November 2005

ICELAND

(a)	**Registration no.**	IS/1
(b)	**Date**	15 September 1995
(c)	**Author(ity)**	Supreme Court (*Hæstiréttur*)
(d)	**Parties**	Guðrún Skarphéðinsdóttir (Individual) vs. the Embassy of the United States of America (State)
(e)	**Points of law**	The Court establishes that according to the principles of public international law a foreign State cannot fall under the jurisdiction of judicial tribunals of another State, without the consent of the former, in the manner the plaintiff sought to accomplish with the instituted legal proceedings.
(f)	**Classification no.**	0.b, 1, 2.c
(g)	**Source(s)**	The Supreme Court´s Collection of Court Rulings 1995 (Dómasafn Hæstaréttar 1995)
(h)	**Additional information**	
(i)	**Full text - extracts - translation - summaries**	Summary English: Appendix 1 Full text: Appendix 2* Full text English: Appendix 3

(*) Not included in this document. Will be included in the final publication where appropriate.

Appendix 1

A landlord instituted legal proceedings against the Ambassador of the United States of America on account of the Embassy of the United States of America in Iceland acting for the State Deparment of the United States of America regarding unpaid rent. In the lease agreement the tenant was claimed to be the Secretary of State of the United States of America. In light of the lease agreement it was understood that the defendant proper were the United States of America, which were represened by the Secretary of State. The Court pointed out that according to Icelandic rules of civil procedure, a foreign Embassy does not enjoy the status of being capable of acting as an independent party in a court case. Also, the Court stated that in accordance with principles of public international law, a State cannot fall under the jurisdiction of judicial tribunals of another State, without the consent of the former, in the manner the plaintiff sought to accomplish with the instituted legal proceedings. The case was dismissed *ex officio.*

<u>Appendix 3</u>

The Supreme Court of Iceland

Friday 15 September 1995.

No 299/1995.

Ms. Guðrún Skarphéðinsdóttir

(Barrister Mr. Björgvin Þorsteinsson)

versus

The Embassy of the United States of America in Iceland

Complaint. Dismissal confirmed. Judicial tribunals. Public international law.

Ruling of the Supreme Court of Iceland.

Supreme Court Justices, Mr. Garðar Gíslason, Mr. Gunnlaugur Claessen and Mr. Markús Sigurbjörnsson, hand down judgement in the present case.

The plaintiff took an appeal to the Supreme Court by way of a complaint on 4 September 1995, which was received by the Court together with the complaint documents on 6 September the same year. The subject matter of the complaint is the decree of the District Court of Reykjavík on 30 June 1995, where the plaintiff's case against the defendant was dismissed *ex officio*, but the plaintiff states that she did not learn of the decree until 22 August 1995. Regarding freedom of filing a complaint the plaintiff refers to Article 143, paragraph 1(j) of the Civil Litigation Act No 91/1991. The plaintiff makes the claim that the decree complained about would be annulled and requests that the District Court judge would be ordered to hear the case *de novo*. Furthermore the plaintiff makes the claim that the defendant would bear the costs associated with the complaint.

The defendant has not exerted itself with regard to the case.

In the summons the plaintiff states that she brings action against "Ambassador Parker Borg residing at Laufásvegur 21, Reykjavík, on account of the Embassy of the United States of America in Iceland, acting for the State Department of the United States of America". The plaintiff backs up her claims in the present case with a lease agreement, dated 18 September 1990, concerning an apartment at Freyjugata 27 in Reykjavík, where the tenant is claimed to be the Secretary of State of the United States of America. Considering the aforementioned wording of the summons the plaintiff's building of the case must be so understood, in light of the lease agreement, that the defendant proper were the United States of America, which were represented by the Secretary of State of that state. Furthermore it must be borne in mind that, according to Icelandic rules of civil procedure, a foreign Embassy does not enjoy the status of being capable of acting as an independent party in a court case.

In accordance with principles of public international law, a state cannot fall within the jurisdiction of judicial tribunals of another state, without the consent of the former, in such a manner that the plaintiff seeks to accomplish with her legal proceedings. The

present case will therefore not be presented before Icelandic judicial tribunals. For that reason the conclusion of the decree complained about must be confirmed forthwith.

No costs, related to the complaint, will be determined.

The verdict:

The decree complained about is here by confirmed.

Decree of the District Court of Reykjavík 30 June 1995.

The present legal action, where the case was taken in for judgement on 27 June 1995, is brought against Ambassador Parker Borg, residing at Laufásvegur 21 in Reykjavík, on account of the Embassy of the United States of America in Iceland acting for the State Department of the United States of America, before the Court by way of a summons issued 23 June 1995 by Ms. Guðrún Skarphéðinsdóttir, identity number 130741-7459, residing at Freyjugata 27 in Reykjavík, on the subject of payment of a debt of the amount of ISK 7 424 280 at a penalty rate, pursuant to Chapter III of the Interest Act No 25/1987, as regards the amount of ISK 322 920 as from 20 July 1992 to 20 October 1992; as regards the amount of ISK 664 500 as from the same date to 20 January 1993; as regards the amount of ISK 1 046 400 as from the same date to 20 April 1993; and as regards the amount of ISK 1 424 280 as from the same date until the date of payment.

The plaintiff makes the alternative claim that the defendant would be ordered to pay the amount of ISK 1 101 360 at a penalty rate, pursuant to Chapter III of the Interest Act No 25/1987, as regards the amount of ISK 341 580 as from 20 October 1992 to 20 January 1993; as regards the amount of ISK 723 480 as from the same date to 20 April 1993; and as regards the amount of ISK 1 101 360 as from 20 April 1993 until the date of payment.

The plaintiff makes the claim that the Court would rule that penalty interest would be added every 12 months to the amount of principal outstanding determined by the Court, whichever would be accepted, the principal or the alternative claim.

Furthermore the plaintiff makes the claim that the defendant would bear the Court costs in accordance with the invoice for the costs, which would be presented at the primary hearing of the case at the latest, with the addition of mandatory value added tax.

Conclusion.

An Ambassador has been summoned, on account of the Embassy of the United States of America in Iceland acting for the State Department of the United States of America, before the Court by the plaintiff on the issue of the payment of a rent, that she claims the Embassy owes her. Article 31(1) of the Vienna Convention on Diplomatic Relations, which was legally validated in this country by Act of Parliament No 16/1971, states that a diplomatic agent should enjoy immunity from civil and administrative jurisdiction of the receiving State. An exception is made to this principle as stated in subparagraphs a to c of the aforementioned Article. With reference to this it must be held that the Embassy of the United States of America in Iceland, acting for the State Department of the United States of America, enjoys immunity (extraterritorial rights) in this country. Hence the present case must be dismissed *ex officio.*

No costs will be determined.

Ms. Arnfríður Einarsdóttir, deputy for the President of the Court, issued the decree.

The decree reads as follows:

The present case is dismissed. No costs are determined.

(a)	**Registration no.**	IS/2
(b)	**Date**	28 January 1998
(c)	**Author(ity)**	Supreme Court (*Hæstiréttur*)
(d)	**Parties**	Sigurður R. Þórðarson, Björn Erlendsson, Vilhjálmur A. Þórðarson, Hákon Erlendsson, Jón Ársæll Þórðarson og Naustin hf. (Individuals) vs the Government of the United States, the United States Forces in Iceland and the State of Iceland (States)
(e)	**Points of law**	The Court dismissed the the case against the Government of the United States and the United States Forces in Iceland *ex officio* on the grounds that neither the Defence Agreement between the Republic of Iceland and the United States of America, done on 5 May 1951, nor rules of public international law lead to the conclusion that the US Government or the US Forces in Iceland should fall under the jurisdiction of Icelandic judicial tribunals in disputes over such matters.
(f)	**Classification no.**	0.c, 1, 2.c
(g)	**Source(s)**	The Supreme Court´s Collection of Court Rulings 1998 (Dómasafn Hæstaréttar 1998)
(h)	**Additional information**	
(i)	**Full text - extracts - translation - summaries**	Summary English: Appendix 1 Full text: Appendix 2* Full text English: Appendix 3

Appendix 1

The plaintiffs commenced legal action against the Government of the United States, the United States Forces in Iceland and the State of Iceland, submitting various claims related to the defendants' use of the plaintiffs´ land. The plaintiffs´ land had been leased by the Government of Iceland that then handed it over to the US Forces to use. Neither the US Government nor the US Forces in Iceland were parties to the lease agreement. The Supreme Court dismissed the case against the US Government and the US Forces in Iceland *ex officio* on the grounds that neither the Defence Agreement between the Republic of Iceland and the United States of America, done on 5 May 1951, nor rules of public international law lead to the conclusion that the US Government or the US Forces in Iceland should fall under the jurisdiction of Icelandic judicial tribunals in disputes over such matters.

Appendix 3

Supreme Court

No 7/1998.

Wednesday 28 January 1998.

Mr. Sigurður R. Þórðarson

Mr. Björn Erlendsson

Mr. Vilhjálmur A. Þórðarson

Mr. Hákon Erlendsson

Mr. Jón Ársæll Þórðarson and

Naustin Ltd

(Themselves)

versus

The Government of The United States of America,

The US Defence Force in Iceland

(No one) **and**

The State of Iceland

(Barrister Ms. Guðrún Margrét Árnadóttir)

Complaint. Dismissal confirmed. Jurisdiction.

Ruling of The Supreme Court of Iceland

Supreme Court Justices, Mr. Pétur Kr. Hafstein, Mr. Garðar Gíslason and Mr. Haraldur Henrysson, hand down judgement in the present case.

The plaintiffs took an appeal to the Supreme Court by way of a complaint on 29 December 1997, which was received by the Court, together with the complaint documents, on 6 January 1998. The subject matter of the complaint is the decree of the District Court of Reykjavík where the case was dismissed. Reference is made to the clause on freedom of filing a complaint in Article 143, paragraph 1(j) of the Civil Litigation Act No 91/1991. The plaintiffs make the claim that the decree complained about would be annulled and request that the District Court judge would be ordered to hear the case *de novo*. Furthermore they call for the reimbursement of costs related to the complaint.

The defendants, the US Government and the US Defence Force in Iceland, have not exerted themselves with regard to the case.

The defendant, the State of Iceland, demands that the decree of dismissal and costs related to the complaint will be confirmed.

Article 2 of the Defence Agreement between The Republic of Iceland and The United States of America, dated 5 May 1951, which was enacted by adoption of Act of Parliament No 110/1951, provided that Iceland would make all acquisitions of land and other arrangements required to permit entry upon and use of facilities in accordance with the said agreement and that the United States should not be obliged to compensate for such entry or use. The Defence Agreement does not stipulate that the US Government or the US Defence Force in Iceland should fall within the jurisdiction of Icelandic judicial tribunals in matters of disputes over such matters. Rules of public international law do not lead to that conclusion either. By way of this observation and with reference to the argumentation for the decree complained about in other respects it will be confirmed

The plaintiffs shall pay the defendant, the State of Iceland, costs related to the complaint as stated in the verdict.

The verdict:

The decree complained about is here by confirmed.

The plaintiffs, Mr. Sigurður R. Þórðarson, Mr. Björn Erlendsson, Mr. Vilhjálmur A. Þórðarson, Mr. Hákon Erlendsson, Mr. Jón Ársæll Þórðarson and Naustin Ltd, shall pay the defendant, the State of Iceland, *in solidum* costs related to the complaint of the amount of ISK 60 000.

Decree of The District Court of Reykjavík 15 December 1997

The present legal action is brought against the defendant by way of a summons, served on the defendant, the United States Government, 21 May 1997, and a summons was served on the Icelandic Government 26 May the same year.

The plaintiffs are: Mr. Sigurður R. Þórðarson, identity number 260745-3959, residing at Glaðheimar 8, Reykjavík; Mr. Björn Erlendsson, identity number 210545-3529, residing at Aðalland 15, Reykjavík; Mr. Vilhjálmur A. Þórðarson, identity number 050342-3529, residing at Háteigsvegur 40, Reykjavík; Mr. Jón Ársæll Þórðarson, identity number 160950-4399, residing at Framnesvegur 68, Reykjavík and Mr. Hákon Erlendsson, identity number 210150-4719, residing at Helluhóll 5, Hellissandur, in person and also on behalf of Nausin Ltd, as the owners of all shares in the company and the owners of the farms Eiði I and II, situated in the peninsula of Langanes in the District of Norður-Þingeyjarsýsla.

The plaintiffs' claims are mainly submitted against the US Government, represented in Iceland by the Ambassador of The United States of America in Iceland, Mr. D. O. Mount, in the American Embassy at Laufásvegur 21, 101 Reykjavík, on behalf of the US Government, and by Admiral J. E. Boyington, the Commandant of the US Armed Forces Defence Force in Iceland (Iceland Defence Force), on behalf of the US Armed Forces Defence Force, post office box 1, 235 Keflavíkurflugvöllur, and alternatively Mr. Davíð Oddsson, Prime Minister, and Mr. Halldór Ásgrímsson, Minister for Foreign Affairs, are summoned on behalf of the Icelandic Government for the defence in the case.

Claims Made Before the Court

The plaintiffs make the following claims before the Court against the prime defendants: That the US Government and the US Armed Forces Defence Force would be ordered to make acquisitions of land, by way of agreements, for the purpose of the storing of military wastes and other construction debris in the part of the plaintiffs' land on Mount Heiðarfjall/Mount Hrollaugstaðafjall on the estate of Eiði I and II in the peninsula of Langanes delimited by the following coordinates: 1) N 7352.095.52, E 499.927.88, 2) N 7351.500, E 500.300, 3) N 7351.180, E 500.500, 4) N 7350.500, E 500.500, 5) N 7350.500, E 499.500, 6) N 7351.500, E 499.500 and 7) N 7351.902.34, E 499.500, in aggregate 156 hectares. The claim is also made that the acquisitions made would be upheld during the prime defendant's use of the land and until wastes and other construction debris, belonging to the prime defendant, had been fully cleaned up and that the rightful owners would, in pursuance there of, be compensated for the damage, which they had genuinely suffered.

The plaintiffs make the claims before the Court against the alternate defendant that the State of Iceland would be ordered to make the same acquisitions of land, as those stated in the claims against the prime defendant, on the aforementioned estate and in the aforementioned area, on behalf of the US Government and the US Armed Forces Defence Force, cf. Article 2 of the Defence Agreement dated 5 May 1951, in order to release the rightful owners from the obligation, imposed upon them at the present, to provide the aforesaid access to their private property. The claim is also made that the acquisitions made would be upheld during the use of the prime defendant of the land and until wastes and other construction debris, belonging to the defendant, had been fully cleaned up and the rightful owners had, in pursuance there of, been compensated for the damage, which they had genuinely suffered.

Furthermore, the plaintiffs make the claim before the Court that the defendants would be ordered to pay *in solidum* full costs, in accordance with the invoice presented, with the addition of a mandatory value added tax put on the costs amount, cf. the provisions of Acts of Parliament No 50/1988 and No 119/1989, and that the plaintiffs would not be treated as taxable persons with regard to the VAT; further still that the costs amount would bear late-payment interest, cf. Article III of the Interest Act No 25/1987, as amended in accordance with Article 129(4) of Act of Parliament No 91/1991.

These claims were made before the Court since the defendants' use of the plaintiffs' private property, for the purpose of storage of wastes and other construction debris, were continuing, prevailing and illegal, and were moreover causing the plaintiffs damage and considerable inconvenience. The summons were in direct consequence there of.

The alternate defendant's main claims made before the Court, i.e. those of the State of Iceland, are that the case would be dismissed and that the plaintiffs would be ordered to pay the alternate defendant full costs *in solidum,* determined by the Court. The alternate defendant's alternative plea is that it would be acquitted of all claims, made by the plaintiffs, and that it would receive full costs, paid *in solidum*, from the plaintiffs, as may be determined by the Court.

No one was present on behalf of the prime defendants, when the case was instituted here before the Court on 26 June 1997. The President of the Court received a letter from the Ministry for Foreign Affairs, dated 10 June 1997, stating that the American Embassy and the US Defence Force had contacted the Ministry and expressed their opinion that an action would not be brought against them before Icelandic judicial tribunals. Hence no

one would be present on their behalf before the Court and they would assume that the case would be dismissed *ex officio* as they were concerned.

At the hearing on 22 October 1997 the plaintiffs' advocates made the request that the representation on account of the dismissal claim introduced would be in writing. The judge granted the request with the approval of the attorney for the alternate defendant, hereinafter referred to as "the defendant", unless otherwise stated. Before addressing substantially the alternate defendant's dismissal claim and the prime defendants' involvement in the case, a general account will be given of the circumstances of case.

Circumstances of the Case

Act of Parliament No 110/1951 enacted the Defence Agreement between The Republic of Iceland and The United States of America. Two so-called attachments were enacted concurrently with the legislation procedure and are regarded as a part of the enactment. The attachments lay down more specifically the legal status of the two contracting states and their nationals in this country. One of the attachments bears the title "The Defence Agreement between The Republic of Iceland and The United States of America Pursuant to the North Atlantic Treaty" and the other "Annex on the Status of the United States Personnel and Property". In the present case the first mentioned attachment applies and it will hereinafter be referred to as the attachment to the Act of Parliament No 110/1951. According to Article 2 of the attachment the Icelandic authorities undertake to make all acquisitions of land and other arrangements required to permit The United States entry upon and use of facilities with no obligation to compensate for such facilities, cf. Article 1 of the attachment.

By concluding a contract, dated 3 May 1954, the Icelandic authorities leased a piece of land on the farm Eiði in the peninsula of Langanes (Eiði I and II). The area concerned is 1 km² of land on Mount Hrollaugsstaðafjall, delimited on a geological map attached to the contract as a part there of. The contract was valid as from 1 September 1953 and no time limit was set on the lease. The lessor was unable to withdraw from the contract, whereas the lessee was entitled to cancel it with six months notice as from 1 September every year. The contract states that the lessee may use the piece of land leased at will and may authorize others to use it. The contract authorizes the lessee to lay water pipes on the land of the estate Eiði leading to the piece of land leased and to lay sewage pipes out to sea. Furthermore construction works were authorized and excavation of minerals for building purposes and other use. The contract does not lay down any requirements with respect to departure from the area when the lease would expire.

Access to the area was granted to the Americans in May 1955, who built a radar station there, which was in operation from 1957 until 1970. By way of a contract, dated 10 December 1960, the landowners handed over to the Icelandic authorities additional land on Mount Hrollaugsstaðafjall. In communications between Icelandic authorities and the US Government this area is referred to as the H-2 area. Use of the said area, as stated in the lease, was terminated in a letter to the owners of the farm Eiði, dated 5 March 1970, as from 1 September the same year. Payment for the lease, from 1 September 1970 until 1 March 1971, was enclosed with the letter. Icelandic authorities received the said area from the Americans by way of a contract dated 7 July 1970. The contract states that Icelandic authorities renounce, on their behalf and on the behalf of all Icelandic nationals, all claims against the US Government that might be attributed to its use of the said area. The State of Iceland took over all constructions and other assets of the Defence Force in the area and the Surplus Agency was assigned the task of putting

them up for sale and furthermore the cleaning-up of the area. A letter from the Surplus Agency, dated 8 March 1976 and produced in Court, states amongst other things: “In 1974, when removal of utilizable constructions had been finished, remediation works started on the mountain and its environment. This was done May through September 1974. Remediation, burying and levelling of earth on the mountain had then been completed and thus the aforementioned area was fully levelled and no remains to be seen, except the bottoms of the residential constructions, which are flat concrete floors, all foundations being underground structures.” A team of people went up and down the mountain hills and collected loose items, such as wrappings, barrels, containers and other debris, as stated in the aforementioned letter. These wastes were collected and transported by tractors and trailers to the sites where they were buried. The Commissioner of the Municipality of Sauðaneshreppur was assigned the task of supervising these remediations.” A letter to the Surplus Agency from the Commissioner, Mr. Sigurður Jónsson, dated 25 February 1976, has also been produced. Towards the end of his letter Mr. Jónsson states: “It is almost certain that people will argue about the accomplishment of this tidying up, but I am of the opinion that the job was well done.” The letter from the Surplus Agency is an answer to the plaintiffs’ complaint, dated 19 January 1976, about the Agency’s departure from the area.

In 1985 remediation works were taken on in the area with the help of the Icelandic authorities. The task was assigned to the Rescue Unit Hafliði in the town of Þórshöfn for remuneration. The rescue unit collected the debris to form a heap with the aim of burying it, but that aim was never achieved due to the plaintiffs’ opposition, who demanded that the waste heap would be removed from the area. This was rejected on behalf of the Icelandic authorities due to high costs associated with such removal.

In recent years research has been carried out in the area, both through Icelandic authorities and the plaintiffs. The objects of the research was the wastes heaps, the burying of which had been the responsibility of the Defence Force while it was present in the area, and the effects of the presence of the wastes on the water budget in the area as a whole. The Department of Pollution Prevention of the Environmental and Food Agency of Iceland submitted an opinion on the situation in the area in 1993. The research was first and foremost aimed at finding out if heavy metals had, together with persistent organohalogen compounds, leaked out of the wastes heaps and mixed with surface and spring water around Mount Heiðarfjall/Hrollaugsstaðafjall. The research revealed no measurable pollution of the water, which would render the water unfit to drink, with the exception of iron, which has leaked out of the moorland into the creek near the farms Eiði and Eiðisvatn. Results from more recent research are nor available.

A letter, dated 29 August 1974, to Mr. Jónas Gunnlaugsson, one of two owners of the farms Eiði I and II, has been produced in Court. Enclosed was a payment of ISK 110 000 made by the defendant to each of the owners of the farm Eiði at that time for the lease and of damages on account of a piece of land on the property Eiði in the peninsula of Langanes, as stated in the letter. The letter states further that the amount also included a payment for disturbance of ground and damage to land on account of constructions of the Defence Force on the estate.

The plaintiffs came into possession of the farms Eiði I and II by signing a sales contract, dated 10 April 1974, which was registered 30 March 1994. The following statement, issued by the vendors, is written beneath the signatures and the certification of the document: “In addition to that which is mentioned in the present sales contract I, the undersigned, would like to point out that the affairs of the Defence Force on Mount Heiðarfjall on the estate of Eiði concerning the situation there and its departure from

there are unresolved and unsettled. The departure of the Defence Force and the situation on Mount Heiðarfjall are unacceptable. There the estate is being used without permission and without any valid agreement. The leasing contract was terminated unilaterally on 5 March 1970, but the estate was continuously in use. You, the purchasers, must wind up these affairs. Improvements have been promised, but these promises have not been fulfilled. I hereby assign all our rights to you, the purchasers, regarding these affairs". This statement, as well as the sales contract, is signed by Mr. Jóhann Gunnlaugsson on his behalf and on the behalf of Mr. Jónas Gunnlaugsson on his authority. This statement is not written on the bill of sales, which is dated 30 November 1974.

The plaintiffs have, from the time they came into possession of the farms Eiði I and II, encouraged Icelandic authorities and the US Government to see to that the piece of land on the properties Eiði I and II, handed over to the Defence Force, would be adequately cleaned up and that all hazardous substances and other wastes, which were buried there while the Defence Force was present on the estate, would be removed. The plaintiffs had intended to start fish farming on the land, which fitted well for exploitation of that kind, but that had not been worth risking, since they did not have knowledge of what substances had been buried there, and therefore danger were that subterranean water, to be used for the farming, would be contaminated. For that reason they had been unable to exploit their land in a normal way. While that state of affairs were continuing it seemed clear that the US Government, or Icelandic authorities on their behalf, must make payments for leasing the land, since it had not been expropriated. Hence the claim were made before the Court that the US Government and The United States Armed Forces Defence Force would be ordered to make, by way of contracts, acquisitions of land for the purpose of storing military wastes and construction debris on the plaintiffs' estate.

The Merits of the Case and Legal Arguments Presented by the Defendant, The State of Iceland, Regarding Dismissal

The defendant, the State of Iceland, points out that the US Government and its Defence Force, stationed in this country, enjoys extraterritorial rights and therefore did not fall within the jurisdiction of Icelandic judicial tribunals, cf. the final clause of Article 16(1) and Article 24(1) of the Civil Litigation Act No 91/1991. Hence that the Court had not jurisdiction with regard to accusations brought against the aforementioned parties, which would cause all claims made against them to be dismissed *ex officio*.

The defendant, the State of Iceland, makes the claim that the case, as a whole, would be dismissed and that the plaintiffs would be ordered to pay the defendant the court costs of this part of the case *in solidum* and as determined by the Court.

The defendant backs up its claim for dismissal by pointing out that the plaintiffs' claims and building of the case were contrary to the principles of legal procedures applying to clear and definite building of a case, cf. Article 80, subparagraphs d and e, of the Civil Litigation Act No 91/1991.

The claims made by the plaintiffs were of such unclear and indistinct character that it were impossible to examine them qualitatively.

Article 80(1)(d) of the Civil Litigation Act No 91/1991 stated that a claim made should be of such conclusive and clear wording that it could stand as a conclusion in the ruling, in such a way that requirements set with regard to a court solution were met, i.e. that the

claim should be so conclusive that it could stand on its own as a conclusion as regards the accusation, cf. Article 1140(4) of the Civil Litigation Act No 91/1991. Thus a judicial tribunal should be able to use the wording of the claim unchanged as a conclusion in its ruling, provided that the substantial preconditions allow such an outcome of the case.

The term “reservation” in Article 80(1)(d) of the Civil Litigation Act No 91/1991 meant that, if a request were made that a judicial tribunal would address the claim that rights and obligations should be of a specific quality, a request which were made in the present case, this would call for the provision of a clear definition of the objects of the rights and obligations the ruling on which were requested. The reservation of the legislative provision, that a claim should be clear, included a demand that the claim were stated clearly enough to be understood. The wording of the claim proper should make it quite clear to the defendant and the Court which obligations it held in store for the defendant and how the defendant should fulfil them.

In their claim, as it is presented, the plaintiffs demand that the State of Iceland will be ordered to make, by way of a contract, acquisition of a specified piece of land for the purpose of storage for an unlimited period of time. However, the claim does not in any way define the rights and obligations that such a contract is supposed to hold in store for the contracting parties. Thus the claim did not, for example, include any definition of the usage contract to be concluded, e.g. a lease for a consideration or usage free of charge, nor of the object of the intended storage, which the plaintiffs called “military wastes” and “construction debris” in the claim incorporated into the summons. There were no definition of the wording “fully cleaned up”, no explanation of the necessary measures to be taken, and no instructions given regarding what should be cleaned up. A precise definition of the subject matter of the legal relationship, which were expected to be established, were on the other hand necessary in order to allow the defendant to put up a defence, as the law allowed, and so that the claim could be regarded as eligible for adjudication. The same would apply to the part of the claims, made by the plaintiffs before the Court, which concerned their demand to be compensated later for damage they had verifiably suffered. The claim did not include any explanation of the alleged damage, its cause, or how severe the damage were, and it should be clear, apart from other considerations, that claims concerning events, that occurred in the future, should be dismissed, cf. Article 26(1) of the Civil Litigation Act No 91/1991.

The defendant further draws on the assumption that a ruling, in accordance with the claim incorporated into the summons, would not settle the dispute between the parties qualitatively, which had been going on for decades. The plaintiffs had since 1976 been making diverse claims against the Ministry for Foreign Affairs, which had been rejected, e.g. claims for further remediation of the piece of land in question and the removal of wastes heaps. Furthermore they had made claims for payments going to themselves, such as leasing fees and damages. The plaintiffs did not, as the case were presently put forward, make any particular claims against the defendants in addition to the claim that they must accept to be ordered by a judicial tribunal to observe the law and make acquisition of the piece of land in question, either by contracts or by a lease or taking under the right of eminent domain. The only conclusion to be drawn from this were that the plaintiffs’ intension were to make further claims in case their claims, submitted in the present case, were accepted. The proceedings thus did not serve the purpose of settling the dispute between the parties once and for all. This sole flaw in the claim made by the plaintiffs and in their building of the case would lead to dismissal of the case, cf. decrees of The District Court of Reykjavík No 539/1996 and 2713/1996.

The defendant also draws on the assumption that the plaintiffs' building of the case did not, in other respects, meet the requirements set regarding the argumentation of an accusation, cf. Article 80(1), subparagraphs e and f, of the Civil Litigation Act No 91/1991, which stipulated that the building of a case should be clear and definite enough to demonstrate what events and arguments lead to the claim. This constitutes that imperfect argumentation and ill-defined presentation, in this respect, would result in a dismissal of a case. There were such defects in the summons, issued in the present case, that would be impossible to correct during the proceedings.

In the account of the circumstances of the case, included in the summons, considerations were given to several issues, which were of little or no relevance to the claims made before the Court, and the same seemed to apply to a good number of documents presented by the plaintiffs in Court. The plaintiffs' building of the case were thus imperfectly argued for, unclear and aimless, and were extremely inaccessible for the defendant and the Court. For instance, the plaintiffs had not produced any list of documents with the summons. Furthermore documents were produced in one textbook, as exhibit No 3, but the book did not include any table of contents. The pages of the aforementioned exhibit, a textbook of more than 100 pages, were not numbered, which made it almost impossible to make reference to the exhibit or find documents included therein by any chance.

Finally, the defendant drew attention to the fact that the landowners and the company Naustin made jointly all claims before the Court. No information were available on that company and its activities and no attempt had been made to explain, in the summons, the concern of Naustin Ltd in the claims made. Moreover, shareholders, as such, were not allowed to represent companies in a court case, cf. Article 17(4) of the Civil Litigation Act No 91/1991.

The Merits of the Case and Legal Arguments Presented by the Plaintiffs Regarding the Dismissal Claim Introduced by the Defendant

Concerning this section of the case the plaintiffs make the claim that their claims, made before the Court, would be accepted as presented in the summons. The judge is of the opinion that it is implicit in the aforementioned claim that the dismissal claim of the defendant, the State of Iceland, would be rejected.

Furthermore, the plaintiffs make the claim that the Attorney General's deputy demonstrated, by producing a written authorization from the alternate defendants, Mr. Davíð Oddsson, prime minister, and Mr. Halldór Ásgrímsson, minister for foreign affairs, verifying that he were their defence counsel in these proceedings, and moreover, that he verified his authorization to represent the prime defendant, the US Government, with regard to the Attorney General's claim before the Court that the case would be dismissed *ex officio* with regard to the US Government's concern in the present case.

The plaintiffs draw on the assumption that their building of the case and their claims were clear and definite and in accordance with Article 80, subparagraphs d and e, of the Civil Litigation Act No 91/1991. They point out that their claim, that the defendants would be ordered to make acquisition of the land in question by way of contracts, were based on Article 2 of the Defence Agreement. It were clear what claims they were making and against whom they were directed. The claim, made before the Court, also comprised that the area would be cleaned up and vacated or that a permit would be sought to take a lease or carry out a taking under the right of eminent domain.

Moreover, the plaintiffs reject the point, made by the defendants, that their claim were unclear, due to the fact it were of unlimited duration. It were clearly stated in their claim that acquisition of land should be made and such a permit should be maintained during the defendant's use of facilities on their land. The plaintiffs also raise an objection to the assertion that it were difficult to understand the context of the merits of their claims, as were maintained on behalf of the State.

The plaintiffs also reject the State's argumentation that their claims were of such nature that they did not bring an end to the dispute between the parties. In this connection they point out that in cases, where a claim were put forward for a lease or a taking under the right of eminent domain, various matters, concerning rights, obligations, and amounts, would have to wait. Therefore it were not unsuitable to make the claim that the judge would rule on the question of the obligation to make acquisition of land, and that other questions should wait until that claim had been addressed substantially.

The plaintiffs point out that they had realized from the beginning that their claims, made before the Court, were somewhat abrupt and there were valid arguments for that, as should be obvious. The plaintiffs had thought it would be improper, at this stage, to mention leasing fees, e.g. claims concerning a lease or a taking under the right of eminent domain, but had preferred to allow the judge to decide on such matters later in the proceedings, since many difficult and complicated issues would be addressed then. The plaintiffs are of the opinion that their claims, made before the Court, could hardly be more specific considering the subject matter and nature of the case and other circumstances.

The plaintiffs call attention to a great difference with regard to facilities, on the one hand the position they were in and on the other hand the position the State were in, which enjoyed the services of attorneys, assigned the task of protecting its interests, and did not have to worry about the costs related to such legal proceedings as were initiated before this Court. The general public had two choices, either to suffer damage or to defend its rights at a great cost, concurrently carrying the burden associated with such proceedings.

Argumentation and Conclusion

I.

Competency of the US Government to be Involved

Article 2 of a attachment to the Defence Agreement between The Republic of Iceland and The United States of America, which was enacted by Act of Parliament No 110/1951, clearly states that the US Government were not obliged to compensate Iceland or its nationals for the use of a piece of land or facilities handed over to it by the State of Iceland. The piece of land in question was leased by Icelandic authorities for the purpose of enabling the US Defence Force to use it and on the basis of the cited clause. The US Government was not a party to that agreement and had no part in it. The US Government returned the piece of land to the State of Iceland by way of an agreement dated 7 July 1970. The agreement states that the State of Iceland took the land back together with all constructions and other betterments to be found there and in the said agreement the State of Iceland declares that it waived, on its behalf and on behalf of its nationals, all claims against The United States that might be put forward on account of the Defence Force's use of the piece of land in question.

With reference to the course of events described above and to the provision of Article 2 of the attachment to the Defence Agreement, and to extraterritorial rights enjoyed by the US Government, entailing that it were not obliged to accept the jurisdiction of Icelandic judicial tribunals, the plaintiffs' case against the US Government is dismissed *ex officio.*

II.

Claim for Dismissal Made by the Defendant, The State of Iceland

The plaintiffs have questioned the authorization of the Attorney General's deputy to protect the interests of the State of Iceland in this case and demanded that he produced a written authorization from the prime minister and minister for foreign affairs, which were summoned on behalf of the State of Iceland for the defence in the case.

Act of Parliament No 51/1985 concerns the office of the Attorney General and defines its field of activities. Article 2(2) of the said Act states *inter alia* that the Attorney General conducted legal defence before judicial tribunals in civil proceedings instituted against the state. In Article 3 authorization is granted to employ deputies at the office of the Attorney General, who would conduct the cases, on behalf of the state, which the Attorney General had assigned to them.

The Attorney General's authorization in the present case is based on the aforementioned Act. The Attorney General is therefore not obliged to prove further his authorization. The aforementioned authorization is embodied in the position of a deputy at the office of the Attorney General.

The defendant's claim for dismissal is *inter alia* based on the assumption that the plaintiffs' claim contravened Article 80, subparagraphs d and e, of the Civil Litigation Act No 91/1991 and conflicted with the principles of civil procedure concerning an evident building of a case. Moreover, the dismissal claim is based on the assumption that a court conclusion, based on the plaintiffs' claim, did not settle the dispute between the parties, on the contrary it created more arguments than it would settle.

On the other hand the plaintiffs maintain that their claims, made before the Court, were of such evident and unambiguous character that they could be examined qualitatively.

The plaintiffs' claim, made before the Court, is that the State of Iceland would be ordered to make acquisition of land by way of contracts, which would permit the use of land for the purpose of storing military wastes, etc.

The Court is of the opinion that a claim of this kind is of such unclear and undecided character that it were impossible to accept it. Its acceptance would create a situation where the defendant, the State of Iceland, would be obliged to enter into negotiations with the plaintiffs without any notion of the content and subject matter of a subsequent agreement. The results achieved could be no agreement at all, which meant that the plaintiffs had no legal remedies to force the judgment debtor to fulfil his obligations in accordance with the judgement. Hence the judgement would not have any effect on the settlement of the dispute between the parties and would create more serious legal uncertainty about their dispute than existed already. The defendant's views, regarding the plaintiffs' imperfect argumentation concerning the definition of the terms "military wastes" and "construction debris", i.e. whether they specified buried wastes or merely visible wastes, can also be agreed to. Furthermore, the Court accepts the opinion expressed by the defendant that the plaintiffs should provide a more lucid explanation of

what were meant by the wording “fully cleaned up” or what damages they demanded to be compensated for in case their claims would be accepted.

Hence the Court draws the conclusion that the present case must be dismissed with reference to the aforementioned argumentation.

With reference to the fact that there exists a great difference between the parties as to facilities, i.e. the plaintiffs have no education in law and have not enjoyed the services of lawyers, and the defendant has behind it a legion of experts in all fields, it is fair that each party will bear its share of the Court costs.

District Court Justice, Mr. Skúli J. Pálmason, issued the decree.

THE DECREE READS AS FOLLOWS:

The present case is dismissed.

No costs are determined.

(a)	**Registration no.**	IS/3
(b)	**Date**	2 September 2002
(c)	**Author(ity)**	Supreme Court (*Hæstiréttur)*
(d)	**Parties**	Sigurður R. Þórðarson, Björn Erlendsson, Vilhjálmur A. Þórðarson, Hákon Erlendsson, Jón Ársæll Þórðarson (Individuals) vs. United States of America (State)
(e)	**Points of law**	The Court dismissed the the case against the Government of the United States *ex officio* on the grounds that neither the Defence Agreement between the Republic of Iceland and the United States of America, done on 5 May 1951, nor the rules of public international law lead to the conclusion that the US Government should fall under the jurisdiction of Icelandic judicial tribunals in disputes over such matters.
(f)	**Classification no.**	0.c, 1, 2.c
(g)	**Source(s)**	The Supreme Court's Collection of Court Rulings 2002 (Dómasafn Hæstaréttar 2002).
(h)	**Additional information**	
(i)	**Full text - extracts - translation - summaries**	Summary: Appendix 1 Full text: Appendix 2* Summary English: Appendix 3

Appendix 1

The plaintiffs commenced legal action against the Government of the United States submitting various claims related to the defendant´s use of land belonging to the plaintiffs. In accordance with the Defence Agreement between the Republic of Iceland and the United States of America, done on 5 May 1951, the land in question had been leased by the Government of Iceland that then handed it over to the US Forces to use. The defendant was not party to the lease agreement. The plaintiffs argued that because of the private law character of the actions giving rise to their claims, which concerned the plaintiffs´ proprietary rights and free disposal of their estate, the US Government should not enjoy extraterritorial rights in this case. The Tribunal pointed out that the 1951 Defence Agreement does contain a rule which stipulates how claims (other than contractual claims) arising out of acts done by members of the United States Forces shall be settled through the auspices of a specific body construed for that purpose. However, neither the Defence Agreement nor rules of public international law were thought to lead to the conclusion the the US Government should fall under the jurisdiction of Icelandic judicial tribunals disputes over such matters. The Tribunals decision to dismiss the case *ex officio* was confirmed by the Supreme Court.

Appendix 3

The Supreme Court of Iceland

No 356/2002.

Monday 2 September 2002.

Mr. Sigurður R. Þórðarson

Mr. Björn Erlendsson

Mr. Vilhjálmur A. Þórðarson

Mr. Hákon Erlendsson and

Mr. Jón Ársæll Þórðarson

(Barrister Mr. Páll Arnór Pálsson)

versus

The United States of America

(no one)

Complaint. Jurisdiction. Judicial tribunals. Dismissal confirmed.

The case of S. R. Þ., B. E., V. A. Þ., H. E. and J. Á. Þ. against The United States of America was dismissed by the District Court of Reykjavík on the grounds that the defendant did not fall within the jurisdiction of Icelandic judicial tribunals.

Ruling of The Supreme Court of Iceland

Supreme Court Justices, Mr. Markús Sigurbjörnsson, Mr. Árni Kolbeinsson and Ms. Ingibjörg Benediktsdóttir, hand down judgement in the present case.

The plaintiffs took an appeal to the Supreme Court by way of a complaint on 22 July 2002, which was received by the Court, together with the complaint documents, on 2 August 2002. The subject matter of the complaint is the decree of the District Court of Reykjavík on 9 July 2002, where the plaintiffs' case against the defendant was dismissed. Reference is made to the clause on freedom of filing a complaint in Article 143, paragraph 1(j) of the Civil Litigation Act No 91/1991. The plaintiffs make the claim that the decree complained about would be annulled and request that the District Court judge would be ordered to hear the case *de novo*.

The defendant has not exerted itself with regard to the case.

With reference to the argumentations for the decree complained about it will be confirmed.

No costs, related to the complaint, will be determined.

The verdict:

The decree complained about is here by confirmed.

Decree of The District Court of Reykjavík 9 July 2002

The present legal action is brought against the defendant by way of a summons, issued 9 April 2001 and served on the defendant, the Government of the United States of America, on 17 and 19 April the same year. The case was instituted before the District Court of Reykjavík 28 June 2001 and taken in for judgement the same day. The case was heard *de novo* and taken in for judgement anew on 1 November the same year.

The plaintiffs are the owners of the farms Eiði I and II situated in the peninsula of Langanes in the District of Norður-Þingeyjarsýsla, Mr. Sigurður R. Þórðarson, identity number 260745-3959, residing at Glaðheimar 8, Reykjavík; Mr. Björn Erlendsson, identity number 210545-3529, residing at Aðalland 15, Reykjavík; Mr. Vilhjálmur A. Þórðarson, identity number 050342-3529, residing at Háteigsvegur 40, Reykjavík; Mr. Hákon Erlendsson, identity number 210150-4719, residing at Kambasel 28, Reykjavík; and Mr. Jón Ársæll Þórðarson, identity number 160950-4399, residing at Framnesvegur 68, 107 Reykjavík.

The plaintiffs' claims are submitted against the Government of the United States of America and the following persons summoned to represent the aforementioned Government: the President of the United States, Mr. George W. Bush, at The White House, 1600 Pennsylvania Ave., NW 20500, Washington, D.C., USA; Secretary of State, Mr. Colin Powel, at the Office of the Secretary, United States Department of State, 7th Floor, 2201 C Street, NW, Washington, DC 20520, USA; and Secretary of Defence, Mr. Donald Rumsfeld, at the Office of the Secretary, United States Department of Defence, The Pentagon, Washington DC 20301-1155, USA, all three on behalf of the Government of the United States of America.

Claims Made Before the Court

The claims made by the plaintiffs before the Court are the following:

That the defendant would be ordered by the Court to remove hazardous wastes and construction debris in the soil and on the ground on Mount Heiðarfjall (Mount Hrollaugsstaðarfjall) on the estate Eiði I and II in the peninsula of Langanes in an area delimited on the surface of the earth by the following coordinates used by the United States Armed Forces: 1) N 7352.095.52, E 499.927.88, 2) N 7351.500, E 500.300, 3) N 7351.180, E 500.500, 4) N 7350.500, E 500.500, 5) N 7350.500, E 499.500, 6) N 7351.500, E 499.500 and 7) N 7351.902.34, E 499.500, as shown on a map marked "Headquarters Iceland Defence Force, Station H-2, agreed area boundary, 17 March 1960, LGS", and in a drawing marked "US Naval Station, H-2 Site Plan dwg: 568-E-690", and failing to do so to pay a fine per diem of ISK 150.000 for each day work on the removal of debris and hazardous wastes from the estate is delayed;

that the defendant would be ordered to reimburse costs to the plaintiffs, as determined by the Court.

The defendant, the Government of the United States of America, has not exerted itself with regard to the case.

Circumstances of the Case

The plaintiffs state the case and explain the reasons for the litigation in the summons.

In the summons it is mentioned that, in a letter dated 23 March 1954, the US Government had invited Icelandic authorities to make acquisitions of land, on their behalf, designated on maps and in documents of the United States Armed Forces as the H-2 area in the peninsula of Langanes, and in pursuance of which an agreement on the

leasing of land on Mount Hrollaugsstaðafjall (hereinafter referred to as Mount Heiðarfjall) had been signed on 3 May 1954 between the Ministry for Foreign Affairs and the representative of the owners of Eiði I and II and again on 10 December 1960 on additional land, in aggregate 156 hectares. Acquisition of land, which had been required to be made on behalf of the American Defence Force, cf. Article 2 of the Defence Agreement between The Republic of Iceland and The United States of America, dated 5 May 1951, had then been made, cf. letters from the American Defence Force to Icelandic authorities dated 23 March 1954, 9 August 1954, 17 August 1954, and the Defence Council minutes dated 17 August 1954, 19 April 1955, 10 May 1955 and 17 May 1955.

It is mentioned that the American Defence Force had been notified, by way of an official communication from the Icelandic Ministry for Foreign Affairs to the American Defence Force on 17 May 1955, that acquisition of land had been made on behalf of the American Defence Force. In the official communication it had been explained to the American Defence Force what consisted in the acquisition of the land leased. There had been no mention of any waste landfill permit or a permit to store waste, neither before nor after the use granted would come to an end. It had been assumed, as stated in the leasing contract, that all sewage would be lead out to sea, but that had never been accomplished and all sewage had been let out on the land leased. The official communication had stated clearly the rights and obligations of the American Defence Force in the H-2 area on Mount Heiðarfjall.

It is mentioned that the Icelandic Government had not taken part in any works in the area and that when implementation of the provisions of the leasing contract had commenced the Americans themselves had implemented them as the accountable party and user of the estate, to cite an instance they enclosed the land leased and paid the costs there of, cf. a number of letters and minutes relating there to from 1958 and 1959, it being stated in the leasing contract that: “The lessee undertakes to enclose the land with an isolating fence”. The American Defence Force had repeatedly been reminded of its obligations under the agreement, cf. letter of Mr. Björn Ingvarsson, Chief of Police, dated 28 April 1958.

At the time the US Government had decided to bring an end to the operation of the radar station on Mount Heiðarfjall, the Americans had been asked if they required to continue to lease the H-2 area for future use by the American Defence Force, cf. minutes of the Defence Council, dated 24 February 1970. The Americans had then replied, *“that at present it would not be necessary for the Government of Iceland to continue to hold the land under lease on behalf of the Defence Force”.* Shortly after, or on 7 July the same year, the Americans had presented to the Icelandic authorities the so-called “renunciation agreement” in which all rights of the landowners, protected by the Constitution, to make claims for damages were renounced, which had then been signed. Subsequent to the meeting on 24 February 1970 the leasing contract with the landowners had been terminated unilaterally as from 1 September 1970. This had been done by way of a letter, dated 5 March 1970, from the Ministry for Foreign Affairs to the landowners. The leasing charge had been paid until 1 March 1971.

As stated above, agreements between the US Government and Icelandic authorities had been signed, first on 30 June 1970 and again on 7 July and 18 September 1970. According to the agreements Icelandic authorities had taken over constructions and other betterments on Mount Heiðarfjall and all rights had been renounced. In the agreements no mention had been made of wastes and other construction debris, which had been continuously stored in the area. The aforementioned agreements had not been

concluded with the rightful owners of the estate and the Icelandic authorities had not represented the owners or been their advocate when these agreements had been concluded, and further more the owners had only learned of the existence of these contracts on 4 April 1990. From this, one could draw the conclusion that officials of the Ministry for Foreign Affairs had willingly attempted to conceal the agreements from the owners. The landowners had received a photocopy of the agreements in May 1990 from the Prime Minister at that time, Mr. Steingrímur Hermannsson.

According to the minutes of the Defence Council, dated 7 July 1970, the US Government had presented and promulgated the aforementioned agreements and requested that they would be concluded. The following had been specified in the minutes: *"After having vetted the agreement the Icelandic chairman requested to be advised whether the provision of Article II of the agreement dated 7 July 1970, where the Government of Iceland renounces all claims made by Icelandic nationals against The United States of America for a personal detriment or a property damage, would be active as from the date use was first made of the estate or whether one should construe the provision as being retroactive from another date. Lieutenant Commander Crane replied that the provision of Article II were active as from the date of signature of the agreement, 7 July 1970, and not retroactive."*

United States authorities had, from 1 September 1970 onwards, been storing wastes and other construction debris, despite the fact that no agreement had been concluded, without permission, and illegally, on a private property on Eiði in the peninsula of Langanes. The estate had not been legally expropriated. When the leasing contract had expired on 1 September 1970 United States Government had lost all its rights to occupy the area, i.e. have personnel stationed there and store wastes and other construction debris in the area.

In the period 1971-1974 former landowners had, on several occasions, made oral observations and submitted their requests for improvements and corrective actions to Mr. Sigurður Jónsson, Commissioner of the Municipality of Sauðaneshreppur, and Mr. Jóhann Skaptason, sheriff of the District of Þingeyjarsýsla, as regards the situation on Mount Heiðarfjall. The landowners at present had continued to make observations as from midyear 1974 and submitted requests for improvements and corrective actions.

On 10 April 1974 the owners at present, Mr. Björn Erlendsson, Mr. Hákon Erlendsson, Mr. Jón Ársæll Þórðarson, Mr. Sigurður R. Þórðarson and Mr. Vilhjálmur A. Þórðarson, had purchased the estate Eiði. The following were *inter alia* stated in the sales contract: *"In addition to that which is mentioned in the present sales contract I, the undersigned, would like to point out that the affairs of the Defence Force on Mount Heiðarfjall on the estate of Eiði concerning the situation there and its departure from there are unresolved and unsettled. The departure of the Defence Force and the situation on Mount Heiðarfjall are unacceptable. There the estate is being used without permission and without any valid agreement. The leasing contract was terminated unilaterally on 5 March 1970, but the estate was continuously in use. You, the purchasers, must wind up these affairs. Improvements have been promised, but these promises have not been fulfilled. I hereby assign all our rights to you, the purchasers, regarding these affairs".* (Signed by Mr. Jóhann Gunnlaugsson.) The vendors had issued a bill of sale on 30 November 1974. The bill of sale had been registered on 28 January 1975 by the vendors and without the signatures of the purchasers.

As repeatedly mentioned in the history of the case and in accordance with the facts of the matter, as the advocates of the Ministry for Foreign Affairs had established them for

the landowners, the Icelandic authorities had not regarded themselves as being responsible for the present and future situation and had referred to the fact that Icelandic authorities had terminated warranties and authorizations on the land in 1970, after United States authorities had given a negative answer to the Defence Council's question, if they required their authorizations to be maintained on the estate. On 17 December 1996 the Ministry for Foreign Affairs had, in a letter to the landowners, informed them that the case were closed as far as the Ministry were concerned. Acquisitions of land had not been made anew after 1970, nor had other necessary measures been taken to secure any facilities.

It is mentioned that the landowners had already started preparations for, and conducted research in, fish farming in April 1974. On 16 January 1975 they had, for fish farming and aquaculture purposes, established the company Naustin Ltd., which had been engaged in extensive research and construction works in preparation for industrial production of char fry for char farming and smolt for open-ocean rearing in bulk by way of exploiting spring water on the land. Naustin Ltd. leased the estate for fish farming purposes, but the defendant's use at present made the aforementioned activities impossible. Preparations, research and pilot projects, which had shown promising results, had been going on for 15 years, contradictory to what many others had been achieving, it being generally criticized how little effort and money had been put forth for preparations for and research in fish farming. Participation of foreign copartners had been secured when the existence of the rubbish heaps on the mountain had been discovered above the wells on 13 July 1989.

In the period June through August 1974 the Surplus Agency had, under the auspices of the Ministry for Foreign Affairs, conducted the so-called "cleaning-up" on the mountain and demolished buildings and other constructions, but previously, in 1970-1971, buildings had been demolished and debris buried. Some of it had been collected and a considerable amount buried in the area, without any permission granted by the landowners, and the whole operation had been performed without their knowledge and without holding consultations with them. At this time the landowners had dwelled only temporarily in Eiði. There, personnel had entered a private property with powerful construction machinery without any warrant at all. The outward appearance of the land had been worse after this operation and evidence suggested that the personnel had for the most part been engaged in collecting usable articles rather than in cleaning-up. The Surplus Agency had then asked the Commissioner of the Municipality Sauðaneshreppur to assess the outcome. The rightful owners had not been contacted and the Commissioner had neither been authorized by them to assess the finished work nor had he in any sense been the owners' advocate or agent when the operation had been under way.

The landowners had continued to make complaints about the situation, which had been totally unacceptable, and in a letter from Mr. Páll Ásgeir Tryggvason, an official of the Ministry for Foreign Affairs, dated 11 March 1976, the following had been stated *inter alia*: *"The Ministry agrees with The Surplus Agency that a complete remediation of land on the estate Eiði has already been perfected and further treatment charged to the Treasury is therefore unjustified".*

Further complaints had been made about the situation and Mr. Helgi Ágústsson, director with the Ministry for Foreign Affairs, hat stated the following in a letter dated 15 January 1981: *"The Ministry hereby informs you that it will not take your claim regarding further remediation on the estate Eiði into consideration".*

In 1982-1984 plans had been made for the construction of a new radar station on Mount Heiðarfjall. In the end it had been decided to choose another mountain nearby for the station.

In 1986-1987 the Ministry for Foreign Affairs had employed boy scouts and teenagers under the aegis of a rescue unit from a nearby town, Þórshöfn, to collect and form heaps of surface debris, e.g. oil containers and other articles. The rightful owners had not been consulted on this matter. Later permission had been sought to bury the debris, but the landowners had refused and insisted that it would be removed from the mountain. The debris, which had not already been blown into the blue by strong winds, had not yet been removed from the estate.

Further complaints had been made about the situation and Mr. Þorsteinn Ingólfsson, an official of the Ministry for Foreign Affairs, had stated the following in a letter to the Althingi Ombudsman, dated 26 August 1988: *"The Defence Department is of the opinion that it is under no obligation to the present landowners regarding the situation in the area".* It is stated that Mr. Ingólfsson had maintained in the letter that the owners had purchased the land on 30 November 1974, but that the fact of the matter were that the estate had been purchased on 10 April 1974.

Further complaints had been made about the situation and an agreement had been negotiated between the Ministry for Foreign Affairs and the landowners to make a trip to the mountain on 13 July 1989 and assess the situation in the area. Representatives of the Ministry for Foreign Affairs, the landowners, the landowners' lawyer, a representative of the Rescue Unit of Þórshöfn, a representative of the Nature Conservation Council, a representative of the Nature Conservation Committee of Þórshöfn, and a former employee of the radar station had met on the mountain. When the assessment had been under way the former employee had stated that all wastes from the radar station had been buried and left hidden in pits on the top of the mountain and he had shown the people present the area, where the waste had been buried, which had been of the dimensions 1.5-2 hectares. He had explained to those present that all wastes from the military installation had been buried there, i.e. waste oils, electric accumulators, and other articles, unseparated and without taking any safety measures at all. This had been a complete surprise to everyone. No one else, amongst those present, had seemed to know about this. United States military authorities had later refused to disclose information to the landowners about the nature of the debris buried on Mount Heiðarfjall.

The discovery of the wastes, in July 1989, had forced the landowners to review their plans for continued water budget, fish farming, and food production underneath the heaps on the mountain, which had been going on for 15 years and shown good results, but at a high cost and with heavy investments made. The reason for this had not least been the fact that foreign copartners had stated that they could not continue to operate under the scrap heaps until all wastes had been removed and it had been established that no substances, causing damage to the environment, had leaked out of the heaps into water leaking strata below, cf. their letter dated 30 November 1989. Neither had it been thought to be appropriate to start further work, or make more investments, whilst the exposed wastes were still stored above the wells. The decision had then been made to stop all investments and terminate all activities in the water budget, fish farming and food production sectors until all wastes and hazardous substances had been removed.

It is mentioned that in letters from the Environmental Health and Protection Office of the district Norðurland-eystra to the Ministry for Foreign Affairs, the Environmental Committee on Mount Heiðarfjall, and Mr. Ólafur Pétursson at the Environmental and

Food Agency of Iceland, dated 12 and 13 June 1990, the following had been stated: *"It may be asserted that leachate from waste heaps from the radar station on Mount Heiðarfjall will mix with the groundwater. The consequences will be determined by the waste heap and leachate content, and the course and flow rate of the groundwater".*

It is pointed out that research and sampling, in August and November 1991, on the surface of the waste heaps, under the direction of The National Toxic Campaign Fund in Boston, USA, had revealed the existence of toxic heavy metals and waste oils, both in samples of soil and water.

It is pointed out that measurements in springs on the slopes of Mount Heiðarfjall, done on 18-19 August 1993 by the Environmental and Food Agency of Iceland under the auspices of the Ministry for the Environment, had revealed the existence of lead in the landowners' well of drinking water. Concentration of lead had been measured 0,0059 mg per litre, which were 18% above the maximum permitted level of lead in drinking water according to a new standard issued by the US Environmental Protection Agency and provisions of law adopted by the US Congress on 24 May 1994 under the aegis of the Department of Health and Human Services. According to the said provisions and the recommendations of the Food and Drug Administration in Washington D. C. the maximum permitted level of lead in drinking water should be 0,005 mg per litre, cf. Act No 5 U.S.C., 552(a), 1 CFR 51, 21 CFR 103.35(d)(3)(v).

The Center for International Environmental Law in Washington D. C. furnished the landowners with documents on the issue from the United States Armed Forces by virtue of the Freedom of Information Act, cf. a letter from the Admiral in the Naval Base in Keflavík, dated 12 May 1992. The documents included agreements dated 7 July and 18 September 1970. The landowners had received the documents in the beginning of October 1993. 25% of the documents had been declared confidential information and had not been disclosed. Earlier the Americans had declared that they were willing to furnish the landowners with the said documents, i.e. 75% of the documents, which were not confidential, against a considerable payment.

The Environmental Health and Protection Office of the district Norðurland-eystra had written the Commandant of the American Defence Force a letter on 11 August 1992 stating: *"The Health Commission of the Þórshöfn-region considers the completion on Mount Heiðarfjall a major violation of the above mentioned provisions. The Environmental Health and Protection Office of the district Norðurland-eystra insists that the said provisions will be complied with and that the Defence Force will remove the wastes it left on Mount Heiðarfjall when it terminated its activities there".* In relation to this reference had been made to Articles 14(1), 16(1), and 46(1) of Health Regulation No 149/1990. Furthermore attention had been called to Article 27, paragraphs 4, 5 and 6, of the Sanitary Measures and Environmental Health and Protection Act No 81/1988. This letter had not been responded to.

It is pointed out that a complaint had been filed with The Director of Public Prosecutions on 19 April 1993 in consequence of alleged violations of Article 257 and paragraphs 2 and 3 of Article 259 of the Penal Code No 19/1940. The Director of Public Prosecutions, Mr. Hallvarður Einvarðsson, had dismissed the complaint and stated in a letter dated 3 September 1993: *"The fact that your clients have suffered indefinite financial losses by virtue of this case is not questioned, but that question must be resolved by way of civil proceedings".* The approach of the Director of Public Prosecutions to the case had been complained of to the Althingi Ombudsman on 31 August 1994, but the Ombudsman had not been able to take on the case.

A complaint had been filed with the Ministry of Justice about the approach of the Director of Public Prosecutions to the case on 23 September 1994 and the case restated with the Ministry on 12 February 1995. A reply had been received from the Ministry of Justice, dated 2 May 1995, where the complaint had been dismissed. Reference had been made to the reasoning of the Director of Public Prosecutions that the Ministry for Foreign Affairs had stated, in its opinion to the Director of Public Prosecutions, that the Defence Force's disposal of wastes on Mount Heiðarfjall had been consistent with normal practice and rules prevailing in the period in question. Furthermore, a complaint had been filed with The State Department of Criminal Investigation on 7 December 1994, which had dismissed the complaint, in a letter dated 21 December 1994, by reason of the dismissal of the Director of Public Prosecutions, that decision being binding for The State Department of Criminal Investigation. A new complaint had been filed with The National Commissioner of The Icelandic Police on 17 March 1999 in the light of new information and data and on other foundations than before. The National Commissioner of The Icelandic Police had referred the matter to the Director of Public Prosecutions, which again had refused to act.

The Foreign Affairs Committee of The Althingi had taken up the matter, in a meeting in the Pentagon on 12 May 1994, and sought access to information. According to the members of the Committee the request had then been well received, but later acted on negatively by the Americans in a letter, dated 15 November 1994, where reference had been made to the agreement dated 7 July 1970. The landowners had, in a letter to the Foreign Affairs Committee of The Althingi dated 24 February 1996, sought access to information and data regarding the matter. It had been stated in the Committee's reply on 11 March 1996 that it would not be possible to honour that request since the data were of confidential nature. The landowners had been invited to approach the Ministry.

The Health Commission of the district of Norðurland-eystra had requested from the Ministry for the Environment, in letters dated 13 June 1994 and later, that the United States Armed Forces would be called upon to submit information about the debris on Mount Heiðarfjall. On 29 March 1995 the Minister for the Environment at that time, Mr. Össur Skarphéðinsson, had described the circumstances of the case in a letter to the Secretary of Defence, Mr. William J. Perry, and demanded an explanation for the existence of hazardous wastes and had further recommended that an agreement would be concluded with the landowners. In reply to the letter, letter dated 22 June 1995, Vice-Admiral H. W. Gehman, Jr. had referred the matter to the Icelandic Ministry for Foreign Affairs. On the other hand the Ministry for the Environment had written the Regional Committee on Environmental Health and Protection in the district of Norðurland-eystra a letter, dated 10 September 1996, and had maintained, with reference to the opinion of the Environmental and Food Agency of Iceland, that nothing had come into view that indicated serious pollution in the Mount Heiðarfjall area. The Environmental and Food Agency of Iceland had planned to take samples to verify pollution, but the landowners had not been willing to accept the operation. The fact of the matter had, on the other hand, been that the landowners had not been able to accept the work procedure. They had called for a detailed and scientific research project, which, amongst other things, would uncover the identity of the substances in the heaps, but the Environmental and Food Agency had favoured sampling outside the heaps, which would mean an incidental outcome. The landowners' reply had been based on the fact that they had received a letter from a prominent Belgian firm on 27 March 1990 describing procedures to be followed in verifying pollution in the area. The plaintiffs had wished to follow these procedures, but in a letter from the Ministry for the Environment to the landowners, dated

17 July 1991, it had been stated that it would be inappropriate and unsafe to dig up the heaps on Mount Heiðarfjall.

The landowners had also written a letter to Secretary of State, Mr. William J. Perry, on the issue on 9 December 1995. Neither that letter nor a letter dated 9 March 1996 had been responded to.

The landowners had, in a letter to the Ministry for Foreign Affairs dated 1 January 1997, called for information in accordance with the Information Act No 50/1996. The landowners had almost exclusively received documents, which were already in their possession, but on the other hand they had not received documents about communications between United States and Icelandic authorities concerning the issue, which they had insisted would be delivered to them.

Furthermore the Council of the Municipality of Þórshöfn had, in a letter to the Ministry for Foreign Affairs dated 5 July 2000, invited the Ministry to ensure that the owner of the wastes on Mount Heiðarfjall would remove it from the mountain. In the Ministry's reply, dated 28 August 2000, it had been stated that the Ministry entertained the opinion that sufficient remediation had already been completed, and that the Minister for Foreign Affairs had declared his intention to visit the site and examine the situation for himself.

Landvernd, The National Association for the Protection of the Icelandic Environment, had, in a letter to the Ministry for Foreign Affairs dated 5 July 2000, requested answers to questions regarding disposal of wastes from the Defence Force on Mount Heiðarfjall, and in a written reply from the Ministry, dated 6 October 2000, it had been stated that the Ministry entertained the opinion that nothing were wrong with the situation on Mount Heiðarfjall.

On 26 June 2000 and 11 October 2000 the plaintiffs had written letters to the Ambassador of The United States of America in Iceland, Ms. Barbara J. Griffiths, requesting the US Government to make adjustments to the current situation brought about by storage of hazardous wastes on Mount Heiðarfjall. Furthermore the US Secretary of State, Ms. Madeleine Albright, had been sent a letter on the same issue on her visit to Iceland 29 September 2000. These letters had not been responded to.

It is mentioned that the case had been subject for Parliamentary procedure, during the 125. Parliamentary session of the Althingi, when two members of the Althingi, representatives of the political party The Left-Green Movement, had submitted a proposal for a Parliamentary resolution to investigate environmental impacts of foreign military presence (Parliamentary document No 650). The proposed resolution had not been acted on during the aforementioned session.

It is mentioned that in the United States Armed Forces radar station on Mount Gunnólfsvíkurfjall no wastes were buried on the mountain. All wastes were transported from the site and stored elsewhere, as had been done in the United States Armed Forces telecommunication station in Hraun, near the town of Grindavík, in the period 1954-1969. In 1989 the American Defence Force had provided 9 million US dollars for the construction of a new water supply for the town of Keflavík and Keflavík-airport, since there had been a reason to believe that the wells, used by the Americans, had become polluted on account of hazardous wastes. This had been achieved by way of a memorandum dated 17 July 1989. In July 1991 the American Defence Force had been in charge of remediation works on Mount Straumnesfjall in northwest Iceland, where the Defence Force had at one time operated a radar station. At the time the American loran station in Sandur, in the peninsula of Snæfellsnes, had been closed down, the Ministry

for Foreign Affairs had entertained the opinion that on departure from the site the situation should be the same as on entering. The Americans had accepted these terms in case the issue would be put to the test. Neither had wastes been systematically disposed of on the estate in Sandur. All wastes had been moved elsewhere.

When the owners of the estate Eiði had sought access to information on the matter from the Icelandic Ministry for Foreign Affairs, they had been referred to the American Defence Force, in accordance with what had been stated earlier and a letter to the landowners from the Ministry for Foreign Affairs, dated 12 June 1991. When the owners had turned to the American Defence Force they had been referred to the Ministry for Foreign Affairs in accordance with an agreement, which they had concluded with the director of the Defence Department of the Ministry for Foreign Affairs, cf. the aforementioned letter from the Commandant of the American Defence Force dated 23 February 1993.

The plaintiffs had time and again requested that the American Armed Forces and Icelandic authorities had wastes and hazardous substances removed from Mount Heiðarfjall, but their requests had always been rejected. Furthermore the plaintiffs had to no avail endeavoured to file a complaint with the Icelandic Police Authorities about the storing of these substances. The plaintiffs had also tried to get the American Armed Forces to make acquisition of the land, which the Military had used for the storing of hazardous substances and wastes, but without success. The plaintiffs had gone to court in an attempt to have the US Government's obligation to make acquisition of the land recognized, but the case had been dismissed (cf. Ruling of the Supreme Court of Iceland in the Court Reports for 1998, page 374).

It is mentioned that the plaintiffs had not known how deep substances from the wastes heaps had sunk into the soil with the leachate, and lead, above the maximum permitted level in drinking water, had been measured in a spring, approximately 200 metres below certain wastes heaps at a great distance outside the area delimited by the aforementioned coordinates. The consequences of the US Government's aforementioned use had been that the owners could not continue to exploit the estate for fish farming and food production purposes, since the wastes from the United States Armed Forces had been situated above the wells and the area. For that reason the US Government were indirectly using the two farms, Eiði I and II, or the rightful owners had been deprived of control over their estate in this respect.

When the case was heard *de novo* in court on 1 November 2001 the plaintiffs submitted additional information reaffirming that summons had rightfully been served on the President of the United States of America and two members of his administration. This had been done within a legal period of notice under Icelandic legislation, which were three months pursuant to Article 91(3) of Act of Parliament No 91/1991, and within a legal period of notice under public international law, cf. cited letter from the American Embassy to the Icelandic Ministry for Foreign Affairs. In that letter the Ministry had been noted that summons should be served through diplomatic channels, which the plaintiffs had attempted two times. In the first incidence the Ministry for Foreign Affairs had given consideration to the matter for a too long period of time before the summons had been served, and in the second incidence the Ministry had refused to forward the summons. The American Embassy had been alerted and since the Embassy had refused to receive the summons the only option left for the plaintiffs had been to serve the President of the United States, as the highest ranking holder of executive powers, with a summons, as well as the Secretary of State, since, under public international law, it were normal practice to serve that particular Secretary with a summons on behalf of a sovereign

State. Furthermore a summons had been served on the Secretary of Defence, since institutes under his authority were responsible for the storage of wastes in the H-2 area on Mount Heiðarfjall. According to a certificate, issued by process servers in Washington D. C. employed by a New York firm specializing in summons, the aforementioned three parties had all been legally served with a summons, which had been done more than 60 days before the case were instituted before the District Court of Reykjavík.

Finally, reference is made to a produced letter from the American Ambassador who declared, amongst other things that, according to an agreement concluded in 1970, the area on Mount Heiðarfjall had been returned to the Government of Iceland. It had been stated in that letter that, due to the fact that the Government of Iceland had agreed to accept delivery of the area in accordance with the said agreement, the Ministry for Foreign Affairs should govern all matters regarding the area. The Minister for Foreign Affairs had expressed a contrary view in an interview with the newspaper Fréttablaðið, where he had stated that Icelandic authorities were not obliged to administer remediation works on Mount Heiðarfjall: The US Government had been obliged to do so and it had been done as normally practiced at that time. The fact of the matter had been that the area had never been cleaned up, and in no way as had been generally accepted at that time, e.g. since all wastes and hazardous substances were still stored at the site without any security measures taken, but still the Government of Iceland had notified the landowners that the case were closed on its behalf.

The Merits of the Case and Legal Arguments Presented by the Plaintiffs

The plaintiffs maintain that the United States Armed Forces' illegal use of private property on Mount Heiðarfjall on the estate Eiði I and II in the peninsula of Langanes for the purpose of the storage of thousands of tons of military wastes, comprising of hazardous substances and "other construction debris", were prevailing, continuing and totally unauthorized. The wastes were stored in water leaking strata above water wells, where no security measures had been taken. Toxic agents from the place of storage were passing into the landowners' wells. The defendant were using the plaintiffs' property without any valid contract. Acquisition of land had neither been made by the United States Armed Forces, or by Icelandic authorities on their behalf, for exploitation purposes, nor had there been made other arrangements required to permit entry upon and use of facilities in accordance with Article 2 of the Defence Agreement between The Republic of Iceland and The United States of America, dated 5 May 1951, cf. Act of Parliament No 110/1951. As from 1 September 1970 the lessee had unilaterally terminated warranties and authorizations in accordance with leasing contracts concluded 3 May 1954 and 10 December 1960. The real estate in question did not fall within authorized areas any more, as stated in the Defence Agreement, and that the United States Armed Forces had not enjoyed extraterritorial rights with regard to the site, or the use of the estate, since 1970.

The plaintiffs maintain that the presence of hazardous wastes has been established, since they can be seen on the surface of the wastes heaps, and further more former employees of the firm Iceland Prime Contractor had confirmed that hazardous wastes had been buried on the site in large quantities. All wastes from the radar station had been put unseparated into the ground on the mountaintop.

The plaintiffs, as rightful owners of the farms, had always maintained that officials of the Ministry for Foreign Affairs were not in any way their advocates or agents and had never been. All matters regarding the removal of wastes or the remediation of Mount Heiðarfjall were the defendant's affair and not under the auspices of, or within the sphere of

activities of, the Icelandic Government, which had not exercised control or jurisdiction over the area or the case since 1 September 1970. It seemed as if the agreement and the information available suggested that the US Government had concealed the presence of wastes and hazardous substances on Mount Heiðarfjall from the Icelandic authorities.

The plaintiffs maintain that the Icelandic Government's renunciation, on their behalf and on the behalf of Icelandic nationals, of the right to claim damages against The United States of America for personal detriment or for property damage, which could arise due to usage on the estate, cf. Article 2 of the agreement dated 7 July 1970, could neither exempt the defendant in any way from being accountable to the plaintiffs for the alleged illegal and concealed use of the land after the agreement had been concluded, nor in fact before its conclusion. The defendant's advocates had always known or ought to have been aware of the fact that the renunciation of the landowners' rights, in accordance with the agreement dated 7 July 1970, had not been binding on the plaintiffs.

When the landowners had tried to reach an agreement on the matter officials of the Ministry for Foreign Affairs had told them to bring an action against the Icelandic Government, and had, amongst other things, recommended that this should be done with reference to Article 12(2) of the Annex to the Defence Agreement on the Status of the United States Personnel and Property. Nevertheless Article 12(2) of the said Annex would not be understood in such a way that the Icelandic Government had assumed liability for damage inflicted on Icelandic nationals by the United States Armed Forces. The Article dealt with damage done by the United States Armed Forces personnel, cf. Article 1 of the Annex to the Defence Agreement, but not with the United States Armed Forces' obligation to comply with Icelandic legislation.

The plaintiffs maintain that the US Government makes repeatedly reference to the agreements dated 7 July and 18 September 1970, and in a letter from the Ambassador of the United States of America, dated 30 July 1990, the following had been stated: "Since this site was accepted by the Government of Iceland pursuant to 1970 agreement". It could well be the case that the Icelandic Government had assumed some liability vis-à-vis the Americans by way of this agreement, but it could not deprive landowners in Iceland of the right to make the claim against the US Government that it would remove debris, buried for storage purposes by its Armed Forces, which would prejudice the exploitation of the estate and the right to go to Icelandic courts over such a claim.

The plaintiffs maintain that the Republic of Iceland cannot, by way of agreements concluded with the United States of America, deprive them of the control over their estate or of the right to exploit it in a tangible manner. They make reference to Article 1 of Annex No 1 to the Convention for Protection of Human Rights and Fundamental Freedoms, cf. Act of Parliament No 62/1994.

Concerning legal arguments in other respects the plaintiffs refer to of the Constitution of the Republic of Iceland, cf. Act of Parliament No 33/1944, to Article 21, which prohibits the renunciation of land by way of international agreements, and to Article 72, on protection of property, cf. Act of Parliament No 97/1995. Furthermore the plaintiffs refer to unwritten rules of property ownership law on legal protection of ownership rights and of property ownership. Moreover the plaintiffs refer to Article 5 of the Defence Agreement, cf. Act of Parliament No 110/1951, stipulating "nothing in this Agreement shall be so construed as to impair the ultimate authority of Iceland with regard to

Icelandic affairs”. The defendant’s usage had caused damage and considerable inconvenience and had been a violation of Article 257 and Article 259(2) of the Penal Code No 19/1940. Still further reference is made, on behalf of the plaintiffs, to the Sanitary Measures and Pollution Prevention Act No 7/1998, Article 14(1) of Health Regulation No 149/1990, Pollution Prevention Control Regulation No 786/1999, and to the Nature Conservation Act No 44/1999, e.g. to Article 44. That “with its actions and failure to act the defendant were violating the aforementioned law and regulations and the Icelandic authorities had not wished to prevent such violations”. Therefore the only option left for the plaintiffs had been to take the defendant to court with the aim of forcing the defendant to take positive action.

Article 34 of Act of Parliament No 91/1991 stipulated that action might be brought on account of a real estate in the district court where it is situated. Nevertheless the plaintiffs had decided to take the present case against the defendant to the District Court of Reykjavík with reference to Article 33(3), specifying that the Government should be taken to court in Reykjavík, and to the provisions of Article 32(4) on account of the location of the American Embassy.

The ruling of The Supreme Court of Iceland, dated 28 January 1998, in the case of the landowners against the US Government, the United States Defence Force, and alternatively against the Icelandic Government would not disallow the plaintiffs to bring the present case against the United States of America. The first case had concerned the landowners’ claim that the US Government should make acquisition of land on Mount Heiðarfjall in order to gain access with the aim of storing military wastes. In its ruling the Supreme Court had pronounced that the Defence Agreement did not contain any provisions laying down that the US Government or the United States Defence force in Iceland should fall within the jurisdiction of Icelandic judicial tribunals in disputes over such matters. Claims made in the present case were of an entirely different nature as had been described above. It should be pointed out that nor were there any provisions in the Defence Agreement stipulating that the US Government or the United States Defence Force should not fall within the jurisdiction of Icelandic judicial tribunals in a similar case to the present case. The plaintiffs also maintain that the ultimate authority of Iceland with regard to Icelandic affairs, cf. Article 5 of the Defence Agreement, should include the jurisdiction of Icelandic judicial tribunals over Icelandic affairs and full authority of rightful Icelandic owners over the affairs of their private properties in Iceland.

Reference is made, on behalf of the plaintiffs, to the notion that property ownership of Icelandic nationals had priority over the extraterritorial rights of the United States in Iceland, and since the United States Armed Forces, and hence the US Government, had a permanently fixed place of establishment in this country and did not observe the rights of owners of immovable property in Iceland they were forced to accept to be ordered by a judicial tribunal in this country to collect their belongings and wastes from the grounds and soil of the plaintiffs.

Notwithstanding the actuality of the principle of public international law, laying down that the Government of one country would not be the subject of a lawsuit before a judicial tribunal in another country, there were generally accepted exemptions from that rule. In the last decades public international law had developed rapidly towards increased exceptions, since the business of states were not entirely limited to the exercise of their rights as a state (jus imperii), but in stead there were all kinds of activities of an exclusivity nature also blooming in other countries in the trade and communications sectors, which meant that the law of the state, where the activities were going on, would prevail (jus gestiorum). No regulations had been enacted to this effect in this country, but

in the United States a law had been adopted, “The Foreign Sovereign Immunities Act of 1976”, delimiting these rules, which amongst other things stipulated that a foreign state would not be excluded from the jurisdiction of US judicial tribunals where a case concerned a real estate, situated in the United States of America, or legal deeds concerning assets and taking place in US territory. By virtue of the fact that a US national or legal person were capable of taking the State of Iceland to court, on account of a similar claim to the one made in this case, the plaintiffs are of the belief that it would be only logical that the principles of reciprocity and equality should prevail. Likewise they should, for that same reason, be able to take the US Government to court in Iceland.

By virtue of the aforementioned rule under public international law governing exemptions, general rules of private international law applied to the legal relationship, since the plaintiffs’ claim were based on exclusivity, even though the opposite party were a state. The plaintiffs lay emphasis upon that their claim were not a claim for damages or a claim of a kind that could fall within the regulatory procedures of the Defence Agreement, but rather a claim for an obligation to act to be met by the defendant alone. The plaintiffs maintain that only Icelandic judicial tribunals were competent to address questions regarding the exploitation of assets in this country and that the US Government could be summoned as a party to the dispute, which meant that the US Government would not be excluded from jurisdiction in such matters pursuant to Article 16 of the Civil Litigation Act No 91/1991, or under public international law. No provisions of the Defence Agreement stipulated that Icelandic nationals were incapable of taking the US Government to court in Iceland, but on the other hand the provisions on payment obligations to Icelandic nationals, assumed by the Icelandic Government on account of damages, were clearly invented for their convenience.

The plaintiffs maintain that the defendant’s exploitation of their land were unauthorized under Icelandic law and for that reason the plaintiffs were entitled to make the legally protected claim that the wastes, causing them harm and damage, would be removed from their estate.
The plaintiffs are of the opinion that the case could not be time barred, since the illegal circumstances were persisting, nor could indifference on behalf of the plaintiffs be taken into consideration, who had, after the extensive and concealed storage of wastes had become clear in 1989, constantly fought for the cleaning-up and removal thereafter of wastes on behalf of the defendant. The plaintiffs’ efforts had only met with indifference on behalf of the defendant, even though great emphasis had been put on remediation in similar cases in the United States, e.g. on account of hazardous substances dating back to the second World War.

Since the defendant’s use of the plaintiffs’ estate, for the purpose of storage of wastes and other construction debris, were continuing, prevailing and illegal, and since utility theft were being committed, which were causing the plaintiffs damage and considerable inconvenience, the plaintiffs made the claim before the Court that the defendant should be ordered by the Court to pay a fine per diem on failing to remove the wastes. Great interests were at stake for the plaintiffs, industrial, social and economic, and if a court ruling on the plaintiffs’ claim were to have any effect, determination of a high fine per diem were necessary. A claim were made for ISK 150 000, which were not a high amount considering other issues in relation to the case, and the interests at stake for the defendant in this context must be regarded minor in relation to those of the plaintiffs. As concerns powers to determine fines per diem the plaintiffs refer to Article 114(4) of the Civil Litigation Act No 91/1991.

When the case was heard *de novo* the plaintiffs presented additional evidence. Regarding the Ambassador's assertion, that in 1970 the area on Mount Heiðarfjall had been handed over to the Icelandic Government by way of an international agreement, it should be pointed out that the aforementioned agreement had not covered the Icelandic Government's acceptance of wastes and hazardous substances, which had been buried and concealed. The Icelandic Government had not wished to accept responsibility for the situation, but on the other hand the rights of the owners were renounced by way of agreements. The aforementioned agreement had not been an international agreement proper intended to amend rights between the two states or to have the consequence that one of the states would be released from its obligations under private international law. The parties most deeply concerned, i.e. the owners, had only learned of the existence of the agreement when more than twenty years had passed from the date of its conclusion. Likewise the plaintiffs make reference to the fact that the Americans had been tidying up and removing debris in other areas.

The farms Eiði I and II had not been sold concurrent with the issue of the bill of sale on 30 November 1974, but by way of a sales contract, dated 10 April the same year, and in the current condition at that time. The purchasers had then examined the condition of the estate at first hand and voiced their full approval such as they had confirmed with their signature. The bill of sale, issued at a later date, should be regarded as a unilateral recognition, on behalf of the vendors, of the fact that the purchasers had fulfilled their contractual obligations. Hence it should be the purchasers' concern to specify what kind of an asset they had purchased, to what condition reference had been made, and what they had accepted, but not the concern of other parties, who had not had anything to do with the purchase. The present owners had thus come into possession of the farms in the very condition the farms had been in at the change of ownership on 10 April 1974 and the text of the bill of sale had not obliged the owners to accept any condition not known of at that time, e.g. buried wastes and hazardous substances, which neither the vendors nor the purchasers had learned about until 1989, bearing in mind that the bill of sale had not covered renunciation on account of the situation on Mount Heiðarfjall. Problems concerning surface debris, which the vendors had made complaints about to the sheriff of the District of Þingeyjarsýsla in the town of Húsavík from 1971, had been discussed separately when the transaction had taken place in April 1974, and the right to make claims on account thereof had been transferred to the purchasers. When the vendors had issued the bill of sale that act had only been between the owners and the vendors and the clause on the condition had been of no concern to other parties and had not concerned the situation on Mount Heiðarfjall with regard to the Defence Force or the Ministry for Foreign Affairs' further use there of land for the purpose of storage of debris and with regard to possible future claims made by the owners. The declaration of the former owners, included in the bill of sale, could not be interpreted as if possible future rights of the owners to make claims against the aforementioned parties had been renounced. They had acquired such rights when the sales contract had been concluded. The vendors' declaration only stated that the purchasers had accepted certain facts vis-à-vis the vendors. The purchasers had examined the condition of the estate and voiced their full approval vis-à-vis the vendors, but neither the purchasers nor the vendors had been satisfied with the situation in the Defence Force area. The purchasers had always intended to continue to make claims against the Ministry for Foreign Affairs or the Defence Force on account of the situation in area H-2 on Mount Heiðarfjall and make requests for corrective actions and improvements regarding the situation in the area, which the US Military had been using continuously. The vendors had known of this, cf. a certified declaration, dated 30 January 1991, made by the former owners and

concerning issues regarding a third party. The Municipality of Þórshöfn had supported the landowners' claims that the defendant should remove wastes and debris, containing hazardous substances, from Mount Heiðarfjall and had repeatedly made the claim against the Americans that this would be removed from the soil. This revealed that it were not only in the plaintiffs interest to have the wastes removed, but also in the interest of the general public, as the legislative provisions, referred to in the summons, revealed.

Finally, the plaintiffs make the claim that the defendant would be ordered to pay full costs, in accordance with the invoice presented, with the addition of a mandatory value added tax put on the costs amount, cf. the provisions of Acts of Parliament No 50/1988 and No 119/1989, and that the plaintiffs would not be treated as taxable persons with regard to the VAT.

Conclusion

In the present case the plaintiffs make their claims against the government of a foreign state, the Government of the United States of America. With regard to the principle of public international law, concerning extraterritorial rights of states, that a state cannot fall within the jurisdiction of a court of another state, it is imperative to take a stand on the issue of jurisdiction before adopting a further qualitative position on the plaintiffs' claims and merits of a case.

It is maintained, on behalf of the plaintiffs, that the Government of the United States of America does not enjoy extraterritorial rights before Icelandic judicial tribunals in a case concerning the aforementioned alleged undertakings of the US Military on the land of the plaintiffs. Therefore, given the circumstances, Icelandic judicial tribunals had jurisdiction over the present case and authority, where applicable, to oblige the defendant to act as claimed by the plaintiffs. The basic argument, presented on behalf of the plaintiffs, is that the approach of public international law at present lead to the conclusion that the legal deeds in question should be considered as being of civil law nature and concerning the plaintiffs' proprietary rights and control over their land. On behalf of the plaintiffs, reference is also made to aspects of reciprocity and argued that in other countries judicial tribunals might reserve jurisdiction over foreign states in cases of certain legal deeds of civil law nature.

Subparagraph 2 of Article 16(1) of the Civil Litigation Act No 91/1991 lays down that judicial tribunals have powers to determine the case of everyone, who qualifies as a party, without prejudice to exceptions in accordance with the law or under public international law. Likewise Article 24(1) of the aforementioned Act lays down that judicial tribunals have powers to rule on any matter under national legislation, unless it is excluded from their jurisdiction according to law, contract, practice, or its nature.

Article 2 of the Defence Agreement between The Republic of Iceland and The United States of America, dated 5 May 1951 and which became legally valid with the adoption of Act of Parliament No 110/1951, provided that Iceland would make all acquisitions of land and other arrangements required to permit entry upon and use of facilities in accordance with the said agreement and that the United States should not be obliged to compensate for such entry or use; but Article 12(2) of the Annex to the Defence Agreement deals specifically with proceedings regarding claims, other than contractual claims, concerning acts of United States Armed Forces personnel causing damage to

assets of natural persons or agencies in Iceland or to human lives and health there, excluding claims according to paragraph 1(d).

The Defence Agreement does not stipulate that the Government of The United States of America should fall within the jurisdiction of Icelandic judicial tribunals in a dispute like that which is being addressed before this Court. Rules of public international law have neither been considered to lead to such a conclusion in Icelandic law, cf. rulings of the Supreme Court of Iceland No 613/1961 and 374/1998. The merits of the case presented by the plaintiffs, namely that the building of the present case should be seen as different from the case mentioned later from the point of view of Icelandic law regarding extraterritorial rights of foreign states before Icelandic judicial tribunals, cannot be accepted. Hence the present case must, in accordance with the aforementioned arguments, be dismissed *ex officio*. No costs will be determined.

The issue of this decree was delayed due to workload and the magnitude of the case.

District Court Justice, Mr. Eggert Óskarsson, issued the decree.

THE DECREE READS AS FOLLOWS:

The present case is dismissed.

No costs are determined.

(a)	**Registration no.**	IS/4
(b)	**Date**	12 December 2002
(c)	**Author(ity)**	Supreme Court (*Hæstiréttur*)
(d)	**Parties**	The Prosecution (State) vs. Ingólfur Guðmundsson, Arnar Ingi Jónsson and Erpur Þórólfur Eyvindarson (Individuals).
(e)	**Points of law**	The Court establishes that the act of throwing a Molotov cocktail at an embassy is a public act of disrespect towards a foreign State and punishable by law when committed in public and directed at official embassy premisses. The embassy premisses were considered to be an emblem of the foreign State in Iceland and a part thereof according to public international law.
(f)	**Classification no.**	0.a, 1.c, 2.c
(g)	**Source(s)**	The Supreme Court´s Collection of Court Rulings 2002 (Dómasafn Hæstaréttar 2002).
(h)	**Additional information**	
(i)	**Full text - extracts - translation - summaries**	Summary English: Appendix 1 Full text: Appendix 2* Full text English: Appendix 3

Appendix 1

The defendants were accused of having publicly disgraced a foreign nation and a foreign State, pursuant to Article 95 of the Penal Code, by throwing a Molotov cocktail against the place of residence of the Embassy of the United States of America and of the Ambassador. It was pointed out that the conduct, i.e. to disgrace publicly a foreign nation or a foreign State within the meaning of Article 95(1) of the Penal Code, must consist of an insult to or disrespect for the nation, in one way or another, the aim of which would be to attract attention, and of an act of disparagement and the demonstration of contempt and dishonour. The defendants´ conduct, i.e. to attack the facade of the American Embassy with a Molotov cocktail, the intention of which seemed to have been to leave tracks rather than to cause significant damage, was be deemed to have disgraced the United States of America, the American people or its leaders, since the Molotov cocktail exploded on the wall within a very short distance from the United States Coat of Arms and the American flag. The aforementioned act was deemed to have constituted an act of public disrespect for the United States of America, since it was initiated in public and directed against a public building bearing a symbol of the United States of America in Iceland and a part of that State pursuant to established public international law cf. Article 22 of the Vienna Convention, cf. Act of Parliament No 16/1971 on the adherence of Iceland to the Convention on Diplomatic Relations. The defendants were therefore found guilty of having violated Article 95(1) of the Penal Code.

Appendix 3

The Supreme Court of Iceland

No 328/2002

Thursday 12 December 2002.

The Prosecution

(Mr. Bogi Nilsson, Director of Public Prosecutions)

versus

Mr. Ingólfur Guðmundsson,

(Barrister Mr. Sigmar K. Albertsson)

Mr. Arnar Ingi Jónsson, and

(Barrister Mr. Brynjar Níelsson)

Mr. Erpur Þórólfur Eyvindsson

(Barrister Mr. Haraldur Blöndal)

A foreign state. Disgrace. Legal authority to penalize. The Vienna Convention. Appeal. A claim for dismissal refuted. Dissenting opinion.

I. G., A. I. J. and E. Þ. E. were accused of having publicly disgraced a foreign nation and a foreign state, pursuant to Article 95 of the Penal Code No 19/1940, by throwing, in the early hours of the morning, a Molotov cocktail against the place of residence of the Embassy of the United States of America and of the Ambassador, leaving obvious traces of fire and smoke on the facade of the Embassy building. It was established that I. G. had prepared the Molotov cocktail and thrown it against the Embassy and that A. I. J. and E. Þ. E. had accompanied him. I. G. was deemed to have been the main perpetrator and A. I. J. and E. Þ. E. his accomplices. It was pointed out that the conduct, i.e. to disgrace publicly a foreign nation or a foreign state within the meaning of Article 95(1) of the Penal Code, must consist of an insult to or disrespect for the nation, in one way or another, the aim of which would be to track attention, and of an act of disparagement and the demonstration of contempt and dishonour. I. G.'s conduct, i.e. to attack the facade of the American Embassy with a Molotov cocktail, the intention of which seemed to have been to leave tracks rather than to cause significant damage, must be deemed to have disgraced the United States of America, the American people or its leaders, since the bomb exploded on the wall within a very short distance from the United States Coat of Arms and the American flag. The aforementioned action was deemed to have been the equivalence of a public disrespect for the foreign nation in question, since it was initiated in public and directed against a public building being a symbol of the United States of America in this country and a part of that state pursuant to established public international law, cf. Article 22 of the Vienna Convention, cf. Act of Parliament No 16/1971 on the adherence of Iceland to the Convention on Diplomatic Relations. I. G., A. I. J. and E. Þ. E. were therefore found guilty of having violated Article 95(1) of the Penal Code; furthermore A. I. J. and E. Þ. E. were subjects to criminal liability pursuant to Article 22(1) of the said Penal Code.

Ruling of the Supreme Court of Iceland.

Supreme Court Justices Mr. Hrafn Bragason, Mr. Garðar Gíslason, Mr. Haraldur Henrysson, Ms. Ingibjörg Benediktsdóttir and Mr. Pétur Kr. Hafstein hand down judgement in the present case.

The Director of Public Prosecutions appealed against the decree of the District Court of Reykjavík to the Supreme Court on 1 July 2002 for conviction, in accordance with the charges made, and for determination of penalty.

The main requirement of all the defendants is that the Supreme Court would dismiss the case. Their alternative plea is firstly to be acquitted and secondly to receive the mildest punishment the law allows.

I.

The defendants' claim for dismissal is based on the assumption that an appeal against the decree of the District Court of Reykjavík were not permitted. Such permission would have been necessary, pursuant to Article 150(2) of the Criminal Proceedings Act No 19/1991, since conviction could only lead to punishment in the form of a fine, that would be much lower than an amount appealed against in civil proceedings, cf. Article 152(2) of the Civil Litigation Act No 91/1991, and the prosecutor's claim before the District Court had not involved anything else.

The Director of Public Prosecutions believes that the defendants were wrongly acquitted in the District Court and appeals against the Courts decree as Article 148 of Act of Parliament No 19/1991 permits, cf. Article 8 of Act of Parliament No 37/1994. The provisions of Article 150(2) of the Act on appeal against convictions do not apply in this case, since the view that punishment or other sanctions were much too mild, cf. Article 148, is not at issue here. The defendants' claim for dismissal will therefore not be taken into consideration.

II.

The defendants are accused of having publicly disgraced a foreign nation and a foreign state, pursuant to Article 95 of the Penal Code No 19/1940, by throwing, in the early hours of the morning of Saturday 21 April 2001, a Molotov cocktail against the place of residence of the Embassy of the United States of America and of the American Ambassador in Laufásvegur in Reykjavík, which caused a fire to flare up on the facade of the building. Still no serious damage was inflicted on the Embassy building and security guards put out the fire within a short period of time. Presented photographs show however obvious traces of fire and smoke on the facade of the Embassy building. The Prosecution holds the opinion that the defendants were agreed on the offence, and that the defendant I. Guðmundsson prepared the Molotov cocktail and threw it against the building. The defendants A. I. Jónsson and E. Þ. Eyvindsson had been guilty of having a part in the defendant I. Guðmundsson's violation of the above mentioned clause of the Penal Code, cf. Article 22 of the said Penal Code. The case was reopened after primary hearing and decree of the District Court and the Counsels were invited to argue the relevance of the offences, allegedly committed by the defendants, to Article 257 of the Penal Code, but the prosecutor also referred to Article 165 of the said Penal Code. The Counsels have, here before the Supreme Court, also expressed their views about the implementation of these legislative provisions and opposed such implementation.

The original police report states that the police was called to the American Embassy at Laufásvegur at 04.23 hours on the morning of Saturday 21 April 2001 "by reason of an attack alert from there". On their arrival at the scene the police officers had noticed

heavy smoke rising from the building and an employee of the security service Securitas Ltd. had been engaged in applying a fire extinguisher to the west side of the Embassy. He told the police that a man had been seen on TV surveillance throwing a Molotov cocktail against the Embassy and another employee of Securitas had pursued the man in question. After the security guard had reported two men in the street of Skáholtsstígur police patrol cars were sent off to search for the men. The defendants A. I. Jónsson and E. Þ. Eyvindsson were arrested in the street of Templarasund few minutes after the offence was committed and taken into police custody. They were interrogated on the following day and released in the evening. On the other hand the defendant I. Guðmundsson was not arrested until in the evening of Saturday 21 April 2001 and was interrogated at noon the following day, Sunday, and released thereafter. The police interrogated the defendants A. I. Jónsson and E. Þ. Eyvindsson again in December 2001.

III.

Reference is made to the decree of the District Court in which the testimony of the defendants and witnesses in the case before the said Court, which largely explains the course of events in this case, is described. On the other hand it is also necessary to argue certain parts in the defendants' testimony, given in the police investigation, which they have confirmed before the District Court on being asked to do so, with the exception of E. Þ. Eyvindsson.

During police interrogation on 22 April 2001 the defendant I. Guðmundsson stated amongst other things that they, the defendants, had late at night discussed politics in general in a restaurant, e.g. the United States warfare policy and intervention in Palestine. They had also discussed demonstrations, which had taken place in front of the American Embassy in Reykjavík, where fire had been set to the Israeli flag. These discussions had led to the idea of expressing some noticeable protest at the premises of the Embassy and then the idea had been hit upon to throw a Molotov cocktail against the Embassy building. He stated that he did not remember who had come up with the idea. The defendant I. Guðmundsson declared before the District Court that this was not wrongly repeated after him. It was further repeated after him, in the police record, that the other two defendants had seemed very pleased when he had told them that he had prepared the bomb, after having walked to the defendant A. I. Jónsson's car, fetched an empty bottle of vodka, and filled it up with soil and petrol together with a strip of newspaper, as further explained in the District Court decree. Shortly after, they had decided to go and throw the bomb against the American Embassy. In Court he declared that this was accurately repeated after him and that the other two defendants had known where they were going.

In the police report dated 21 April 2001 the defendant A. I. Jónsson states that on their way the defendant I. Guðmundsson had told the other two that he were going to throw a Molotov cocktail against the American Embassy, but he had never told them the reason why. In Court the defendant said that this was "somehow" correctly repeated after him, but that he did not recall that they had, on the way, discussed at any length the act of throwing the bomb. The defendant A. I. Jónsson stated, during police interrogation on 17 December 2001, that Guðmundsson had met him and Eyvindsson in the restaurant Prikið and asked them to leave the restaurant with him and once they were outside he had shown them a completed Molotov cocktail, which he had prepared in the vodka

bottle. They had then walked together to the American Embassy and in the backyard of a house opposite the Embassy Guðmundsson had lifted the bottle, lit the wick, jumped out of the yard into the street of Laufásvegur, and thrown the flaming bottle against the Embassy. Concurrently he, i.e. Jónsson, and Eyvindsson had run and fled from the scene. He had realized what was about to happen when Guðmundsson had shown them the Molotov cocktail. He had done nothing to stop Guðmundsson from throwing the bottle against the Embassy and said: "It is my belief that this action was not decided on jointly and that Ingólfur Guðmundsson did this and we did nothing to stop him." Before the District Court the defendant A. I. Jónsson declared that this was accurately repeated after him.

In the police report dated 21 April 2001 it is repeated after the defendant E. Þ. Eyvindsson that Guðmundsson had been hiding a completed Molotov cocktail inside his clothes when they were leaving the restaurant Prikið. Then Guðmundsson had told him and Jónsson that he intended to throw this against the American Embassy. They had been under the influence of alcohol and thought this was a joke and had not said anything to Guðmundsson. He claimed to have seen Guðmundsson lit the bomb and jump around the corner of the house and thereafter he had lost sight of him and ran to flee the scene. Before the District Court the defendant E. Þ. Eyvindsson excused himself for not remembering clearly what happened owing to his intoxication.

IV.

It is established, with confession made in Court by Guðmundsson, which is supported by other evidence in this case, in particular the testimony of the defendant A. I. Jónsson, that Guðmundsson prepared a Molotov cocktail and threw it against the Embassy of the United States of America in Laufásvegur in Reykjavík on the morning of 21 April 2001, as detailed in the charges made, the defendant I. Guðmundsson knowing that the Embassy was covered by TV surveillance. It is furthermore established, with the testimony of the defendants in Court, in particular the testimony of I. Guðmundsson and A. I. Jónsson, that the defendants A. I. Jónsson and E. Þ. Eyvindsson accompanied the defendant I. Guðmundsson and that, before taking action, he borrowed from them some clothes the purpose of which was to help him disguise himself and give false impression of himself, from the defendant A. I. Jónsson a blue cap and from the defendant E. Þ. Eyvindsson a camouflage jacket. Information from police investigation also supports this. Due to the fact that the defendants went downhill to the street of Fríkirkjuvegur, it is clear that they did not take the shortest route from restaurant Prikið in the street of Ingólfsstræti, presumably in order to hide, and from Fríkirkjuvegur they went uphill, alongside house No 11, into the backyard of a house in the street of Laufásvegur facing the Embassy. On the other hand it has not been established beyond a doubt that the defendants agreed amongst themselves on the action, but according to the testimony of the defendant A. I. Jónsson he was at least sure of the defendant I. Guðmundsson's intentions when they approached the American Embassy. With regard to the testimony of the defendants I. Guðmundsson and A. I. Jónsson it must also have been clear to the defendant E. Þ. Eyvindsson what was brewing in spite of his excuse of having been intoxicated and having had lapses of memory, and he, like the defendant A. I. Jónsson, did nothing to stop the defendant I. Guðmundsson. The defendant I. Guðmundsson must, in accordance with the statements above, be considered the main perpetrator of the act described in the charges made, and the defendants A. I. Jónsson and E. Þ. Eyvindsson his accomplices. Hereinafter, relevance to an appropriate sanction will be discussed further as well as the appropriate punishment.

V.

Pursuant to Article 95(1) of the Penal Code, cf. Acts of Parliament No 101/1976 and No 82/1998, a natural person, who publicly disgraces a foreign nation or a foreign state, its head of government, head of state, flag, or another established national emblem, the flag of the United Nations or of the Council of Europe, shall be fined or imprisoned for up to two years. In case of serious charges the offence can carry up to six years imprisonment. Pursuant to Article 95(2), cf. Act of Parliament No 47/1941, the same penalty can be imposed for publicly disgracing or abusing, injuring otherwise in words or deeds, or making slanderous insinuations to other officers of a foreign state placed in this country.

With Act of Parliament No 56/2002, which took effect on 14 May 2002, the following new paragraph was added to Article 95 of the Penal Code: “A natural person, who threatens, or uses force in this country against, a diplomat of a foreign state or intrudes into or causes damage on the premises of an Embassy or threatens to do so, shall pay the same penalty.” In the general annotations made to the Parliamentary bill the assertion is made that the purpose of this paragraph is to give protection by way of penalty against threats to or use of force against foreign diplomats in this country and against property damage made on the premises of an Embassy or against threats to cause such property damage. It is stated that neither in paragraph 1 nor in paragraph 2 of Article 95 is there absolutely provided for protection by way of penalty in the event of an attack or a threat directed against an officer of a foreign state in this country, or in the event of an act of sabotage committed on the premises of an Embassy. It is further indicated that Article 95(2) exclusively concerns “the act of publicly disgracing or other injuries” inflicted on the officers of a foreign state placed in this country. The bill should clarify that the clause “even though there is no case of disgrace and injury” should comprise conduct, which is considered a minor act of sabotage directed against an Embassy building, the premises of an Embassy, or the home of a foreign diplomat, and the threat to commit such an act. It is a prevalent opinion that this should be provided for more clearly in the Penal Code, notably bearing in mind Iceland’s commitments in accordance with public international law. Reference is made to the Vienna Convention on Diplomatic Relations of 18 April 1961, which has been ratified by Iceland, cf. Notification No 14/1971 in Section C of the Official Journal 1971, and to Act of Parliament No 16/1971 on the adherence of Iceland to the International Convention on Diplomatic Relations, Article 1 of which provides for the validity of the Convention in this country. Commitments, in accordance with Article 22 of the Vienna Convention, are reaffirmed and mentioned that Iceland’s adherence to the said Convention had not called for specific amendments to Article 95 of the Penal Code before. In Norway, however, one had chosen to phrase the concept of “protection by way of penalty” in Article 95(2) of the Norwegian Penal Code, similarly, qualitatively speaking, to the wording in the Article of the Bill, but that clause had, among other things, been enacted with a view to honour commitments in accordance with the Vienna Convention. In specific annotations made to the Article of the bill the assertion is made that the aim of the clause were to honour the commitments in accordance with Articles 22, 29 and 30 of the Vienna Convention. For that reason it is suggested that all doubts would be dispelled that a threat made, or the use of violence against a diplomat of a foreign state in this country, or an attack or an act of sabotage committed on the premises of an Embassy, or the threat to commit such an act, would be declared a punishable conduct, even though it did not comprise disgrace or injury according to Article 95(2) of the Penal Code.

The defence claims that the legislature had harboured a doubt that the clause of Article 95(1) of the Penal Code would cover incidents equivalent to those referred to in this case, which gave grounds to the enactment, by way of Act of Parliament No 56/2002, of the clause which became Article 95(3) of the Penal Code.

VI.

It is obvious that with the aforementioned amendment to Article 95 of the Penal Code the legislature had in mind, amongst other things, to offer Embassies and their premises increased protection by way of penalty with a view to honour international commitments in accordance with the Vienna Conviction more effectively than before. Thus the clause comprises minor acts of sabotage, not necessarily including disgrace or injury, which may rather be looked upon as property damage. Nevertheless it does not rule out that vandalism in various forms will be deemed to include disgrace brought on an Embassy and the foreign nation of which it is a symbol, even though such vandalism is insignificant.

The conduct of publicly disgracing a foreign nation or a state, within the meaning of Article 95(1) of the Penal Code, must comprise insult or disrespect for the nation in one way or another, the aim of which would be to track attention. It must entail an act of disparagement and the demonstration of contempt and dishonour. The clause will be applied in such circumstances, provided that freedom of expression, as protected by the Constitution, does not oppose such application. No declaration has been made, on behalf of the defendants, that the purpose of the said action had been to exercise such rights. However, the conduct of the defendant I. Guðmundsson, i.e. to attack the facade of the American Embassy with a Molotov cocktail, the aim of which seems to have been to leave tracks rather than to cause significant damage, must be deemed to have disgraced the United States of America, the American people or its leaders. He himself explained to the police that he had aimed at the wall of the Embassy's first floor, i.e. to the right above the entrance. There the flaming bottle exploded and photographs show soot and black stuff on a part of the wall, within a very short distance from the United States Coat of Arms and the American flag. This action must be deemed to be the equivalence of a public disrespect for the foreign nation in question, since it was initiated in public and directed against a public building being a symbol of the United States of America in this country and a part of that state pursuant to established public international law, cf. Article 22 of the Vienna Convention.

With regard to what has been mentioned earlier the defendant I. Guðmundsson's behaviour must be deemed to comprise a violation of Article 95(1) of the Penal Code, which renders it unnecessary to take a stand on other sanctions referred to in this case. The defendants A. I. Jónsson and E. Þ. Eyvindsson assisted the defendant I. Guðmundsson, as described earlier, and did nothing to prevent the action he intended to initiate. For that reason they are also subjects to criminal liability pursuant to Article 22(1) of the Penal Code.

When penalty is decided upon it is appropriate to take into account the defendants' young age and the fact that they have not been convicted of crimes, relevant in this context, before. The defendants I. Guðmundsson and A. I. Jónsson have been convicted of committing a driving offence and the defendant E. Þ. Eyvindsson has a clean police record. The offence they committed is certainly serious, but did not cause extensive damage. With regard to all events and to Article 70, paragraph 1, points 1, 2, 4 and 5 of the Penal Code it is held to be right that the defendants should be ordered to pay a fine to the Treasury, the defendant I. Guðmundsson ISK 250 000, and the defendants A. I.

Jónsson and E. Þ. Eyvindsson ISK 150 000 each. The fines shall be paid within 30 days from the pronouncement of this judgement, if not, alternative penalties will be imposed as detailed in the verdict.

In accordance with the verdict the defendants shall pay all costs in connection with the charges brought against them before the District Court and in connection with the procedure in the Supreme Court:

The verdict:

The defendant Mr. Ingólfur Guðmundsson shall be fined ISK 250 000 to be paid to the Treasury within 30 days from the pronouncement of this judgement, failing to do so he shall be imprisoned for 34 days.

The defendant Mr. Arnar Ingi Jónsson shall be fined ISK 150 000 to be paid to the Treasury within 30 days from the pronouncement of this judgement, failing to do so he shall be imprisoned for 26 days.

The defendant Mr. Erpur Þ. Eyvindsson shall be fined ISK 150 000 to be paid to the Treasury within 30 days from the pronouncement of this judgement, failing to do so he shall be imprisoned for 26 days.

The defendant Mr. I. Guðmundsson shall pay his appointed defence in the District Court and the Supreme Court, Barrister Mr. Sigmar K. Albertsson, an amount of ISK 300 000.

The defendant Mr. A. I. Jónsson shall pay his appointed defence in the District Court and the Supreme Court, Barrister Mr. Brynjar Níelsson, an amount of ISK 270 000.

The defendant Mr. E. Þ. Eyvindsson shall pay his appointed defence in the District Court, solicitor Gísli Gíslason, an amount of ISK 150 000 and his appointed defence in the Supreme Court, Barrister Mr. Haraldur Blöndal, an amount of ISK 120 000.

The defendants in this case shall pay *in solidum* all other costs in connection with the charges made.

Dissenting opinion
of Supreme Court Justice Mr. Hrafn Bragason

I agree to the statements in the first four chapters of the opinion of the majority of the judges regarding the facts of this case and that the defendants are responsible for the defendant I. Guðmundsson's act of throwing a Molotov cocktail against the American Embassy in the early hours of the morning of Saturday 21 April 2001, inflicting some fire damage on the facade of the building, as shown in the photographs presented. I also agree to the majority's explanation of the provisions of Article 95 of the Penal Code No 19/1940 and of the amendments to that Article, laid down in Act of Parliament No 56/2002, that is to say after the events of this case took place, and one can refer to Chapter V of the said opinion in this respect. On the other hand I disagree with the majority on the relevance of a sanction to the action in question and I am of the opinion that Chapter VI of the ruling should read as follows:

VI.

The defendants are accused of having publicly disgraced a foreign nation and a foreign state according to Article 95 of the Penal Code. In the annotations made to the provisions of the original version of the said Article the assertion was made that the aim

of its enactment was to protect the interests of the State of Iceland, and not especially to protect foreign interests in this country. This view is *inter alia* based on the fact that the State of Iceland is under an obligation, according to public international law, to offer delegates of foreign states, dwelling in this country, special protection, including protection by way of penalty, cf. Act of Parliament No 16/1971 on the adherence of Iceland to the International Convention on Diplomatic Relations, or the so called Vienna Convention, Article 1 of which provides for the validity of the Convention in this country. Subsequently the American Embassy referred the police to the Icelandic Ministry for Foreign Affairs after the youngsters had committed the act, by reason of which the Ministry filed a legal accusation with the police on 9 October 2001, accurately so in fulfilment of the state's obligations under the aforementioned Convention. This was done within the period of six months referred to in Article 29 of the Penal Code, as discussed here below. According to the Vienna Convention states are required to declare attacks and acts of sabotage, committed on the premises of an Embassy, or a threat thereof, as a punishable conduct.

Established facts of this case reveal that the youngsters' act was notified to the police as an attack against an Embassy, but was later investigated as an arson attack. The Director of Public Prosecutions would have had the choice to prosecute under Article 164 of the Penal Code, or, since damage done to the building turned out to be light, under Article 257 of the said Code, taking into account the fact that a legal accusation was filed as a result of the act within a period of six months after it was committed, as mentioned earlier. The case was reopened in the District Court and the Counsels were invited to argue the relevance of the offences, allegedly committed by the defendants, to Article 257 of the Penal Code, but the prosecutor then also referred to Article 165 of the said Penal Code. For that reason it was considered to be appropriate that the Counsels would also argue the case, before the Supreme Court, with regard to the aforementioned provisions. According to the introductory clause of Article 117 of the Criminal Proceedings Act No 19/1991 a defendant shall not be convicted of a conduct other than that referred to in the charges made. It is appropriate, however, to pass sentence raised on other sanctions than those referred to in the charges made, provided the defence is not faulty and the description of the act committed is in compliance with the respective sanction. In this case the Director of Public Prosecutions decided to prosecute the offenders for having publicly disgraced the United States of America by way of their action and to apply the clause of Article 95(1) of the Penal Code to their action, as mentioned earlier. The description, in the charges made, of the act committed does not give rise to penalty based on the clause of Article 257 of the Penal Code.

It is mentioned in Chapter V above that the defence had claimed that the legislature had harboured a doubt that the clause of Article 95(1) of the Penal Code would cover the act committed by the young men. Reference was made to the fact that with the Act of Parliament No 56/2002, which was adopted after the said act was committed, a new paragraph was added to Article 95. This clause is clarified in Chapter V and in the general annotations made thereto. In there it is indicated that neither in paragraph 1 nor in paragraph 2 of Article 95 is there absolutely provided for protection by way of penalty in the event of an act of sabotage committed on the premises of an Embassy. The bill should, amongst other things, clarify that the clause "even though there is no case of disgrace and injury" should comprise conduct, which is considered a minor act of sabotage against an Embassy building. In specific annotations made to the Article of the bill the assertion is made that the aim of the clause were to honour the commitments in accordance with Articles 22, 29 and 30 of the Vienna Convention. It is stated in the

annotations that in Norway it had been believed necessary to adopt a comparable clause for the same purpose. That was done on 15 December 1950.

The provision of Article 95(1) of the Penal Code has not been applied in Supreme Court rulings since the first half of the last century. An identical clause has neither been applied in Denmark since that time. In Norway an act, comparable to that which is being considered here, has been made relevant to Article 95(2) of the Norwegian Penal Code after 1950, which is comparable to the clause, which was enacted in Iceland in 2002. Since the end of World War II public opinion regarding matters dealt with in Article 95(1) of the Penal Code has changed, which is best seen in the provisions of the Universal Declaration of Human Rights and the United Nations Agreements on Human Rights, and which coalesces in Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe, which was enacted in Iceland by adoption of Act of Parliament No 62/1994 relating thereto, and in Article 73 of the Constitution, as amended by Article 11of the Constitutional Law No 97/1995. The aforesaid provisions assert enhanced rights to the general public to express itself, e.g. to demonstrate in front of foreign Embassies. The objective of the provision of Article 95(1) of the Penal Code is to support that foreign nations and states are shown due respect in words and deeds in public. This provision cannot be clarified without reference to the human rights provisions on freedom of speech mentioned above and the ideas reflected therein. When clarifying these articles one can not ignore the clarification of the European Court of Human Rights of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms. It is imperative to take into account the aforementioned conventions and the legislation resulting there from when clarifications of the provision of Article 95(1) of the Penal Code are provided, just as when other honour protection provisions of Icelandic legislation are clarified. The said provision will not be deemed to apply to an act committed, unless such an act is undoubtedly specified in that provision, cf. Article 73(3) of the Constitution. The Icelandic legislature responded to this, e.g. by adopting Act of Parliament No 56/2002 with regard to acts of sabotage committed on the premises of an Embassy.

The defendant I. Guðmundsson claimed before the District Court that it had not been his intention to disgrace the United States of America. In the Supreme Court proceedings his defence maintained that he had been opposed to the United States foreign policy and that the idea to attack the Embassy had merged from discussions of the policy pursued by the United States in the Middle East and that the aim of the attack had been to symbolize his disapproval. This is in harmony with I. Guðmundsson's testimony and the defendant A. I. Jónsson's testimony, that were confirmed for the most part in the District Court. It is clear that the reason for the defendants attack on United States Embassy is at least the opinions of the defendant I. Guðmundsson. On the other hand it has been established that all the young men were roaring drunk when the act was committed, which makes it difficult to work out their exact intentions. The only comparison to be made is that their intention had been to inflict damage on the Embassy and the act committed should not be given any other or hidden meaning. Furthermore the act was committed early in the morning, when few people were on the move, it only being observed by security guards through TV surveillance, and the defendants had sneaked through backyards towards the Embassy. By reason of what has been mentioned here above Article 95(1) of the Penal Code cannot apply to the act committed by the defendants. Whereas the Prosecution has tied the description of the charges made to a breach pursuant to the aforesaid Article the defendants must be acquitted of its demands and the State of Iceland sentenced to pay all costs related to the appeal made.

(a)	**Registration no.**	IS/5
(b)	**Date**	21 December 1987
(c)	**Author(ity)**	Governments of Denmark, Finland, Iceland, Norway and Sweden Statement
(d)	**Parties**	Governments of Denmark, Finland, Iceland, Norway and Sweden to the International Law Commission
(e)	**Points of law**	See S/E 4
(f)	**Classification no.**	0.c, 1, 2.c
(g)	**Source(s)**	
(h)	**Additional information**	
(i)	**Full text - extracts - translation - summaries**	Appendix 1: See S/E 4

(a)	**Registration no.**	IS/6
(b)	**Date**	11 June 1992
(c)	**Author(ity)**	Governments of Denmark, Finland, Iceland, Norway and Sweden Statement
(d)	**Parties**	Governments of Denmark, Finland, Iceland, Norway and Sweden to the International Law Commission
(e)	**Points of law**	See S/E 5
(f)	**Classification no.**	0.c, 1, 2.c
(g)	**Source(s)**	United Nations, Report of the Secretary General, UN document A/47/326, p. 17
(h)	**Additional information**	
(i)	**Full text - extracts - translation - summaries**	Appendix 1: See S/E 5