The Structure of the Judicial System and its Function in a Developing Society

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The practical purpose of the research project described below, has been to investigate how the 1951-reform of the Greenland administration of justice and the law pertaining to it, have worked out during the past twelve years.[1])

By way of introduction the background and the main outline of the reform are described. This is followed by an account of the theoretical frame of reference of the study. Here the goals of the system of administration of justice and the duties of the courts are summed up together with some important conditions towards the realization of these. Finally, in the last three sections, are given the working assumptions and the results of the investigation comprising:

a) the possibilities of the judical system recruiting personnel to the present organization, with lay judges holding their positions as a public duty.

b) the ability of the district courts to handle the cases as they occur and

c) the confidence of the public in the present system of administration of justice.

1. *The background of the judicial reform and this investigation*

As a preliminary to the reformwork in the legislative field, the Administration for Greenland sent out three Danish jurists, who toured the west coast of Greenland in 1948–49, and systematically collected information about written and unwritten local law and its administration within the provinces of criminal and civil law.[2]) This information was, particularly at the beginning of the reform-work from 1950 onwards, used by the legislators as a directive on the question of whether the conception of law of the Greenland judicial administration differed to any extent from that of its Danish counterpart or the provisions of Danish laws.

The administration of justice was the first subject of reform. At the time the legal system divided the population into two groups so that the Danish and the Greenland population were served by different judicial bodies, according to dif-

ferent material rules. On the part of the Greenlanders there was a strong desire for the abolition of the double system, and several aspects moreover were contrary to prevailing Danish ideology. The main complaints were that the judiciary was not seperated from the prosecution and that the judiciary frequently was the highest local administrative power as well. This part of the legislative work was stimulated not so much by the discovery of practical difficulties of judicial administration – nothing was claimed about this – as by the fact that a need was felt to place on an equal footing the two populationgroups and to aid the former colony of Greenland towards the status as a province of a modern, constitutional state. In the preparatory work on the bill the aim was expressed to set up a judicial system, that could ensure a sound administration of justice based on modern judicial principles, which had already stood their test in a society such as that of Denmark. But at the same time the legislators called attention to the obstacles in the way of a direct transfer of the Danish system as a whole. Denmark was far more industrialized and socially far more differentiated than Greenland. A number of rules concerning the treatment of certain types of cases were found to be superfluous or absurd, as long as there were no material legal rules in Greenland for the treatment of conflicts within this field (i.e. cases concerning instruments of debt, bills of enchange).

It was found that the scattered population and the bad communications made it impossible to demarcate jurisdictions in such a way as to provide a jurist with a full-time job and at the same time ensure frequent contact between the court and the various settlements within the jurisdiction. Is was thought that the latter consideration required at least three jurisdictions and this would to all appearances not provide full-time jobs for three judges.[3]) The population numbered about 25,000.

As a result of the new Administration of Justice Act[4]) the region was instead divided into fifteen smaller sub-jurisdictions, affording, it was supposed, an amount of work which could be dealt with by one man as a public duty apart from his main occupation. The regional division followed the municipal one. Apart from the judges, who were to be termed "district judges" with a four-year term of office; two local lay assessors, chosen by the municipal council, must assist in all final case-decisions. All three judges of each regional court were thus laymen. In order to secure expert influence in the treatment of cases was introduced a court of appeal, the "High Court for Greenland", presided over by a (Danish) jurist as a full-time judge and, in the separate cases, assisted by two lay assessors, chosen by the provincial council of Greenland. The High Court-judge must also, apart from his court duties, instruct the lay assessors. It is the High Court judge who, acting upon the recommendation of local councils and authorities, nominate the district judge.

At the same time a separation of the judiciary from the prosecution was carried out. According to the new system judges hold no duties of a police- or prosecuting nature, since an independent police-authority, which was also to act as prosecutor, was established.

After the system of the administration of justice had functioned for twelve years, the Ministry for Greenland effected an investigation of its function, among other things because the activities of the district judges had been subjected to some criticism from the local press and the provincial council. The material collected during 1964 comprises statistical tables over all legal proceedings initiated and concluded, the length of time of the treatment and the number of sittings in each case etc. Moreover, the three members of the research team personally interviewed all district judges, most of the lay assessors, members of the police and the lay counsels for the defence, as well as the district judges' superiors in their main job and local politicians and authorities. Finally it may be mentioned that the author of this article as acting High Court judge during the year the survey lasted, has experience as participant observer, working in the court of appeal and as instructor to the district judges.

2. *Theoretical frame of reference*

In order to carry out the actual investigation it was attempted to select a broader theoretical frame of reference as a starting-point.

In this study the frame of reference was that of system theory or system reasoning.[5]). So the organization of judicial administration is considered as an open social system within a larger one, the society, and possessing a number of sub-systems, the single district courts. The single units of the respective systems are assumed to be interdependent. The system of the administration of justice is seen both as a whole, a social system described by a number of selected characteristics (and qualities) and as an element, a characteristic trait recurrent in several known cultures or societies. The system of administration of justice may be characterized by the type of work it carries out within the society. It is assumed to be a general feature, if not a universal one, of a society, that a certain type of work – which will be described in the following – is taken care of by a more or less specialized body.[6])

The objectives of the judicial system and the duties of the courts may thus be determined by considering the administration of justice as part of the social system. Societies, which are under technical and economical development, will undergo considerable specialization and differentiation in most of its social spheres. At the same time new independent organs with integral duties develop, where the former social order becomes inadequate.

Among these organs are those of the judicial administration, which promote the integration, or, in other words, contribute towards the upkeep of peace and order by settling disputes and laying down sanctions for violations of the rules established by the state.[7])

It follows, that it is the duty of the courts to make decisions upon the cases brought to court. A result must be arrived at. The court must not desist from coming to a decision and let the cases rest owing to uncertainty as to how they should be judged. Moreover, the decisions must be made within a certain space of time. It is considered to be of importance to the social effects of the judicial activities whether the court's decisions are made slowly or quickly. An actual norm for the speed with which a case should be conducted is hard to establish, since the settlement of a case will be influenced by a number of factors, but it is possible to distinguish between factors, which the court itself may influence, and factors which it cannot control, but which possibly may be altered by political means, if a speedier settlement is considered desirable. The procedure, which the court must pursue in order to reach a decision, is regulated, but the contents of these regulations vary from culture to culture. However it is characteristic of those norms, that are directed towards judicial organs, that they place on formality independent qualities towards the securing of social ends. It will thus be possible to speak of formal errors of method, faulty legal proceedings.

In the same way the form and contents of the case-decisions can only vary within certain limits. It is thus possible to characterize decisions as being either formally or materially incorrect. The duties of the judge regarding the form and contents of the decision may be expressed thus: that he must first describe certain circumstances and facts (facts forming the legal basis, breach of law etc.). Faulty or incorrect description of facts may subject the sentence to criticism. The judge must moreover consider whether guilt or other commitments may be found with either both parties or the accused in a criminal case. Finally he must select the appropriate norms and legal regulations, that are to be applied to the case in question. Criticism or acceptance by colleagues, superior instances and the parties concerned or their professional advisors, will primarily be directed towards the aspects of the decision mentioned here 8 a).

It is often asserted – also in Scandinavian legal sociology[8]) – that the judge is not responsible for the practical consequences of each decision, in the same way as, for instance, are the administrative authorities. The judge is responsible to the public, he must make just decisions, there must be equality for the law, he must be impartial, but the fate of the single party is no concern of his. This description of the judge's attitude towards the ultimate practical consequences of case-decisions cannot be said to be generally valid; indeed it is already being modified within the Scandinavian judicial system.

As for the judicial system of Greenland, the position is definitely another one. According to the Greenland criminal code[9]) the court must succeed in finding a precautionary measure, which will be of use towards the resocialization of or influence each delinquent according to his particular requirements. Together with the responsibility for the consequences of his decision, the judge must be responsible for procuring information concerning the background and personality of the accused. It is the execution of this duty which particularly engages the interest of the public. Public criticism has especially been directed towards separate decisions where the selection of the precautionary measure was found to be unfortunate, and it may be presumed that the general attitude to the administration of justice and the judges to a large extent is influenced by the way this aspect of their duties is handled.

How much the system of the administration of justice may contribute towards social order or integration depends on among other things upon the willingness of the public to bring conflicts into court and to accept the court's decision. This again depends on whether the public is confident that the courts are suited to undertake this duty. This is particularly important as far as civil cases are concerned. But *confidence* in the police and the courts may also have bearing on whether violations are reported. The integral activity of the courts is almost impossible to illustrate empirically: on the other hand it is possible to find out whether the population has confidence in the system of judicial administration; this question has therefore been included in the study, where it is regarded as a condition of obtaining the social objectives.

Another decisive condition of the work of the organization of the judicial system is that it is possible to *recruit the positions,* of which the organization is made up. This may seem a matter of course, and judging by a European society, it would be natural to take the upkeep of the system itself for granted. But it is one of the assumptions of the study, that even the upkeep of the organization in its present form may be problematic, not only judging by its qualifications for solving the problems it is confronted with, and for the confidence placed in it by the public, but also from an estimate of the possibilities of obtaining qualified persons to undertake the duties.

The structure of the organization of judicial administration may at times be more or less adequate for the fulfilment of its objectives. A less effective structure may be the result of changes within the organization or within the community. It is presumed that the adaptation of the system to changed demands on the part of the citizens and changed outward conditions may take the form of more or less extensive alterations of the inner structure, and that these changes may be described either as an adaptation to the changes in the community or as a termination of the

system in its old form and its reconstruction in a new one, depending on the comprehensive degree of the changes.

The connection between legislation and the administration of justice has so numerous and so complicated aspects, that it could not be described sufficiently here, but it must be emphasized that in this study the working thesis is that demands made to the training and professional ability of the judges vary along with the amount and the type of the society's legal regulations.

It has been a subject of discussion in legal philosophy whether laws are directed to the citizens or are to be considered only as prescriptions for the judge.[10]) Without doubt a great deal of the legislation has the latter character. Legislation is furthermore important in defining the activities of the judicial system; only after a certain subject has been legally dealt with do the courts take up their part as mediating authority on this subject.

The society's regulative rules may exclude certain kinds of conflicts from trial or refer them to special courts. They may influence the courts' decisions in each case by granting the judge more or less liberty to assess and by determining what aspects of a case are to be considered important, thus directing the courts' choice of descriptive elements, i.e. the actual circumstances on which the decision is to be based.

In this study it has moreover been emphasized that the Greenland society during the interval of time from the reform of the administration of justice to the study in question has changed considerably in this respect; legislation has been introduced concerning a number of provinces hitherto not covered by the law.[11]) Changes in the material legislation have frequently been followed by changes in the legal administration act; this clearly shows the expectation that the new legislation will have effect upon the work of the courts.

The rise in legislative activity reflects a society, which is changing in other respects, and the problem of this study will be whether any of these changes are of any consequence to the system of judicial administration, apart from the above mentioned, indirect influence caused by the change in legal matter.

Here it may be mentioned that factors such as an increase of population and particularly migrations which result in stagnation or decline in certain areas and in an increase in population elsewhere,[12]) may signify a very uneven distribution of cases among the jurisdictions; it may be necessary to adapt the jurisdictive limits and the size or the terms of employment of staff within the jurisdictions.

Urban and industrial development in the towns may result in cases that vary in number as well as in contents from the jurisdictions undergoing slow development and those being quickly developed. Life in the districts, which are still influenced by the traditional culture, and those, that are influenced by urban and

industrial development, will take on very different forms. The types of conflicts among the citizens and of the citizens versus the authorities will likewise vary.

It is a main hypothesis of the study, that the expectations and the demands of the citizens to the system of legal administration will, in the traditional community, be different from those of the more developed urban and industrial community. A system of legal administration, which must adapt itself to a large geographical area with a very uneven standard of development wihtin its separate districts, must therefore be flexible enough to deal with all contingencies and problems, with which it will be confronted in the various areas.

3. *Recruitment of the personnel*

An fundamental aim in instigating any system is that the system must be able to function, and that it can survive a certain period of time, frequently of indefinite length. The first question one can ask, therefore, is whether the organization can be expected to recruit and retain a sufficiently large and qualified staff to carry out the tasks demanded of the organization. The following factors, drawn from surveys into the sociology of employment, can be quoted as having an effect on the attraction of a position to suitable applicants and to those people already occupying such a position: the remuneration, prestige carried by the post, security of employment, type of work, working conditions.[13])

More definite inquiry into the significance of these factors in the administration of justice must bear in mind the character of the positions in Greenlandic justice, including the fact that some of the post in question constitute a public duty, the holder being obliged to accept the post if selected, and that some of the positions are restricted to a certain length of offices, others last longer, some are full-time, others part-time. With regard to remuneration it is certainly true that recruiting is affected in circumstances whereby acceptance of the post means a loss of better earning opportunities. Even though the holder does not have a concrete possibility for better earnings, the salary may appear poor in comparison with the importance and extent of the position in relation to similar duties .On the other hand, occasionally remuneration can exceed the salary one might otherwise be earning and this has a positive effect. The significance of salary differs among the various members of the administrative organization. It is of more importance to full-time employees than part-time, and carries more significance with participants executing one individual and isolated action than with participants having long-term associations with the organization. The latter theory is linked with the assumption that prestige is associated more with long-term connection with the organization than with the execution of a operation, and that high prestige and reputation can balance a low salary. On the other hand it must be admitted that remuneration

fixed for a particular job helps to establish the prestige enjoyed by the position in question.

Prestige depends on other factors too, however. Perhaps a particular person is appointed because he has the proper qualifications for the job, and because there are few such qualified people in the area. In such a case, selection to fill the post would mean an official stamp on prestige. The matter of what possibilities are possessed for fulfilling one's duties satisfactorily both in respect of oneself and of other people would then become a principal motive.

It is important in this respect to know how discernible the duties are as holder of the particular post, and whether one considers one has or can obtain the qualifications to meet these duties. This depends not only on one's own qualifications and abilities but also on considerations of what aids are placed at one's disposal in the form of additional staff, information and guidance from superiors or supervisors, and technical equipment.

The above factors will greatly influence one's decision to accept or reject the position, if one can assess them at the outset and compare them with other possibilities. The occupant of the post will be more willing to accept shortcomings that can be replaced or picked up as experience increases.

Security of employment presumably plays no major role in positions that are not of a full-time nature unless in accepting the position one gives up income or rights which are irredeemable if the position is later vacated.

The existence and relative significance of the above factors, which are reckoned to be of importance to recruitment into a retention in positions in the administration of justice, inevitably guided to a certain extent the aims of the investigation.

A description will be given of the individual posts (or roles) occupied in the Greenlandic system of administration of justice. This and the results of the investigation with regard to the matter of recruitment will then be compared with the above theories.

Lay assessors, interpreters and lay counsels for the defence are paid for their participation in individual cases or the individual sitting on the court, which may cover several cases. The fee paid is directly comparable with the income the person in question would receive if he/she were not participating. The participation of *interpreters* is voluntary and it has been found that interpreters will not take part in judicial work if they can earn more elsewhere because there is no attraction in the way of prestige, a fixed salary, or anything else. The duties are fairly well defined but demand a certain amount of experience in legal affairs. Uncertainty in respect of the work may thus also account for reticence on the part of interpreters.

One is obligated to accept the position of *lay counsel for the defence* if selected by the court, but in practice one can refuse if the duties are considered

more than one can handle. The fact that one is selected for duty involves a certain degree of prestige, but the duties are not well defined. Lay counsels for the defence are given a very poor description of the work expected of them, and it is thought that uncertainty in respect of the work more than the size of the fee has caused an unwillingness to take part in the work of the courts. The fee can be tailored to fit the actual work performed, which is not the case with interpreters and lay assessors.

The job of *lay assessor* is a public duty, and there are in effect few opportunities for declining the post and most of the citizens selected are not inclined to do so since it is in the first place an honorary position which is fairly well defined with clear-cut duties which most people would consider they were capable of handling. But a lay assessor can excuse himself from the occasional court-sitting, or influence the date of the sitting. It has been found that lay assessors who lose money because of their participation in court work are more difficult people with whom to co-operate than assessors not in the same financial position. It is more difficult to arrange court-sittings with free businessmen than with permanent or publicly employed people.

The job of district judge is a public duty and must be regarded as a position of trust and honour. The salary is a fixed one and it is difficult to say in advance whether the amount will compensate fairly for the work burden. The duties of the position are not too discernible, and in occasional instances uncertainty is increased by the fact that one's predecessor in the position has given the job up.

It may be accepted that uncertainty about one's ability to handle the job is greater in areas of fast growth and varieties of employment, because the court will have to judge more frequent and more varying forms of dispute. This is not illustrated directly by the investigation because, as it happened, the most developed areas of Greenland were not subjected to a change of judge during the period of investigation, but it was made plain that it is in these areas that they are most pessimistic about finding replacement judges when the present ones retire or complete their terms of office. The most vital factor influencing recruitment to the post of district judge is considered to be a statement of the type of duties expected of the holder, and requirements of qualification. If these can be defined, it is possible to recruit suitable people to the jobs. Where the duties and qualifications are indiscernible it is impossible or extremely difficult to recruit suitable people.

District court secretaries receive a fixed salary which is based on the assumption that the person can carry out the work within the normal working hours of his/her main source of employment. It is impossible to lay down a fixed image of the type and extent of work encountered. The post carries no particular prestige, but a movement is afoot to have the work carried out by people of a certain

category with employment by the State, because an administrative circular has ordered certain institutions to provide office assistance to the courts.

The investigation has illustrated that financial motivation plays a decisive part, and that the District Courts will never procure other than casual secretarial workers if the salary offered is less than the suitable applicant can obtain from a similar job elsewhere.

Conclusion

To summarise, one may say that the investigation has pinpointed fairly serious recruitment problems in respect of the main posts in the administration of justice, such as those of district judge, secretaries and interpreters. This is due in part to the fact that the judiciary have not been afforded sufficient financial opportunity to compete with other institutions in procuring staff, and partly to the fact that the duties have appeared indiscernible and in certain places in recent years more than can be coped with by lay people on a part-time basis.

4. *Treatment of cases by District Courts*

District judges had from the outset to handle criminal cases and were required to be familiar with *criminal procedure*. With the exception of one or two special instances, the District Courts are invariably the courts that deal with the cases, and in the early years they made up among the largest classification of cases.

The Criminal Code was still at the Bill stage when the District Courts were set up. The Act is intended to be a codification of Greenland legal practice and thus an expression of the standards with which local lay judges ought to be familiar. The measures applied by the system, which puts the emphasis on special prevention and resocialization of the offender and which to a great extent depends on the execution of the respective measures with the direct co-operation of the citizens (training with a private institution, employment and accomodation with private individuals, control by private persons, being three of the main measures), assume that the legal authority which administers the law has an intimate ascociation with the Greenlandic community and a knowledge of the individual members of that community, including the persons charged as offenders and persons required to carry out part of the corrective measures.

As regards criminal law district judges thus possessed certain qualifications in order to carry out their work, and in the actual execution of their duties they obtained a great degree of training. The investigation confirmed that in the main the treatment of criminal cases presents no difficulties to District Courts, and these cases are handled at a reasonable rate. But external factors in society itself set severe

restrictions on the ability of District Courts to fulfil the expectations held of them by legislators and the general populace with regard to the tailoring of punishment to suit the individual offender. The possibilities for allotting measures such as training, employment, private accommodation, a period in an offender's institution, etc., were so limited that in great many instances the courts were obliged to revert to the imposition of fines, although this measure was not regarded suitable 14 a).

Paternity cases are the largest group of cases, and the courts have thus here, too, been able to establish a fair degree of routine. The Administration of Justice Act contains detailed provisions for procedure in these cases, and the material rules were until 1962 contained in a Greenland regulation of 1929. These old provinsional orders applied however only in cases where a Greenlander woman had a child out of wedlock. If the woman was Danish, the matter was treated according to the Danish Children's Act. In 1962 an Act was passed to cover both groups of the population on an equal footing, the provisions of which differed somewhat from previous Greenland practice. In civil cases and therefore also in paternity cases the District Courts may pass the case on to the High Court, if legal insight would appear to require this. In paternity cases this approach to the higher authority has been invoked in instances where the former Danish law might have applied. According to the provisions of the new common law the District Courts have been authorised to handle all of these cases, but there has been a clear increase in applications for by the H. C. judge instructions in respect of certain paternity cases. This has been caused by the fact that interpretation of the new provisions has presented problems not previously encountered. The District Courts were informed of the content of the new Act by cable, accompanied by a brief account of the main amendments. The actual text of the statute in Danish and Greenlandic was not placed in the hands of the courts and police until after the Act had come into force. Preliminary hearings were already under way in a large number of cases based on the old law, and judges and police authorities were obliged to order a reassessment of these particular cases.

It is true of the great majority of paternity cases that those district judges not entirely new to the post handle the cases without difficulty. Most are settled quickly. Two-thirds are concluded within six months of action being raised. Four-fifths within a year. But one-fifth of the cases can take as long as three years, due mostly to circumstances beyond the control of the district judges: As a rule there are several men presented as possible fathers, and this involves hearings in a number of different areas.

Matrimonial cases did not come under the jurisdiction of the District Courts until 1955 when regulations concerning the dissolution of marriages came into force. Numbers have gradually increased, but it is still a relatively small number of

cases that actually reach the courts. During the first year or two in particular the opportunity was taken to pass some of the cases to the High Court, and in general the cases have given rise to many queries on the part of the District Courts and individual statements of guidance by the High Court judge. General instructions have been issued governing the procedure in this type of case, which is really best heard by judges whose special qualifications comprise a familiarity with the customs, beliefs, people and conditions in the little society in which the marital drama took place, and in which the parties and their children (if any) must live their lives in changed circumstances after the separation or divorce. In many instances, however, the actual treatment of the cases is beyond control since judgments are usually quite brief and give no detailed grounds for the result arrived at: a fact that has given rise to complaints by the High Court judge on several occasions.[14])

A small percentage of matrimonial cases are drawn out over a lengthy period. This is often the case when one of the parties has departed the particular district in which the case is heard following disagreement with the spouse, but in other instances some uncertainty as to the procedure to be followed in the case leads to a postponement of the hearing in favour of a verbal or written presentation of the problems and circumstances to the High Court judge or clerk.

The final sphere in which a common act was passed for the two population groups during the period of investigation is *law of inheritance*. The Geeenland act came into force in 1959, but was used in draft form for a few years prior. The draft was applied in the District Courts and contained (as does the present law) regulations concerning inheritance and a few regulations concerning the administration of estates, particularly for winding up certain estates for which there is no partition between heirs or a group of heirs having joint ownership. The High Court judge has furthermore issued general instructions on the handling of administration of estates.

The law and these general instructions prescribe the use of Danish regulations in respect of inheritance and administration of large estates, while smaller estates are in general treated in a similar manner to the practice that existed in Greenland before the introduction of the law. District judges themselves consider the hearing of large estates as the cases which offer most difficulties. And a number of these cases can stretch over a lengthy period. Following this investigation and an earlier similar one[15]) which went into the question of Greenlandic attitudes towards the owning of belongings within the family, it can be stated that part of the explanation for the difficulty in handling these cases is due to the fact that opinions on the matter of belongings have differed and indeed to an extent still differ in Denmark and Greenland. The position in Denmark is that individual rights of ownership are recognised within the family and that joint ownership

exists between husband and wife – but other forms of joint ownership are practically speaking unknown. In Greenland the economic unit has always been the family as a whole, not the isolated married couple, and the individual family member has had a personal right to ownership of an extremely limited set of belongings. The basis of judicial doubt seems then to rest in the fact that the regulations laid down to guide district judges do not meet the demands and problems of a case in which the deceased has participated in a different economic family set-up than that recognised in Denmark.

Civil actions have in the main taken the form of simple debt cases, raised normally by tradesmen in southern Denmark. Few have presented any legal problems. Any problems that have in fact arisen have been passed on to the High Court. The District Courts themselves have handled cases of torts according to unwritten Greenland law, which correspond closely to the unwritten law of torts operated in Denmark. Civil actions between citizens in Greenland have been few and far between, but have lately shown an increase in the towns as a result of a rise in the number of private enterprises and in the number of contracts drawn up in commerce and industry. A complete series of Danish laws in respect of law of contracts was put into force in Greenland after the investigation had ended. It was impossible to assess the consequences of these laws in respect of the District Courts.

The investigation showed that the following factors would to a greater or lesser degree have a direct effect on the effectiveness of the District Courts, and their ability to solve forthcoming disputes: *guidance* and instruction from the High court for the staff of the District Courts; the equipping of the individual District Court with *premises,* fittings, office equipment, literature, etc. the *man power resources* of the individual District Court, i.e. the ratio between the quantity of work determined in particular by current cases and the time available for court work; the attachment of the circuit judge to his chief occupation, his opportunity of obtaining secretarial assistance, interpreting facilities, etc.: and finally the question of *balance* in co-operation between the various participating parties in legal administration, which has not been made the subject of discussion in this paper.

The effect of High Court guidance of the District Courts

High Court guidance of the District Courts is an essential link in the system of legal administration because district judges have no previous training in legal practice. It is recognised from organisational theory that prior training and education and a fully developed system of information can substitute each other,[16]) and that the absence of trained staff will burden an organization's system of

information dispersion. Before being able to apply and maintain the regulations, it is vital that one is familiar with them, and as there is a continuous flow of new directives with which district judges must become acquainted, the guidance of the High Court comprises not only the task of instructing newly appointed district judges in the procedure and material of justice, but also the question of keeping district judges informed of constant amendments in legal practice.

It is difficult to lay down a norm for the amount of guidance to be given to district judges, but it is in any event true that if general instructions concerning new provisions to be observed are not made available before the new law and provisions come into force there will be a considerable risk that formally and materially wrong decisions are given; similarly if sufficient guidance is not given to newly appointed district judges simultaneously with their appointment, there is a risk that their work as judges will not begin until the guidance is in fact passed on. The practical opportunities for the High Court to pass on information and guidance in sufficient quantity and time must be regarded as an important feature of the legal scene. It is also important how long the district judge remains in legal practice, and to what extent his predecessor can introduce him into the duties of the position. With the old-established district judge training compensates for lack of legal education, and the importance of basic information is of lesser degree – but he is still in need of guidance on new statutes and their interpretation.

Personal contact between the High Court and the staff of District Courts has in the intervening period been increased gradually. The staff of the High Court has been expanded to include, in addition to the High Court judge, his secretary and interpreter, 1 legal principal, 4 secretaries trained in legal practice, and 3 clerks. The principal and 4 secretaries help in training the staff of District Courts. During the 12 years the District Courts had operated at the time of the investigation there were almost annual requests to the consultative political council of Greenland for increased assistance to district judges and District Courts, with particular emphasis on more frequent and long visits from High Court staff. The assembly has at various times supported requests to the appropriate Danish authorities for an increase in the number of High Court personnel.

The requirement for a specific personal guidance for the individual district judge can be demonstrated by an examination of the length of service executed by the judge. As mentioned earlier, the system at present appoints the judge for a period of four years with a possibility of reappointment. In fact, most district judges occupy their posts for a considerably shorter period than four years, occasionally some stay in office much longer. In the main it has been true that the newly appointed judge has had no predecessor to whom to turn for assistance and advice. In quite a number of instances the new judge has had to wait weeks or months for a visit from a High Court representative because (on account of

transport difficulties) a visit by the High Court judge or one of his representatives takes place only once, perhaps twice, a year to each district. The only advice a new judge in these circumstances can obtain is from a representative of the Prosecution, i.e. the local head of police or police sergeant. Obviously this does not benefit the state of balance between Court and Prosecution. The requirement for a general set of instructions to all district judges is illustrated, among other things, by the above presented description of the type of cases heard by the District Court, and by amendments in legal material during the period of investigation.

The *conclusion* in respect of the relationship between the High Court's information system and the handling of cases by district judges is that the system has been unable to ensure continuity of justice only in districts where district judges have changed frequently. In some of these districts the treatment of cases has actually come to a halt for certain periods but (as can be seen from the statistics on the length of treatment for all cases) most have been settled within six months of the case being raised. Lay judges are at present able to assume familiarity – with the help of guidance from the High Court – with the Administration of Justice Act and the Criminal Code, as well as the – as yet – few and readily grasped written statutes on civil law normally encountered by the district judge. Because of some doubt as to the judgment, one or two cases are long-drawn. To a certain extent this is bound up with factors that make written communication with the High Court inconvenient and laborious. Little use is made of the opportunities available for passing on difficult cases to the High Court. At present this safety valve is considered sufficient to ensure that, from a judicial viewpoint, more complicated cases receive an expert hearing.

Material requirements of the District Court

The equipment of the individual District Court in the way of premises, fittings, literature, etc., presumably has an effect on the courts efficiency. Here we may look at the question of premises. Is it possible to lay down a standard form of outer seat in order to permit a court to carry out duties? It is perhaps only possible to put forward certain minimum requirements which should be met if the work of the court is not to be hampered. On the basis of the provisions of the Administration of Justice Act concerning the procedure in hearing cases, it is possible to arrive at such minimum requirements, particularly regarding premises, etc. The rules on oratory, presence and immediacy of proof and the two parties involved in the dispute, the accusation principle, and the participation of lay assessors illustrate that it is essential a case be heard in premises with space for all participants and their tasks.

With regard, for example, to a criminal case there must be a district judge, two lay assessors, the clerk to the court, perhaps an interpreter, the accused, the counsel for the defence, the prosecutor and perhaps witnesses, i.e. six to eight people at least must be able to occupy the premises simultaneously. In addition there is the principle of public accessibility which requires that the court must normally be open to the public and that space must be provided for spectators.

A considerable portion of the court's work is carried out over and above the hearing of cases, and includes office routine, preliminary or subsidiary hearings before the judge, sending and receipt of mail, etc. Legal books, documents, files, concluded cases, etc., will occupy an increasingly bulky area. If the court does not meet daily or almost daily, it can be held perhaps in premises shared with other institutions, but the routine and office side of the court's work demands that there is a minimum of an office where the district judge and his secretary (if he has one) can work and interview people, where court books and papers, etc., can be stored and to which written and personal applications may be made.

It is a natural assumption that the problem of premises arises when the work of a court is of such a modest nature that an office and courtroom cannot be utilized every day in normal working hours. If the particular community suffers generally from a shortage of office space, it is difficult to insist that a court be given the right to specific premises. Knowing that Greenland towns are growing at a tremendous rate and with continually increasing requirements for staff in all institutions and organizations, it was assumed that the judiciary in these local communities could scarcely, being represented normally by one man, compete for premises – especially when the legal representative had an official and civil duty executed generally outside regular office hours. The assumption was correct. The judiciary have not pressed their claims and have given way in the face of pressure from other institutions. But forced by a growing number of cases which have demanded more office routine, district judges have gradually been establishing their right to an office and courtroom, and have received growing support from the High Court. In many instances the result has been that courtrooms have been fitted into plans for town development and expansion.

At the time of this investigation, however, the position was far from satisfactory. Half the district judges had no courtroom facilities for spectators. All had offices, but in general these were so small that there was not enough room for a desk each for the judge and his secretary. There was on average far too great a lack of filling space. District judges were obliged in many cases to borrow equipment and office fittings from other public institutions. The judges themselves admitted that local difficulties had forced them to ignore the High Court order to publicise hearings and courts. In the great majority of instances at the time

of the investigation no notice was published. As a result there were scarcely any spectators. It was stated that another result of lack of suitable premises was difficulty in co-operating with the local secretary.

Man-power resources of the District Court

At the outset of the system of administration of justice it was totally unforeseen that a need would arise for any form of permanent secretarial assistance. District judges were advised to request help in written work from the treasurer at the local authority office. The capacity of District Courts to handle a steadily increasing number of cases has been due partly to the High Court assistance mentioned earlier, and partly to the fact that most district judges have been successful in claiming for permanent local office assistance. It has not, however, been possible to establish a regular and beneficial system of co-operation between the district judge and his new secretary. One of the problems has been the difficulty encountered by the judge in instructing the secretary and in laying down a specific sphere of work. The earlier mentioned shortage of office space has certainly not made the problems any simpler. A working fellowship and discussion of judicial matters has in many instances been impossible.

A reasonable ratio between the work load and the time available for its completion would appear necessary in order to settle cases a rate set by the readiness of the particular case for hearing. If a case is ready for hearing or other treatment, it ought not to lie dormant. If in fact this occurs on a fairly large scale, the problem of delay immediately registers. A case may, as related in an earlier section, be held back because of uncertainty about the settlement – but its delay may frequently be due to lack of time.

The investigation concentrated to a great extent on the planning by judges of the time factor in their work, since the basis of the reform was that the job of district judge was one that could be executed over and above a main occupation that constituted the judge's real income. As much of the legal work, as already mentioned, takes place at meetings of courts in which a number of different parties must participate simultaneously, planning the time factor demands that the judge bears many facts and people in mind. Employers of district judges in their main job (these employers are all leaders of various public institutions) have been instructed by the Governor of Greenland to free judges from work in order to hold courts and business trips throughout the district. At the same time the High Court has advised the District Judge as far as possible to fix certain permanent days for courts as frequently as the district demands, partly with a view to letting the employer know well in advance partly on account of lay assessors

and other participants in the court. In general the institution leaders as employers have with one or two exceptions been willing to free district judges from work to take care of court procedure, but it is not uncommon that employers have expressed regret at having an employee with such a demanding position of trust. Few district judges have fixed permanent court-days or office hours, and this has given rise to certain problems of integration.

The number of cases handled and therefore the degree of business handled varies considerably from district to district. As mentioned earlier, the number of cases has increased in every judicial district but the rate of increase has differed from district to district. We saw previously how this was balanced by the employment of increased secretarial assistance. The main factor, however, in meeting the increase in cases has been the extension of the time spent by judges on their legal work. Three district judges at the time of the investigation had gone over completely full-time to legal work. Two of them had been given charge of two or three districts. All three were still formally employed by some public institution or other, which paid their salaries, and they were still appointed only for four years at a time. This means of meeting the increasing number of legal cases and actions has raised a number of problems which will not, however, be discussed here.

5. *Public trust*

The trust and confidence of the general public in the courts and administration of justice are often put forward as an end in themselves, and public trust has certainly been an expressed aim among legislators both of Danish law reform at the beginning of the present century and of Greenlandic law reform which produced the existing system of administration of justice in the two countries.

In any event, trust in the administration of justice is regarded as essential both for the successful use of the courts as organs for settling disputes of a voluntary nature, and for the respect for and acceptance of court decisions. Trust is thus necessary for the realisation by any system of justice of the objectives of society such as integration and establishment of peace and order 17 a).

One question demands some kind of answer in this connection: Who must display this trust, and in whom are they to place their trust? A precise and clear-cut answer would be difficult if not impossible to form, but it ought to be possible to obtain a general idea.

First, the question of who should display the trust. It is probably true to assert that in every community there is a large group of people who have no contact with courts of law and no real impression of their set-up and method of operation. Other groups of the population (for example, on account of their employment) are particularly prone to becoming involved in disputes brought before the courts,

and are therefore more likely to have a firm opinion of the courts. Others have professional associations with the administration of justice. Others play the parts of consultants, advisers, comforters, etc., and thus encounter situations and conditions in which it is required to consider how best to ensure a person's rights or to solve their legal problems. This provides such advisers with a means of forming an opinion of justice. And again there are others who speak on behalf of the people via the Press, etc., or who are appointed representatives who, because of this position, require occasionally to form a view of the administration of justice.

In short, it can be said of some groups that they can influence the choice or otherwise of courts of law as a means to settle a particular dispute, others to a greater extent can influence the general operations of a court through legislation which may restrict or extend the powers of the court, while others influence general opinion on the courts.

The next question is to what one should direct one's trust in order to make use of the courts and respect their judgments. To begin with "trust" may be interpreted as a belief that through their actions and decisions courts of law will meet certain expectations. What one actually expects of justice and the courts will depend to a certain extent on the cultural background of the particular society, but just as in the earlier section we have seen certain general duties for a system of justice, so we can lay down certain general expectations of the courts. It is expected that courts of law can cope with the duties delegated to them. The demand then registers that the court's representatives should boast an ability and competence to allow them to meet these duties, and this affects principally the judges. It is moreover normal, in any event in democracies of the Western European variety, for courts of law to be shown to be independent and non-partisant.[17])

The demand that a court should be independent is based on the fact that an independent court is synonymous with a balance of power within the society since the court is able to control the activities of other departments of government. For this reason, it is obvious that independence is not a factor enjoyed by courts in every society regardless of government, nor is it something on which every section of any particular society can agree.

The demand for independence forms also the basis of a court's impartiality and thus also for the effect of a fair trial. Again, on the matter of impartiality, it is unlikely that this will be a universal demand in every society and unlikely that it will produce agreement among the different divisions of the individual society. It is probably true that neither party in a dispute objects to a judge's favour of the interests which they represent, but they are willing to recognize that the next best thing is impartiality. The general demand for impartiality is one that can no

doubt be accepted by all. But what precisely is understood by impartiality will doubtless be a matter of heated discussion.

It was a working assumption that the trust of the general public in administration of justice is frequently linked with the question of whether they regard the courts as independent of public (State) administration and of the prosecution, and as impartial in relations between, for example, Danes and Greenlanders and between the ordinary citizen and the State. It was moreover regarded as important to the judge's prestige and thus for the confidence in his ability that he could execute his work sufficiently well to permit cases to be settled at a reasonable rate. It appeared problematic whether the features of Greenland justice (which differed from Danish) would support the trust in the system of both groups of population, and whether this would be the case equally in rapidly developing urban areas with their varying business structure and in other areas which have retained the traditional culture.

This approach to the problem requires that the observer forms a theory on the association between the development of the system of administration of justice and the population's trust in the system. Precisely as cultural variations may influence the expectations made of the courts (judges), so will there be variations concerning the factors likely to cement or destroy the trust. Factors which may ensure trust to a system in one society, may be completely without significance or even have an opposite effect in another society. Certain characteristics of a judge's treatment of a case, and the judicial structure, are thought at any rate in Scandinavian legal theory and policy to affect public trust in a judge and the judiciary. The judge's independence of the civil service is assured particularly as long as his legal decision in no way is subject to consequences instigated by the administration, by his conduct in the position being free of all control by the civil service, and that his promotion as a judge is in no way connected with civil channels.

It is however the case in Denmark that the civil service administration does play a part in the promotion of the judiciary; thus only the judge, who has reached the highest position he personally can attain, can really be called independent. If it can be shown that the judiciary are under no obligation to the power of the State, public trust should increase in the courts as a defence against misuse of authority.

In instituting reform of the legal system in Greenland, an effort was made to achieve independence of the civil service by permitting the permanently appointed High Court judge elect district judges for a period of four years at a time – however, on the proposal of the Governor. In practice all district judges are holders of subordinate positions (with the exception of one or two department chiefs) in one or other public institution governed by the civil service, commerce (the

majority of all commercial concerns in Greenland are run by the State) education, communications, or similar institutions. The civil service, commerce and public works concerns are frequently parties in legal actions and the wronged party in criminal cases. In cases of a civil nature raised by or against the district judge's own institution the judge generally vacates his seat on the bench on grounds of disqualification. In criminal cases in which the concern is the injured party the judge normally retains his seat, however. District judges themselves do not regard the problem of disqualification as serious. On the other hand most consider the administrative planning of the legal work a heavy burden because they must in the first instance carry out their main occupation. There is therefore an increasing desire to see a greater degree of independence by making the position of district judge a full-time one.

In studying the public's trust in the courts, it was found to be a fairly widespread opinion (particularly among politicians) that it was in principle unfortunate that district judges were not their own masters and that they were employed by some public institution. There were on the whole, however, very few actual complaints of a district judge giving way to his department chief, or of his independence being restricted in any particular decision.

Another important factor in gaining public trust is the complete divorce of the court from the office of the prosecution, particularly in respect of the judge's requiring not to initiate criminal cases and bearing no responsibility for the detection of an individual case. This distinction between the two offices that exists in Denmark was introruced in Greenland with the present system, but several parties have expressed concern that the balance between judge, prosecution and defence has not been achieved to the same degree as in Denmark where the three offices are occupied by professionals. In Greenland the prosecution is represented by a full-time, trained police officer, the defence by a lay counsel who in daily life has no connection whatever with court procedure, perhaps never having taken part in a legal action before. Between these two is the lay judge who has been appointed to this position of honour for a limited period. He is "accompanied" by two lay assessors.

The investigation illustrated that this was a point which held no public interest outside the circle of persons who had themselves taken part in the administration of justice. Public apathy on this point might be due to the fact that there is no opportunity to follow the goings-on of a court, and a local press has not yet been developed, and cannot therefore represent the public in this respect. The views of lay counsels for the defence and lay assessors are thus the only guiding factor in assessing public opinion on balance of the parties in court. The lay assessors believe (which perhaps is natural for them) that the court is conscious of the need for independence of the prosecution, and that a critical attitude is taken

to the question of proof and in instigation of charges. It is probably more important that as a whole they consider that the prosecution has always behaved objectively and correctly and has contributed in large measure to an understanding of the case by a clear presentation of the facts and circumstances. A very small percentage of prosecution representatives have dominated court proceedings. The lay assessors also regard the lay counsel for the defence as a valuable asset in court and a force to counteract the prosecution.

It is true that the lay counsel for the defence has felt to a certain extent that he occupies an exposed and precarious position. Many have expressed the opinion that they were uncertain of their duties, and that they received too short a time in which to make a worthwhile effort. Although at times they felt ill-prepared, they considered normally that they were given their proper value in the courtroom. Some thought the leadership of the district judge too weak and the prosecution too dominating, but most were of the opinion that their own defence was fairly heard.

The most obvious distinctions between the Danish and Greenlandic judicial system is the different criteria applied to the selection of a judge and the differen forms of employment. The latter have already been examined. In the following part we shall take a look at the significance of the appointment criteria in the prestige held by the judge or the trust in his ability to carry out his work.

In Denmark one of the principal qualifications a man must hold in order to become a judge is a lengthy legal training and a degree in law. In Greenland men appointed as district judges are those well-respected in the local community and familiar with the culture, language and local inhabitants.[18]) The decisive factor is a combination of local community link and respect within that community. Appointment does not depend on education or training. It is, however, a point of a certain importance that the appointee is used to office work and speaks two languages, Greenlandic and Danish.

It is assumed that the demands (expectations) made of a judge alter with the development of society from a small homogeneous community to a large, more widely differing community. In other words, trust among the general public is based on a different set of factors in a modern industrial society from those of a community with primitive economy. But these are the extremes. At what rate and in what manner do the demands alter? This must surely be an all-important question in any assessment of the existing Greenland system of administration of justice and its chances of fulfilling its duties in respect of the public; particularly in view of the rapid but erratic expansion which Greenland has been experiencing in recent years. Bearing in mind the declared objectives of the administration of justice to contribute towards an increased assimilation with the community's standards, it is unlikely that a judge will satisfy public opinion if he is completely

ignorant of conditions within the group or community whose disputes he must solve. A casual, change decision is unacceptable even though Lady Justice is shown with a blindfold over her eyes. The required decision must tally with the standards that apply within the particular community. It is thus imperative that a judge should be acquaint with these norms. The outward manifestation of community standards may thus play a vital part in assessing the qualifications and abilities of an individual judge. If many complicated written rules of law exist in a language which assumes special education of its users, it is to be assumed that the community's judge also has a special education or training. On the other hand it is possible with the required professional qualifications to become acquainted with the rules without a particular local knowledge. If on the other side the rules primarily are to be inferred from local mores and customs and from verbal transference, and unwritten law is thus prevailing, it is neither necessary nor sufficient for the judge to possess professional qualifications. Under these circumstances familiarity with the culture of the community and knowledge of the vernacular and reasoning of the local population are more essential qualifications for the judge.

It may be questioned whether it is an advantage or a disadvantage for the judge to be well acquainted with the people in his district. The disadvantages are most obvious. A wish for objectivity and impartiality may be a reason why one sometimes appoint strangers as conflict solvers. It may be unpleasant for a judge to decide between persons he knows well and associates with.

However it may be different to what degree regulations prescribe that the personal qualities and social background of the parties or the defendant are to be regarded by the judgment. The most commonly accepted concept among both lay and professional is probably that legal judgments must be made irrespective of persons; all are equal in the eyes of the law. But on a closer inspection of various aspects of the system of justice it is found that this belief is only partly valid. If information on an individual person is relevant to the treatment of a case, it must be regarded as advantageous if the judge possesses first-hand knowledge of the person(s) and his circumstances. This applies in particular if the system of rules lays down that the judge bears an independent responsibility for investigation of the case and is not bound to rely on the facts put forward by the two parties – including the prosecution.

In this survey it has proved possible to outline clearly the qualities required in a judge: connection with the local community, knowledge of the culture and mentality of the inhabitants, and an ability to speak the Greenlandic language and perhaps Danish. But these qualities have not been, and for a long number of years are not in practice likely to be, combined with a legal training. The occasional exception comes to mind – but not in sufficient numbers to provide a basis for a

judicial system. The choice of candidate for judge is thus between an outside professional and a local layman.

The situation so far in Greenland has been that the district judge has in practice required to apply only a few laws (as yet still under 10), compiled in a language designed for easy comprehension, and unwritten common law. In addition he has in general been faced with only a few types of conflicts, and in this respect prior training has not proved essential. More so than his counterpart in Denmark, the district judge in Greenland has a greater responsibility for instructing both parties at all stages of the case. He also bears considerable responsibility for procuring the evidence required to settle the case. He thus needs, much more than a Danish judge who has lawyers between himself and the parties, an ability to talk confidentially and confidently with the parties in order to get to the bottom of an otherwise inarticulate application to the court.

The Criminal Code requires that he, together with the two lay assessors, be responsible for arriving at a judgment which is suited to the resocialization of an offender, based on a knowledge of the individual and perhaps of the citizens who will assist in the execution of the penalty in the way of supervision, training or employment of the offender. For this reason the judge's decision in criminal cases is tailored more to fit the individual offender and is less automatic than in a Danish court. The magical effect of a general prevention is as yet scarcely felt.

In some districts the judge and his lay assessors know almost everyone, and it is true of every district that they know all permanent residents. In large towns there are growing groups of incomers and people passing through, and in these circumstances the personal acquaintance of the judge plays a decreasing role. The mass of legal material continues to grow, and there are more and more varying types of disputes, particularly in large towns. The number of legal actions is also an increasing factor in every district, but most of all in urban areas.

What does the investigation reveal about the trust of the public in their district judge, his ability and qualifications? It demonstrates clearly that all groups and classes of people questioned placed emphasis on the judge being familiar with the country's culture, language and population – as well as the latter's mentality – through a lenghty association with the community. A Dane who met these requirements (there are one or two who do) would be equally as well esteemed as a Greenlander. Opinions differ more sharply on the question of whether a woman could fill the post of district judge. Many people, especially in urban areas, expressed the wish for a jurist to whom they could turn for advice, and several thought that future development would demand legally trained judges. In some circles it is felt that such judges are already required in large, more densely populated districts. It is a generally accepted opinion that District Courts have too much work to do, that the settlement of cases takes too long, and that courts

ought to be relieved of some of their load through the medium of more secretarial assistance. From a study of complaints about the duration of cases (which are voiced mainly by people in areas with no court meeting-place of their own, i.e. in outlying hamlets and villages and one or two towns) it is, however apparent that no distinction is made between the duties of the police and those of the court.

Conclusion

Greatest satisfaction with the present system was expressed in the northernmost districts, where society development has been a slower process and where traditional way of life is largely unaltered. But it must be emphasised that nowhere in Greenland has development reached the stage where the system of lay judges has failed in its purpose. On the other hand, the old division into court districts no longer corresponds to the burden of work carried by a district judge with the law as secondary occupation. The judiciary and the people are equally conscious that the system of administration of justice must in this respect be subjected to a process of adaptation that should begin with a modification of the system's structure and conditions. The most obvious sign that changes are required if the main characteristics of the present system are to be retained is the fact, revealed by the investigation, that recruitment to the bench is becoming a problem.

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