

THE IMPEACHMENT OF GEIR H. HAARDE, PART II: A FLAWED AND BIASED PROCESS

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In Part II of this series, Hannes Gissurarson lays out the case that Geir Haarde was unfairly singled out and

blamed for the bank collapse in a flawed and biased process.

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In this three-part series, Hannes Gissurarson argues that the impeachment of Geir H. Haarde, Iceland's prime minister (2006-2009) and Leader of the centre-right Independence Party, for negligence in the period leading up to the 2008 bank collapse was a scandalous travesty of justice. Read Part I: Political Machinations and Legal Manoeuvres [here](#).

PART II

Three Individuals Spared

The remarkable fact about the Special Investigation Commission (SIC) was that 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.

First, Foreign Minister Ingibjorg S. Gissladottir was leader of one of the two coalition parties, the Social Democrats, and she and Geir H. Haarde jointly made all important decisions in response to the banking crisis. Gissladottir 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.

Second, 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 than 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.

Third, 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.

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 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, Haarde and 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 Helgadóttir, and Deputy State Prosecutor Sigríður Fríðjónsdóttir—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 2004–5 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 a 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. Gisladdottir 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.

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 grounds 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. 11 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: First, If either of the two ministers from the Social Democrats had been impeached, the Party would have split. Second, 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. And third, 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.

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 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.

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 was 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 the 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. Seven reasons are provided below:

First, 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.

Second, 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.

Third, 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.

Forth, 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.

Fifth, 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.

Sixth, 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.

Seventh, two of Tomasson's sons had worked in the banks and lost their jobs after the collapse.