THE IMPEACHMENT CASE AGAINST GEIR H. HAARDE

ENGLISH SUMMARY

1. The Icelandic Bank Collapse

In the beginning of the 21st century, the Icelandic economy was flourishing with substantial new capital being created as a result of comprehensive economic reforms: 1) Taxes were cut which stimulated economic growth. 2) Government enterprises were privatised which made them more productive. 3) Government funds which had mostly subsidised loss-making activities were wound up. 4) Pension funds were greatly strengthened. 5) Iceland joined the EEA, European Economic Area, gaining access to the internal European market. 6) Public debt was greatly reduced while inflation fell. The three major banks, one privatised in 1990 and two in 2003, received favourable credit ratings based on the good reputation Iceland had established, while low interest rates in international markets also encouraged borrowing. In 2003–7 the banks rapidly expanded, becoming 7–8 times bigger than Iceland's GDP, gross domestic product. Their size clearly exceeded the capacity of the CBI, Central Bank of Iceland, and the Icelandic Treasury to provide them with liquidity in the case of a credit crunch. Such a credit crunch indeed began in August 2007, turning into a major international crisis with the failure of Bear Stearns in March 2008 and Lehman Brothers in September 2008. Traditional sources of funding on financial markets dried up.

Now the Icelandic banks partly financed themselves by collecting bank deposits abroad, as they could do in EEA member states, and partly by borrowing against collateral from the ECB, European Central Bank. Both kinds of activities were regarded with scepticism and even hostility by European central bankers. In late 2007, the CBI became concerned about the liquidity of the banks. It tried repeatedly to enter into currency swap arrangements with other central banks, only obtaining such agreements with the three Scandinavian central banks in May 2008. The ECB, the Bank of England and the US Fed (Federal Reserve System) all refused any such deals with the CBI.

When the US Fed announced on 24 September 2008, in the midst of the crisis, dollar swap deals with the three Scandinavian central banks, conspicuously leaving out Iceland, a run on the Icelandic banks started. Depositors and other creditors claimed back their money. The government's attempt on 28 September to recapitalise Glitnir, one of the three major banks, did not restore confidence. Subsequently, the Icelandic government proposed on 6 October the so-called Emergency Act under which the IFSA, Icelandic Financial Supervisory Authority, was allowed to take over failing banks whereas depositors, foreign as well as domestic, gained priority over other creditors to any assets of fallen banks. In the crisis, the British government provided generous liquidity to all British banks except the two British banks owned by Icelanders, KSF and Heritable. When the British government closed down KSF on 8 October, its parent company Kaupthing, Iceland's largest bank, collapsed, the last of the three major banks to do so. The British government also froze all assets of Landsbanki which had operated a deposit-collecting branch in London, and of the CBI and the IFSA, under an anti-terrorism law. For a while, Landsbanki could be seen on a list of terrorist organisations published at the British Treasury website, alongside Al-Qaida and the Talibans. The only countries which came to the assistance of Iceland in those dire circumstances, without any strings attached, were the Faroe Islands and Poland.

2. A Biased Commission

The 2008 bank collapse came as a major shock to the Icelanders, causing much anger, even fury. Prime Minister Geir H. Haarde immediately proposed an investigation into its causes, and the SIC, Special Investigation Commission, was appointed by the Speaker of Parliament, with three members, Supreme Court Judge Pall Hreinsson, Parliamentary Ombudsman Tryggvi Gunnarsson, and Dr. Sigridur Benediktsdottir who had three years earlier graduated in economics from Yale University and was now working there as an Assistant Professor. But Iceland is a small country, and all three members of the SIC

had ties to the banking sector. For example, Hreinsson's former wife had been a bank employee. Gunnarsson's daughter-in-law had been the IFSA public relations officer, and his son lost his job at Landsbanki in the collapse. Gunnarsson also had in 2004 had a very public row with then Prime Minister David Oddsson, now one of the three CBI governors. Benediktsdottir's father had been the chief law officer of Landsbanki, and he had been summarily fired when the bank was privatised in 2003.

The clearest indication of bias, though, was an interview which Benediktsdottir gave in March 2009 to a Yale student magazine on the bank collapse: 'I feel it is a result of extreme greed on the part of many and reckless complacency by the institutions that were in charge of regulating the industry and in charge of ensuring financial stability in the country.' Here she singled out two Icelandic institutions, the IFSA which was in charge of regulating the industry, and the CBI which was in charge of ensuring financial stability. Benediktsdottir was in other words announcing at the beginning of the investigation what the conclusions would be. When Hreinsson and Gunnarsson, both accomplished legal experts, were notified of this, they immediately asked Benediksdottir to withdraw from the SIC. She refused. The Speaker of Parliament instructed Hreinsson and Gunnarsson that they would themselves have to rule on Benediktsdottir's competence. Under heavy political pressure and after a fierce media campaign in support of Benediktsdottir (mainly conducted by vehement critics of the CBI), finally they decided that she had not disqualified herself by her remarks since they were general in nature, not about specific institutions. This was implausible. It was obvious which institutions Benediktsdottir had in mind: the IFSA and the CBI. Thus, as one of the three members was beyond doubt not competent to serve on the SIC because of her bias, the whole SIC report was tainted. In particular, its assignment of responsibility to individuals and institutions for the bank collapse should be regarded with scepticism. Moreover, at the request of Hreinsson and Gunnarsson, the SIC was granted legal immunity which implied that its possible targets were deprived of their constitutionally guaranteed right to resolve disputes about their rights and duties in fair hearings by independent and impartial tribunals.

3. A Flawed Investigation

The SIC delivered its report on 12 April 2010, five months behind schedule, at the staggering total cost of 4.9 million euros (at 2022 prices). It was very long, seven volumes, with two additional volumes of addenda, one of them only online. While it contained much information about the operations of the fallen banks, it was lightly edited and repetitive.

The SIC did not hold its hearings in public, as would have been desirable. Instead, it selected out from individual testimonies several flippant yet irrelevant comments as well as unsubstantiated allegations, quoting them almost gleefully on the margins of the report's pages. It was apparent to many of the people testifying that the three SIC members and their staff approached the subject matter with preconceived opinions. CBI Governor David Oddsson was for example asked why it had not occurred to him to resign since he was one of the persons responsible for the bank collapse. It is true that the SIC was not expected to carry out a criminal investigation but nevertheless it should have been expected to respect the rights of individuals to a fair hearing, not least because of its wide powers and the serious consequences individuals might suffer if blamed by the SIC. There was a great imbalance between the powers and resources vested in the SIC on the one hand and those at the disposal of the individuals it was investigating on the other hand.

The SIC was operating in an abnormal situation, in the aftermath of a national shock where there were a strong demand for finding culprits on whom to blame the bank collapse. The SIC members also seemed to have quite elevated ideas about their own role and historical importance. Hreinsson said gravely in an interview that the SIC would bring worse news to the nation than any other commission had ever had to do, and Gunnarsson said in a briefing to the press that he had almost cried when confronted with some of the information the SIC had gathered, while suggesting that the nation should take a leave for two days just to read the forthcoming report. In early February 2010 twelve individuals—four government ministers, the three CBI governors, the IFSA director, and four high officials—were notified that the SIC was considering accusing them of negligence in the period leading up to the bank collapse, but that they had the opportunity to respond to its allegations, as they all chose to do. They only had 10–11 days to respond, whereas the SIC had had thirteen months to investigate them. On the basis of the responses it received, the SIC removed some individuals from the group of people eventually accused of negligence while it withdrew some charges against those remaining in that group.

4. A Tautological Explanation

The main explanation for the bank collapse provided by the SIC in its April 2010 report was that the Icelandic banks had grown too fast and become too big. But this was a bit like saying that glass breaks because it is breakable, or, as Molière quipped, that opium puts people to sleep because of its dormitive power. The large relative size of the banking sector was a *necessary* but not a *sufficient* condition for its collapse. The banking sectors

in Scotland and Switzerland did not collapse although they were bigger relatively than in Iceland. Moreover, the biggest Scandinavian banks, such as Danske Bank, would have fallen if they had not received liquidity assistance from the US Fed through dollar swap deals. The reason why the US Fed made such deals with the Scandinavian central banks at the same time as it refused them to the CBI was presumably that Iceland was expendable: She had been of great strategic importance in the Cold War, but was thought not to matter any more. Moreover, at the same time as the British Labour government bailed out all other British banks, it refused liquidity assistance to the two British banks owned by Icelandic banks, Heritable and KSF, and closed down Landsbanki's London branch. To add insult to injury, the British government imposed an anti-terrorism law on Iceland, freezing all assets of Landsbanki as well as the CBI and IFSA in the United Kingdom.The alleged reason was a fear that the Landsbanki London branch would illegally move funds from Great Britain, like Lehman Brothers had done before its failure. But a Supervisory Notice from the British FSA, Financial Services Authority, to Landsbanki's London branch on 3 October 2008, five days earlier, had made this impossible. Thus, this was an excuse, not a reason.

The real reason for this extraordinary treatment of an old ally—a peaceful small neighbour which did not even have a military—seems to be that Prime Minister Gordon Brown and Chancellor Alistair Darling both came from Scotland where they were challenged by Scottish Nationalists who spoke about the 'Arc of prosperity' extending from Ireland through Iceland to Norway of which Scotland should be a part. Brown and Darling wanted to demonstrate to their voters the perils of independence, Darling triumphantly pointing out that in the international financial crisis the 'Arc of prosperity' had turned into an 'Arc of insolvency'. The British government also wanted to force the Icelandic government to admit liability for deposits collected by Landsbanki's London branch in so-called Icesave accounts. (If the deposits had been collected by a British subsidiary, the British deposit insurance scheme would have been liable if the bank's assets would not have sufficed to compensate all depositors.) It is true, and convincingly demonstrated in the SIC report, that the Icelandic banks had been reckless. But so had banks been elsewhere. Financial experts have since concluded that on average the assets of the Icelandic banks in 2008 were probably no better and no worse than assets of other banks. The two British banks closed down by the British government, Heritable and KSF, in the resolution process turned out to be solvent, unlike some of the banks bailed out by the British government, such as RBS.

5. Laws Applied Retroactively

The seven individuals ultimately accused of negligence by the SIC—three government ministers, the three CBI governors and the IFSA director—were not accused of negligence in the traditional sense of Icelandic law, but instead in the sense of the law on the SIC, passed at the end of 2008, after the bank collapse. There negligence was interpreted in a new and very wide sense as for example not assessing information correctly, not responding adequately to it and not taking the initiative in obtaining new information. Prime Minister Geir H. Haarde was accused of not responding adequately to the information he received in early 2008 that the banks might fall, of not having commissioned an analysis on the financial risk from a possible bank collapse, of not having ensured that the operations of a working group on financial stability were effective, of not having taken steps to reduce the size of the banking sector and of not having directed Landsbanki to transfer the Icesave accounts from its London branch to a British subsidiary, thus moving it out of Icelandic jurisdiction (and potential financial liability by the government). The other two government ministers, Finance Minister Arni M. Mathiesen and Business Affairs Minister Bjorgvin G. Sigurdsson, were accused of similar negligence in their responses to the impending crisis. The CBI governors were accused of having neglected in two major decisions—to refuse liquidity assistance to Landsbanki in August 2008 and to Glitnir in September 2008—to ask for more information about, and reviews and estimates of, the banks' financial circumstances, and in the latter case formally to reject the request (in writing). The IFSA director was accused of general negligence in running his agency, especially of leniency to the banks.

These accusations, based on a retroactive application of the law on the SIC, not only went against the legal maxim *Nullum crimen sine lege,* no offence without law, but they were also quite unfair. In 2008, Haarde and the other government ministers were entrapped: You are damned if you do; you are damned if you don't. If they did something about the banks, they might bring about their collapse. Banks operate on trust, and if the financial markets notice any signals that they might fall, they will. If the ministers did nothing, they might however be accused of negligence, as indeed they were. The only sensible strategy was to move carefully and try to maintain trust in the banks, for example by obtaining currency swap deals and credit abroad. This was precisely what Haarde and his fellow ministers did. The accusation against the three CBI governors that they had not produced sufficient paperwork in connection with their decisions about Landsbanki in August and about Glitnir in September was almost laughable, as government ministers and central bankers all around the world—Alistair Darling, Timothy Geithner, Hank Poulson and others—were at the same time making similar decisions on the phone about much bigger

transactions, with almost no paperwork. The accusation against the IFSA director did not take into account that he was constrained by the Icelandic rule of strict legal authority. This constraint was duly noted in the fair and balanced report on the Icelandic bank collapse written for the IMF, International Monetary Fund, by Kaarlo Jännäri, former Director of the Finnish Financial Supervisory Authority. The SIC's criticisms of the bankers were more plausible, as they clearly had acted recklessly and possibly in some cases criminally. The fact remains, however, that the SIC did not find any obvious violation of the law by the government ministers, the CBI governors, or the IFSA director, despite ample resources and a thorough investigation lasting 16 months. The mountains were in labour, and a ridiculous little mouse was born.

6. Three Individuals Spared

The remarkable fact about the dog in the well-known Sherlock Holmes story was that it did not bark. The remarkable fact about the SIC was that in its strictures it omitted three individuals who would seem to bear just as much responsibility, on the SIC's own criteria, as those it accused of negligence.

1) Foreign Minister Ingibjorg S. Gisladottir was leader of one of the two coalition parties, the Social Democrats, and she and Geir H. Haarde jointly made all important decisions on responses to the banking crisis. Gisladottir was one of the most enthusiastic supporters of the banks. She had in the 2003 election campaign defended the retail magnate Jon A. Johannesson, later chief owner of Glitnir and the largest debtor of all the banks, even hinting that a police investigation into his activities was politically motivated. (He was later convicted of the charges investigated and received a suspended prison sentence.) It was she who had decided that Business Affairs Minister Bjorgvin G. Sigurdsson should not participate in deliberations about the government offer to recapitalise Glitnir, a breach of good administrative practice, as formally the banking sector was his ministerial responsibility.
2) Education Minister Thorgerdur K. Gunnarsdottir was Vice-Chairman of the Independence Party, as well as a major shareholder in Kaupthing, with her husband, a Kaupthing manager. She was also an enthusiastic supporter of the banks, vigorously challenging foreign analysts when they pointed out weaknesses in the structure of the Icelandic banking sector. When she attended a meeting with the CBI governors and Prime Minister Haarde on 26 September 2007 Governor Oddsson expressed his fear that the

emerging international credit crunch might fell the banks. She strongly disputed this, but in November 2007 her husband asked for an exemption from the rules on the bank's staff, so that they could move most of their Kaupthing shares into a corporation, thus limiting their personal liabilities. They received this exemption in February 2008 which meant that they, unlike many other Kaupthing employees, did not go bankrupt in the collapse. (If the transaction had taken place less then six months before Kaupthing's collapse, it would have been invalidated.) When Governor Oddsson told a cabinet meeting on 30 September 2008 that the banks were about to fall, Gunnarsdottir also protested vehemently, but the very same day she and her husband sold the rest of their personally held Kaupthing shares. It is extraordinary that the SIC did not investigate these transactions. It did not even call on Gunnarsdottir to testify.

3) Jon Sigurdsson, Chairman of the IFSA Board, had allowed his name to be used when Landsbanki began in May 2008 to collect deposits in its branch in the Netherlands, a major blunder. Moreover, the IFSA management was by law required to refer all major decisions to the IFSA Board so that Board members bore some responsibility for the operations of the institution, not least the Chairman himself. Nevertheless, Sigurdsson was hardly mentioned in the SIC report, let alone accused of negligence.

The point is not that these three individuals should necessarily have been censured by the SIC. It is rather that it seemed unfair to single out Haarde and the other five ministers and officials and leave out these three.

7. Surprise Moves by a Parliamentary Committee

Originally, the Speaker of Parliament and his deputies were supposed to respond to the SIC report. But in early 2009 the Social Democrats broke with the Independence Party whereupon Prime Minister Geir H. Haarde resigned. The new left-leaning leader of the Social Democrats, Johanna Sigurdardottir, formed a coalition with the Left Greens, and the two government parties won a resounding victory in parliamentary elections. The new parliamentary majority decided that the response to the SIC report would not come from the Speaker of Parliament and his deputies, but rather from a special parliamentary review committee, the PRC, which would decide whether to recommend the impeachment of any former government ministers (where impeachment did not mean removal from office, but a charge of misconduct while in office). The PRC was composed of two representatives from

each political party, the Social Democrats, the Independence Party, the Left Greens, and the Progressive Party, except that the smallest one, The Movement, had one representative. The chairman, Atli Gislason, came from the Left Greens. The PRC soon split. The members from the Independence Party did not want to impeach any government minister. The other PRC members wanted to impeach not only the three ministers accused of negligence by the SIC, Geir H. Haarde and Arni M. Mathiesen from the Independence Party, and Bjorgvin G. Sigurdsson from the Social Democrats, but also Foreign Minister Ingibjorg S. Gisladottir from the Social Democrats. Of the four legal experts from whom the committee sought advice, three—Professors Jonatan Thormundsson and Ragnhildur Helgadottir, and Deputy State Prosecutor Sigridur Fridjonsdottir—recommended impeaching those four government ministers, whereas one—former State Prosecutor Bogi Nilsson—argued that there were probably no legal grounds on which to do this. Thormundsson had been a leading member of the so-called National Movement which had in 2004–2005 actively campaigned against the government in which Haarde was a member, on two issues, a controversial media law (eventually withdrawn) and Iceland's support of the American-led military action in Iraq. Now Thormundsson suggested that a new charge should be added, that Haarde and the other ministers had not held ministerial meetings to discuss the impending crisis, as seemed to be their constitutional duty, since the Icelandic Constitution stipulated, on his interpretation, that important government affairs should be discussed at ministerial meetings. A fifth legal expert, Professor Robert Spano, a committed leftist, assisted the PRC majority in making the impeachment proposals clear and specific, as required by law.

The PRC did not conduct any independent investigation of the possible criminal liability of the government ministers. Its lengthy report was mainly a summary of the SIC report, somewhat like the folk story of the stone soup where charlatans fooled gullible villagers into believing that the soup they were making was made of a stone whereas it was in fact made of all the ingredients provided by the villagers. The PRC majority's impeachment proposals had two main deficiencies. First, no plausible argument was presented to the effect that the accusations of negligence found in the SIC report (based on an retroactive application of law) constituted criminal offences under Icelandic law. The SIC's assignment had not been to conduct criminal investigations, but rather to find the causes of the bank collapse. In the second place, even if the SIC report could be used as the factual basis of impeachments, as Professor Thormundsson argued, it remained to provide the legal grounds on which the three additional charges adopted by the PRC would stand, 1) to include Ingibjorg S. Gisladottir in the group of ministers being charged with negligence; 2) to charge all four ministers with violating a constitutional duty to request ministerial

meetings on important government matters; and 3) to charge Arni M. Mathiesen with neglecting to promote the transfer of Landsbanki's Icesave accounts in Great Britain from a branch to a subsidiary. The SIC had considered all three charges and ultimately decided not to include them in the strictures of its report. Thus, these three additions might be regarded as cases of 'double jeopardy'. Even if the SIC was not formally a tribunal, it was widely treated as such, whereas an old legal maxim says: *Ne bis in idem*; after acquittal, do not prosecute again.

8. Political Machinations

Originally, all the majority members of the PRC supported impeaching all four government ministers, while the two representatives of the Independence Party did not want to impeach anyone. But when the leaders of the Social Democrats were in early September 2010 informed that this might become the recommendation of the PRC, Ossur Skarphedinsson, now Foreign Minister (previously Industry Minister in Haarde's government) put great pressure on the two Social Democrats in the PRC not to propose impeaching Business Affairs Minister Bjorgvin G. Sigurdsson, Skarphedinsson's friend and ally. Subsequently, the two Social Democrats changed their position, recommending the impeachment of three ministers, Geir H. Haarde, Arni M. Mathiesen, and Ingibjorg S. Gisladottir, while sparing one minister, Bjorgvin G. Sigurdsson, on the ground that even if the banking sector had formally been his responsibility as Business Affairs Minister, information had been withheld from him. The PRC thus split into three groups, five members proposing to impeach four ministers, two proposing to impeach three, and two wanting to impeach no one.

When the two impeachment proposals were submitted to Parliament in September 2010, it became clear that the Independence Party members would reject both of them, while the members of the Left Greens and The Movement would support impeaching all four ministers. The members of the Progressive Party split, with six wanting to impeach all four ministers, in some cases out of personal motives, while three wanted not to impeach any of them. The main battle was fought within the parliamentary group of the Social Democrats. Eleven members wanted not to impeach any minister, while one wanted to impeach all four ministers. The eight remaining members voted in three different ways, all eight for impeaching Haarde, four for not impeaching Gisladottir and four for impeaching her, two for not impeaching Mathiesen and six for impeaching him, and finally five for not impeaching Sigurdsson, two for impeaching him, and one abstaining. While

some members of the Social Democrats had personal motives to vote for or against their party comrades, the result was designed to solve three problems. 1) If either of the two ministers from the Social Democrats had been impeached, the Party would have split. 2) If no minister had been impeached, the Left Greens might have broken with the Social Democrats and insisted on new elections, well aware of the strong public demand for holding somebody responsible for the bank collapse. 3) If only the two ministers from the Independence Party had been impeached, while the two ministers from the Social Democrats had been spared, the result would have seemed overly political. Therefore, the result was that Haarde alone was impeached, with 33 votes against 30, while the other three ministers were spared.

9. A Flawed Process

From the beginning, the process against Geir H. Haarde was flawed. The law on the Impeachment Court says that at the same time as the Parliament decides to impeach a minister, it appoints a special prosecutor. Furthermore, under Icelandic law proposals not fully resolved during a parliamentary session should be regarded as automatically rescinded. But by oversight the special prosecutor was only appointed in the next parliamentary session after the impeachment decision, so that arguably the decision should be regarded as automatically rescinded. Moreover, the special prosecutor appointed in October 2010, Sigridur Fridjonsdottir, had been one of the legal advisers to the PRC, whereas the law in Iceland says that prosecutors as well as judges should recuse themselves from a criminal case if they had been involved in it at an earlier stage. The Impeachment Court which convened in March 2011 refused however to dismiss the case on those grounds, as was demanded by Haarde's counsel. The Court argued that these measures had not abrogated Haarde's rights in any significant way. The Impeachment Court was by law composed of fifteen judges, eight elected for a period of six years by Parliament, the five longest-serving judges of the Supreme Court, the professor of constitutional law at the University of Iceland, and the president of Reykjavik District Court. The president of the Supreme Court presided over the Impeachment Court. The eight lay members of the Court had been elected in May 2005 so that their terms ran out in May 2011, but at the initiative of the president of the Impeachment Court, Parliament passed a law extending their terms to the end of the case, against the protests of Haarde's counsel who argued that the real prosecutor, the Icelandic Parliament, was in fact making decisions about who should be judges in this particular case.

There were other complications. The professor of constitutional law at the time was Bjorg Thorarensen, and in October 2010, the Faculty of Law at the University held a meeting in which it chose her substitute. Professor Eirikur Tomasson, who had also taught constitutional law, was unwilling to be her substitute, so an associate professor, Benedikt Bogason, was chosen instead. But Professor Thorarensen was married to Supreme Court judge Markus Sigurbjornsson, and by law married couples could not serve together on the Impeachment Court. In a process which remains unclear it was decided in early 2011 that Sigurbjornsson and not his wife would sit on the Impeachment Court, even if she was automatically a judge on the Court as professor of constitutional law whereas he was part of the pool of nine Supreme Court judges, five of whom were to sit on the Impeachment Court on the basis of seniority. Therefore Thorarensen's substitute, Bogason, took a seat on the Impeachment Court when it first convened in early 2011.

The special prosecutor, Sigridur Fridjonsdottir, obtained transcripts of the SIC hearings and other evidence used by the SIC, as well as Geir H. Haarde's complete emails when he was Prime Minister. But she did not conduct any independent investigation, comparable to a criminal investigation. Haarde's emails provided no incriminating evidence against him: no 'smoking gun' was found. In her eventual indictment presented in May 2011 Fridjonsdottir only repeated the charges decided upon by the majority of Parliament and based on the SIC report, while she handed 7,000 pages of documents over to Haarde's counsel without any satisfactory explanation of their relevance to the case. In the autumn of 2011, the Impeachment Court dismissed two of the charges against Haarde as lacking clarity and specificity, but retained, for eventual judgement, four charges against him: that he had not ensured that the operations of a working group on financial stability were effective, not taken steps to reduce the size of the banking sector, not directed Landsbanki to transfer the Icesave accounts from its London branch to a British subsidiary, and not held cabinet meetings about the impending crisis. In December 2011, Independence Party Leader Bjarni Benediktsson submitted a proposal to the Parliament that these four remaining charges should be withdrawn. As some members of parliament who had voted for impeachment had changed their minds, it seemed that his proposal might be accepted. Strongly supported by Steingrimur J. Sigfusson, leader of the Left Greens, some members of parliament for the Social Democrats threatened to form a splinter group and break away if their comrades would vote for the proposal. Subsequently Johanna Sigurdardottir, leader of the Social Democrats, bullied most of the Party's members of parliament into voting to dismiss Benediktsson's proposal on formal grounds. Of the eleven Social Democrats who had in September 2010 voted against impeaching Haarde, only two voted in March 2012 in the same way. Thus, Benediktsson's attempt failed.

10. A Judge With a Bias

There were further complications about the composition of the Impeachment Court. Benedikt Bogason had taken a seat on the Court as Professor Bjorg Thorarensen's substitute when it was decided that Thorarensen's husband and not her would serve on the Court. Although Bogason var appointed Supreme Court judge in late 2011, he remained on the Court. However, the president of Reykjavik District Court, Helgi I. Jonsson, who had initially served on the Court with Bogason, withdrew from it in late 2011 when he was also appointed Supreme Court judge. He was replaced on the Impeachment Court by his successor at the District Court. It is unclear why Bogason remained on Impeachment Court whereas Jonsson withdrew from it. Another significant change occurred when one of the five Supreme Court judges on the Impeachment Court had in late 2011 to excuse himself for health reasons. He was replaced by Professor Eirikur Tomasson who was one of three additional Supreme Court judges then newly appointed. To the author of this book, conflicting and unclear answers were given to the question why Tomasson was chosen from the group of three new judges and why he was now willing to serve on the Court, having refused to be Professor Thorarensen's substitute in 2010. While Geir H. Haarde's counsel did not formally object to Tomasson's becoming a judge on the Impeachment Court, there were several reasons, some unknown at the time, why he could be seen as being biased against Haarde.

1) Tomasson had long been Haarde's political rival. He had been Chairman of the Young Progressives, whereas Haarde had been Chairman of the Young Independents, and Tomasson had been political assistant to government ministers from the Progressive Party, whereas Haarde had been political assistant to government ministers of the Independence Party.

2) Having been professor of law at the University of Iceland for several years, in 2003 Tomasson applied for a judgeship on the Supreme Court. He was furious when another individual was appointed, complaining to the Icelandic Ombudsman and cutting all personal ties to leading members of the Independence Party, old schoolmates of his.

3) In 2004, Tomasson applied again for a judgeship on the Supreme Court. The Minister of Justice recused himself, and the decision was assigned to Haarde, then Finance Minister. When Haarde appointed another individual, Tomasson angrily commented publicly that the rule of law was being threatened. The citizens could no longer trust the Supreme Court to resolve cases in an unbiased way, he said.

4) Alongside his professorship, Tomasson was Managing Director of the Icelandic Composers' Rights Society which collected royalties for the performance of music and then disbursed them to rights holders. Tomasson had kept a substantial amount of the Society's money in money market funds which crashed in the bank collapse, although eventually the recovery rate was 70%. Tomasson publicly exclaimed at the time that the Emergency Act, which Haarde had proposed and which gave priority to depositors, amounted to theft from other bank creditors, such as investors in the money market funds.

5) It was discovered in 2016 that Tomasson had held shares in two of the banks, worth around €175,000 at 2022 prices, a substantial amount by Icelandic standards. These shares became worthless by the decision of Haarde and the government not to bail out the banks.

6) In February 2009, Tomasson had published an article online arguing that one reason for the bank collapse was that in Iceland government ministers had had too much power and that they had abused this power. For some mysterious reasons, the article was only online for a while before it suddenly disappeared, and people were not generally aware of it. It was only retrieved with some difficulty by the author of this book.

7) Two of Tomasson's sons had worked in the banks and lost their jobs after the collapse.

11. Three Judges With a Financial Interest

In late 2011, the law on the Supreme Court was, at its own initiative, changed in such a way that its president was to be chosen for five years. Previously the presidency had rotated between the judges on the basis of seniority on the Court, each president serving two years. The most influential judge, Markus Sigurbjornsson, was subsequently chosen president for the next five years, 2012–2017. Thus he automatically became president of the Impeachment Court. But more than four years after the trial, in December 2016, a leak to the media revealed that Sigurbjornsson and two other judges on the Impeachment Court, the aforementioned Eirikur Tomasson and Vidar M. Matthiasson, had suffered significant losses as a result of their ownership of shares in the fallen banks and of investments in the banks' money market funds (in total more than €500,000 at 2022 prices). Thereupon, some bankers who had been convicted by tribunals in which these three judges sat, applied to the ECHR, European Court of Human Rights, arguing that their right to be fairly heard by

an independent and impartial tribunal, under the European Convention for the Protection of Human Rights, had been violated. The ECHR ruled in their favour. It found that if a judge had held a substantial amount of shares in a bank he should have disqualified himself or herself from hearing a case where that bank was involved. Accordingly, several cases were settled with the Icelandic state paying non-pecuniary damages to the applicants as well as legal costs.

In the case against Geir H. Haarde there were more reasons to doubt the impartiality of the judges than in the cases against those bankers: 1) The three judges who had been bank shareholders or money market investors had incurred greater losses than the average Icelandic citizen, and therefore their anger at the collapse could be expected to be more specific and stronger than that of the Icelandic public. 2) Haarde had chosen not to try and bail out the banks, for example by the Treasury getting a large loan abroad, as some advised, putting them instead into resolution which meant that shareholders lost all the money they had invested in the banks. By giving depositors priority claims to the banks' assets, investors in money market funds lost some money as well. Both Markus Sigurbjornsson and Eirikur Tomasson (on behalf of the Society which he managed) had invested in money market funds. 3) The three judges had mainly invested in Landsbanki and Glitnir, whereas in the initial stages of the bank collapse the CBI had, advised by Haarde, tried to save Kaupthing alone by giving it a large emergency loan. Although ultimately this rescue attempt failed, shareholders in Landsbanki and Glitnir may have held a grudge against Haarde because of this. But even in the unlikely event that Sigurbjornsson and Matthiasson could be regarded as competent to hear Haarde's case despite their financial entanglements, Tomasson was beyond doubt not competent as a judge in the case, which means that the whole process should have been invalidated, although this was not known at the time and therefore not done.

12. Legal maneuvers

The Impeachment Court held hearings in the case against Geir H. Haarde in March 2012. One witness after another testified that the specific charges against Haarde in the prosecutor's indictment could not be substantiated. They stated that the operations of a working group on financial stability had been as effective as it was reasonable to expect; that in 2008 it was impractical and well-nigh impossible to reduce the banking sector by selling assets or by moving one of the major banks to another country; and that Haarde as Prime Minister had had no authority to transfer Landsbanki's Icesave accounts in Great

Britain from a branch to a subsidiary, as it was an issue between Landsbanki and the British FSA. Furthermore, six government ministers as well as the cabinet secretary testified that it was a long-standing and uncontested practice that some important government matters were resolved outside formal cabinet meetings, and that some sensitive issues, while discussed at formal cabinet meetings, were not mentioned in minutes. Again, those ministers who had served in Haarde's government all testified that the problems of the banks had often been discussed at cabinet meetings. The only witness to testify against Haarde was the leader of the Left Greens, Steingrimur J. Sigfusson, now a government minister. He asserted that the conditions of an agreement which Iceland had in May 2008 made with the three Scandinavian countries had not been fulfilled, whereupon Haarde's counsel stood up, walked to him where he sat in the witness box and showed him what was not an agreement, but a declaration signed by three Icelandic government ministers, made in order to facilitate a currency swap deal between the CBI and the three Scandinavian central banks. Sigfusson had to admit that this was a declaration, not an agreement. Then the counsel showed him two CBI reports sent to the Scandinavian central banks about steps to fulfil the conditions listed in the declaration. Apparently, Sigfusson had been unaware of those reports.

The Impeachment Court delivered its verdict in April 2012. It unanimously acquitted Haarde of the first three charges, as it concluded that the evidence presented had made clear that Haarde could not have prevented the bank collapse. Nevertheless, ten of the fifteen judges criticised Haarde in their opinion for not having responded adequately to all the warnings he had received about the impending danger. The minority, five judges (including Supreme Court judges Gardar Gislason and Benedikt Bogason), argued that the prosecutor had simply not proven her case about the working group on financial stability, or about the reduction of the banking sector, or about the transfer of Landsbanki's Icesave accounts to a subsidiary. There had been different opinions and conflicting signals on the danger to the banks, until late in September 2008. Moreover, the government had neither had the power nor the means to prevent the bank collapse. Therefore Prime Minister Geir H. Haarde was not guilty of any criminal negligence and should be acquitted without the criticisms expressed in the majority opinion. The dissenting opinion of the minority was based strictly on the law, leaving out the political considerations found in the majority opinion. Perhaps the main flaw in the majority opinion was its failure to distinguish between two kinds of danger. One kind of danger is that of earthquakes, volcanic eruptions, epidemics, severe storms, floods, and traffic accidents. It can certainly be useful to discuss such dangers because it encourages people to prepare for them, in order to reduce their impact. Another kind of danger is that of bank runs in a fractional

reserve banking system. This is a system based on trust, and if for some reason that trust is eroded, banks become vulnerable. Therefore central banks have the task of providing immediate liquidity to commercial banks when necessary. It is certainly less than useful to discuss such a danger: in fact, it increases it. Bank failure may become a self-fulfilling prophecy. Thus it was prudent of Haarde to try not to send any signals to the international financial markets that the Icelandic banks were in serious trouble.

13. Convicted on a Trivial Issue

In the Impeachment Court, Geir H. Haarde was only convicted by a majority of nine judges on a trivial issue, for not having formally put the problems of the banks on the agenda of cabinet meetings, whereas the minority of six judges wanted to acquit him on that count. Although one of the lay judges had concurred with the majority in acquitting Haarde of the first three charges while criticising him for his alleged lack of action, she concurred with the minority that Haarde should be acquitted of the fourth charge, on the cabinet meetings. The constitutional stipulation on these meetings was, as the minority of six judges emphasised, introduced in 1920. It had its origin in the peculiar situation between 1918 and 1944 when Iceland was a kingdom in a personal union with the Danish king who resided in Copenhagen. Once or twice a year, the Icelandic prime minister went to Copenhagen to hold a Council of State with the King, presenting the documents which needed formal royal approval. As he was not only presenting cases belonging to his own ministry, but also those of his colleagues, their agreement had to be formally established. Therefore it was stipulated that important government matters had to be discussed at cabinet meetings, by which was meant, as was expressly recognised at the time, matters which the minister attending the Council of State would be presenting to the King. Otherwise the stipulation would hardly have made sense: it should normally not be necessary to put in writing a requirement for the discussion of important matters at cabinet meetings. Significantly, while the Icelandic Constitution was more or less an adaptation of the Danish Constitution, there was no corresponding stipulation in the latter one. When Iceland became a republic in 1944, this constitutional stipulation was retained which meant, the minority argued, that important government matters now referred to matters which needed the approval of Iceland's President in the Council of State. The majority maintained, however, that this had somehow turned into a general and unambiguous requirement which Haarde had not fulfilled. It was nonetheless admitted by the majority that if Haarde had just put the problems of the banks on the agenda of cabinet meetings

or had had them mentioned in the minutes, the Court would have had to acquit him of this charge. Haarde was not given any punishment, and the state was ordered to bear all legal costs.

There were serious flaws in the legal arguments of the majority. It did not provide any answer to the question when and how the constitutional stipulation to discuss important government matters at cabinet meetings should have changed its meaning: in 1920 it had been an unambiguous obligation to put on the agenda of those meetings matters subsequently to be presented in the Council of State, whereas in 2012 it had somehow become a wide-ranging obligation of the prime minister (and apparently the prime minister alone) to put all important government matters on the agenda of those meetings. When did matters become government matters and when did they become so important that they had to be brought up at cabinet meetings? For example, when Geir H. Haarde received warnings in February 2008 that in the ongoing international credit crunch the banks would have problems financing themselves, it was by no means certain that they would fail. Arguably the bank collapse only became almost inevitable after the US Fed refused on 24 September 2008 to provide the same liquidity assistance (through dollar swap deals) to the CBI as it was providing to the three Scandinavian central banks. And even then it was not certain that all three major banks would fall. Kaupthing, having received an emergency loan from the CBI, was the last bank to fall, and it fell because the British government closed down its subsidiary in London (as recognised in the SIC report), leading to the cancellation of most of the Icelandic parent company's loan agreements. The majority blithely ignored the testimony of six government ministers who all described the long-standing practice of resolving important matters outside formal cabinet meetings or of discussing such matters at the meetings without putting it into in the minutes. The majority also rejected the argument that some matters were too sensitive to be put on the agenda of cabinet meetings, ignoring previous indications of leaks from such meetings.

Again, the majority ignored the fact that the SIC had already considered this charge about cabinet meetings and decided not to present it in its report as a case of negligence. The majority also ignored precedents where important but sensitive government matters were intentionally not discussed at cabinet meetings. One example was in the period of 1956–1958 when a socialist with close ties to Moscow was a government minister. He was not trusted by his colleagues, so that negotiations with the United States—which had a military base in Iceland—were not discussed at cabinet meetings. Another example was the joint decision by the then prime minister and foreign minister in March 2003 publicly to support the impending military action by the United States, the United Kingdom and other countries in Iraq, without consulting other government ministers or the Foreign Affairs

Committee of the Parliament. Indeed, one of the judges on the Impeachment Court, Eirikur Tomasson, had as professor of law argued in a specially commissioned report that the two ministers had acted within the law. Anyway, Haarde had not enjoyed the benefit of doubt before the Impeachment Court. The minority, in its opinion, quoted the old legal maxim: *In dubio, pars mitior est sequenda;* In doubt, the gentler course is to be followed.

14. An Implausible ECHR Majority Opinion

The choices Iceland made in the 2008 financial crisis under the leadership of Prime Minister Geir H. Haarde and CBI Governor David Oddsson, to fence off Iceland and to keep the financial obligations of the Treasury to a minimum, while depositors were given priority claims to the estates of the fallen banks, turned out to be more prudent and effective than government bailouts in other countries. Since the assets of the banks were more valuable than estimated at first, the IMF in 2016 concluded that the Treasury actually had made a net gain from the bank collapse of 9% of GDP. In a 2013 report for the Parliamentary Assembly of the Council of Europe, Dutch Member of Parliament Pieter Omtzigt criticised the process against Haarde, stressing that political and criminal responsibility should be kept separate. However, against the advice of many of his friends who told Haarde that he should regard his acquittal of all substantial charges in the impeachment case as a victory, he referred his case to the ECHR in Strasbourg. He argued that in the process against him two legal principles had been violated, the right to a fair trial and no conviction without law.

Shortly after the ECHR had decided to hear the case, a new Icelandic judge was appointed at the Court, Robert Spano. He recused himself because of his earlier involvement in the case, being replaced by another Icelandic judge, Hjordis Hakonardottir, who was even more of a committed leftist. The final majority opinion of the ECHR, delivered in late 2017, echoed arguments presented by Spano in previous discussions in Iceland about Haarde's conviction. 'The voice is Jacob's voice, but the hands are the hands of Esau.' In the opinion it said that Haarde's right to a fair trial had not been violated, since the charge against him had been sufficiently clear and since the offence for which he had been convicted had been adequately defined in law. The Court rejected Haarde's complaint that the process had been political. This caused former Justice Minister Ogmundur Jonasson who had voted for Haarde's impeachment, to exclaim that of course it had been political, as he could confirm from his own participation in it. Jonasson, from the Left Greens, added that in hindsight he thought that he and the other members of parliament who had voted

for impeachment had made the wrong decision. A minority of one on the ECHR, Judge Krzysztof Wojtyczek, agreed with the ECHR majority that there had been no violation of the right to a fair trial, but found that the majority of the Impeachment Court had read more into the constitutional stipulation on cabinet meetings than was proper. He could nowhere discern a constitutional obligation of the Prime Minister to hold cabinet meetings on all important government matters. Therefore the principle of no conviction without law had been violated.

Judge Wojtyczek was certainly right that Haarde could not have known that he was violating the Icelandic Constitution by not formally putting the problems of the banks on the agenda of cabinet meetings. Of course he would have done so, had he known this. Haarde's conviction was based on reading into the Constitution more extensive obligations than were to be found there. The majority of the Impeachment Court not only interpreted the stipulation about cabinet meetings differently from what was its original intent: It also speculated that if Haarde had indeed put the problems of the banks on the agenda, then things might have turned out for the better. Haarde was never given the opportunity to defend himself against this additional charge. He did no more know about it than Joseph K. in Kafka's *Trial* about the charges against him. If Haarde had known about this charge, in his defence he could for example have called all his government colleagues as witnesses where they would have described the measures which they presumably had up their sleeve and which would have been revealed in discussions at cabinet meetings about the problems of the banks. He could also have called experts to testify on the likelihood of leaks if he had formally put the problems of the banks on the agenda of cabinet meetings and on the possible repercussions of such leaks. But there was an obvious reason why the majority introduced in its decision some speculations that things might have turned out for the better if Haarde had held cabinet meetings about the crisis. If he was only guilty of a formal lapse, a procedural error, then he should never have been brought before the Impeachment Court. It was only meant to deal with serious offences such as treason, gross negligence with grave consequences for the nation or a major infringement of individual rights.

The opinion of the ECHR majority was also based on a false analogy with the impeachment of Danish government minister Erik Ninn-Hansen on which the ECHR had earlier issued an opinion: 1) An important difference between the two impeachment courts was that non-professional (i.e. politically elected) judges formed a majority in the Icelandic court but only one half of the Danish court; the Icelandic one was thus more political in nature. 2) In Iceland, the prosecuting authority, the Parliament, had made several decisions during the process which affected the composition of the Impeachment Court, whereas in Denmark the composition of the Impeachment Court had remained the same from the

beginning to the end of the case. 3) Unlike Haarde, Ninn-Hansen had ignored warnings from his officials that he was violating the law. It was also clear what Ninn-Hansen should have done if he had taken notice of their warnings. 4) Unlike Haarde, Ninn-Hansen's case has been thoroughly investigated as a criminal case, with the charges clearly stated and with him having the opportunity to defend himself against them. 5) In Denmark, the proposal before the parliament was about charging one person, on the basis of a criminal investigation, and that proposal was approved, whereas in Iceland the proposal before the parliament was about charging four persons, on the basis of a non-criminal investigation, and after some political machinations it was decided to charge Haarde alone. The impeachment case itself cost 1.9 million euros, in addition to the 4.9 million euros the SIC cost. Even if Haarde was awarded all legal costs by the Impeachment Court, he, and his supporters, had to contribute 200 thousand euros in addition (all numbers at 2022 prices).

Some Conclusions

In one of Icelandic Nobel Laureate Halldor Laxness' novels, *Iceland's Bell,* taking place at the close of the 17th century, a distinguished Icelandic scholar meets a poor convict who has escaped from prison. The scholar is familiar with the convict's case and tells him that he cannot see any reasonable connection between the evidence presented and the conviction, but that the case is not anyway about the guilt or innocence of the accused. It is about who should exert authority in Iceland. Likewise, Geir H. Haarde's impeachment was not really about whether he was guilty or innocent according to the law. Everybody knew that he was not a reckless adventurer or a corrupt politician: he was known for his mild manners, honesty, courtesy and caution. Two powerful groups united against him. Left-wing politicians such as Steingrimur J. Sigfusson, Johanna Sigurdardottir and their followers saw an opportunity, in the aftermath of the bank collapse, to try and criminalise the major centre-right political force, Haarde's Independence Party. Some legal experts and judges, still resentful that they had not been able to control all appointments to the bench, played along, seeing an opportunity to teach unruly politicians a lesson or two. They probably also read the popular mood as requiring that somebody from the political leadership before the bank collapse should be convicted of something, however trivial and far-fetched. Few however took Haarde's conviction seriously, and indeed some of those members of parliament who voted for his impeachment have later recanted publicly. In 2015, a new centre-right government appointed Haarde as Iceland's Ambassador to the United States, and in 2019 he was chosen, without any objections, as the representative

of the Nordic and Baltic countries on the Board of Directors at the World Bank, serving for two years. The rapid recovery of the Icelandic economy after the bank collapse amply demonstrated both how successful the comprehensive reforms implemented in 1991–2007 had been and how prudent the government's reaction in 2008 to the crisis had been. In 2022, a decade after Haarde's impeachment trial, Iceland is again amongst the most prosperous and peaceful countries in the world.