JUDGMENT OF THE SUPREME COURT

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.