the outcome of the case if it had come to light before judgment was delivered,

b. it may be argued that the police, the prosecutor, the judge or other persons engaged in criminal actions in order to obtain the conclusion of case that was arrived at, for example if witnesses or others consciously gave false testimony to the court, or if forged documents were submitted and this resulted in a false conclusion to the case,

[28] The primary reason for this legislative amendment were special circumstances in a highly debated and public criminal case, *Case of Guðmundur and Geirfinnur*, in which two out of six convicted persons were deceased.
[29] See decisions by the Committee accepting reopening with respect to applications of five individuals, Case 5/2015, Case 6/2015, Case 7/2015, Case 8/2014, Case 15/2015, all decisions of 24 February 2017. The committee rejected an application by one individual, see Case 7/2014, decision of 24 February 2017.
[30] Case 9/2019, 17 December 2019.

c. it is demonstrated that there is a strong likelihood that evidence submitted in the case was wrongly assessed, which influenced the outcome of the case,

d. there were substantial defects in procedure, which influenced then outcome of the case.

The criteria for reopening of a case has broadened in the past 20 years. The first Law on Criminal Procedure of 1951 included only the conditions set out in item a) and b). Item c) was added in the year 1999, with the argument it would 'enhance legal certainty in very special circumstances, similar to Article 977, paragraph 1(3) of the Danish law of Procedure and paragraph 2 of Article 392 of the Norwegian Code of Criminal Procedure'.[31] The new Law on Criminal Procedure of 2008 added item d), with the argument it would be 'normal to add such condition to ensure just procedure'.[32] The explanatory notes to the Bill cited as an example the situation of shown disqualification of a judge deciding a case, not previously known.[33] In May 2020 the Parliament made changes to conditions set out in item a), which took effect 1 December 2020, cf. Law No 47/2020. The words 'or information' was added following the term 'material' in item a). The commentary to the bill states that such information could include decisions of international courts such as ECtHR and the EFTA Court. The commentary notes that the EFTA Surveillance Authority has underscored the importance that legislation on procedure provides for a possibility of reopening of a case following a decision of the EFTA Court.[34] Interestingly the commentary does not mention similar recommendation made by the Committee of Ministers of the Council of Europe.[35]

In practice, applications based on requirements set out in items a), c) and d) were accepted by the Committee on Reopening Cases. For instance, the Committee considered a new evaluation by a court appointed evaluator relating to medical conditions of 'shaking baby

[31] Bill to changes to law on penal procedure, Parliamentary document 1145, Session 1999 (translation by authors).
[32] Bill to Law on Penal Procedure, Parliamentary document 252–233, Session 2007–2008 (translation by authors).
[33] Ibid.
[34] See Bill to changes to Law on the Judiciary, Law on Civil Procedure, and Law on Criminal Procedure, Parliament, Parliamentary document 685, Session 2019–2020.
[35] The Icelandic Government has for years been in dialogue with the Committee of Ministers on such changes to the legislation, see Thordis Ingadottir, 'Sanngjarnar bætur og bindandi áhrif dóma' [Just satisfaction and binding force and execution of judgments, Article 41 and 46 of the European Convention on Human Rights], in Björg Thorarensen, Davíð Þór Björgvinsson, Guðrún Gauksdóttir og Hjördís Björk Hákonardóttir (eds), *Mannréttindasáttmáli Evrópu, meginreglur, framkvæmd og áhrif á íslenskan rétt*, [The European Convention on Human Rights, principal rules, implementation and impact on Icelandic law] (Mannréttindastofnun Háskóla Íslands, Lagadeild Háskólans í Reykjavík 2017).

syndrome' meeting the requirements of paragraph a).[36] In the *Case of Guðmundur and Geirfinnur* the Committee considered requirements of paragraphs a), c) and d) fulfilled, e.g. due to the interrogation techniques applied, the harsh and long solitary confinements of the accused, and their lack of access to legal aid.[37] As to paragraph d), in 2019 the Committee agreed on reopening of three judgments of the Supreme Court, in cases were directors of a former bank in Iceland were found guilty of breach of duty and market manipulation. The Committee considered a stock ownership of one of the judges in the respective bank, which became worthless in the financial crash of the bank, affect requirements of impartiality as set out in Law on Criminal Procedure, the right of the accused to a fair trial, cf. Article 70 of the Constitution and Article 6 of ECHR. Hence, requirements of paragraph d) were considered met.[38]

4.3 Procedure

As a main rule, the procedure is in writing, but the Court on Reopening of Cases may decide on an oral procedure, cf. Article 230(4) of the Law on Criminal procedure.

If an application for the reopening of a case is evidently groundless, it shall be rejected immediately, cf. Article 229(3). In practice large number of applications fill this category. If that is not the case, the application is sent to the counterparty, who shall be required to submit written observations on his or her position with regard to the application, cf. Article 230(1). During further processing of the application for the reopening of the case, the Court shall be obliged to appoint, for a person who has been convicted, or is a defendant, a lawyer to defend his or her interests if he or she so requests, cf. Article 230(1). The cost of a convicted person's application to have a case reopened, and of the new examination of the case, if the application is granted, shall be paid by the Treasury, cf. Article 231(4).

If the Court accepts an application the previous judgment in a criminal case is invalid, in full or partly, unless the Court decides to prolong its effect up until a new judgment is rendered, cf. Article 231.

[36] Case 17/2013, 25 June 2015. The Supreme Court later rejected that assessment, see discussion above.
[37] Case 7/2015, Case 5/2015, Case 6/2015, Case 8/2014, Case 15/2015, all decisions of 24 February 2017. The Supreme Court confirmed that assessment in its decision of 27 September 2018, case No 521/2017.
[38] Case 7/2016, Case 6/2017 and case 11/2016, all decision of 12 May 2019. The Supreme Court confirmed this assessment in its Decision of 27 May 2020. In the meantime one applicant won a case before the ECtHR based on the same argument, cf. *Case of Sigríður Elín Sigfúsdóttir v. Iceland*, Application No 41382/17, Judgment of 25 February 2020. In its reasoning the ECtHR referred to the decision of the Committee. The other applicant has pending cases before the ECtHR, based on same argument.

As explained above, this rule was subject to major debate during the time of the Committee on Reopening Cases.

The Court may call on the Director of Public Prosecution to take steps to have specific matters investigated or to gather evidence before a district court. The convicted person, or the defendant, may also demand that evidence be gathered before the district court, cf. Article 230(3). In practice of the Committee on Reopening of Cases, this authorization was rarely used. Interestingly, in 2019 the Director of Public Prosecution denied the request of the Committee to investigate stock holdings of certain judges of the Supreme Court claimed to have affected impartiality of relevant judges.[39]

5 Statistics

Limited information is available on practice of the Supreme Court. As described above, decisions of the Supreme Court for reopening cases have not been made public. Also, no statistics have been collected or published. Based on a response of the Minister for the Interior to Parliamentary request for information on decisions of the Supreme Court for the period from 1 January 2000 until 1 July 2012, it can be concluded that during this period the Supreme Court received 30 applications for reopening of criminal cases it had decided, out of which 28 were rejected and two were accepted.[40]

All decisions of the Committee for Reopening of Cases have been published.[41] As of the day the Committee commenced and until the end of the year 2019, the Committee received altogether 54 applications of reopening of criminal cases (at both district and Supreme Court level). Based on analysis of Committee decisions on applications for reopening of criminal cases decided by the Supreme Court, it can be concluded that during the same period the Committee accepted 11 applications, while 18 applications were rejected.

The statistics indicate that the Committee has received more applications than the Supreme Court. Furthermore, the statistics indicate a higher acceptance rate by the Committee. It remains to be seen how many cases the Court on Reopening Cases will receive. According to explanatory notes to the Bill on the establishment of a Court on Reopening of Cases, the estimated workload of the Court will remain much the same as of the Committee.[42]

[39] Case 7/2016, Case 6/2017 and case 11/2016, all decision of 12 May 2019.
[40] Parliamentary document No. 357, Session 2012–2013.
[41] https://www.stjornarradid.is/gogn/urskurdir-og-alit-/$LisasticSearch/Search/?SearchQuery=&Ministries=&Committee=Enduruppt%c3%b6kunefnd&Year.
[42] Parliamentary document No. 685, Session 2019–2020.

6 Conclusion

The system for reopening cases in Iceland has undergone fundamental reforms. High profile cases have repeatedly tested the system, with fierce debate on its structure and conditions for reopening cases. The development has also been driven by a number of successful applications to European Court of Human Rights in which applicants have later faced difficulties in having their cases reopened before the judiciary in Iceland.

In quest of a transparent and independent system different methods have been tested. In that process the structure in Norway and Denmark served as important examples. The authority to decide on reopening of cases has moved from the state's highest court, to an administrative committee, and finally to a special court. There was a broad consensus on transferring the authority to decide on reopening cases from the Supreme Court to the Committee on Reopening of Cases. However, the change was insufficiently prepared, which resulted in legal debate on its legitimacy. Hopefully, a new Court of Reopening Cases will create a harmonized, just and efficient system.

The statistics on number of applications and reopening of cases illustrates strict application of the criteria for reopening of criminal cases. A comparison of the practice of the Supreme Court and of the Committee on Reopening Cases illustrates though higher acceptance rate by the committee. Reopening of criminal cases have been accepted largely with references to human rights concerns, i.e. right to fair trial and effective remedy. One of the more contested issues in later years is the possibility of having a case reopened following a decision of the ECtHR. A legal amendment has recently been adopted to facilitate such a possibility, however it is vague and it remains to be seen if the amended text proofs sufficiently clear to realize that possibility.