

SMALL CLAIMS RESOLUTION IN ICELAND: STATUS AND PROSPECTS

A preliminary report written for Iceland's Consumer Spokesman

By Ian Watson, December 2013

While it would be going too far to describe small claims resolution in Iceland as in “crisis,” there is no question that it is an important, long-unresolved issue and that the current state of affairs impairs Icelandic society. This document is a preliminary report on the situation – indeed, a draft really – produced with the limited time and resources at hand and without discussion with stakeholders. The goal is to describe the problem and some of the solutions which have been proposed, to briefly compare the way that small claims are resolved in other OECD countries, and to help call attention to Iceland’s current predicament. This report has been written in English so that it can aid outside experts on small claims resolution in understanding the situation in Iceland. The author welcomes any comments and corrections, which may be sent to ian@bifrost.is.

1. What are small claims?

Small claims are most typically monetary claims whose amount does not exceed a certain threshold. Currently in OECD countries, this threshold commonly ranges from about €2000 to €10,000.¹ Injunctive claims (those in which a court is asked to require or prohibit certain actions) can sometimes share commonalities with small monetary claims, in that they may revolve around matters in which the financial amounts at stake are relatively low and where it is in the parties’ interests to avoid the cost of a full court procedure. While “consumers” file many small claims, any legal entity may be the complainant or respondent in a small claim.

2. How are small claims generally resolved in other countries?

Independent complaint resolution services. In many countries, consumer and industry associations offer mediation services for consumer complaints. These services are operated independently and without any legal authority or foundation, but companies sometimes promise to respect the results. Those operating the service generally have a basic knowledge of consumer law that allows them to weigh the claims of the complainant and defendant. The Better Business Bureau in the United States is an example of such a service.

Arbitration and mediation. A hallmark of this kind of service is that it operates outside the judicial system, but according to professionally established codes of procedure in which arbitrators and mediators are trained and certified. These processes may take place face-to-face, or in writing; they may be binding and enforceable, or not; and they may or may not guarantee a resolution of a dispute.

1 For a table of monetary limits in the United States, see “50-State Chart of Small Claims Court Dollar Limits,” web page on the website of Nolo, <http://www.nolo.com/legal-encyclopedia/small-claims-suits-how-much-30031.html> (December 2013). The European small claims procedure currently has a €2000 threshold, but recent proposals would increase this to €10,000.

Small claims courts. Small claims courts are specialized courts (or specialized sessions of existing courts) designed for cases where the issue at stake is relatively minor. The procedures are simplified, the presence of lawyers is discouraged, the cost of going to court is relatively small, the time frame is relatively quick, and yet the judgement issued is enforceable. Although small claims courts traditionally operated on a local level, increasingly small claims procedures are designed to resolve disputes between parties who live at a distance from one another (the new European small claims procedure is an example). Classically, argumentation has been oral, but it may also be written. Typically, these courts hear only monetary claims between private parties. But some countries have procedures in place for low-value disputes between private parties and government bodies, and some also have simplified procedures for injunctive claims. While small claims courts may physically and administratively be part of the general court system, they often have more in common with non-judicial dispute resolution services.

Complaint boards. Complaint boards consist of a panel of specialists (usually at least three) who issue written opinions or rulings in response to small claims. Argumentation is generally written and the defendant has a chance to challenge the complainant's written assertions. Complaint boards are particularly common in Scandinavia. Complaint boards may operate in a limited sector (such as automobile sales or insurance) or they may be general, in which case they approximate the competence of a general small claims court. The members of the panel are frequently a mixture of people with legal training (lawyers or judges) and people with special expertise in the area of the board's operation. There may or may not be a filing fee for bringing a case before a complaint board. Complaint board rulings may or may not be legally enforceable.

Class action (also called **collective redress**). These lawsuits are filed on behalf of an entire class of plaintiffs, who need not be a party to the action and are sometimes unaware of it. At some point, an effort is made to contact all those affected by the suit and to give them the option to "opt out" and decline participation; otherwise, they are bound by any settlement. Class action lawsuits are significant from a small claims perspective because they allow relief to large groups of injured parties to whom the amounts due are so small that it does not make sense to seek redress individually.

3. How are small claims currently resolved in Iceland?

Consumers Association. In disputes between consumers and sellers of goods and services, the Consumers Association of Iceland (Neytendasamtökin) is sometimes the first stop. The association provides a "complaint service" (*kvörtunarþjónusta*) which employs three people and whose costs are largely subsidized by the Icelandic state. To make full use of the service, consumers must join the association, which costs a little over €30 per year. The service operates informally and has no legal power, but is sometimes able to resolve disputes, to get sellers to engage with consumer complaints, or at least to advise parties of their rights and obligations. The service should not, however, be thought of as a procedure by which injured

parties can seek redress. The service received 4161 contacts in 2012.² Unlike the American BBBs, the service does not publish ratings or detailed information on individual companies' compliance.

Complaint boards. The principal formal channel for small-value claims in Iceland is the array of complaint boards (*kærunefndir* or *úrskurðarnefndir*), each of which focuses on a specific type of trade or social relation. Complaint boards exist for the following sectors: insurance, banking, travel agencies, legal services, dry cleaners, dentistry, and rental and multiowner housing. There is also a complaint board for “cash and service purchases” (*lausafjár- og þjónustukaup*) which covers a wide (but still limited) and confusingly defined realm of consumer purchases, including many everyday purchases in shops, as well as home repair services.³ There is sometimes a small fee for bringing a complaint before a complaint board; even in such cases, though, most costs are subsidized by the state or by trade associations (with one exception).⁴ Some boards accept complaints only from private persons. Icelandic complaint boards do not issue enforceable judgements, but rather only reasoned opinions. These opinions are not binding on the parties. The sectors covered are not exhaustive, and although the complaint board for “cash and service purchases” does have a wide purview, there is no omnibus complaint board. If a dispute does not fall under one of the defined areas (disagreements about telephone service and billing are a common example), the only recourse is generally a full court case. As well, if the “losing” party in a complaint board case refuses to comply with the board's opinion, the only way to force compliance is to re-argue the case before a court.

Court system. The Icelandic court system is the only body in the country which can issue enforceable small claims judgements. However, the minimum cost of a court case in Iceland is currently about €3500 (about 500.000 to 600.000 kr.). Though some of these costs may be recoverable from the losing party, an unsuccessful complainant may also be held responsible for the opponent's legal expenses. Court cases also take considerable time from start to finish. There are two levels to the court system: local courts (*héraðsdómar*) and a supreme court (*Hæstiréttur*). The court system does currently recognize the concept of larger

2 “Leiðbeininga- og kvörtunarþjónusta Neytendasamtakanna: ársskýrsla 2012,” p. 4. Available at https://www.ns.is/ns/upload/files/pdf-skrar/neytendasamtokin_1&k_2012.pdf

3 There is no official list of Icelandic complaint boards, but informal lists can be found under “Listi yfir úrskurðarnefndir” on the Leiðakerfi Neytenda website (<http://www.leidakerfi.is/?q=rettaradstod/urskurdarnefndir/um-urskurdarnefndir>, December 2013) and under “Úrskurðarnefndir” on the Consumers Association website (<http://ns.is/ns/ns/ena/urskurdarnefndir>, December 2013). These websites also list a few appeals boards which allow administrative rulings by government bodies to be challenged; these are not included in the discussion above as they do not involve private disputes. Icelanders tend to use the words *kærunefnd* and *úrskurðarnefnd* indiscriminately to describe both complaint boards and administrative appeals boards which review government decisions.

4 The complaint board for legal services can require either party to a dispute to pay the other party's expenses (see 28 gr. laga 77/1998).

and smaller-value cases, in that only cases which concern a minimum level of value can be appealed to the supreme court (the 2014 threshold is 761.423 kr. or about €4750).

Debt collection. The court system is normally the only avenue for the enforcement of monetary judgements. To enforce the collection of an unpaid debt, specific forms of notice must be given and a court judgement is required. Recent changes in the law have clarified the process somewhat. But there is no simplified procedure and collection takes a long time. Creditors generally employ the services of one of several collection agencies with experience in processing the necessary paperwork as swiftly and efficiently as possible; debtors generally pay the costs of this service on top of the actual amount owed, but creditors may be held responsible in cases where recovery fails.

Class action. Icelandic law does not permit class action lawsuits (*hópmálsóknir*). Confusingly, though, a law allowing multiple plaintiffs in a civil action to establish a corporate body (*málsóknarfélag*) to pursue the action was passed in September 2010 (as law 117/2010). This law has widely been misunderstood as allowing class action. The Consumers Association, which had called for the introduction of class action for many years, mistakenly welcomed it as the long-awaited goal.⁵ A 2012 government committee on consumer affairs misunderstood the law as well (see section 6). In fact, there is still no legislation in Iceland laying down procedures for lawsuits on behalf of parties defined only by their membership in a class.

Arbitration and mediation. There is no tradition of professional arbitration or mediation in Iceland. However, there is a provision in Icelandic law which allows either a judge (at the request of the parties to a legal action), or the parties themselves, to refer a dispute to the local district commissioner (*sýslumaður*) for mediation (*sáttaumleitanir*) (107. gr. laga 91/1991). This provision was introduced in 1991 but has not actually been put into practice.⁶ In Iceland, district commissioners handle matters such as land records, probate and custody issues, notarization, passport issuance, and voting.

The European small claims procedure. Iceland is subject to many (but not all) European directives through its membership in the European Economic Area (EEA), which also includes Norway and Liechtenstein. Iceland has participated in the European Small Claims Procedure, which was implemented at the beginning of 2009 based on a 2007 directive.⁷ However, the procedure is designed for cross-border, rather than domestic disputes, the value limit is low (€2000), and its uptake has been very slow.

5 “Mikilvægt úrræði fyrir neytendur,” news item on the website of the Consumers Association, 8 September 2010 (http://www.ns.is/ns/ns/frettir/frettir_2010/?ew_news_onlyarea=&ew_news_onlyposition=3&cat_id=79799&ew_3_a_id=367338); Jóhannes Gunnarsson, “Brot úr sögu Neytendasamtakanna,” *Fréttablaðið*, 7 April 2012, p. 14.

6 The reasoning behind the introduction of the law is given in “Um 107. gr.” in the parliamentary bill proposing it (available at <http://www.althingi.is/altext/115/s/0072.html>).

7 Regulation 861/2007/EC (available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32007R0861:en:NOT>).

4. What problems do Icelanders face in resolving small claims?

No economical way to obtain an enforceable judgement. The most common situation that Icelanders find themselves in is one in which the cost of obtaining an enforceable judgement is greater than the value of the dispute – even though the interests at stake are non-trivial. The court system is too expensive, there are no arbitration or mediation options, and complaint board opinions, though affordable, are non-binding.

Debt collection requires special knowledge and incurs added financial risk.

Icelanders who are owed money cannot collect without employing the service of specialists, and doing so incurs the risk of also having to pay the high cost of these services if collection efforts fail. The author knows a lawyer, who has considerable experience with small-value debt collection between private parties, whose standard advice is that attempts at debt collection are only worthwhile for amounts above about €3000 (500.000 kr.) As elsewhere, Icelanders have an incentive to deprive others of their rights up to the cost of seeking redress. If the lawyer's assessment is correct, this incentive would apply in Iceland as long as the amount is less than €3000 – an amount that is probably higher than in other OECD countries.

Bringing an important matter before a complaint board can make the case drag on even longer and cost more. If an Icelander brings a matter before a complaint board and wins, but the opponent refuses to pay, the only way to obtain an enforceable judgement is to re-argue the matter in court. That makes the cost of justice higher than if the complainant went to court in the first place. This begs the question of whether nonbinding complaint boards sometimes do more harm (by setting complainants up for disappointment) than good. Note that the costs incurred in filing a complaint board case are generally not recoverable.

The cost to society of complaint boards is high. While the author does not yet have any data on the cost of complaint boards, it is noteworthy that their opinions are often long, detailed legal documents that are signed and reviewed by three highly trained experts, edited by a paid staff member, and published (with names redacted) on the web. These opinions, though not enforceable, are as complex as a court judgement. As well, preparing written argumentation to submit to a complaint board is time-consuming and difficult for non-lawyers. Having multiple complaint boards for multiple sectors may increase the quality of judgements, but may also reduce efficiency.

The turnaround time for complaint boards is too long. The laws and regulations governing the work of the complaint boards specify turnaround times for complaint processing: for example, eight weeks for the “cash and service purchases” board and two months for the housing complaints board.⁸ In practice, though, the boards often fail to meet these goals. For example, in 2011 and 2012 the time from initial submission to final opinion at the housing complaints board was often six to nine months. Such delays can affect whether an injured party chooses to seek redress at all. Among the factors causing these delays may be that the boards lack flexibility to respond to fluctuations in demand for their services.

In view of the foregoing, and the fact that Iceland has almost no tradition of arbitration or mediation, it is no surprise that many small-value disputes are simply dropped. Cultural

⁸ See 4. gr. reglugerðar 766/2006; 80. gr. laga 26/1994.

mores may intensify this tendency: for example, it seems that in general in Iceland, “complaining” about the quality of goods or services is somewhat frowned upon, and seen as a waste of peoples’ time rather than as valuable feedback.⁹

5. How do other countries’ systems work?

Limited resources permit only three comparisons here, but it would be interesting to add more case studies, in particular of societies whose size is more comparable to Iceland’s.

5.1. Denmark

Icelanders often compare themselves to Denmark because Iceland was long a part of the Danish realm. The comparison is especially relevant in the legal arena. The Icelandic legal system was originally modeled on the Danish system and remains much influenced by it, although ties between Iceland and Denmark have weakened in recent decades.

Complaint boards. Denmark has an active system of complaint boards (*ankenævn*). At least nineteen boards decide disputes in defined sectors, and there is an omnibus board (*Forbrugerklagenævnet*) which handles disputes not covered by any other board.¹⁰ It is hard to understand why there are complaint boards in some specific areas but not in others, and there seems to be a certain amount of haphazardness. For example, Denmark has special complaint boards for disputes involving automobiles, funeral homes, and telecommunications companies (all absent in Iceland), but there is no dispute board for dry cleaners or for property owners in multi-unit residential buildings (both present in Iceland). Some of the complaint boards seem to have been started at the initiative of industry members, who, one speculates, may thereby be able to represent their own interests better in the dispute process.

Small claims procedure. Since 2008, Denmark has had a special small claims procedure which is available for disputes with a maximum value of approximately €6700 (50,000 DKK), as well as for some injunctive claims. The cost of filing a claim is €67 (500 DKK). Judgement is promised within 14 days, and if a lawyer is used, lawyer’s fees are capped at a relatively low and affordable amount.¹¹

9 For more on this perspective see Margrét Reynisdóttir, “Auka úrbætur í þjónustu gæði veittrar þjónustu? Miða fyrirtæki í Íslensku ánægjuvuginni að því að auka gæði veittrar þjónustu með úrbótum?” (unpublished master’s thesis, University of Iceland, 2004).

10 For a list of Danish complaint boards, see “European Consumer Centres and complaints in Denmark,” web page on the web site of European Consumer Centre Denmark, <http://www.consumereurope.dk/Complaints/ECC-and-complaints-in-DK>, December 2013. On the *Forbrugerklagenævnet*, see the web pages on the website of Forbrugerrådet (<https://www.forbrug.dk/Artikler/Dine-klagemuligheder/saadanklagerdu/klagtilforbrugerklagenavnet/forbrugerklagenavnet>) and on the website of the relevant government ministry (<http://www.kfst.dk/Forbrugerforhold/Klageforhold/Forbrugerklagenavnet>).

11 See “Small claims procedure in Denmark,” web page on the web site of European Consumer Centre Denmark, <http://www.consumereurope.dk/Complaints/Small-claims-process-in-Denmark>, December 2013. This web page includes a link to the form used to file a case.

Simplified debt collection. Danish law provides for a simplified debt collection procedure (*forenklet inkasso*) for amounts under about €13,000 (DKK 100,000).¹² Before the introduction of the simplified procedure in 2005, the Danish system was similar to the Icelandic one in that a regular civil action in court was required before the collection of a debt could be enforced.¹³

Summary: Like Iceland, Denmark has an active complaints board system. However, Denmark has a much larger number of sectoral boards as well as an omnibus board which can handle complaints in all areas. Denmark also has an established small claims procedure and a simplified procedure for enforcing debts.

5.2. Germany

No small claims court. Germany does not in general appear have a simplified small claims procedure for domestic cases. Low-value civil court cases have to be processed through the lowest level of the regular court system (*Amtsgericht*).¹⁴

Mediation and arbitration is encouraged. The use of formal mediation (*Schlichtung*) in settling small-value disputes is encouraged in Germany. Mediation is significantly less costly than a court case, and can, but does not always, result in a binding judgement.¹⁵

Simplified debt collection. Germany has a simple procedure called *Mahnverfahren* for the collection of debts due. This involves filling out a form to request that notice (*Mahnbescheid*) be sent to the debtor, who has the option to contest the debt in court. If the debtor does not contest, the creditor can then file another form within six months (*Vollstreckungsbescheid*) to enforce the debt collection. The process can be initiated online at www.online-mahnantrag.de. It is significant that the system places the onus on the debtor to decide whether to initiate a court proceeding or not. To some extent, this system can be seen as functioning as a sort of small claims procedure.¹⁶

12 See “Forenklet inkasso,” web page on the web site of Danmarks Domstole,

<http://www.domstol.dk/frederiksberg/rettenssagsomraader/Pages/Forenkletinkasso.aspx>. The filing form is at <http://www.domstol.dk/Selvbetjening/blanketter/Blanketter/Betalingspaakrav.pdf>.

13 For an overview of recent developments, see “Når kunden ikke betaler,” *Iværksættelsen*, October 2005, p. 16, available at <http://www.ivaerksaetteren.dk/flx/artikler/6/naar-kunden-ikke-betaler-360>

14 See European Consumer Centre Germany, *The German Judicial System* (undated). Available at http://www.eu-verbraucher.de/fileadmin/user_upload/eu-verbraucher/PDF_Englisch/Brochures/Legal_sytem_Germany.pdf

15 See “Schlichtung,” web page on the website of the European Consumer Centre Germany, <http://www.eu-verbraucher.de/de/verbraucherthemen/rechtsdurchsetzung/schlichtung/>, December 2013; Staatsministerium [Sachsen] der Justiz und für Europa, *Schlichten ist besser als Richten*, 5th edition (2011), available at <https://publikationen.sachsen.de/bdb/artikel/10684/documents/10799>.

16 See “German judicial dunning procedure,” webpage on the website of the European Consumer Centre Germany, <http://www.eu-verbraucher.de/en/consumer-topics/enforcing-your-rights/german-judicial-dunning-procedure>, December 2013.

Summary. In comparison to Iceland, key features of the German system include an active mediation system; a simplified procedure for enforcing debts where it is the debtor who must choose to contest a debt in court; and, apparently, less reliance on complaints boards.

5.3. New York State

Each of the fifty United States has its own, somewhat different court system. The focus here is on New York State; small dispute resolution in other parts of the United States is broadly similar, though sometimes with important differences.

Better Business Bureau. This dispute resolution organization, funded by local businesses and sometimes seen as too soft on them, has chapters active across the United States and has a well-defined procedure for addressing complaints. It publishes complaint details and statistics on how well business respond to disputes, but it only handles disputes involving businesses which pay to be members of the organization. The main website is at www.bbb.org.

Small claims courts. Small claims courts have been active in the United States for decades and are well-established in the public mind. In summer 2013 the author visited a small claims court in a suburban, upstate New York municipality which met on weekday evenings a few times a month. Three cases were heard on the evening of the author's visit; before starting, the judge encouraged the parties to go out into the hall and try to resolve their disputes privately. Arguments were presented orally and a written decision (with minimal or no justification or reasoning) was mailed to the participants within two weeks. Judges are elected by town voters, and at the small claims level do not have to have formal legal training; the judge at the court the author visited was a retired police officer. The fee for bringing a case before a New York State small claims court is \$15-20.¹⁷

Debt enforcement. Monetary judgements in a small claims court can be collected by a so-called "enforcement officer" at an extra cost, usually a percentage of the amount owed plus expenses.

Mediation and arbitration via the small claims system. The professional mediation and arbitration community in the United States is strong and active. Some municipal courts in New York State strongly encourage or require the parties to a small claims dispute to go for arbitration or mediation rather than having their case heard before a judge.

Class action. Class action has a longer tradition in America than in Europe, and the typical American consumer is contacted every now and then by lawyers pursuing a class action.

Summary. In comparison to Iceland, small claims courts play a prominent role in low-value dispute resolution in New York State. The courts themselves provide routes to alternative settlement (mediation and arbitration) as well as debt collection. There is less emphasis on written argumentation or reasoned opinions, and complaint boards are absent, while class action is frequent.

¹⁷ See "A Guide to Small Claims in the NYS City, Town, and Village Courts," brochure published by the New York State Unified Court System, January 2010 revision.

6. What solutions have been proposed for small claims in Iceland?

The idea of changing small claims resolution procedures has come up in Iceland often, and it is possible to discern several recurring types of proposals. One family of proposals, generally based on Scandinavian models, recommends tinkering with the complaint-board system in various ways. Another family of proposals would strengthen the arbitration system, building on the current, but unimplemented, legislation referred to in section 3. Another type of proposal would introduce a formal small claims court or small claims procedure.

In April 1977, shortly after small claims courts were instituted in Sweden and Britain, the Icelandic parliament passed a resolution calling for the government to create legislation allowing minor civil cases to be resolved in the lower-level courts more quickly and cheaply.¹⁸ This resolution was never followed up on. After inquiries by a member of parliament in 1984, the then minister of justice promised action soon; still, nothing happened.¹⁹

In the past few years, proposals for change in small dispute resolution have been included in two public reports on the status of “consumer” affairs. One report, in 2008, was written at the request of a government ministry by the Social Science Research Institute at the University of Iceland.²⁰ The other (from 2012) was created by four staff members from three different government ministries.²¹ Unfortunately, neither report engaged deeply or diligently with the issues surrounding small claims.²² At the risk of giving these reports more weight than they deserve, one can say that the 2008 report (section 8.2) reviews the new small claims procedure in Denmark but recommends against introducing anything similar in Iceland (the authors apparently disliked the idea of simplifying the procedures for presenting evidence and did not consider arguments for why that might be a worthwhile tradeoff). The 2008 report also speaks tentatively in favor of class action lawsuits, and it favors the introduction of coordinated, general rules for all complaint boards and the option to make complaint board opinions binding if the amounts in question are very small (under 100.000 kr., then about €800). The 2012 report (sections 7-10) proposes that complaint board decisions should remain non-binding, yet does not suggest any way of obtaining an enforceable judgement at a reasonable cost – an inconsistency criticized by the Consumers Association in their review of the report.²³ In section 7, the authors labor under the same previously mentioned

18 “Tillaga til þingsályktunar um fljótverkari og ódýrari meðferð minni háttar mála fyrir héraðsdómstólum,” þingskjal 131, 110. mál (<http://www.althingi.is/altext/98/s/pdf/0131.pdf>).

19 Jón Magnússon, “Sum mál sofna í kerfinu,” *Dagblaðið Vísir*, 1 October 1986, p. 13.

20 Ragna Benedikta Garðarsdóttir, Ásdís A. Arnalds, and Friðrik H. Jónsson, “Ný sókn í neytendamálum: staða neytenda á Íslandi 2008” (Viðskiptaráðuneytið, 2008). Available at www.atvinnuvegaraduneyti.is/media/frettir/Ny_sokn_i_neytendamalum_skyrsla.pdf

21 Steinunn Valdís Óskarsdóttir et al., “Starfshópur um skipulag neytendamála desember 2012” (Innanríkisráðuneytið, 2012). Available at www.innanrikisraduneyti.is/media/frettir-2012/Skyrsla-starfshops-um-neytendamal---des.-2012.doc

22 Neither report presents carefully weighed arguments for choosing one option or another; the comparison with foreign systems is very limited, and the recommendations presented come across as relatively uninformed personal opinions rather than reasoned judgements.

23 See “Athugasemdir Neytendasamtakanna vegna skýrslu starfshóps um skipulag neytendamála sem

misconception that law 117/2010 (referred to above) established a class action procedure. They then ask, under these mistaken premises, why the procedure has not yet been used.

Gísli Tryggvason, during his tenure as Iceland's Consumer Spokesman from 2005 until the position was terminated in 2013, advocated strongly for activating the unused provision in law 91/1991 for arbitration and mediation. He attempted to gain support from Iceland's two dozen district commissioners, who, at least as the law is currently written, would be charged with managing mediation services. He argued that mediation could be faster and cheaper than bringing cases to court, and could also reduce the amount of lasting ill will between parties in a dispute, citing his 2004 master's thesis which compared mediation and court cases as dispute resolution methods.²⁴ A broad interpretation of the current law would allow for parties to a dispute to request mediation directly, without first bringing the dispute to the attention of the court. While Gísli's efforts fell largely on deaf ears, the law's provision for mediation was attractive to those involved in a separate effort to revise the legislation on divorce and custody cases. They saw mediation by the district commissioner's office as a way to speed the resolution of such cases. Draft rules for the implementation of the legislation on mediation have now been proposed and a workshop on mediation was held for district commissioners,²⁵ but still, few if any concrete steps have been taken.

In 2013, the European Union issued a directive which mandates the establishment of alternative dispute resolution services for consumers in each member state.²⁶ Assuming that this directive is judged as binding on Iceland under the EEA treaty, this may spur Iceland to revise how it handles small claims between domestic parties.

7. Small claims in Iceland as an "access to justice" issue

Internationally, the term "access to justice" is frequently used by those advocating for individuals' rights to be able to use a socially funded legal system to seek redress for their grievances. In developing countries, the goal is basic access to the judicial system, which is seen as a worthwhile target of assistance from abroad. The justice systems in wealthier countries, such as those in the OECD, are more mature, but specific gaps still exist and need

út kom í desember 2012" (18 January 2013). Available at http://www.ns.is/ns/ns/alit/umsagnir_um_log_og_reglugerdir/?ew_news_onlyarea=&ew_news_onlyposition=4&cat_id=80529&ew_4_a_id=397135

24 "Sátt hjá sýslumönnum í neytendamálum," *Morgunblaðið*, 30 September 2006 (available at <http://www.mbl.is/greinasafn/grein/1105725>); Gísli Tryggvason, "Sáttameðferð -forsenda fyrir sjálfstæðum valkost við dómstólakerfið" (unpublished master's thesis, Reykjavík University, 2004). See also a 2010 lecture by Gísli at Reykjavík University, available at <http://www.youtube.com/watch?v=umhbFEbXLO4>

25 See two web pages on the web site of the network of district commissioners (both as of December 2013): "Drög að reglum um málsmeðferð við sattaumleitun sýslumanns," <http://www.syslumenn.is/allir/sattaumleitun/malsmedferdarreglur/>, and "Sýslumenn sækja námskeið í sáttamiðlun," <http://www.syslumenn.is/frettir/nr/2478>.

26 Directive 2013/11/EU "on alternative dispute resolution for consumer disputes," available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0063:0079:EN:PDF>

to be addressed, and even mature justice systems need to keep pace with changes in society. For example, the European Union Agency for Fundamental Rights in Vienna states that its “research shows that access to justice is problematic in a number of EU Member States,”²⁷ and the agency has been particularly active in ensuring access to justice for migrants and minority groups at risk of discrimination. The EU’s efforts at ensuring the easy resolution of disputes arising from cross-border trade, especially e-commerce, can also be seen as promoting “access to justice.”

In the author’s view, the problem of small dispute resolution in Iceland can also be seen in this frame. Indeed, article 70 of Iceland’s current constitution appears to view access to the justice system as a basic right for all citizens (although it is debatable whether this article, which is based on article 6 of the European Convention of Human Rights, was really intended to ensure access to justice in non-criminal cases). From an “access to justice” viewpoint, a normally constituted, peaceful society has an obligation to design procedures that make it practically possible for one party to obtain an enforceable judgement against another party, and those who steward Iceland’s legal system have a duty to fulfill this obligation.

8. What needs to be done?

The cost of obtaining and enforcing binding judgements in Iceland needs to be reduced so that Icelanders have an incentive to seek redress for smaller grievances. Not only would this be fair to injured parties in Iceland, it would create an incentive structure that might strengthen the rule of law in Iceland. There are several different institutional designs which could achieve these goals, and other countries provide living models of these various designs.

In the author’s view, the problem is not that Icelanders have difficulty settling on one of the various types of small claims resolution procedures and implementing it. The problem is rather a lack of energy, initiative, interest, and imagination on the part of the civil servants and politicians – of all political stripes – who are charged with stewarding the Icelandic justice system, as well as a weak non-governmental advocacy sector which has neither the time, the funding, or the knowledge to lobby effectively for changes that would be in the public interest. Ultimately, none of these parties has an incentive to bring about any of the potentially sufficient changes. Positive action is often described depressively, as “costly and time-consuming,”²⁸ rather than hopefully, as important and just. Meanwhile, the needs of those injured individuals and corporations which seek redress for their grievances remain as pressing as ever.

27 “Access to justice,” web page on the web site of the European Union Agency for Fundamental Rights, <http://fra.europa.eu/en/theme/access-justice>, December 2013.

28 “Starfshópur um skipulag neytendamála desember 2012,” section 7.