Faculty of Law and Social Sciences

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# The Separation of Powers, the Non-Delegation Doctrine and the Right to Work in Icelandic Constitutional Law

University of Akureyri

May, 2007

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Final Thesis towards the Degree of B.A. in Law (90 credits),

Faculty of Law and Social Sciences

It is hereby declared that I am the sole author of this thesis and that it is the product of my own research.

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It is hereby certified that in my judgement, this thesis fulfils the requirements for the degree of B.A. at the Faculty of Law and Social Sciences.

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Abstract

The French social and political thinker Montesquieu (1698-1755) thought it was necessary that power by checked by power. He was influential in framing the Separation of Powers doctrine. According to the pure doctrine, state power is to be divided into three completely distinct branches, each confined exclusively to its own proper functions. Article 2 of the Constitution of the Republic of Iceland allocates legislative power to *Althingi*, and to the President, executive power to the President and "other governmental authorities", and judicial power to the judges. The branches of the Icelandic state are interdependent, and in particular the legislative and the executive branches. The Ministers are members of the government and the leaders of the majority of the members of *Althingi* at the same time. Legislative power can be delegated to the executive branch. A large portion of legislation in modern bureaucratic countries is inevitably delegated legislation. However, there are limitations due to the separation of powers and the Rule of Law. Article 75 of the Constitution protects the right to work and stipulates that it will only be restricted by law. Strong requirements must therefore be fulfilled in order to legitimately restrict the right to work with delegated legislation. In this thesis these requirements are investigated by examining relevant decisions of the Supreme Court. Even though the Supreme Court has not been entirely consistent, three general rules appear in the cases examined, although they are sometimes violated. Firstly, the purpose of the restrictions must be clear in the enabling act. Secondly, the enabling act must contain guidance concerning how to restrict the right to work and thirdly it must have principles regarding the scope of the necessary restrictions.

## Útdráttur

Franski þjóðfélags- og stjórnmála hugsuðurinn Montesquieu (1698-1755) taldi að nauðsynlegt væri að vald reisti valdi skorður. Skrif hans höfðu mikil áhrif á mótun kenningarinnar um þrískiptingu valdsins. Samkvæmt hinni hreinu kenningu á ríkisvaldið að skiptast í þrjár algerlega aðskildar og sjálfstæðar greinar, sem hver um sig hefur einvörðungu sinn þátt ríkisvaldsins til meðferðar. Samkvæmt 2. gr. stjórnarskrár lýðveldisins Íslands fara Alþingi og forseti Íslands með löggjafarvaldið, forseti og önnur stjórnvöld með framkvæmdavalið og dómendur með dómsvaldið. Hinar mismunandi greinar ríkisvaldsins eru innbyrðis háðar. Löggjafarvaldið og framkvæmdavaldið tengjast sérlega nánum böndum. Ráðherrarnir, sem sitja í ríkisstjórn, eru jafnframt leiðtogar meirihlutans á Alþingi. Löggjafarvald getur verið framselt til framkvæmdavaldsins. Í nútíma ríkjum eru stjórnvaldsfyrirmæli óumflýjanlega fyrirferðamikil. Framsal lagasetningarvaldsins lýtur þó takmörkunum vegna þrígreiningar valdsins og lögmætisreglunnar. Atvinnufrelsið er varið með 75. gr. stjórnarskrárinnar og verður einungis skert með lögum. Af þessum sökum verður að gera ríkar kröfur til lagastoðar, eigi að skerða atvinnufrelsið með stjórnvaldsfyrirmælum. Í þessari ritgerð eru þessi skilyrði könnuð með því að skoða dóma sem um þetta hafa gengið í Hæstarétti. Jafnvel þó að skort hafi upp á samræmi í þeim dómum, sem skoðaðir eru, má engu að síður greina þrjú megin skilyrði sem uppfylla þarf, þó að Hæstiréttur hafi stundum litið framhjá þeim. Til þess að framsalið geti talist lögmætt þurfa pólitísk markmið og tilgangur skerðingarinnar að koma fram í lögum, svo og leiðbeiningar um þær leiðir sem fara á til að skerða frelsið. Einnig þurfa að vera til staðar meginreglur í settum lögum um umfang og takmörk hinnar nauðsynlegu skerðingar.

Table of Contents

# INTRODUCTION

This thesis is divided into two parts, containing two chapters each. In Part I we will discuss the separation of powers in order to give the broad constitutional background for Part II. We will briefly look at the origins and contents of the doctrine before examining the separation of state powers in Iceland. We will examine the Icelandic Constitution, the Icelandic parliamentary system, and the role and relationships between the holders of state power in order to give a systematic overview of the Icelandic situation. The holders of Icelandic state power are *Althingi*, the Icelandic legislative parliament; the President; the Ministers of the government; the municipal authorities; and the Judges. We will see that the branches of the Icelandic state are highly interdependent, especially, the executive and the legislative branches.

In Part II, we will discuss the delegation of legislative power to the executive branch, and delegated legislation, itself most often referred to as *regulations*. We will consider the pros and cons of delegating legislative power, and the limits of permissible delegation. The doctrine of the separation of powers, as well as the principle of legality (the Rule of Law), inhibit delegation of legislative power to some extent. Even so, secondary legislation is inevitably extensive and accepted in modern bureaucratic societies.

Article 75 of the Constitution of the Republic of Iceland protects the right to work. Paragraph 1 states: “Everyone is free to pursue the occupation of his choosing. This right may however be restricted by law, if such restriction is

required with regard to the public interest". Perhaps it would be more accurate to refer to the right to work as protected in Article 75, as the "freedom to work", in order not to confuse it with the positive socio-economic "right to a useful and remunerative job".[1] Article 75 guarantees that the government will not obstruct the citizens form doing the work of their choice, unless it is required by public interests. This negative right to work is the right we are referring to in this thesis.

We will investigate to what extent legislative power can be delegated in order to restrict the right to work under Icelandic Constitutional law. This is best done by looking at relevant Supreme Court cases. We will look at seven cases and see that the Court has not been entirely consistent. We can however draw from them three general rules. Although they are occasionally violated, they provide us with a coherent framework within which we can better understand and assess this part of Icelandic public law. Firstly, the *purpose* of the restrictions must be clear in the primary legislation. Secondly, the act enabling secondary legislation must contain guidance concerning *how* the restrictions are to be carried out. Thirdly the enabling act must contain guidance concerning the *scope* and limits of the necessary restrictions.

[1] Roosevelt, Franklin F. D. State of Union message in 1944. Cited in Griffin, James. *Discrepancies Between the Best Philosophical Account of Human Rights and the International Law of Human Rights.*, p. 23.

# PART I

# CHAPTER 1. THE SEPARATION OF POWERS IN ICELAND

## 1.1. Origins and the Contents of the Doctrine

> Constant experience shows us that every man invested with power is apt to abuse it, and to carry his authority as far as it will go... To prevent this abuse, it is necessary from the very nature of things that power should be a check to power.[2]
>
> *- Montesquieu*

History has shown that there is a strong tendency among those with power to abuse it. At least this was the opinion of the influential French social commentator and political thinker, Charles de Secondat, baron de Montesquieu (1698-1755). The quotation above is taken from his book, *De l'esprit des lois* (The Spirit of the Laws). In the latter part of the quotation, it is suggested that the appropriate way to deal with the problem of power abuse is to ensure that power will be "checked" by power.

Montesquieu is often considered to be the author of the idea of the "separation of powers".[3] Today, when people talk about the separation, what they have in mind is the separation of the state into three branches: the

[2] Montesquieu. *The Spirit of the Laws*, book XI, Chapter 4, p. 172.

[3] Montesquieu divides the power in similar ways as had been done in England and an earlier English writer, John Locke, wrote somewhat similarly about the separation of powers, but did not use the term "executive power" like Montesqieu, but used "federative power". See Vile. *Constituionalism and the Seperation of Powers*, p. 86.
Nevertheless, book XI of the *Spirit of the Laws* by Montesquieu has been was very influential.

legislative branch, the executive branch, and the judicial branch. Each branch is usually thought to “check” or limit the powers of the other branches and to be somewhat independent and separated from the other branches, even though the separation or the independence is never complete or absolute.

The “pure doctrine“ of the separation of powers - according to M. J. C. Vile, author of the classic work, *Constitutionalism and the Separation of Powers* - states that the government is to be divided into three completely distinct branches: the legislature, the executive and the judiciary. Each branch must be confined to its own proper functions only. No one should be allowed to be a member of more than one branch at the same time. The pure doctrine is according to Vile an “ideal type” that is rarely held, and has never been put into practice. [4]

According to Montesquieu a national parliament, in two divisions, should hold the legislative power. The lower division (civil parliamentarians) ought to initiate legislation, but the upper division (noble men), ought to have veto power. The King was to exercise executive power: he was to have veto power over legislation, and the power to summon the parliament. The power to judge was to be in the hands of juries. That power was insignificant, since the juries were “only” to apply the law as it was written. This was considered to be a simple task of little importance at the time. Things like “judicial review” were not thought of at all.[5]

[4] Vile. *Constitutionalism and the Separation of Powers*, p. 13.

[5] Tómasson, Eiríkur. *Hvernig á að skýra fyrirmæli 2. gr. stjórnarskrárinnar um að Alþingi og forseti Íslands fari saman með löggjafarvaldið?* p. 333.

Even though Montesquieu's doctrine is by no means identical to the modern expressions of the separation of powers, it has been very influential. His suggestion that governmental power ought to be separated into branches limiting and "checking" each other was carried via the French revolutionaries to the United States (Constitution 1789) and later to numerous other countries. Modified versions of Montesquieu's idea have become the constitutional reality for western liberal democracies such as the United States, France, Germany and Denmark.[6]

## 1.2. The Icelandic Constitution

From 1262 to 1944 Iceland was under the rule of various Scandinavian kings. The first Icelandic constitution is from 1874. By this constitution, *Althingi* was given limited legislative power on special Icelandic matters, while the Danish king retained most of the power over Iceland. This constitution was amended in 1903, bringing an Icelandic Minister of Icelandic Affairs to Reykjavík, and again in 1915, when workers and women over 40 years old received the right to vote. In 1918 Iceland became a sovereign state that shared a king with Denmark and in 1920 a new constitution for the Icelandic monarchy followed. In it the voting age became the same for both the sexes. The constitution from 1920 was amended in 1934 and in 1942 mainly to change the rules concerning the elections to *Althingi*. The constitution was amended again in

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[6] Schram, Gunnar G. *Stjórnskipunarréttur*, p. 26.

1942 in order to prepare for the birth of the Icelandic republic. The republic of Iceland was founded in 1944.[7]

Like in the majority of western liberal democracies, one of the main characteristics of Icelandic constitutional law is that there is a special written constitution that has a higher status than other laws and cannot be amended by the normal legislative process.[8]

The Constitution of the republic of Iceland was enacted on the 17th of June in 1944. In relation to the issue of constitutional amendments, Article 79 of the Constitution states:

> Proposals to amend or supplement this Constitution may be introduced at regular as well as extraordinary sessions of Althingi. If the proposal is adopted, Althingi shall immediately be dissolved and a general election held. If Althingi then passes the resolution unchanged, it shall be confirmed by the President of the Republic and come into force as constitutional law.

Amendments or supplements to the Constitution have not been made unless there is a political unity concerning the proposals. They have been adopted at the end of the term right before elections and *Althingi* is being dissolved anyway. The proposals are then passed again after the elections and become constitutional law. Constitutional changes have not been a large issue in elections since the parties have always agreed on the amendments.

[7] Schram, Gunnar G.. *Stjórnskipunarréttur*, p. 32.

[8] Schram, Gunnar G. *Stjórnskipunarréttur*, p. 32-34.

The *Constitution of the Republic of Iceland no. 33, 17 June 1944* (referred to henceforth as the Constitution), is rather flexible, even though the amending process is indeed more complex than the normal legislative process. It has been amended seven times since 1944. By constitutional law no. 51/1959 a fundamental change was made to the system of electoral districts. By constitutional law no. 9/1968 changes were made concerning the right to vote. The voting age was lowered to 20 years. The Constitution was changed in 1984, by constitutional law no. 65/1984, in which the rules concerning elections of municipal authorities were amended. In the constitutional law no. 56/1991 *Althingi* was made to sit in one chamber instead of two. Constitutional law no. 97/1995 amended and added human rights provisions to the Constitution, and changes were also made regarding taxes and municipal authorities. In constitutional law no. 100/1995, *Althingi* was given the task of auditing the state bill. Constitutional law no. 77/1999 changed the number of parliamentarians, and electoral districts.

## 1.3. The Three Branches of State Power

In Iceland there is a parliamentary system. Article 1 the Constitution states that “Iceland is a Republic with a parliamentary government”. We will discuss the effect that this has on the interplay of the branches of state power in Chapter 2.

Article 2 of the Constitution separates the power of the state into three branches – the legislative branch, the executive branch, and the judicial branch:

> Althingi and the President of Iceland jointly exercise legislative power. The President and other governmental authorities referred to in this Constitution and elsewhere in the law exercise executive power. Judges exercise judicial power.

This article has remained unchanged in the Constitution since 1920 apart from the fact that the word "king" was replaced by the word "President" in 1944. A partly similar provision was to be found in Article 1 of the Constitution from 1874, derived from Article 2 of the Danish constitution from 1849.[9] To clarify the terms in Article 2, we will now say something about "*Althingi*", "other governmental authorities", "judges" and the "President".

*Althingi* is the Icelandic legislative parliament. It sits in one chamber. It has 63 elected members. Parliamentary elections must take place at least every four years. There is a proportional election system with an electoral threshold, and currently there are five parties represented in *Althingi*.[10]

After elections, parties that together have the majority of seats in *Althingi* form the government. Minority governments are possible but very rare. There are currently 12 Ministers in the government.[11] They are the most important holders of executive power. The Governmental Offices of Iceland are divided by Act no. 73/1969 into 14 ministries, i.e. the Prime Minister's Office, the

[9] Tómasson, Eiríkur, et al. *Skýringar við Stjórnarskrá Lýðveldisins Íslands*, p. 3.

[10] The Constitution of the Republic of Iceland no. 33/1944. Articles 31(1) and 32.

[11] The official web-page of the Icelandic government. http://raduneyti.is/rikisstjorn/ Downloaded the 13th of April, 2007.

Ministry of Fisheries and the Ministry of Foreign Affairs, etc. These ministries usually have a central department and ministerial agencies under their control. The head of the government is the Prime Minister. The Ministers are the most important "other governmental authorities" referred to in Article 2 of the Constitution.

A body of locally elected people governs local municipalities. They also hold executive power according to Article 2 of the Constitution since they are given public tasks in Article 78.[12] Article 78 of the Constitution states:

> The municipalities shall manage their affairs independently as laid down by law. The income sources of the municipalities, and the right of the municipalities to decide whether and how to use their sources of income, shall be regulated by law.

Article 2 of the Constitution also allocates judicial power. There are 8 district courts in Iceland, and a Supreme Court that has a nationwide jurisdiction. They deal equally with civil and criminal matters. The judges are appointed by the Minister of Justice for an indefinite period of time.[13]

The President has mostly a symbolic or ceremonial position.[14] Unlike the Presidents of the United States of America and of France, for instance, the

[12] Logadóttir, Sigríður. *Lög á bók*, p 42.

[13] Articles 4 and 12 in Act no 15/1998. There are also two special Courts. The Court of Impeachment, Landsdómur. It has competence if Ministers in pursuance of their official tasks are to be impeached, see Article 14 of the Constitution and Act no. 3/1963. It has never been convened; and *Félagsdómur*, which deals with industrial disputes, Section IV of Act no. 80/1938.

[14] Schram, Gunnar, G. *Stjórnskipunarréttu*r, p.132.

Icelandic President is not the political leader of the nation.[15] According to Article 2 of the Constitution, the President shares the executive power with other governmental authorities. In Article 13 we read that the "President entrusts his authority to Ministers". Therefore we know that the Ministers are the agents that execute his authority. Furthermore, there can be little power without accountability, and according to Article 14 of the constitution, the "Ministers are accountable for *all* executive acts".[16] Article 11 states that the President of the Republic may not be held accountable for executive acts. In light of Articles 11, 13 and 14, it is evident that the Ministers are the primary holders of executive power.[17]

According to Article 2 of the Constitution, the President shares the legislative power with *Althingi*. What that means in practice is that the President must give parliamentary bills formal consent, in accordance with Article 26 in the Constitution.[18]

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[15] Logadóttir, Sigríður. *Lög á bók*, p. 37.

[16] Emphasis added

[17] Tómasson, Eiríkur, et al. *Skýringar við Stjórnarskrá Lýðveldisins Íslands*, p. 4.

[18] Tómasson, Eiríkur, et al. *Skýringar við Stjórnarskrá Lýðveldisins Íslands*, p. 4.
Ólafur Ragnar Grímsson, the current President of the Republic of Iceland, rejected the so-called "Media bill" in 2004. This was the first time in the history of the Republic that the President refused to give a bill his consent. His authority to reject bills was disputed at the time. On the one hand there were those who claimed that he obviously could reject bills. That would be in accordance with the plain, literal meaning of Article 26 of the Constitution, and in accordance with Article 2 of the Constitution, in which the President shares the legislative power with Althingi. On the other hand, there were those that said that if the President rejected the bill, it would violate the parliamentary system, constitutional customs and articles in the Constitution, such as Article 13, according to which he was to let the Ministers carry out his powers. See Tómasson, Eiríkur, et al. *Skýringar við Stjórnarskrá Lýðveldisins Íslands*, p. 28. The presidential power to reject bills would appear to have been strengthened by the precedent that was created in 2004. Rejecting bills frequently would however violate the parliamentary system, Icelandic constitutional customs, and the traditional understanding of the position of the President as a non-political leader. The power should obviously be applied with moderation. See Líndal, Sigurður, in Schram, Gunnar G. *Stjórnskipunarréttur*, p 134.

The participation of the President in governmental actions is most often only formal.[19] In spite of the fact that he has both legislative and executive power according to Article 2 of the Constitution, he has no role in our discussion about the delegation of legislative power to the executive branch in Part II of the thesis.

Now we have introduced all the holders of state power according to Article 2 of the Constitution. We may now turn to our examination of the parliamentary system and the relationships the branches have one with another. State powers in Iceland are not separated very clearly. In particular, there is a close connection between the legislative and the executive branches as we will now see.

[19] It has been suggested that in times of emergencies and under unusual circumstances, his formal power would become more substantial. The President has also some power when it comes to forming governments after elections, for examples when the parties are having difficulties in forming coalitions. Schram, Gunnar G. *Sjórnskipunaréttur*, p. 132.

# CHAPTER 2. THE ICELANDIC PARLIAMENTARY SYSTEM AND THE RELATIONSHIPS BETWEEN THE BRANCHES

## 2.1. The Parliamentary System and Interdependent Branches

Liberal democracies have either a parliamentary system or a presidential system. In presidential systems, the President, who is an important political leader, is the head of the state and the government and is voted into office independently and is only accountable to the legislature in limited ways. The distinction between the executive branch and the legislative branch is therefore clearer. France and the United States of America are examples of states with a presidential system.

Iceland has a parliamentary system according to Article 1 of the Constitution, which states: “Iceland is a Republic with a parliamentary government”. In Iceland, therefore, the government must be supported or at least tolerated by *Althingi*.[20] In a parliamentary system there is no clear-cut separation of powers in accordance with the “pure doctrine” discussed in Chapter 1.

The branches of the Icelandic state are in fact quite interdependent. The voters vote for the members of *Althingi*. The political parties that have the majority of members of *Althingi* form the government. The government is accountable to *Althingi* and dependent upon its support and the Minister of Justice, who is a member of the government, appoints the judges.

[20] Líndal, Sigurður. *Um lög og lögfræði*, p. 162.

The Ministers of the government are usually members of *Althingi*, although they do not have to be. This violates the "pure doctrine" of separation of powers, which states that no one should be allowed to be a member of more than one branch at the same time. The Ministers are not only members of *Althingi*, they are the leaders of the majority parties and therefore its most powerful members.

According to *Hrd.* 1985:1290, and *Hrd.* 1987:356,[21] the same person can be a member of the executive branch and judicial branch at the same time. This was however found to violate Article 70 of the Constitution concerning the right to a hearing in front of an independent and impartial court of law in *Hrd.* 1990:2. The authority of *Hrd.* 1985:1290 and *Hrd.* 1987:356 is therefore doubtful according to commentators.[22] Judges do not have administrative functions any more and they will not be discharged from office except by judicial decision or in the event of reorganization of the judiciary.[23]

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[21] "*Hrd."* stands for "Supreme Court decisions". Cases from before 1997 are referred to by the year they appear in the annual case report of the Supreme Court, and by page number in the report.

[22] Tómasson, Eiríkur, et al. *Skýringar við Stjórnarskrá Lýðveldisins Íslands*, p. 4.

[23] Article 61 of the Constitution states: "In the performance of their official duties, judges shall be guided solely by the law. Those judges who do not also have *administrative functions* cannot be discharged from office except by a judicial decision, nor may they be transferred to another office against their will, except in the event of re-organization of the judiciary...." (emphasis added) Here of course it is implied judges can hold administrative functions. However judicial and administrative functions have been separated. Act. no. 92/1989 which deals with the separation of judicial and administrative functions, was enacted in 1989. It entered into force in 1992. It has been replaced by the Act no. 15/1988 concerning the organization of judiciary.

According to Article 34(2) of the Constitution, Supreme Court judges are not eligible in elections to *Althingi*. Therefore no one is allowed to be a member of the legislative branch and the judicial branch, as a Supreme Court judge, at the same time.

Let us now examine each of the three relationships between the organs of state power. We will begin with the relationship between the legislative and the executive branches.

## 2.2. The Legislature and the Executive

Since the government is dependent on and accountable to the parliament in a parliamentary system, one might assume the legislative branch to be the most powerful of the branches. Furthermore, the laws coming from *Althingi* bind those that hold the executive and judicial power.[24] The judges must be guided solely by the law and the organization of the judiciary is established by law according to Articles 59 and 61 in the Constitution. The executive authorities receive their power from *Althingi*. In general the decisions and acts of the executive authorities must be grounded in laws from *Althingi*.[25] This is called the "Rule of law" or "Principle of legality", and is meant to guarantee "a government of laws, not of men".[26] We will further discuss the Rule of Law in Chapter 3.3.

[24] Tómasson, Eiríkur, et al. *Skýringar við Stjórnarskrá Lýðveldisins Íslands*, p. 4.

[25] Hreinsson, Páll. *Lagaáskilnaðarregla atvinnufrelsisákvæðis stjórnarskrárinnar*, p. 401-402

[26] Ford, Gerald G. President of the United States (1974-1977). "Our constitution works. Our great republic is a government of laws, not of men".

But the Ministers of the government are themselves the most powerful members of *Althingi*. Therefore many consider that the executive government dominates the legislature and think that *Althingi* is merely passing whatever legislation it is that the government has seen fit to let them enact.[27] As reverend Örn Bárður Jónsson, an outspoken cleric in the Icelandic State Church, the Evangelical Lutheran Church of Iceland, stated in a sermon he preached on the 19th of June 2005:

> The separation of powers into the judicial, legislative and executive branches is much discussed in our present-day society and many think that the boundaries between the branches are not clear-cut enough and that the executive branch has usurped power, flouting the fences and barriers in its desire for power…[28]

To give some insight into the discussion that Örn Bárður Jónsson is referring to, we will look at some examples of similar perspectives. Bryndís Hlöðversdóttir, who was at the time a member of *Althingi* for the Social Democrats (*Samfylkingin*), said in the year 2000 that the executive branch had become far too strong, and that the other branches were paying the price;[29] Associate professor, Eiríkur Bergmann Einarsson, the director of the Centre for European Studies, and a member of the Social Democratic party (*Samfylkingin*), said in February 2005 that the strength of the executive

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[27] For example, Sigurjón Þórðarsson, a member of Althingi for the "Liberal Party" (Frjálslyndi flokkurinn) claimed on his home page that many parliamentarians sitting in Althingi for the majority parties see it as their only job to help pass the bills created by the government, and to be otherwise silent. http://www.althingi.is/sigurjon/safn/2006_11.html

[28] Jónsson, Örn Bárður. The web-page "Trúin og Lífið". http://tru.is/postilla/2005/06/daemdir-domarar/

[29] Hlöðversdóttir, Bryndís. Talk given at meeting about democracy hosted by Samfylkingin, 29th of December 2000.

branch had been increasing at a dangerously fast pace, diminishing the power of other branches;[30] and Pétur Blöndal, a member of *Althingi*, representing the Independence Party (*Sjálfstæðisflokkur*) has voiced concerns about the futility of any efforts of parliamentarians to oppose bills prepared by the government.[31] We could go on indefinitely.

Whether the government has been usurping power or not, it is evident that the executive and legislative branches are very interdependent. Those who direct both the executive branch and the legislative branch, and tie them together, are the political parties that form the majority coalition government (minority governments being very rare and short-lived). Usually, the same few individuals that are the leaders of *Althingi* are the leaders of the government at the same time.

Yet it would be an oversimplification to claim that there are only two branches of the state, that there is a dual separation of powers in Iceland, one branch being the joint executive/legislative branch and the other being the judicial branch. After all, *Althingi* contains members of the opposition parties as well. In regard to the question of whether *Althingi* is held hostage to the government, it is worth noting that some have the opposite opinion. For example Gunnar Harðarsson, senior lecturer at the department of philosophy at the University of Iceland claims that *Althingi* is the autocratic power, oppressing the executive branch, since the executive is accountable and

[30] Einarsson, Eiríkur Bergmann. *Leiðtogaræði.* Fréttablaðið. 9/2 2005.

[31] Gylfason, Þorvaldur. *Lýðræði í skjóli laga.* Fréttablaðið, 24/6 2004.

dependent upon *Althingi*. Similar views have been held by former Prime Minister, Davíð Oddsson.[32]

Our purpose is to highlight the main features of the separation of powers in Iceland in order to better understand the context of the non-delegation doctrine. The important thing to note here is the interdependence of the two branches, and that the individuals that lead the parties that form the majority coalition hold both the legislative and executive powers in their hands.[33]

## 2.3. The Executive and the Judiciary

What can be said about the relationship between the executive and the judiciary under the Icelandic constitution? Fears regarding the alleged lack of independence of the judicial branch vis-à-vis the executive branch have been expressed in the aftermath of the two recent appointments to the Supreme Court. Independence Party Ministers appointed Ólafur Börkur Þorvaldsson (August 2003), a close relative of Davíð Oddson, who was currently the leader of the Independence Party, and Jón Steinar Gunnlaugsson (September 2004), an outspoken supporter of the Independence Party. This was in violation of the custom of appointing a judge in accordance with the suggestion of the Supreme Court. The court in both cases recommended other candidates. According to section 4(4) of Act no. 15/1998 on the

[32] Magnússon, Þorsetinn. *Alþingi í ljósi samþættingar löggjafarvalds og framkvæmdavalds*, p. 199-201.

[33] Magnússon, Þorsetinn. *Alþingi í ljósi samþættingar löggjafarvalds og framkvæmdavalds*, p. 199-201.

organization of the judiciary, and in older such acts,[34] there is a requirement to ask the Supreme Court about the competence of the candidates, and its advice about who to appoint had always followed.

*Althingi* can give executive authorities some judicial power in some cases, in that it gives to them the task of settling various legal disputes. According to *Hrd.* 1991:1690 *and Hrd.* 1994:748, however, their rulings can never be final in conflicts that can be submitted to the courts.

## 2.4. The Judiciary and Legislation

What about the issue of judge-made laws and judicial review in Iceland? It is a known worldwide phenomenon that "judges make rather than simply discover law".[35] This is also the case in a civil law jurisdiction like that of Iceland. For example the Courts created the main laws of Tort,[36] although they were later codified. This might seem hard to reconcile with the separation of powers. Judges do not hold legislative power. According to Article 2 of the Constitution, legislative power lies only with *Althingi* and the President. Furthermore, Article 61 stipulates that "judges shall be guided solely by the law". It might seem hard to reconcile the notion of the Courts being guided by the law, and at the same time creating the law.

[34] For example Artilce 5 in Act no. 75/1973.

[35] Shapiro, Martin. *On Law, Politics, and Judicialization*, p. 20.

[36] Björnsson, Arnljótur. *Skaðabótaréttur*, p. 12-13.

The Icelandic Supreme Court has reviewed the constitutionality of legislation since *1900.* In a case before the old Icelandic Supreme Court, *Landsyfirréttur*, *Lyrd.* 1900:176 (VI), the constitutionality of an act charging fees for innkeeping was debated. It was submitted that it violated the right to work protected by Article 51 of the Constitution from 1874. *Landsyfirréttur* did not concur, but nevertheless assumed that it had competence to review the constitutionality legislation[37]

The Supreme Court does not "strike down" acts, but can say that articles or provisions within them are to be "disregarded" in the instant case if they are found to violate the Constitution. They are then of no value as a source of law in that case. A decision will not be built on an unconstitutional provision. Unlike in some other western liberal democratic states, "disregarded" provisions are not eradicated and are still formally valid and found within the acts unless *Althingi* removes them. It is even possible that later judges might find the provisions to be lawful and in compliance with the Constitution and use them as valid sources of law, disagreeing with the former decision of disregarding them.[38]

An early example of Icelandic judicial review, where an act was held unconstitutional, is the Hrafnkatla case, *Hrd.* 1943:237, where provisions that gave the Icelandic state alone the right to publish the old Icelandic sagas were

[37] Jónsdóttir, Svandís Nína. *Samræmi laga og stjórnarskrár: Afstaða íslenskra fræðimanna til úrskurðarvalds dómstóla*, p. 88.

[38] Líndal, Sigurður. *Um lög og lögfræði*, p. 96.

considered to violate Article 67 of the Constitution from 1920 that protected the freedom to print.[39]

Judicial review *strengthens* the separation of powers, since the judiciary is "checking" and preventing the legislature from abusing power. Even so, it is possible to look at it from the other perspective and say that the judicial branch is involving itself in the affairs of the legislative branch. Some argue that the Supreme Court has gone too far in its endeavours to review legislation. The Disability Benefits case *Hrd.* 125/2000 sparked a debate about the role of the courts in the field of socio-economic rights.

According to Article 17(5) in Act no. 117/1993, as amended by Article 1 in Act no. 149/1998, disabled people that together with their spouses earned above a certain limit did not receive full disability benefits. This was held by the Supreme Court to violate Article 65 in the Constitution about equality before the law,[40] and Article 76 that says that "[t]he law shall guarantee for everyone the necessary assistance in case of sickness, invalidity, infirmity by reason of old age, unemployment and similar circumstances." The Supreme Court said that people that were receiving partial disability benefits were not receiving necessary assistance in accordance with their minimum rights guaranteed by Article 76 of the Constitution. Article 17(5) of Act no. 117/1993, as amended by Article 1 in Act no. 149/1998, breached the Constitution.

[39] Líndal, Sigurður. *Um lög og lögfræði*, p. 86-87. Today the freedom to print, as well as other forms of expressions are protected by Article 73 of the Constitution.

[40] Article 65: "Everyone shall be equal before the law and enjoy human rights irrespective of sex, religion, opinion, national origin, race, colour, property, birth or other status. Men and women shall enjoy equal rights in all respects."

Davíð Oddson, the Prime Minister and the chairman of the Independence party, claimed that it was the task of *Althingi* to distribute wealth, set the priorities, and to decide what needs were to be met and to define "necessary assistance". Therefore the Supreme Court had intruded into the domain of the legislature.[41] Most legal scholars would disagree with Oddsson, since the socio-economic welfare rights are usually considered indivisible from the classical civil and political rights. This has also been confirmed by the European Court of Human Rights.[42] The Court therefore had to give Article 76 a concrete meaning.[43]

## 2.5. Concluding remarks

We have now come to the end of Part I of the thesis. We have seen that the branches of the Icelandic state are interdependent, and that individuals can be members of more than one branch at the same time. The fact that the pure doctrine of the separation of powers has not been put into practice in Iceland should not coma as a surprise, since, as we have mentioned, it has not been put into practice elsewhere either. There are however undoubtedly some countries that are closer to the pure doctrine than Iceland.

[41] Oddson, Davíð – *Valdheimildir Löggjafans og úrskurðarvald dómstóla*, p. 10.

[42] Þorgeirsdóttir, Herdís. *Togstreita markaðar og réttarríkis*, p. 28.

[43] The Human Rights provision of the Constitution must be interpreted in the light of international commitments, such as the European Convention of Human Rights. See Líndal, Sigurður. *Um lög og lögfræði*, p. 85.

In a parliamentary system, the separation between the legislative and executive branches is particularly weak. Montesquieu said that "[w]hen legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty."[44] In Iceland, legislative and executive powers are united in the political parties that form the majority coalition in *Althingi*, and in particular they are united in the Ministers, as the members of the government, and as the leaders of the majority of the members of *Althingi* at the same time. Furthermore, *Althingi* can, just like the legislative organs in other modern bureaucratic countries, delegate legislative power to the executive branch, blurring the separation even further. Law-making, whether in the form of primary or secondary legislation, is not among the functions that the executive branch should have according to the pure doctrine of the separation of powers. Part II of the thesis will examine the delegation of legislative power from the legislature to the executive branch.

[44] Montesquieu. *The Spirit of the Laws*, book XI, Chapter 6, p. 173.

# PART II

# CHAPTER 3. SECONDARY LEGISLATION

## 3.1. Regulations

The majority of legislation in Iceland, as in other modern bureaucratic states, is secondary legislation.[45] Secondary or delegated legislation is law made by Ministers, ministries, ministerial agencies or municipal authorities under authority given to them in acts from *Althingi*.[46] All primary legislation is made by *Althingi*. However, as we have seen in Part I, the relationship between *Althingi* and the Government means that in many cases the Ministers, or the Governmental Offices, are the real creators of the legislation.

An example of an act enabling secondary legislation would be Act no. 36/1988 concerning police resolutions.[47] In Article 4 we read that municipal authorities are to draft a police resolution, and send it to the Minister of Justice for confirmation. Act no. 36/1988 therefore gives municipal authorities in cooperation with the Ministry of Justice power to legislate on certain topics,

[45] Líndal, Sigurður. *Um lög og lögfræði*, p. 122.

[46] It is possible also for *Althingi* itself to make secondary legislation called "*þingsályktanir*", or "parliamentary resolutions" when they have been enabled to do so in acts. The resolutions only need to be discussed in two rounds, as opposed to three rounds for the primary legislative acts, and do not need Presidential consent. Parliamentary resolutions, containing general binding instructions are rare. See Líndal, Sigurður. Um lög og lögfræði, p. 113-114. When the words "act" or "law" from *Althingi* are used in this thesis, they always refer to primary legislation, and never to parliamentary resolutions.

[47] Líndal, Sigurður. *Um lög og lögfræði*, p. 121.

and the resulting legislation is called a “police resolution”. Legislative power is delegated from *Althingi* to the executive branch.

The most common Icelandic name for a secondary legislation is “*reglugerð*” or “regulation”. In this thesis the word *regulation* shall be used to refer to secondary or delegated legislation.

If there is a conflict between a regulation and an act from *Althingi*, the act prevails.[48] Regulations have to be enabled under law coming from *Althingi*, and cannot concern issues that require primary legislation.[49] An example would be imposing taxes. Article 40 in the Constitution says that “[n]o tax may be imposed, altered or abolished except by law”. The word “law” here does not refer to secondary legislation coming from the executive branch, as we will see in more detail in our discussion of the limits of permissible delegation later in Chapter 3.3. Article 40 calls for primary legislation from *Althingi* in order to impose, alter or abolish taxes.[50]

In this thesis we are not referring to or dealing with decisions or rules made by governmental authorities that are not general instructions to the public, but concern particular individuals or specific groups, for example when boards of administration decide about individuals’ rights and obligations. That type of decisions is dealt with in what is called administrative law, and regulated

[48] Logadóttir, Sigríður. *Lög á bók*, p. 22.

[49] Líndal, Sigurður. *Um lög og lögfræði*, p.120-121.

[50] Líndal, Sigurður. *Um lög og lögfræði*, p. 81.

under the Administrative Procedures Act, no. 37/1993.[51] Neither are we dealing with orders from a higher governmental authority to a lower one. In such a case, the higher authority does not need a special provision within an act from *Althingi* enabling them to act and no delegation has taken place.[52]

Regulations can be divided into two groups. On the one hand we have what Sigurður Líndal calls "*Lagaframkvæmdareglugerðir*" or "implementation regulations". They clarify how to implement or carry out certain provisions within acts from *Althingi*. As an example we can point to Act no. 46/1980 about conditions, health, hygiene and safety in the workplace.[53] Article 46 requires that machines, containers, equipment, working conditions, etc., should be safe, and in accordance with recognized safety standards. Article 47 gives the Minister of Social Affairs the task of making further regulations to ensure safety in compliance with the act. On the basis of Article 47, the Ministry of Social Affairs has issued myriad regulations regarding safety gear, safety glasses, helmets, etc (rgl. 501/1994), nail and staple guns (rgl. 475/1985, rgl 476/1985), tractors (rgl. 153/1986, rgl. 424/1987, rgl. 561/1987 and rgl. 580/1995), lawn movers (rgl. 90/1989), cranes (rgl. 609/1999), spraying cans (rgl. 98/1996) and so forth. The permission to delegate legislative power in this way is usually not in doubt. Few questions arise.

On the other hand we have what Sigurður Líndal calls "*lagasetningaregulgerðir*" or "substantive regulations". As an example of

[51] Hreinsson, Páll. *Stjórnsýslulögin*, p.44-45.

[52] Líndal, Sigurður. *Um lög og lögfræði*, p. 120.

[53] Líndal, Sigurður. Um lög og lögfræði, p. 121.

these, we can point to the police resolutions enabled by Act no 36/1988 that we mentioned above. In the enabling act it is decided what issues are to be dealt with in the secondary legislation, but there is less guidance about the substance of the rules that are to be made. This is a broader delegation of legislative power. Arguments about how broad or open the delegation may be often arise.[54]

## 3.2. Delegating Legislative Power

The first problem regarding the delegation of legislative power is that it does not fit squarely with the idea of the separation of powers. The majority of legislation is secondary legislation and in the hands of executive authorities, and drafted by ministries, ministerial agencies and municipal authorities. If *Althingi* delegates too much of its power, it is failing to take on its full and proper responsibility.[55]

Secondly, the delegation of legislative power can be viewed as undemocratic. When legislative power is delegated, it is not in the hands of the elected parliamentarians of *Althingi*. In an Irish case from 1999 dealing with delegation of legislative power this concern was expressed in these words:

> The increasing recourse to delegated legislation … has given rise to an understandable concern that parliamentary democracy is being stealthily subverted and crucial decision making powers vested in unelected officials.[56]

[54] Líndal, Sigurður. *Um lög og lögfræði*, p. 121-122. The distinction between substantive regulations and implementation regulations is not always clear.

[55] Líndal, Sigurður. *Um lög og lögfræði*, p. 122-123.

[56] *Laurentiu v Minister for Justice*. Irish case. 1999 4 IR 26, at 61 *per* Denham J.

Finally, the decision process is not as open to the public when secondary legislation is made, and therefore there is a higher danger of corruption. When doubts about the meaning of primary legislation arise, the *travaux préparatoire*, which are required to come with bills according to Article 36 in the Parliamentary Procedure Act no. 55/1991, can be consulted in order to aid interpretation. *Travaux préparatoire* are not required to come with regulations.[57]

What then, is the basis for delegating legislative power? If *Althingi* has the legislative power according to Article 2 in the Constitution, and Ministers and municipal authorities hold executive power and not legislative power, how can *Althingi* give them the authority to legislate? According to M. J. C. Vile, the pure doctrine of the separation of powers insists that each branch must be confined to its own proper functions only.[58] Should not legislation be in the hands of the legislators?

It is clear that, in certain circumstances, legislative power *can* be delegated. First, regulations have been taken for granted by people and by the courts for a very long time. For example, Þór Vilhjálmsson wrote in 1969: “Everyone is familiar with regulations, resolutions, and directives, and there can be no

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[57] Líndal, Sigurður. *Um lög og lögfræði*, p. 122-123.

[58] Vile. *Constituionalism and the seperation of powers*, p. 13

doubt as to whether legislative power can be delegated to ministers and even to others."[59]

Secondly, delegation is both reasonable and inevitable. Legislation would be very difficult if all instructions to society would have to be contained in primary legislation from *Althingi*. *Althingi* simply cannot cope with the great demand for new laws. Regulations concerning uncontroversial topics can be made without using up the limited time that *Althingi* has.[60]

Acts would be extremely long and complex if all necessary rules had to be included in them. It is often reasonable to delegate the task of making more detailed rules out of *Althingi*. For example if all the rules contained in the regulations that have been issued on the basis of Article 47 in Act no. 46/1988 about conditions, health, hygiene and safety in the workplace had to be contained within the primary legislation, it would be extremely long.[61] It is impossible for the legislature to prescribe rules for every conceivable situation. This would demand "the framing of rules at a level of detail that would inappropriately burden the legislature".[62]

It is impossible for the members of *Althingi* to be acquainted with all issues in every field of society that have to be governed by rules. They might lack the proper background knowledge. If rules need to be made concerning medical

[59] Vilhjálmsson, Þór. *Fjögur seminarerindi um Stjórnarskrána*, p. 24.

[60] Líndal, Sigurður. *Um lög og lögfræði*, p. 122.

[61] Líndal, Sigurður. *Um lög og lögfræði*, p. 122.

[62] *Maher v. Minister for Agriculture* Irish case: 2001 2 IR 139, at 245 *per* Fenelly J.

operations for example, *Althingi* might want to delegate the responsibility to the Medical Association and the Ministry of Health. Often regulations do not have anything to do with policies but instead focus on technical matters.

It is necessary that laws be stable, while regulations must often be flexible, and adjusted frequently in accordance with changing circumstances. Such frequent changes to primary legislation from *Althingi* would be difficult.[63] The legislative process in *Althingi* is rigid. It must be done in compliance with the Parliamentary Procedure Act no. 55/1991. Bills must be discussed in three different rounds, and more than half of the members of *Althingi* must be present according to Articles 44 and 53 in the Constitution and Articles 37 and 64 of the Parliamentary procedure Act no. 55/1991. It is however possible to circumvent the procedures if two-thirds of the members of *Althingi* agree according to Article 90.[64]

Finally, since it is stated in Article 2 that governmental authorities exercise executive power, it is implied that they are allowed by the Constitution to give the public some binding instructions, in the form of secondary legislation.[65]

The tendency has been towards permitting delegation of legislative power to holders of executive power only, in accordance with Article 2 of the Constitution. In the *Kjarnfóðursgjald* case *Hrd.* 1985:1544 it was considered unlawful to delegate power to impose a tax to an interest group,

[63] Líndal, Sigurður. *Um lögfræði*, p. 122.

[64] Líndal, Sigurður. *Um lögfræði*, p. 97. This is not uncommon.

[65] Líndal, Sigurður. *Um lögfræði*, p. 113.

"*Framleiðsluráð landbúnaðarins*"; a council of representatives from the Farmers Association of Iceland:

> In general the power to legislate will not be delegated to other authorities than to the executive branch, cf article 2 The Constitution of the Republic of Iceland no. 33, 17 June 1944

Secondary legislation properly grounded in an enabling act can be a basis for punishment.[66] Delegation in such a case can only be made to Ministers and municipal authorities.[67] In the Forklift case, *Hrd.* 236/2004, a man was prosecuted for the offence of operating a forklift truck without a licence, which was punishable according to a regulation, made by the Administration of Occupational Safety and Health, and was confirmed by the Ministry of Social Affairs. It was enabled by Article 49(3) of Act no. 46/1980 concerning conditions, health, hygiene and safety at work. It was held that *Althingi* could not delegate to the Administration of Occupational Safety and Health the power to make behaviours punishable. The confirmation of the Minister was not enough, and could not be understood as having the same effect as if he had himself made the regulation.

## 3.3. Limits of Permissible Delegation

There are limits under Icelandic law as to how far *Althingi* can go in delegating legislative power. When there is a need to restrict rights and freedoms,

[66] Spanó, Róbert. *Um lög og rétt*, p. 351.

[67] Provisions in Police Resolutions that are drafted by municipal authorities can be grounds for punishment.

*Althingi* needs to do it itself, and cannot delegate the responsibility to the executive branch. This is often derived from articles in the Constitution dealing with human rights. They frequently state that certain rights or freedoms will be restricted by law, and only if certain conditions are met. The word "law" in these articles has been understood as referring to acts from *Althingi*. The articles are basically stipulating that the rights will not be restricted except by primary legislation from *Althingi*:[68] In this thesis we will refer to them as the "except by law" provisions. Thus Article 75(1) stipulates, "Everyone is free to pursue the occupation of his choosing. This right may however be restricted by law…". Similar or partly similar "except by law" provisions can be found in: Articles 40 and 77 (taxes); Article 66(1,2) (citizenship, rights of aliens); Article 67(1) (liberty); Article 69(1) (punishment); Article 71(2,3) (freedom from interference with privacy, home and family life); Article 72(1,2) (private ownership); Article 73(3) (freedom of expression); and Article 74(2) (associations).

There is also another type of "except by law" provision in the Constitution. These provisions do not deal with freedoms and human rights, but rather with things like the organization of state power. For example Article 59 states that "the organization of the judiciary can only be established by law". What this means is that *Althingi* is given the task of deciding the number of judges and courts, what conditions must be met in order to eligible to be a judge and other such matters. These issues will not be decided by the executive branch, and *Althingi* cannot delegate legislative power concerning the organization of

[68] Líndal, Sigurður. *Um lögfræði*, p. 81.

the judiciary. The Minister of Justice has nevertheless been given one non-crucial decision power in Section 2 in Act no. 15/1998. [69] Section 2(8) paragraph 2 says:

> Each district court shall hold sessions serving the entire area of its office. The Minister of Justice may however, by Regulation, provide for a different arrangement, having obtained the opinion of the district court in question and of the Judicial Council.

Others such "except by law" provisions include Article 14 that says that the accountability of the Ministers is to be established by law, and Article 78 that states that "municipalities shall manage their affairs independently as laid down by law". These Articles hinder delegation. It is for example obvious that *Althingi* will not delegate to the Ministers the task of establishing their accountability. Few if any disputes arise in relation to delegation concerning the "except by law" provisions in articles not dealing with rights and freedoms.

As we have mentioned in Chapter 2.2. the *Rule of Law* or the *Principle of Legality*, is meant to guarantee "a government of laws, not of men". According to the Rule of Law, the decisions and acts of the executive authorities must be grounded in acts from *Althingi*. The executive authorities cannot put burdens on the citizens unless they are guided to do so by law.[70] Martin Scheinin, in the introductory chapter to "*The Welfare State and Constitutionalism in the Nordic Countries*" observes that "[p]ublic authorities may interfere with the rights of individuals only upon authorisation in the law."[71] Secondary legislation needs to be in accordance with law in order to be valid. The

[69] Schram, Gunnar G. *Stjórnskipunarrétur*, p. 287-288.

[70] Hreinsson, Páll. *Lagaáskilnaðarregla atvinnufrelsisákvæðis stjórnarskrárinnar*, p. 401-402.

[71] Scheinin, Martin. *The Welfare State and Constitutionalism in the Nordic Countries*, p. 18.

executive branch is supposed to enforce known laws, not create them. The Rule of Law makes strong requirements regarding clarity and guidance from acts enabling secondary legislation if the secondary legislation is to interfere with rights and freedoms.

Most legislation in Iceland, as in other western nations, is delegated legislation, and usually the Courts see no problem. There are lesser requirements to be fulfilled in order to delegate legislative power to the executive branch, if the delegated legislation is not meant to restrict rights and freedoms. It is evident that when rights and freedoms are to be restricted with secondary legislation, there is a greater need to avoid giving governmental authorities extensive powers.

Now we will investigate the requirements that must be fulfilled in order to legitimately restrict the right to work, protected by Article 75 of the Icelandic Constitution, with secondary legislation.

# CHAPTER 4. DELEGATION OF LEGISLATIVE POWER AND THE RIGHT TO WORK

Article 75 of the Constitution states:

> Everyone is free to pursue the occupation of his choosing. *This right may however be restricted by law*, if such restriction is required with regard to the public interest.[72]

Strict requirements must be fulfilled in order to restrict the right to work with secondary legislation. It is protected by Article 75, which contains a special "rule of law" or "principle of legality" guarantee. The right to work will only be "restricted by law", and the word law in the article refers to acts from *Althingi*. As we saw in our discussion of the limits of permissible delegation in Chapter 3.3., Article 75 is one of many such articles.

The requirements for restricting the right to work with secondary legislation may best be understood by looking at the cases that deal with delegated legislation and restrictions on the right to work. As we will see, the Supreme Court has not been entirely consistent when dealing with the limits of permissible delegation in this context. Yet we can still draw from the cases fairly clear rules, although they may have been violated at times. We will look at seven cases that we will refer to with the following names: (i) the *Frami* case; (ii) the *Samherji* case; (iii) Ozone Depleting Gases case; (iv) the Quota case; (v) the *Stjörnugrís* piggery case; (vi) the Lap Dance case; and (vii) the *Atlantsskip* case.

[72] Emphasis added.

## 4.1. *Frami* case *Hrd.* 1988:1532

In the *Frami* case *Hrd.* 1988:1532, regulation no. 320/1983, Article 8(1), enabled under Article 10 in Act no. 36/1970, enforced taxi drivers to be members of the union *Frami* in order to be allowed to work. The Supreme Court said that Article 75 (then Article 69) of the Constitution, protected the right to work, and that the right would only be restricted by law.[73] The word "law" according to the Supreme Court, referred to act(s) coming from *Althingi*. Regulations in and of themselves did not suffice to limit the right to work. Nowhere in Article 8 of the enabling act was it stated that taxi drivers needed to be members of a union in order to have the right to work. Therefore the provision in the regulation enforcing taxi drivers to be in the union was to be disregarded.[74]

We can see that in the *Frami* case *Hrd.* 1988:1532, the Supreme Court understands the "except by law" provision of Article 75 (then 69) in the Constitution as requiring an act from *Althingi* in order to restrict the right to work. This case was a turning point in the history of the interpretation of the "except by law" provision (rule of law guarantee) of Article 75 (then 69) of the Constitution.[75] In older cases, secondary legislation could be used more freely

[73] Article 69, protecting the right to work, as it was before the constitutional amendments in 1995, was not identical to the current Article 75, but was fundamentally them same. It contained an "except by law" provision, with a special "rule of law" guarantee, and restrictions to the right to work could only be made if required by public interest.

[74] Gunnlaugsson, Jón Steinar. *Um fordæmi og valdmörk dómstóla*, p. 94-95.

[75] Hreinsson, Páll. *Lagaáskilnaðarregla atvinnufrelsisákvæðis stjórnarskrárinnar*, p. 409.

to restrict the right to work.[76] In a case from 1984, *Hrd.*1984:1126, for example, a ministerial agency was allowed to revoke a permission to drive a taxi on the grounds of Article 8(3) of regulation no. 214/1972, where it said that taxi drivers that did not use their working permission for 6 consecutive months could lose it. This regulation was enabled by Article 10 of Act no. 36/1970 where it was said that the Ministry of Communications was to make further rules concerning the implementation of the act. There was nothing in the enabling act about how, when or if taxi drivers' licenses were to be cancelled. Despite the absence of such a provision, the decision to revoke the working permission on the basis of the regulation was upheld.[77] According to the reasoning of the *Frami* case *Hrd.* 1988:1532, which was decided four years later, this would not have been permitted.

In cases from 1986 and 1987, the Diesel car case *Hrd.* 1986:462 and the the Exchange rate case *Hrd.* 1987:1018, the Supreme Court stated that there needed to be restraints on the discretionary power of the Minister if he were to impose a tax by a regulation due to the "except by law" provisions in Article 40 and Article 77, as they were then in the Constitution. In the Diesel car case, the Minister of Communications was allowed to decide with a regulation to charge cars that were not driven by petrol for each driven kilometre. Since there were no restraints on the Minister concerning the amount to be charged, the power to impose taxes had been delegated in violation of Article 40 in the Constitution. In the Exchange rate case, the Icelandic *Króna* had been

[76] Hreinsson, Páll. *Lagaáskilnaðarregla atvinnufrelsisákvæðis stjórnarskrárinnar*, p. 405-406. Hrd 1961:359 and Hrd 1964:59

[77] Hreinsson, Páll. *Lagaáskilnaðarregla atvinnufrelsisákvæðis stjórnarskrárinnar*, p. 407.

devalued and the fishing enterprise Ú was supposed to pay arbitrage. They wanted to be refunded on the grounds that the Minister of Fisheries had been given authority to decide which products were to be taxed. The Supreme Court held that the Minister had only been given permission to make exceptions for few products regarding the tax based on objective valuation. The delegation had therefore not been too broad.[78]

At this point in time, the Supreme Court seems to interpret the meaning of the "except by law" provision of Article 40 and Article 77, and the "except by law" provision in Article 75 (then 69) in the Constitution protecting the right to work differently. As we have seen, the Court had held that the right to work had been lawfully restricted by delegated legislation without there being restraints on the discretionary power of the Minister in the enabling act until the *Frami* case in 1988.

In his book, *Um lög og lögfræði*, Sigurður Líndal discusses three cases from this time dealing with the delegation of taxing power. Those were the Kjarnfóðursgjald case *Hrd.* 1985:1544, where the delegation of taxing to an interest group was unlawful, the Diesel car case *Hrd.* 1986:462 and the Exchange rate case *Hrd.* 1987:1018.[79] Sigurður Líndal asks if these cases tell us anything about the delegation of legislative power in general. He states that there are no reasons to believe that different rules ought to apply about delegation of legislative power to Ministers to do *anything* that would burden or repress. If the government is to limit freedom or repress citizens or

[78] Líndal, Sigurður. *Um lög og lögfræði*, p. 124-126.

companies, there is the same need to avoid giving governmental authorities broad powers, as in the case of levying taxes. [80] It is submitted that this view is correct. From the time since these cases were decided, the Supreme Court has demanded that acts enabling secondary legislation to restrict rights and freedoms, restrain the discretionary powers of Ministers. This has been done, most of the time, on the basis of the "except by law" provisions in the Constitution we talked about in Chapter 3.3. concerning the limits of permissible delegation. The Court has heightened the requirements for guidance in this context, as we will see in the subsequent right to work cases.

## 4.2. *Samherji* case *Hrd.* 1996:2956

In Article 1 of Act no 4/1988 concerning export permission, the Minister of Foreign Affairs was given the ability to decide that types of goods could not be exported from the country except when permitted. In Article 2, the Minister was allowed to make further rules concerning the implementation of the act.

According to Article 2 of regulation 70/1993 enabled by Article 2 of Act no. 4/1988, authorization was needed to export certain seafood products. The fishing enterprise *Samherji* complained that legislative power had been delegated in violation of Article 75 (then Article 69) and that its right to work had been unlawfully infringed.[81]

The Supreme Court reiterated what was said in the *Frami* case *Hrd.* 1988:1532, that the right to work would only be restricted by law (acts from

[80] Líndal, Sigurður. *Um lög og lögfræði*, p. 127-128.

[81] Hreinsson, Páll. *Lagaáskilnaðarregla atvinnufrelsisákvæðis stjórnarskrárinnar*, p. 409-410.

*Althingi*) according to Article 75 of the Constitution.[82] It said that the provision in the Constitution saying that the right to work could be restricted by law meant that the legislature could not delegate unrestrained discretionary power on this issue to the Ministry of Foreign Affairs. The act enabling the regulation had to contain fundamental principles concerning the limits and scope of the necessary restrictions that would guide the Minister of Foreign Affairs.[83] In Act. no. 4/1988, no such principles were to be found, and the Minister of Foreign Affairs had been given a full discretionary power to decide what conditions should be met in order to obtain authorization to export, and when such authorization was needed. The delegation was considered too extensive, and therefore unlawful. This case represents a strong reinforcement of the law as set down in the *Frami* case.

## 4.3. Ozone depleting gases case. *Hrd.* 403/1998.[84]

The Minister of Environment had permission under Article 29(2) of Act no. 52/1988 concerning dangerous chemicals, to regulate emissions of Ozone depleting gases, in accordance with international commitments. This meant that he could therefore limit importation of ozone depleting substances.

In this case the Court held that since the right to work is protected by Article 75 of the Constitution, the Minister of Environment (and the Food Agency of

[82] Gunnlaugsson, Jón Steinar. *Um fordæmi og valdmörk dómstóla*, p. 94-95.

[83] In other words, there had to be some kind of a frame within which the Minister was allowed to operate

[84] Cases decided after 1997 are referred to by their case numbers

Iceland) did not have unrestrained discretionary power to decide how to restrict imports.

The enabling act was clear concerning the purpose that was to be achieved. It was to limit the use of chemicals that could have a negative impact on the environment. But it said nothing about the scope of the restrictions and it was unclear about the ways in which the Minister was to restrict the imports.

In the regulation that was issued, the importation quotas were to be decided in the light of the amount of imports in 1989, giving those that had imported the most in 1989 the largest quota. The company X applied for a quota in 1995, 1996 and 1997. It did not receive the quota hoped for. Those who were in business before 1989 were in a better position than others. Nothing in Act no. 52/1988 concerning dangerous chemicals or in the international commitments allowed the Minister to restrict the imports in this way, favouring those that were in business before 1989, and therefore the restrictions were unlawful and the Court decided in favour of the company X.

It was nevertheless accepted by the Court that the Minister could have limited the importation based on the delegation, had he done it in a *non-discriminatory* way, in spite of the fact that the enabling act provided little guidance concerning the scope of the restrictions and the methods to be used. The Court explicitly stated that Article 29(2) of the act, where the Minister is given the task of regulating, should have been clearer.

Páll Hreinsson says that in this case the Court made lenient demands about guidance.[85] This is because that the Court admitted that the Minister could have restricted importations, had he done it in a non-discriminatory way, even though there was nothing in the enabling act about how the restrictions were to be carried or about out the scope and limits of the restrictions, as was required in the *Samherji* case. The rule set forth in the *Frami* case, that regulations in and of themselves do not suffice to limit the right to work, is nevertheless reinforced.

## 4.4. Quota case *Hrd.* 12/2000

Article 3(1) of Act no. 38/1990 stated that the Minister of Fisheries should make a regulation in which the catch limits for certain species of fish was to be found. The captain of the boat *Vatneyri,* who was prosecuted for fishing without a quota, and the chairman of its fishing enterprise, claimed that this constituted an unlawful delegation of legislative power in violation of Article 75 of the Constitution.

The Supreme Court did not agree on several grounds. The goal and the purpose for the restriction were clear – that the catching limits were to be decided in order to guarantee maximum sustainable yield. This was not stated directly, but indirectly in Article 1 and 3(1), and it was also supported by the *travaux préparatoire*. The enabling act contained rules concerning how to restrict fishing, the scope of the restrictions, and how to divide the quota. Therefore the enabling act contained the fundamental principles concerning

[85] Hreinsson, Páll. *Lagaáskilnaðarregla atvinnufrelsisákvæðis stjórnarskrárinnar*, p. 419.

the restrictions and the Supreme Court said that the provision did not give too extensive discretionary powers to the Minister of Fisheries so as to violate the "except by law" provision in Article 75 of the Constitution.[86]

Here the conditions laid out in the *Samherji* case are met according to the Court. The enabling act gives guidance regarding the scope of the restrictions, the purpose of them and how to restrict fishing. The case will be discussed further in relation to the *Stjörnugrís* piggery case to which we now turn.

## 4.5. *Stjörnugrís* piggery case *Hrd* 15/2000.

In this case, Article 6 in Act no. 63/1993, which regulates environmental impact assessment, was held to be unconstitutional, breaching Article 72,[87] protecting private property, and Article 75, protecting the right to work. It contained an unrestrained and therefore an excessively broad delegation of legislative power to the executive branch.

The company *Stjrönugrís* had bought land in the west of Iceland, and had made preparations in order to build a large piggery for 20.000 pigs. On the basis of Article 6 the Minister of Environment had ordered *Stjörnugrís* to postpone the construction until an environmental impact assessment had been made. The problem, according to the Court, was that there were no

[86] Hreinsson, Páll. *Lagaáskilnaðarregla atvinnufrelsisákvæðis stjórnarskrárinnar*, p. 412 - 413.

[87] Article 72 of the Constitution:
"The right of private ownership shall be inviolate. No one may be obliged to surrender his property unless required by public interests. *Such a measure shall be provided for by law*, and full compensation shall be paid." (Emphasis added).

substantive rules to guide the Minister of Environment in the act apart from the general description of the purpose of the act, contained in Article 1. Consequently, the delegation was too wide and unlawfully violated *Stjörnugrís'* property rights and working rights.[88]

The "except by law" provisions in Article 72, protecting private ownership, and in Article 75 protecting the right to work were both according to the Supreme Court, to be understood as saying that the legislature could not delegate unrestrained discretionary power to the executive branch in these matters and that the enabling act had to contain the fundamental principles concerning the limits and scope of the necessary restrictions. This of course sounds familiar to us by now.[89]

Páll Hreinsson claims that the Supreme Court was wrong in saying that *no* substantive rules existed to guide the Minister of Environment in his role under Article 6. It stated that the Minister could, if advised to do so by the "planning supervisor", decide that operations that were not listed as required to undergo environmental impact assessment in Article 5 of the Act, but might have "sizable effects on the environment, natural resources, or the community," ought to undergo assessment. He was only to call for environmental impact assessment if these requirements were met. He therefore had some guidance, unlike in the *Samherji* case.[90]

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[88] Jóhanssdóttir, Aðalheiður. *Umhverfisvernd í gíslingu rökvillu? Hugleiðingar um mat á umhverfisáhrifum*, p. 179-180.

[89] Gunnlaugsson, Jón Steinar. *Um fordæmi og valdmörk dómstóla*, p. 96.

[90] Hreinsson, Páll. *Lagaáskilnaðarregla atvinnufrelsisákvæðis stjórnarskrárinnar*, p. 415-416.

It is also interesting to compare what the Court says regarding the purpose of the act in the Quota case and the *Stjörnugrís* piggery case, cases that were decided only few days apart. One of the reasons the delegation was lawful in the Quota case was that the purpose of the enabling act was said to be clear, and provided guidance. One of the reasons the delegation in the *Stjörnugrís* piggery case was considered unlawful was that the purpose as stated in the enabling act was too vague and did not provide meaningful guidance.

In the Quota case, the purpose of the catching limits, as set forth in the enabling act, was to guarantee maximum sustainable yield according to the Court in the Quota case. This was however not stated directly in Act no. 38/1990. Article 1 talked about “advantageous utilisation” and Article 3(1) stated that the regulation concerning the catching limits was to apply to species that necessarily needed protection.

The purpose of the Environmental Impact Assessment Act no. 63/1993, was, according to Article 1, to guarantee that before operations that could have a sizable impact due to their location, nature or scope on the environment, natural resources, or the community, were to take place, an environmental impact assessment would be made, and to ensure that such assessments would become the ordinary procedure in planning.

It is not easy to see why the purpose is any clearer in the enabling Act. no. 38/1990 in the Quota case than in the enabling Act no. 63/1993 in the *Stjörnugrís* piggery case. The alleged purpose of guaranteeing the maximum sustainable yield was not even stated directly. The requirements concerning the clarity of the purpose are obviously much stricter in the *Stjörnugrís* piggery

case than in the Quota case. In the *Samherji* case, where the Supreme Court talked about the need for principles concerning the scope and limits of the restrictions, just as in the *Stjörnugrís* case, no purpose was stated in the enabling act at all. We may conclude by emphasising that the Supreme Court makes stricter requirements for the delegation to be valid in the *Stjörnugrís* piggery case than in previous cases.

## 4.6. Lap dance case *Hrd.* 542/2002

The meaning of the "except by law" provision in Article 75 has been illuminated by our discussion of the cases above. The prerequisite for delegating power to restrict the right to work is that *Althingi* has fulfilled its duty to make the fundamental principles concerning the restriction. *Althingi* must be the policy maker. The right work will only be restricted by law, if public interests require it, according to Article 75, and so it must be *Althingi* that decides what is in the public interest, not governmental authorities. The purpose for the restrictions must be stated in the enabling act, giving guidance to the executive branch. *Althingi* has to set up a frame, restraining the discretionary power of the executive authority regarding the scope and limits of the necessary restrictions, and it must guide the executive concerning how they are to restrict the right.

That being said, there is one recent Supreme Court decision about the delegation of legislative power and the right to work that seems to contradict our findings so far. We will refer to this case as the Lap dance case *Hrd.* 542/2002. The council of Reykjavík had amended a police resolution, as

enabled by Act no. 67/1985 about restaurants and hotels, in order to ban strip dancers from performing in the midst of the customers (i.e. walking around in the audience) and to ban private performances, (i.e. lap-dances).

Article 9 of Act no. 67/1985 lists the categories of restaurants dealt with in the act. One of the categories are “night clubs”, referred to in paragraph I. “Night clubs” are said to be clubs where the main focus is on selling alcohol and showing professional strip dances. In other words “night clubs” according to the article are “strip clubs”, and therefore there is no doubt about the legality of professional stripping and strip clubs. In Act no. 36/1988 concerning police resolutions, strip dance is not mentioned explicitly.

A strip club questioned the lawfulness of the amendments banning private performances and performing in the midst of the clients. One of the things that the strip club built their case on was the fact that the right to work would not be restricted except by law according to Article 75 of the Constitution. They pointed out that strip clubs were legal and so was professional stripping. The right to work was protected by Article 75 of the Constitution, and could only be restricted by law. That meant that it would only be restricted by law from *Althingi* (Article 2 of the Constitution). *Althingi* could not delegate unrestrained discretionary power to restrict the working freedom of strippers and strip clubs. *Althingi* had to set out the fundamental principles concerning the limits and scope of the necessary restrictions.[91] In the Act no. 67/1985 about restaurants and hotels, and Act no. 36/1988 about police resolutions, no such

[91] See the *Frami* case, the *Samherji* case, the *Stjörnugrís* piggery case for instance.

principles were to be found. The needed “frame”, according to the strip club, was missing.

The Supreme Court said that Article 3 in Act no. 36/1988 regarding police resolutions permitted rules concerning public order and morals. Public places are defined as to include places that are open to the public, such as restaurants. According to Article 3(2) in the police resolution of Reykjavík, the police had to preserve law and order in restaurants, as elsewhere. Private performances are preformed in private rooms within the strip clubs, and therefore cannot be observed by the police. Easy surveillance by the police was considered necessary to prevent prostitution and other illegal activates that are probably, according to studies that the Supreme Court considered, associated with the strip clubs. Banning private performances and banning stripers to walk around where the audience is seated made surveillance by the police easier. They can then better guarantee compliance with public order and morals, and stop illegal activities, such as prostitution.

The lap dance case contradicted the other cases. No reasons were offered as to why the right to work could now be restricted through secondary legislation, without there being a clear guidance in the enabling act concerning the limits and scope of such restrictions.

Will the Lap dance case turn out to be a return to older ways where the right to work could be restricted rather easily through secondary legislation? It is submitted that this is probably not the case. The “except by law” provision of Article 75 will continue to be understood in the light of cases like the *Frami*

case, the *Samheri* case, the Quota case, and the *Stjörnugrís* piggery case. The Lap dance decision will most likely be seen as an isolated instance, as an exception, probably caused by the fact that strip dance is a particularly sensitive social issue.[92]

The "except by law" provision of Article 75 of the Constitution cannot be understood in complete isolation. It must be seen in the light of the other similar "except by law" provisions in the Constitution, prohibiting delegation of legislative power to restrict freedoms.[93] Although there might be slight differences between the articles, they ought to be seen as making close to equally strict requirements for delegating legislation. There is a similar need to avoid giving governmental authorities broad powers to restrict the right to work, as to restrict privacy or the freedom of expression or the freedom of association etc. And the Supreme Court has not become lenient when dealing with delegation of legislative power to restrict freedoms in the aftermath of the Lap dance case, as we can see for example in the deCode database case.

In the deCode database case *Hrd.* 151/2003, the biotechnology company deCode was promised access, or monopoly control, over Iceland's health records, in order to combine family trees with DNA samples to find disease-causing mutations by Act no. 139/1998. People could block the company from obtaining their health records. However, a women objected not only with the regard to her own records but also with regard to the right of deCode to get her dead father's data, because that would infringe her privacy, since she

[92] Gunnlaugsson, Jón Steinar. *Um fordæmi og valdmörk dómstóla*, p. 99.

[93] Spanó, Róbert. *Stjórnarskráin og refsiábyrgð: (síðari hluti) meginreglan um skýrleika refsiheimilda*, p. 35.

shared half of his DNA. The Supreme Court ruled in her favour. The Court said that according to Article 71 of the Constitution,[94] *Althingi* itself had to guarantee the protection of personal privacy. In the act governing the creation of the database it was stated that no one could use the database to discover anything about the identity of individuals. The information was to be coded and the supervision was entrusted to official bodies and agencies and the Ministry of Health and Social Security that were to insure that individual privacy would not be infringed. The court held, however, that this was not enough. *Althingi* was not fulfilling its duty to guarantee privacy: since the act did not give directions in enough detail about how this would be guaranteed by the Ministers and others, *Althingi* had delegated legislative power too broadly.

## 4.7. Atlantsskip case *Hrd.* 174/2004

We will now look at the *Atlantsskip* case, *Hrd.* 174/2004. The Ministry of Foreign Affairs issued regulation no. 493/2003. It was enabled under Act no. 82/2000 which concerns the implementation of certain aspects of a treaty between the United States and Iceland from 1986. The treaty concerned the right of United States-flag carriers and Icelandic shipping companies to compete for the transportation of United States military cargo between the United States and Iceland. The Minister was to make further rules concerning Icelandic shipping companies.

[94] Article 71 (1): Everyone shall enjoy freedom from interference with privacy, home, and family life.

In Article 2-b of the regulation issued by the Minister, no. 493/2003, one of the requirements for ships to be considered Icelandic included that the crew would be employed by the Icelandic company that was making use of the ship. If not, the ship was not eligible for transporting the military cargo.

This limited the choice *Atlantsskip* had for its business arrangements, and such limitations were not lawful without clear guidance in the act about the scope and substance of the limitations. This echoes similar statements from the *Samherji* case, the Quota case and the *Stjörnugrís* piggery case. In these cases, it was stressed that the enabling act needed to contain fundamental principles concerning the scope and limits of the necessary restrictions. What is however odd about the *Atlantsskip* case is that the Supreme Court does nowhere refer to Article 75 and its “except by law” provision, in spite of the fact that the council for *Atlantsskip* did to a large extent build their case on Article 75.

## 4.8. Concluding remarks

We can see that the Supreme Court has put forth three main requirements that must be fulfilled by *Althingi*, if it is to let the executive branch restrict the right to work with secondary legislation. The enabling act must contain clear guidelines concerning the purpose of the restrictions, the way in which the restrictions are to be carried out, and principles that define the scope and

limits of the necessary restrictions.[95] The Court has however not been consistent, and sometimes it appears to be possible to delegate legislative power in order to restrict the right to work, without fulfilling all the requirements.

[95] Hreinsson, Páll. *Lagaáskilnaðarregla atvinnufrelsisákvæðis stjórnarskrárinnar*, p. 418-420.

# CONCLUSION

Part I of the thesis dealt with the separation of powers. We saw that the separation of powers in Iceland is indeed rather weak, especially in relation to the close connection between the government and *Althingi.* There is of course always some interdependence between the executive and legislative branches under a parliamentary system, although the degree of connection varies between countries. The branches are interdependent. They are not confined to their own proper functions only and there are people that are members of more than one branch at the same time. The pure doctrine of separation of powers is rarely held and has never been put into practice, so the impurities in separation are by no means unique to Iceland.

Article 2 of the Constitution, where the power of the Icelandic state is separated, states that *Althingi* and the President hold the legislative power, while the President and other governmental authorities hold the executive power. The right to work will not be restricted except by law, according to the "except by law" provision of Article 75 of the Constitution. As a result, *Althingi* cannot delegate unrestrained discretionary power to the executive branch when the right is to be restricted. Our discussion of relevant cases in Chapter 4 shows that the Supreme Court has put forth three main requirements that must be fulfilled by *Althingi* if it is to let the executive branch restrict the right to work with secondary legislation.

Firstly, the enabling act must contain clear guidelines concerning the purpose of the restrictions. This may be drawn from Article 75, which says that the

right to work may be restricted by law, "if such restriction is required with regard to the public interest". Since Article 75 is requiring primary legislation, the policy concerning the goals of the restrictions, what is in "public interest", must be decided by *Althingi* and not by the executive branch. There does not have to be a special provision in an act enabling the secondary legislation spelling out the purpose in particular. It can be enough if the purpose can be gathered from articles in the act and the *travaux preparatoire*, as was done in the Quota case. In the *Stjörnugrís* piggery case, the purpose was not thought to be clearly enough stated. [96]

Secondly, there must be a guidance concerning how, or the way in which the restrictions are to be carried out. In the Quota case for example, one of the reasons for which the delegation was lawful, was that the enabling act provided guidance concerning how to divide the quota. In the Ozone depleting gases case, there was nothing in the act that permitted the restriction of imports in the "way" it was done, although in that case, it would have been enough for the Minister to do it in a non-discriminatory fashion, even though there was not a clear guidance concerning how he was to do this.[97]

Finally, the enabling act must contain guidance concerning the scope of the necessary restrictions.[98] The delegation in the *Samherji* case, *Stjörnugrís* piggery case and the *Atlantsskip* case were unlawful because guidance regarding the scope of the necessary restrictions was lacking.

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[96] Hreinsson, Páll. *Lagaáskilnaðarregla atvinnufrelsisákvæðis stjórnarskrárinnar*, p. 418.

[97] Hreinsson, Páll. *Lagaáskilnaðarregla atvinnufrelsisákvæðis stjórnarskrárinnar*, p. 418-419.

[98] Hreinsson, Páll. *Lagaáskilnaðarregla atvinnufrelsisákvæðis stjórnarskrárinnar*, p. 419-420.

# BIBLIOGRAPHY

## Books, articles


Björnsson, Arnljótur. *Skaðabótaréttur*. Hið íslenska bókmenntafélag. Reykjavík 1986.

Gunnlaugsson, Jón Steinar. Um fordæmi og valdmörk dómstóla. Háskólinn í Reykjavík. Reykjavík 2003.

Hreinsson, Páll. *Lagaáskilnaðarregla atvinnufrelsisákvæðis stjórnarskrárinnar.* Afmælisrit til heiðurs Sigurðar Líndal, Reykjvaík, 2001, p 399-421.

Hreinsson, Páll. *Stjórnsýslulögin.* Skýringarrit. Forsætisráðuneytið. Reykjavík 1994.

Jóhanssdóttir, Aðalheiður. *Umhverfisvernd í gíslingu rökvillu? Hugleiðingar um mat á umhverfisáhrifum.* Tímarit lögfræðinga. Vol. 51, No. 3, 2001, p 155-201.

Jónsdóttir, Svandís Nína. *Samræmi laga og stjórnarskrár: Afstaða íslenskra fræðimanna til úrskurðarvalds dómstóla*. Stjórnmál og stjórnsýsla. Veftímarit. Vol. 1, No. 1, 2005, p. 81-106.

Líndal, Sigurður, *Um lög og lögfræði*. Hið íslenzka bókmenntafélag. Reykjavík 2003.

Líndal, Sigurður. *Stjórnskipuleg staða forseta Íslands*. Skírnir, Tímarit Hins íslenska bókmenntafélags, Vol. 166 (autumn 1992), p 425-439: *Stjórnskipunarvald forseta Íslands*. Útvörður, Byggðahreyfingin Útvörður, Vol. 8, No. 1, p. 25-30. Cited in Schram, Gunnar G. Stjórnskipunarrétur 2nd edition. Háskólaútgáfan. Reykjavík 1999.

Logadóttir, Sigríður. *Lög á bók*. Yfirlitsrit um lögfræði. Mál og menning. 2.ed Reykjavík 2005.

Magnússon, Þorsetinn. *Alþingi í ljósi samþættingar löggjafarvalds og framkvæmdavalds.* Tímarit Lögfræðinga. Vol. 55, No. 2, 2005, p. 27-59.

Montesquieu, Charles de Secondat. *The Spirit of the Laws*. English translation by Thomas Nugent, 1752. Batoche Books. Kitchener. 2001.

Oddson, Davíð – *Valdheimildir Löggjafans og úrskurðarvald dómstóla.* Tímarit Lögfræðinga. Vol. 52, No. 1, 2002, p. 7-14.

Roosevelt, Franklin F. D. State of Union message in 1944. Cited in Griffin, James. *Discrepancies Between the Best Philosophical Account of Human Rights and the International Law of Human Rights.* Proceedings of the Aristotelian Society. Vol. 101, No. 1, 2001, p. 133-156.

Scheinin, Martin. *Welfare State and Constitutionalism – Nordic Perspectives*. Nordic Council of Ministers. Copenhagen 2001.

Schram, Gunnar G. *Stjórnskipunarréttur* 2nd edition. Háskólaútgáfan. Reykjavík 1999.

Shapiro, Martin. *On Law, Politics, and Judicialization*. Oxford University Press. Oxford 2002.

Spanó, Róbert. *Stjórnarskráin og refsiábyrgð: (síðari hluti) meginreglan um skýrleika refsiheimilda*. Tímarit lögfræðinga Vol. 55, No. 1, 2005, p. 5-69

Spanó, Róbert. *Um lög og rétt*. Bókaútgáfan Codex. Reykjavík 2006.

Tómasson, Eiríkur. Thoarensen, Björg. Kristinsson, Gunnar Helgi. Stefánsson, Kristján Andri. *Skýringar við Stjórnarskrá Lýðveldisins Íslands*, report from 2005 done at the request of the committee about revising the Constitution of the Republic of Iceland.

Tómasson, Eiríkur. *Hvernig á að skýra fyrirmæli 2. gr. stjórnarskrárinnar um að Alþingi og forseti Íslands fari saman með löggjafarvaldið?* Úlfljótur Vol. 57, No. 3, 2004, p. 333-342.

Vile, M.J.C. *Constitutionalism and the separation of powers*. Clarendon Press. Oxford 1969.

Vilhjálmsson, Þór, p. 24. *Fjögur seminarerindi um Stjórnarskrána.* Úlfljótur. Vol. 22, No. 1, 1969, p. 27-34.

Þorgeirsdóttir, Herdís. *Togstreita markaðar og réttarríkis*. Bifröst: Rit Lagadeildar Háskólans á Bifröst 2006, p. 235-287.

## Other Sources

Einarsson, Eiríkur Bergmann. *Leiðtogaræði*. Article published in the newspaper Fréttablaðið, 9/2. 2005. Found at Einarsons' home-page *http://www.hi.is/~eirikurb/2005/leidtogaraedi.htm*

Ford, Gerald R. Found at brainyquote.com. http://www.brainyquote.com/quotes/authors/g/gerald_r_ford.html

Gylfason, Þorvaldur. *Lýðræði í skjóli laga.* Article published in the newspaper Fréttablaðið, 24. júní 2004. Found at the Gylfasons' homepage. http://www.hi.is/~gylfason/valdskipting.htm

Hlöðversdóttir, Bryndís. Talk given at meeting about democracy hosted by Samfylkingin, 29th of December 2000. Found at the web page Framtid.is http://www.framtid.is/files/bahjgdahfb/Bryndis_Hlodversd_-_lydradisverkefni.doc

Jónsson, Örn Bárður. Sermon from 19th of June 2005. Found at the web-page Trúin og Lífið. *http://tru.is/postilla/2005/06/daemdir-domarar/*

Morgunblaðið (Icelandic daily newspaper), 29. March. 1996.

Official web-page of the Icelandic government. http://raduneyti.is/rikisstjorn/

Þórðason, Sigurjón. The home-page of Þórðason, Member of *Althingi.* http://www.althingi.is/sigurjon/safn/2006_11.html

## Table of Cases

Hrd. = Supreme Court decisions

Lyrd. = The old Supreme Court decision, *Landsyfirréttur*.

Cases from before 1997 are referred to by the year they appear in the annual case report from the Supreme Court, and by page number in the report.

Cases from after 1997 are referred to by their case number.