

Kári á Rógvi, editor

A Faroese Judiciary

The Faroese have for ages convened their Parliament. It is common knowledge that the word “ting” is used to describe the legislative assembly.

However, every Tuesday morning another institution also called “ting” is convened that handles another aspect of the old “ting”. That is the weekly ordinary session of the Faroese Court (confusingly, a Danish institution). Although lying in the vicinity of the Parliament, the court is very far from the minds of most MPs. And yet, the present Government Coalition strives towards the objective of transferring both the court of first instance and the appeal function to Faroese control. Let it be said immediately that I fully support this transfer of the judiciary up to appeal level. I only wonder why it has not happened a long time ago. Such an arrangement is strangely missing from the Home Rule Compact. The Faroese should have been united in requesting that all aspects of the ancient “Ting’s” powers be restored, including the judiciary, control and finance powers as well as the legislative, albeit with a more modern division of powers.

The judiciary handles historically and functionally several tasks. The judiciary has the independent power of adjudicating controversies. These include criminal, administrative and private disputes. The judiciary has at the same time the power to correct the law, the authority to decide questions of interpretation, settle conflicts between different sets of rules and to develop case law. The judiciary powers, lastly, include the power to uphold the constitutional structure as it may be. This authority to adjudicate, create case law and interpret the internal constitution should rest firmly with well-organised Faroese institutions. This in itself does not prevent Faroese recognition of federal or international courts.

We can analyse the present system that is already partially Faroese. It seems more than a little arbitrary, which review bodies get to hear which public cases. Some matters may go before administrative tribunals, others have recourse to higher placed offices, some will be referred to arbitration, others will be dealt with as private disputes in court, and some as criminal cases. The division of powers between the executive and the judiciary – and between Land and Realm – does not preclude Danish judges from sitting on Faroese administrative tribunals or arbitration tribunals.

To take over responsibility for the judiciary should, therefore, be combined with a comprehensive study of all legal review powers. Most important is to transform the tribunal system into proper adjudication of administrative matters. All cases involving public administration now being dealt with under the various, and seemingly randomly picked, procedures mentioned above should be adjudicated in the same way. The present Office of Tribunals should be transferred into a division of the reformed Faroese Court and be given adequate powers and comprehensive procedures. We should combine the duty to inform the cases and the expert and lay members that the tribunals have with the independence of the courts.

We are also resurrecting the Faroe Law Court – the appeal tribunals of the ancient “ting”. We’re not losing much by escaping the Danish tradition with its opaque judgements that in no way shed light on great principles, create law or even reach the levels that we require of administrative decisions in terms of clearly formulating interpretations of law, legal criteria, weighing of criteria and material facts. The Law Court should take upon itself to co-ordinate the judgements of the Faroese Court and its divisions, and to be active, when it comes to correcting the law, developing case law, settling matters of interpretation, defending the rule of law and be a part of the proper balance of powers checking that the other institutions do not transgress their boundaries and help them in matters of uncertainty.

If the Law Court shall manage this, it is highly significant who the Justices on the Court will be. In order to insure impartiality, wisdom and respect, we must elect distinguished lawyers, giving them adequate preparation through further education in the Nordic countries as well as in other small countries and Anglo-Saxon jurisdictions. Other prerequisites of a functioning legal system include scholarly research, a Faroese LL.M., this journal and adequate library resources with textbooks, law journals and case reports.

We have to do this right, creating the foundations for Faroese Justice.