EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

T : +33 (0)3 88 41 20 18
F : +33 (0)3 88 41 27 30
www.echr.coe.int

Copy
Ms Berglind ÁSGEIRSDÓTTIR
Ambassador Extraordinary and Plenipotentiary
Permanent Representative of Iceland
to the Council of Europe
52 avenue Victor Hugo
75016 PARIS

FOURTH SECTION

ECHR-LE4.1aG
SCP/RBJ/csc

14 November 2013

Application no. 66847/12
Haarde v. Iceland

Dear Madam,

I write to inform you that the above application is pending before the European Court of Human Rights.

Following a preliminary examination of the admissibility of the application on 11 November 2013, the President of the Section to which the case has been allocated decided, under Rule 54 § 2 (b) of the Rules of Court, that notice of the application should be given to the Government of Iceland and that the Government should be invited to submit written observations on the admissibility and merits of the case.

Your Government are requested to submit three copies of their observations (together with two copies of the enclosures, if any) by **6 March 2014** and, if possible, one copy by fax.

The observations should deal with the questions set out in the document appended to this letter (Statement of the facts of the application and Questions to the parties).

You should also inform me by **6 March 2014** of your Government's position regarding a friendly settlement of this case and any proposals they may wish to make. If the parties are interested in reaching a settlement, I would be prepared to make a suggestion for an appropriate arrangement. Having regard to the requirement of strict confidentiality under Rule 62 § 2, any submissions made in this respect should be set out in a **separate document**, the contents of which **must not** be referred to in any submissions made in the context of the contentious proceedings.

EUROPEAN COURT OF HUMAN RIGHTS
COUNCIL OF EUROPE
67075 STRASBOURG CEDEX
FRANCE

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
CONSEIL DE L'EUROPE
67075 STRASBOURG CEDEX
FRANCE

I enclose a copy of the following documents:

(a) a statement of facts prepared by the Registry and the questions to the parties;
(b) the application form submitted by the applicant;
(c) most relevant documents submitted by the applicant in support of the application.

Yours faithfully,

F. Elens-Passos
Section Registrar

Encs: Statement of facts and Questions
Application form and documents

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Communicated on 11 November 2013

FOURTH SECTION

Application no. 66847/12
Geir Hilmar HAARDE
against Iceland
lodged on 17 October 2012

STATEMENT OF FACTS

1. The applicant, Mr Geir Hilmar Haarde, is an Icelandic national, who was born in 1951 and lives in Reykjavik. He is represented before the Court by Mr Andri Árnason, a lawyer practising in Reykjavík.

The circumstances of the case

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

3. The applicant was a member of the Icelandic Parliament (*Althingi*) during the years 1987 to 2009. He served as the Minister of Finance in the years 1998 to 2005, Minister for Foreign Affairs from 2005 to 2006 and Prime Minister from 2006 to 2009. After the parliamentarian elections in May 2007 the applicant led the government which was formed by the Independence Party (*Sjálfstæðisflokkurinn*), of which he was a member, and the Social Democratic Alliance (*Samfylkingin*).

4. In the beginning of October 2008 the Icelandic banking system collapsed. On 6 October 2008 the applicant proposed a bill to Parliament which was adopted on the same day as Act no. 125/2008 on the Authority for Treasury Disbursements due to Unusual Financial Market Circumstances etc. ("the Emergency Act"). The Act, among other things, authorised the Financial Supervisory Authority (FSA) to intervene in the operations of financial undertakings and provided bank deposits with the status of priority claims in bankruptcy proceedings. On 7 and 8 October 2008 the FSA seized control of Iceland's three largest banks, Landsbanki Íslands hf., Glitnir banki hf. and Kaupþing banki hf.

5. In December 2008 Parliament established a Special Investigation Commission (SIC) to investigate and analyse the processes leading to the collapse of the abovementioned banks. It conducted an extensive

investigation during which it collected information from individuals, financial institutions and public institutions, conducted formal hearings with 147 individuals and meetings with further 183 individuals. According to section 1 of the Act no. 142/2008 on the Special Investigation Commission ("the SIC Act"), one of its objectives was to assess whether mistakes or negligence had occurred in the course of implementing laws and rules in respect of financial activities in Iceland and, if so, who might be responsible. Its role was not to investigate potential criminal conduct.

6. The applicant testified before the SIC on 2 and 3 July 2009. On 8 February 2010 the SIC informed him that it considered that he had acted negligently and invited him to submit a written statement in reply, which he did on 24 February 2010.

7. On 12 April 2010 the SIC issued its report which contained a detailed description of the causes for the collapse of the Icelandic banks as well as serious criticism of the acts and omissions of a number of public officials and institutions. This included the applicant and two other ministers from his cabinet, the Minister of Finance, Árni M. Mathiesen from the Independence Party and the Minister of Business Affairs, Björgvin G. Sigurðsson from the Social Democratic Alliance.

8. In the meantime, on 26 January 2009, the applicant´s government resigned and in February 2009 the Social Democratic Alliance and the Left-Green Movement formed a government. Those two parties gained a majority of seats in Parliament in the subsequent elections in April 2009.

9. In 2009 Parliament passed an amendment to the SIC Act according to which it was supposed to elect an *ad hoc* review committee (PRC) *"to address the report of the SIC on the collapse of the banks, and form recommendations as to Althingi´s response to the SIC´s conclusions"*. It was also to adopt a position on ministerial accountability and assess whether there were grounds for impeachment proceedings before the Court of Impeachment for violations of the Act on Ministers´ Accountability. The PRC was elected on 30 December 2009.

10. On 11 September 2010 the PRC submitted a proposal to Parliament to commence impeachment proceedings against the three ministers mentioned above (including the applicant) and Ingibjörg Sólrún Gísladóttir who was the former Minister of Foreign Affairs and the head of the Social Democratic Alliance. The proposal was presented as a whole but Parliament decided to vote on each former minister separately which led to the conclusion that the applicant was to be indicted but not the others. Apparently, all parliamentarians but six voted in the same way for all four former ministers.

11. On 12 October 2010 Parliament appointed a prosecutor, Sigríður J. Friðjónsdóttir, to prosecute the case on its behalf. It also appointed a parliamentary committee to assist her and to monitor the case. On 30 November 2010, after having repeatedly rejected the applicant´s requests, the Court of Impeachment appointed him a defence attorney. The prosecutor gained access to documents and information, including documents from the SIC´s database as well as email correspondence from the applicant´s former work email. The prosecutor conducted a research into these documents but she did not question the applicant. By and indictment of 10 May 2011 the applicant was indicted:

"1.

1.1 For having shown serious neglect of his duties as Prime Minister in the face of major danger looming over Icelandic financial institutions and the State Treasury, a danger of which he was or ought to have been aware and would have been able to respond to by initiating measures, legislation, general governmental instructions or governmental decisions on the basis of current law, for the purpose of avoiding foreseeable danger to the fortunes of the State.

1.2 For having failed to take initiative, either by taking measures of his own or by proposing measures to other ministers, to the effect there would be a comprehensive and professional analysis within the administrative system of the financial risk faced by the State because of the risk of financial crisis.

1.3 For having neglected to ensure that the work and emphasis of a consultative group of the Government of financial stability and preparedness, which was established in 2006, were more purposeful and produced the desired results.

1.4 For having neglected to take initiative on active measures on behalf of the State to reduce the size of the Icelandic banking system by, for example, endorsing the banks to reduce their balance sheets or endorsing some of them to move their headquarters out of Iceland.

1.5 For not having followed up and assured himself that active measures were being taken in order to transfer Landsbanki´s Icesave accounts in Britain to a subsidiary, and then to look for ways to enable this to happen with the active involvement of the State.

The above-specified conduct is deemed subject to section 10 (b), cf. section 11, of Act no. 4/1963, and, alternatively, Article 141 of the General Penal Code, no. 19/1940.

2.

For having, during the above-mentioned period, failed to implement what is directed in Article 17 of the Constitution of the Republic on the duty to hold ministerial meetings on important governmental affairs. During this period there was little discussion at ministerial meetings of the imminent danger; there was no formal discussion of it at ministerial meetings, and nothing was recorded about these matters at the meetings. There was nevertheless specific reason to do so, especially after the meeting on 7 February 2008 between him, Ingibjörg Sólrún Gísladóttur, Árni m. Mathiesen and the Chairman of the Board of Governors of the Central Bank of Iceland, and after his and Ingibjörg Sólrún Gísladóttir´s meeting on 1 April 2008 with the Board of Governors of the Central Bank of Iceland and following this a declaration to the Swedish, Danish and Norwegian Central Banks, which was signed on 15 May 2008. The Prime Minister did not initiate a formal ministerial meeting on the situation nor did he provide the Government with a separate report on the problem of the banks or its possible effect on the Icelandic State.

This is deemed to fall under section 8 (c), cf. section 11, of Act no. 4/1963, and, alternatively, Article 141 of the General Penal Code, no. 19/1940."

12. On the same date an amendment to the Act on the Court of Impeachment entered into force, according to which the judges appointed by Althingi (eight out of fifteen), *"who hold seat on [the Court of Impeachment] when Althingi has decided to impeach a minister, and their*

deputies, shall complete the case although their term has expired." This was to prevent that the term of office of those eight judges would expire during the proceedings.

13. The applicant challenged the impartiality and independence of the eight judges appointed by Parliament, mainly on the ground that Parliament had extended their term by having enacted the abovementioned legislation. By its ruling on 10 June 2011, the Court of Impeachment rejected that argument, finding that the legislator had pursued a legitimate aim and that the measure had been proportionate *vis-à-vis* the applicant.

14. The applicant lodged a further request to have the case dismissed, relying mainly on Article 6 of the Convention and Article 70 of the Icelandic Constitution. By its ruling of 3 October 2011, the Court of Impeachment unanimously upheld the applicant's claim for dismissal in respect of counts 1.1 and 1.2 of the indictment, but rejected the remainder of his request.

15. On 5 March 2012 the applicant gave his testimony before the Court of Impeachment, the first testimony he gave on the charges against him. The following days written and oral testimonies were produced and on 14 March 2012 the applicant gave his second testimony.

16. By its judgment of 23 April 2012, the Court of Impeachment unanimously acquitted the applicant of counts 1.3, 1.4 and 1.5 of the indictment. By nine votes to six, however, it found him guilty on count 2 by having failed to comply with the duty set out in Article 17 of the Constitution to hold ministerial meetings on "important governmental affairs". The applicant was not sentenced to any punishment and the Icelandic State was ordered to bear all legal costs, including fees to the applicant's counsel. The judgment is not subject to any appeal and is therefore final.

COMPLAINTS

The applicant complains under Article 6 § 1 that the Parliament's decision of 28 September 2010 to bring charges against him had been based on arbitrary and political grounds and that the fundamental defects in its preparation of the case against him had rendered the subsequent proceedings as a whole unfair.

Invoking Article 6 §§ 1 and 3 (a) and (b) of the Convention, he also complains about not having been given the opportunity to testify during the pre-trial stage of the proceedings, either before the Parliamentary Review Committee (PRC) or the prosecutor.

Moreover, he complains that the lack of clarity of the indictment had given rise to a violation of his right to a fair trial under Article 6 § 1, in particular in conjunction with Article 6 §§ 3 (a) and (b).

Furthermore, the applicant complains that the judgment of the Court of Impeachment had entailed violations of Article 6 §§ 1, 2 and 3 (a) and (b), as well as of Article 7 for the following reasons. The conclusion to convict him on count 2 of the indictment for not having held ministerial meetings on important governmental affairs had in part been based on speculation by

that court and also, in part, on arguments that had not been presented by the prosecution and the applicant had therefore had no reason to defend himself against them. This had also entailed a violation of his right to be presumed innocent. Moreover, he had been convicted for following a parliamentary and government convention which had been complied with and accepted for over a century. He could therefore not reasonably have foreseen that he would risk criminal charges on this ground.

Lastly, he contends that the composition of the Court of Impeachment and Parliaments interference with its composition had been in violation of the independence and impartiality requirement of Article 6 § 1.

QUESTIONS AND REQUESTS TO THE PARTIES

1. Was Article 6 § 1 of the Convention applicable to the proceedings in the present case? If so, as from which stage did it begin to apply?

2. To what extent does the fact that the applicant was acquitted of the charges in count 1 of the indictment of 10 May 2011 affect his status as a victim in the present application?

3. Did the applicant have a fair hearing before an independent and impartial tribunal in the determination of the criminal charges against him, in accordance with Article 6 § 1 of the Convention?

4. Did the wording of the indictment lead to a violation of the applicant's rights as guaranteed by Article 6 § 1 in conjunction with Article 6 § 3 (a) and (b)?

5. Was the presumption of innocence, guaranteed by Article 6 § 2 of the Convention, respected in the present case?

6. Did the conviction of the applicant entail a violation of the principle of *nullum crimen sine lege* as guaranteed by Article 7 of the Convention?

7. The Government are requested to submit an English translation of the judgment of the Court of Impeachment of 23 April 2012 as well as of other decisions/rulings relevant to the applicant's complaints.