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Keeping political and criminal responsibility separate

Information memorandum on the case of Geir Haarde, former Prime Minister of Iceland*

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1. Introduction

1. As indicated in the Introductory Memorandum,¹ the case of former Icelandic Prime Minister Geir Haarde is arguably one of those cases from which lessons can be drawn for keeping political and criminal responsibility separate.

2. My fact-finding visit to Iceland from 6-9 May 2012 was very instructive, and I should like to reiterate my thanks to the Icelandic delegation for its hospitality and the efficient organisation of the visit. As indicated at the Committee meeting on 21 May 2012 in Paris, I should like to present my findings on the Icelandic case in the form of this information memorandum. I will begin by summing up the facts of this case (2.) and presenting the interpretation they have been given by the two sides of the dispute (3.), and conclude by offering my own assessment, in the light of the information and views provided by our legal experts, Professor Satzger from Munich and Professor Verheij from Leiden.

2. Summary of the facts of the case of former Prime Minister Geir Haarde

3. Iceland suffered a severe economic setback in 2008/2009 in the wake of the world-wide banking crisis triggered by the bankruptcy of Lehman Brothers in the United States. The situation in Iceland was worse than in other countries in that the Icelandic banks in crisis (Landsbanki, Kaupthing and Glitnir) were far larger, in proportion to the country's GDP, than those elsewhere,² during the same world-wide financial crisis.

4. Politically speaking, the popular anger about the economic fallout of the banking crisis³ caused the loss of the 2009 general election⁴ by the liberal-conservative Independence Party (IP), which had been in

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¹ Doc. AS/Jur (2012) 18 dated 20 April 2012

² with the exception of Ireland, which also plunged into a severe fiscal crisis following the bailout of Irish financial institutions; in Iceland, the big three banks' balance sheet grew 20-fold in just seven years, between 2001 and 2007 (source: Special Investigation Commission, Press Conference, 12 April 2010, available at: <http://sic.althingi.is/>)

³ According to Statistics Iceland (available at: <http://www.statice.is/>), there was a fall in GDP of 6.8% in 2009 and another 4% in 2010 (2011: +3.1%); unemployment rose from 1.5% to 8.5 % in just a few months between the end of 2008 and the beginning of 2009 and it still stood at 7% in early 2012; the devaluation of the Icelandic Crown by almost half (from 91.2 ISK/€ at the end of 2007 to 182.5 ISK/€ on 30.11.2008 (source: Icelandic Central Bank, see <http://www.sedlabanki.is/default.aspx?PageID=183> and the prospect of a debt burden potentially mortgaging the future of the Icelandic people for generations (see, for example, European Commission, European Economy News, Issue 15, October 2009: Back from the brink? Iceland's road to recovery, available at: http://ec.europa.eu/economy_finance/een/015/article_8890_en.htm

government for many decades, in the last instance in a coalition with the Social Democratic Alliance (SDA). In this coalition Government, the Prime Minister, Geir Haarde, and the Finance Minister, Árni M. Mathiesen, belonged to the IP, whilst the Deputy Prime Minister and Minister of Foreign Affairs, Ms Ingibjörg Sólrún Gísladóttir, and the Minister for Business Affairs, Björgvin G. Sigurðsson, were Social Democrats. The current Government, a coalition of the Left-Green Movement (LGM) and the SDA, is led by Jóhanna Sigurðardóttir (SDA).

5. In December 2008, the Icelandic Parliament (Althingi), launched an in-depth expert inquiry “to investigate and analyse the processes leading to the collapse of the three main banks in Iceland”.⁵ The Special Investigative Commission (SIC)⁶ produced a detailed report of nine volumes published on 12 April 2010.⁷ The SIC functioned along the lines of a “truth commission” aimed at identifying mistakes made by different actors and ways and means to avoid such mistakes in future. The commission held hearings with numerous political and economic actors and experts. It came to the conclusion that the crisis was caused by unsound banking practices (including “weak capital”, the expansion of lending and borrowing spiralling out of control, and insider trading practices), which the Government had failed to stop in good time. In addition to leading bankers, the commission found that four members of the Government had been “negligent”: the Prime Minister, his Deputy (and Foreign Minister), the Finance Minister and the Minister for Business Affairs.

6. The findings of the commission were transmitted to a specially created committee of the Althingi, the Parliamentary Review Committee on the SIC Report (PRC),⁸ whose chair, Mr. Atli Gíslason (independent), I met in Reykjavik. This committee, advised by several experts including Ms Sigríður J. Fridjonsdóttir, who was subsequently elected as Special Prosecutor, decided to initiate prosecutions against three former Government members, i.e. those found “negligent” by the inquiry commission with the exception of the Minister for Banking. The prosecutions were to be based on Section 10 b. of the 1963 Act on Ministerial Accountability,⁹ which effectively penalises the failure of a Minister to take appropriate action in order to avert a “danger” that “foreseeably jeopardizes the State’s fortunes”. At the last moment, and, so I was told, on the proposal of the future Special Prosecutor, another accusation was added to the indictment: the violation of section Article 8 c of the 1963 Act on Ministerial Accountability,¹⁰ in conjunction with Article 17 of the Icelandic Constitution,¹¹ which penalises the failure, by the Prime Minister, to include an important political issue on the agenda of the Government (Cabinet of Ministers). Both counts of the indictment were based alternatively on Article 141 of the Icelandic Penal Code,¹² which generally penalises “major or reiterated negligence or carelessness” of civil servants.

⁴ The IP’s share in the vote fell by almost ten percentage points to 23.7%; other centre-right or liberal parties also lost substantially (details available at http://en.wikipedia.org/wiki/Elections_in_Iceland)

⁵ Act No. 142/2008 establishing the Commission.

⁶ Members: Supreme Court Judge, Mr. Páll Hreinsson, Parliamentary Ombudsman of Iceland, Mr. Tryggvi Gunnarsson, and Mrs. Sigríður Benediktsdóttir Ph.D., lecturer and associate chair at Yale University, USA

⁷ An executive summary and extracts of key findings are available in English at: <http://sic.althingi.is/>

⁸ Information on mandate and membership available in English at:

http://www.althingi.is/vefur/parliamentary_review_committee.html

⁹ Act no. 4/1963; Article 10

Finally a Minister will be deemed guilty according to this Act:

A If he severely misuses his power, although he may not have directly exceeded his executive boundaries;

B if he carries out something or causes something to be carried out that foreseeably jeopardizes the State’s fortunes although its execution is not specifically forbidden by law, as well as if he allows a failure to carry out something that could avert such danger or causes such execution to fail. (source: <http://www.sakal.is/media/skjol/Act-on-Ministerial-Accountability.pdf>)

¹⁰ Article 8

In conformity with the provisions above, a Minister is accountable according to law as follows:

A If he personally issues instructions or sees to the issuance of instructions by the president on matters which, according to the Constitution, can only be determined by law or fall under the auspices of the courts;

B if he does not seek the consent of parliament (Althingi) when obligated to do so according to the Constitution;

C if he by other means personally implements, orders the implementation of or allows the implementation of any such measure that contravenes the Constitution of the Republic, or omits implementing any such measure as ordered or causes an implementation not taking place;

D if he causes any decision or implementation that could reduce the freedom or sovereignty of the country.

¹¹ Article 17

Ministerial meetings shall be held in order to discuss new legislative proposals and important State matters. Furthermore, Ministerial meetings shall be held if a Minister wishes to raise a matter there. The meetings shall be presided over by the Minister called upon by the President of the Republic to do so, who is designated Prime Minister (available at: http://www.government.is/media/Skjol/constitution_of_icealand.pdf)

¹² Act no. 19/1940 ; Art. 141 A civil servant who becomes guilty of major or reiterated negligence or carelessness in his/her work shall be subject to fines or [imprisonment for up to 1 year.]¹⁾

¹⁾ Act 82/1998, Art. 61

7. The proposals of the PRC to indict the former Prime Minister and two former Ministers was put to the vote in the Althingi's plenary on 28 September 2010 one by one, starting with the former Prime Minister. A short majority¹³ voted in favour of his indictment, on both counts. In a surprise vote, the majority voted against indicting the former Deputy Prime Minister and the former Finance Minister. This vote gave rise to intense public debate. Mr. Geir Haarde was thus the only member of the previous Government to be indicted before the *Landsdomur*, the special court set up in 1905 for trying Government members suspected of criminal offenses, which was activated for the first time in the case of the former Prime Minister. The unease about singling out Mr. Geir Haarde was palpable throughout my visit, including among many members of parliament.

8. The *Landsdomur* has 15 members, including five Supreme Court judges, a district court president, a law professor and eight persons elected by the Althingi.¹⁴ In its judgment of 23 April 2012, the special court acquitted the former Prime Minister as regards his failure to take action to prevent a threat against the state, whilst finding him guilty of not having placed the imminent banking crisis on the agenda of the Cabinet of Ministers. The *Landsdomur* did not find it necessary to sentence the former Prime Minister to any fine, let alone a term of imprisonment and even awarded him a record amount for the reimbursement of his legal defense costs. Mr. Geir Haarde nevertheless indicated to me that he strongly resented the fact that he, and he alone, was held criminally responsible for the crisis that had struck his country.

3. Icelandic views on the conviction of former Prime Minister Geir Haarde

3.1. Views among the proponents of the prosecution

9. Those of my interlocutors who were in favour of the former Prime Minister's criminal prosecution gave both political and legal justifications for their point of view.

10. Politically speaking, they considered that the population at large had suffered harsh consequences of the failure of the former Government led by Geir Haarde to reign in on the abusive practices prevalent in the Icelandic banks, which threatened to bring down the finances of the whole country. The population at large would not understand if the political leadership could not be held to account also in criminal law for such grave mistakes.

11. Legally speaking, the proponents of the prosecution argued that the special court and the procedure followed before it were modelled on similar institutions in other Scandinavian countries, including Iceland's former motherland, Denmark. In Denmark, the case of former Justice Minister Erik Ninn-Hansen had followed the same procedure, which had been found to be in conformity with the European Convention of Human Rights by the Court in Strasbourg.¹⁵ The legal provisions relied upon by the prosecution, both procedural and substantive, were sufficiently clear and precise, even though legislative reforms aimed at their "modernisation" were now ongoing.

12. The procedure followed before the commission of inquiry, whilst not constituting, strictly speaking, a criminal investigation, was sufficiently thorough and transparent in order to replace the criminal investigation for the purposes of the prosecution of Geir Haarde.

13. The constitutional requirement of placing all politically important items on the agenda of the Cabinet of Ministers was unequivocal and could not be modified by its continued violation in practice.

14. The difference in treatment between the former Prime Minister, being the only person prosecuted, and the three other Ministers found "negligent" by the commission of enquiry, could be justified by the special responsibility incumbent on the Prime Minister under the Constitution.

15. The fact that the former Prime Minister had been singled out for prosecution gave rise to noticeable unease even among some of those of my interlocutors who were generally comfortable with the principle of prosecuting former Cabinet members for not having prevented the banking crisis. I could not fail to notice that there was a certain sense of relief among the pro-prosecution camp that the special court did not impose any actual punishment on the former Prime Minister.

16. By contrast, the former special prosecutor, who had in the meantime been promoted to the post of Prosecutor General, indicated that she disagreed with the acquittal of the former Prime Minister for the

¹³ by 33 votes to 30

¹⁴ See Article 2, Act no. 3 of 19 February 1963

¹⁵ See Decision as to the admissibility of application no. 28972/95, 18 May 1999

offense of failing to act to avert a grave disaster. The court had, regrettably, not followed her view, which had also been defended in the legal literature, that the provision in question provided for strict liability in the sense that it was not necessary to prove what exactly the former Prime Minister could have done at the relevant time, and that any action would have had a reasonable chance of success in averting the disaster.

3.2. *Views among the adversaries of the prosecution*

17. Those of my interlocutors who spoke against the prosecution of former Prime Minister Geir Haarde raised both political and legal arguments.

18. Politically speaking, they noted that the left-wing parties who were presently in power had lost much of the popularity they enjoyed when they were swept to power by popular discontent with the consequences of the banking crisis, due to their rigid, state-interventionist policies, which slowed down the recovery of the economy. In order to improve their chances at the next elections, they had therefore used the banking crisis and the prosecution of Geir Haarde as a means to “criminalise” the market-oriented, liberal policies of his Government and of its liberal-conservative predecessors, which had in reality been the basis of the unprecedented prosperity of Iceland since the Second World War. The party-political motivation of the prosecution of Geir Haarde became obvious when the current left-wing majority of the Althingi voted to prosecute only the former Prime Minister and not the other Ministers, two of them Social Democrats, who had also been found “negligent” by the commission of inquiry.

19. Legally speaking, the adversaries of the prosecution raised procedural and substantive objections.

20. Procedurally, they considered the special court as structurally flawed as the judges elected by the Althingi were actually in the majority. This was an important difference with the Danish case referred to by the proponents of the prosecution – in Denmark, following a law adopted in 1986¹⁶ not matched by Iceland, the professional judges (the ordinary members of the Supreme Court) and the members appointed by Parliament according to proportional representation were equal in numbers. Also, among the professional judges sitting on the special court, one had been appointed by Mr. Geir Haarde. Whilst this judge declined to sit on a case against the former Minister of Justice, who had appointed him, two others, who at the time were unsuccessful candidates in the same appointment procedure, and who had been appointed later by another Minister of Justice, did not find it necessary to step down. Another procedural objection is the fact that a proper criminal investigation, giving rise to the appointment of a defense council having certain rights of information never took place. The prosecution had based itself solely on the findings of the commission of inquiry, which had functioned along the lines of a “truth commission” and did not provide the safeguards afforded to a suspect in a normal criminal investigation – nor had it ever been intended to serve as a basis for a criminal prosecution. This was another important difference with the Danish case, in which a proper criminal investigation had indeed taken place during which the former Minister of Justice enjoyed all defense rights.

21. As concerns the substantive provisions, the adversaries of the prosecution find that neither accusation held water. As regards the “failure to act” to prevent the banking crisis, the prosecution had not even attempted to show what action the former Prime Minister should have taken, and even less that any such action would have had a chance of success. It is undisputed that for reasons of prescription, only the period between February 2008 and October 2008 could give rise to prosecution. The privatisation of the banks between 1998 and 2003 and the liberalisation of state regulations for banks in the following years are therefore irrelevant as regards criminal responsibility. So is the exponential growth of the banks’ balance sheets, most of which took place from 2003 to 2007.¹⁷ The risks were already taken before the cut-off-date, and they materialised due to external factors, in particular the failure of Lehman Brothers and the subsequent world-wide breakdown of interbank lending, which destroyed the concrete prospects of loans from Norwegian and other banks that may have prevented the Icelandic banks’ bankruptcy. The highly-publicised use by the British authorities of anti-terrorism legislation to freeze the assets of Landsbanki, which had collected private savings in the United Kingdom through its “Icesave” accounts¹⁸ had also not helped

¹⁶ See Act No. 100/1954 and Consolidation Act No. 641 of 17 September 1986, Section 2

¹⁷ See Lessons from a Collapse of a Financial System, Sigridur Benediktsdottir, Jon Danielsson and Gylfi Zoega, 6 October 2010, at pages 6-10 (available at: http://www.cepr.org/meets/wkcn/9/979/papers/benediktsdottir_etal.pdf)

¹⁸ See the current affairs debate at the Standing Committee meeting on 28 November 2008 in Madrid, on - held a current affairs debate on “the world financial crisis: the economic collapse of Iceland”, following the request of the Icelandic parliamentary delegation, introduced by Mr Sigfusson (Iceland, UEL); introduced by Mr. Sigfusson (Iceland/UEL) and the speeches at the January 2009 part-session of the Parliamentary Assembly of Ms Bjarnadottir, Lord Tomlinson and Lord Anderson (available at: <http://assembly.coe.int/Main.asp?link=/Documents/Records/2009/E/0901291000E.htm>).

the situation. At least after the cut-off date for criminal responsibility, i.e. after February 2008, there was nothing the Prime Minister could have done to stop the crisis.

22. The interpretation of the provision in question as providing for strict liability would be a clear violation of Article 7 of the European Convention on Human Rights (ECHR).¹⁹ If it were not even necessary for the prosecution to establish what the accused Cabinet member should and could have done in order to avert the impending disaster, criminal liability would be utterly unpredictable and thus violate the principle of *nulla poena sine lege*.

23. The conviction of the former Prime Minister for failing to include the impending banking crisis on the agenda of the Cabinet of Ministers did not stand up to scrutiny either. Since "time immemorial", before even the independence of Iceland from Denmark, it had been standard constitutional practice that only those items were included on the formal agenda of the Cabinet of Ministers, which were required to be presented subsequently to the Danish King (after independence the President of Iceland), i.e., in particular, any draft laws requiring royal or presidential signature. Other items were usually treated under the agenda item "any other business", including the problems of the Icelandic banks. These had of course been discussed frequently and in depth during Cabinet meetings. placing the impending bankruptcy on the agenda as a separate item would have precipitated a bank run, given also the lack of respect for the confidentiality of the Cabinet agenda by certain Ministers. In view of the standard practice described above, the prosecution of (only) former Prime Minister Geir Haarde was a clear case of selective prosecution, motivated solely by party-political considerations.

4. Assessment in the light of the hearing with legal experts on 21 May 2012 in Paris

24. In my view, the case of former Prime Minister Geir Haarde is a case in point demonstrating that holding a political leader criminally responsible for his political acts (and even omissions) poisons the political climate without advancing the cause of justice.

25. In Iceland, the mechanism of political responsibility through the democratic system has functioned remarkably well: those found to bear primary responsibility for policies that have resulted in economic hardship were voted out of office at the next election.²⁰ At least at that election it became clear that the liberal, pro-market policies pursued by earlier Governments no longer enjoyed majority support.

26. As an economist, I am not so sure that the policies pursued by the Government of Prime Minister Geir Haarde were really so bad. In fact, the market-oriented policies pursued since the 1990s had generated unprecedented prosperity in Iceland, which until then depended entirely on its fisheries. During the crisis, the Government's refusal to nationalise the ailing banks and thus take on all their debts on behalf of the taxpayer (as the Government did in Ireland, for example) may well prove to be less damaging in the long run than letting the banks go bankrupt and using tax money that would have otherwise gone into bailouts for measures to soften the blow to individual savers and the real economy.²¹

27. The attempt to criminalise the former Prime Ministers' policies has clearly backfired against the political class as a whole and in particular against those who were elected on the strength of their promise to "moralise" politics, which had been perceived as being too closely linked to big business. The party-political motivation of singling out the former Prime Minister for criminal prosecution is thinly veiled and has left a bad aftertaste, even among leading supporters of the principle of criminal responsibility for such policy decisions as the handling of the banking crisis in Iceland.

28. It can be said, in the light of Professor Verheij's explanations on the scope of the immunity of politicians, that the legal situation in Iceland is such that cabinet Ministers can indeed be subject to criminal

¹⁹ Article 7 No Punishment without law

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
2. [...]

²⁰ This clearly applies to the Independence Party, less so to the Social Democrats, who were the (junior) partner in the coalition Government in power prior at the time of and in the run-up to the banking crisis and who continue to be in the Government, as part of another coalition.

²¹ I do not wish to take position on the general ideological battle on the political expediency of having private rather than state-owned banks, and how incisive banking regulations and the supervision of their implementation ought to be. History has shown, in many countries, that nationalisation of banks does not prevent costly mismanagement. Neither do I wish to venture an opinion on the question whether Iceland had proper banking regulation in place and had cracked down sufficiently on insider dealings, which are particularly tempting in a small society such as Iceland's.

prosecution before the special court set up for this very purpose. The issue of the necessary lifting of the immunity by parliament does not arise to the extent that parliament itself, the Althingi, acts as the prosecuting authority in this set-up. When the majority of parliament decides to prosecute, immunity is no issue. Whether a parliament is indeed an appropriate body to act as a prosecuting authority is another question. In the light of the Icelandic experience, I have some doubts in this respect.

29. Keeping in mind Professor Satzger's explanation as to the required precision of any criminal provisions, including those applied to politicians, I also have doubts on the compatibility with Article 7 ECHR of both provisions under which the former Prime Minister was indicted. As to the failure to take action to avert an imminent disaster, criminal liability is reasonably foreseeable only when the addressee of the provision knows, or can be expected to know what is expected from him or her. In the case at hand, nobody was able to tell me what the Prime Minister should or could have done at the relevant time in order to prevent the banking crisis. Even the former Special Prosecutor, whom I asked the question several times, could only say that the former Prime Minister should have done "something", "anything", to prevent the crisis. That is clearly not sufficient in terms of the foreseeability requirement of Article 7. The second count of the indictment, the failure to formally include the banking crisis on the cabinet's agenda, in my view smacks of a rather transparent attempt to find "something", or "anything", to avoid a full acquittal of the former Prime Minister. While it is true that actual practice, even since before Iceland's independence, cannot formally change the Constitution, it does provide a basis for interpretation in such a way that whilst politically important issues must be discussed in the Cabinet, this can be done under "any other business", in particular in cases such as that of the impending banking crisis in which there are good reasons not to make the very fact of the emergency discussion public prematurely. The actual wording of Article 17 of the Constitution²² does not appear to lend itself to such a strict, or even formalistic interpretation, which would make the practice - followed since before the independence of Iceland - look unconstitutional and even criminal.

30. The institutional set-up of the special court and the procedures followed also raise important question marks. Even though the non-professional judges on the special court were not elected on an ad hoc basis for the case at hand, the fact that a majority of judges were elected by parliament is questionable, given that parliament is at the same time the prosecuting authority deciding on whether, and whom to prosecute, and on what legal basis. Also, Parliament, as the prosecuting authority, relied entirely on the inquiry carried out by the Special Investigative Commission, whose mandate and procedures did not correspond to a criminal investigation. Neither did the Parliamentary Review Committee, which relied entirely on the SIC report, carry out any investigative acts of its own. The Althingi, as the prosecutorial authority, did not carry out or commission any proper criminal investigation, which seems to have robbed the accused of key defense rights such as that of having a defense council from the early stages of the investigation. These are notable differences from the Ninn-Hansen case, which the proponents of the prosecution have cited as a precedent. In the Danish case, a full-fledged, independent criminal investigation was carried out before the decision on prosecution was taken, during which the accused had enjoyed all the rights pertaining to this status.²³

31. As we have seen, a new parliamentary majority in Iceland had decided to prosecute a former Prime Minister for a relatively minor violation of a formal requirement, which numerous predecessors had also violated without any of them having been prosecuted. This does raise the question of a comparison with the Ukrainian cases of former Prime Minister Yulia Tymoshenko and in particular of former Interior Minister Yury Lutsenko. The former was convicted of having signed a "detrimental" treaty without proper authorisation by her Cabinet of Ministers; the latter for having signed an order whilst being on holiday and for having allowed that his driver be given the same advantages in terms of pay and housing as his predecessors' drivers. Of course there is a very important difference with the Icelandic case, in that the two Ukrainian politicians in question were treated much more harshly – they were given long prison sentences and there are even reports of serious mistreatment in detention. But the fact remains that Mr. Geir Haarde was singled out for prosecution by his political opponents and convicted for having merely followed a long-established practice as regards the agenda of cabinet meetings.

32. Professor Satzger's comparison with football has impressed me. A football player is subject to sanctions under the rules of the game in case of foul play, thus escaping criminal responsibility for intentionally or negligently causing bodily harm. His opponent will get a free kick, or even a penalty shot, but he will not be prosecuted criminally, except when he commits such an outrageous attack on an opposing player that the presumed prior consent (or waiver of criminal responsibility) for "normal" fouls does clearly not

²² See note 11, above

²³ It should be noted that the case of former Danish Justice Minister Ninn-Hansen differed from that of Mr. Geir Haarde not only in procedural terms, but also concerning the substantive grounds for prosecution. Mr. Ninn-Hansen was accused and found guilty of abusing his Ministerial office by giving unlawful instructions to civil servants aimed at depriving refugees of their legal right to family reunification.

apply. *Mutatis mutandis*, a politician and his or her team (party) will lose votes at the next elections, and maybe even be voted out of office if he or she makes a political mistake, even a negligent one, or one that looks particularly bad with the benefit of hindsight. But criminal responsibility, with all that it entails, comes into play only if and when the politician's acts or omissions fall clearly outside the perimeter of normal (albeit flawed) political decision-making. This would normally be the case only when a politician acts for personal gain and/or intentionally violates fundamental rights of others.

33. Applying these criteria to the case of Mr. Geir Haarde, I would say that his political mistake, if it was a mistake at all²⁴ does not fall outside the perimeter of normal political decision-making and should therefore not have been subject to any other accountability than that foreseen by the rules of the "political game" – his camp losing the next election, for either not having done the right thing, or even having done the right thing and not being able to convince the voters.

34. To conclude, I would be rather worried that if we were to accept the precedent of the criminal prosecution and conviction of Mr. Geir Haarde, we would have to expect a wave of prosecutions against many politicians in many countries – if and when the taxpayers in the "Northern" countries of the Euro zone will be made to foot the bill for the staggering rescue packages in favour of "Southern" countries, and/or the people in the "Southern" countries realise how deep the trouble really is that they are in because of the irresponsible fiscal policies pursued for many years by their own Governments. I do not argue that our Governments should not be held to account for the consequences of these policies. But individual politicians should only be held criminally responsible if their action fell outside the scope of normal political decision-making. The latter must be judged exclusively in the "courts" of democratic elections.

²⁴ Sometimes, hindsight changes again after further passage of time; history will tell whether the path chosen by Iceland on the watch of Prime Minister Geir Haarde was really so bad.