



Trial of former Icelandic Prime Minister for negligence in 2008 bank crisis was not unfair

In today's **Chamber judgment**¹ in the case of [Haarde v. Iceland](#) (application no. 66847/12) the European Court of Human Rights held:

unanimously, that there had been **no violation of Article 6 (right to a fair trial)** of the European Convention on Human Rights, and

by six votes to one, that there had been **no violation of Article 7 (no punishment without law)**.

The applicant is a former Prime Minister of Iceland who was impeached for negligence on account of his handling of the country's 2008 banking crisis and found criminally liable. He complained that his trial, which was initiated after a Parliament vote, had not been fair and that the legal provisions used for his criminal conviction had been vague and unclear.

The Court examined the totality of the proceedings against Mr Haarde, including: the pre-trial investigation by a Parliament committee and Parliament's later decision to impeach him; the independence and impartiality of the Court of Impeachment; and the trial before that court and its judgment.

Overall, the Court concluded that the proceedings had been fair and that Mr Haarde had suffered no violations of his rights. In particular, it did not find that the pre-trial collection of evidence had been deficient to the detriment of Mr Haarde or that Parliament's eventual vote to proceed with the impeachment had been political or arbitrary. Moreover, the Court of Impeachment had been sufficiently independent, the indictment had been clear and the court had provided sufficient reasoning for its guilty verdict.

As to the clarity of the legal provisions, the Court considered that the offence of which Mr Haarde had been convicted had been sufficiently defined in law, as was the possibility that he could be found criminally liable under them.

Principal facts

The applicant, Geir Hilmar Haarde, is an Icelandic national who was born in 1951 and lives in Reykjavik (Iceland). He was Prime Minister of Iceland from 2006 to 2009.

Iceland's three main banks collapsed in October 2008. As the crisis unfolded, Mr Haarde proposed a bill to Parliament on 6 October 2008, which gave the authorities the power to seize control of the banks, which duly took place over the following days. Parliament set up a Special Investigation Commission (SIC) in December 2008 to investigate and analyse the crisis. One of its remits was to assess whether mistakes or negligence had occurred in the course of implementing laws and rules on financial activities in Iceland and, if so, who had been responsible. It was not to investigate criminal conduct, but had to inform the State Prosecutor of any suspicions of such conduct or of potential breaches of official duty.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Mr Haarde testified to the SIC in 2009 and in February 2010 it informed him that it considered that he had acted negligently. It asked him to submit a written statement in reply, which he did. In April, its official report blamed Mr Haarde and two other former ministers for failing to respond appropriately to the economic danger caused by the banks' deteriorating situation. In the meantime, Mr Haarde had resigned and a new government had taken office.

In 2009 Parliament also formed an *ad hoc* committee to examine the SIC's report and decide whether there were grounds for impeachment proceedings. Composed of nine members representing all the parliamentary party groups, the committee examined the SIC report, held meetings, received expert opinions and gathered evidence such as Government minutes and emails. Mr Haarde also submitted comments. The committee eventually submitted a proposal for impeachment proceedings against Mr Haarde and three other former ministers, but only the proceedings against Mr Haarde were approved in a Parliament vote in September 2010.

The Court of Impeachment which tried Mr Haarde was composed of professional and lay judges and in May 2011 he was indicted on six counts. The court later upheld an application by Mr Haarde to dismiss two of the counts. In April 2012 it acquitted him of three counts but found him guilty in a majority decision of gross negligence under Article 17 of the Constitution in conjunction with section 8(c) of the Ministerial Accountability Act of failing to hold ministerial meetings on "important government matters" ahead of the crisis. In particular, the court considered it established that a major danger had been facing the banks and the State Treasury as early as February 2008 and that Mr Haarde had to have been aware of the danger. However, it had only been discussed in the last four of 52 ministerial meetings that had been held between February and October 2008.

He was not sentenced to any punishment and the State was ordered to bear all the legal costs. The judgment was not subject to appeal.

Complaints, procedure and composition of the Court

Relying on Article 6 (right to a fair trial) and Article 7 (no punishment without law), Mr Haarde complained, among other things, that the pre-trial investigation had been deficient, that the court which had tried him had not been impartial and that the provisions under which he had been found guilty of criminal conduct had not been clear and foreseeable.

The application was lodged with the European Court of Human Rights on 17 October 2012.

Judgment was given by a Chamber of seven judges, composed as follows:

Linos-Alexandre **Sicilianos** (Greece), *President*,
 Kristina **Pardalos** (San Marino),
 Krzysztof **Wojtyczek** (Poland),
 Ksenija **Turković** (Croatia),
 Armen **Harutyunyan** (Armenia),
 Pauliine **Koskelo** (Finland) and,
 Hjördís **Hákonardóttir** (Iceland), *ad hoc Judge*,

and also Abel **Campos**, *Section Registrar*.

Decision of the Court

[Article 6 \(right to a fair trial\)](#)

In its examination of the pre-trial proceedings – including the investigation by the special Parliament committee, Parliament's decision on his impeachment and the actions of Parliament's prosecutor – the Court did not find anything in the way the case had been handled that had affected Mr Haarde's

position that it had made the rest of the process unfair. In particular, although political preferences might have played a role in Parliament's vote on bringing charges, the steps leading to his indictment had not been arbitrary or political to such an extent that they had prejudiced the fairness of the trial.

The Court found that the domestic Court of Impeachment had met the requirements of independence and impartiality enshrined in the Convention, even if it had included lay judges who had been appointed by Parliament. The Court noted in particular that the lay judges had been under an oath to act impartially and that it had not been shown that they had had any political affiliations concerning the subject matter of the case.

The Court also evaluated the trial itself. It noted that Mr Haarde had been held criminally liable under Article 17 of the Constitution of Iceland read together with section 8 (c) of the Ministerial Accountability Act, and that the offence imputable to him had been one of omission. Reiterating that it was not called upon to substitute its own assessment of the evidence for that of the domestic court, the Court considered: that the offence of which Mr Haarde had been found guilty had been sufficiently described in the count of the indictment concerned; that it had been covered by the prosecution's arguments; and that he had been able to respond to those arguments. The domestic court had also set out the factual and legal reasoning for the conviction and had not strayed beyond the case as put to it by the prosecution.

Article 7 (no punishment without law)

The Court noted that the domestic court had examined in-depth the constitutional issues at stake, including Mr Haarde's own arguments. The Court also observed that Article 17 was a provision of central importance in Iceland's constitutional order. It agreed with the domestic court that that provision could not be regarded as lacking in sufficient clarity, even though the notion of "important government matters" that the former prime minister had been found guilty of neglecting could be a matter of interpretation.

Overall, the Court found that the conclusions drawn by the Court of Impeachment on the meaning of the provisions and their application to Mr Haarde had been well within its remit to interpret and apply national law, and that the offence of which he had been convicted was sufficiently defined in law. That meant that it had been possible for him to have reasonably foreseen that his conduct would make him criminally liable under the Constitution and the Ministerial Accountability Act.

Separate opinion

Judge Wojtyczek expressed a partly dissenting and partly concurring opinion. The opinion is annexed to the judgment.

The judgment is available only in English.

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Press contacts

echrpess@echr.coe.int | tel.: +33 3 90 21 42 08

Patrick Lannin (tel: + 33 3 90 21 44 18)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Denis Lambert (tel: + 33 3 90 21 41 09)

Inci Ertekin (tel: + 33 3 90 21 55 30)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.