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***Comments on the Decision of the Supreme Court to invalidate the election to the
Constitutional Assembly***

The Supreme Court has handed down a Decision that declares the election to the Constitutional Assembly of 27 November 2010 null and void. It might be anticipated that the Supreme Court would have exercised special care in arriving at such a momentous Decision – a Decision which has the effect of depriving over 83 thousand voters of their democratic right to elect a Constitutional Assembly by a *de facto* invalidation of their ballots, not to mention the small matter of chucking into the bin the entire expense of organising the election, which reportedly amounted to over ISK 200 million. It therefore came as a surprise to discover that the Decision is not only poorly reasoned, but must be seen as materially wrong in important respects. The purpose of this article is to substantiate this contention.

The Decision of the Supreme Court, as published on the Court’s website, is some 1100 lines in length, but it is only the last fifth that lays down the reasoning and conclusions of the Court, preceded by a description of the complaints and the facts of the case. That is hardly an extensive discourse considering the implications of the Decision. In its conclusions, the Supreme Court indicates six items that the Court considers to be deficiencies in the conduct of the elections, two of which are considered significant deficiencies; the reasoning concludes as follows: “The above deficiencies in the conduct of the election held on 27 November 2010 to the Constitutional Assembly must be considered collectively, and it is the conclusion of the Supreme Court that because of these deficiencies, there is no alternative but to invalidate the election.” This “collective consideration” by the Court is not explained in further detail, and it must therefore be assumed that collectively these six “deficiencies” were sufficient to justify invalidation of the election. We must therefore content ourselves with looking at each item separately, although the last two will be discussed under the same heading.

1. Bar coding and numbering of ballot papers

The ballot papers were marked on the reverse side. The second paragraph of Article 10 of the Act on a Constitutional Assembly reads as follows: “The back of the ballot paper shall be marked with the identification code of the ballot.” It is not specified further what form the “identification code” should take, but in fact it was a so-called bar code, which is a number expressed in the form of variously thick lines, designed to facilitate reading using special electronic equipment; usually the number is also printed along with the bar code in normal digits, and this was also the case here. The Supreme Court concludes that the decision to number the ballots, as done in the election, “was in violation of the final provision of Article 4 of Act No. 90/2010 regarding ballot secrecy, which provision is consistent with the fundamental provisions of the Constitution concerning public elections, cf. Article 5 and 26, the first paragraph of Article 31 and the second paragraph of Article 79 of the Constitution. This must be seen as a significant deficiency in the conduct of the elections, particularly in view of the fact, to be further addressed below, that votes must be tallied in the open and in the presence of agents according to the second paragraph of Article 94 of Act No. 24/2000.” The cited final provision of Article 4 of the Act on a Constitutional Assembly merely says: “The election shall be conducted by secret ballot.” The provisions of the Constitution stipulate that certain elections should be held by secret ballot. It must therefore be surmised that the

“significant deficiency” perceived by the Supreme Court consisted in the marking of the ballot papers, which had the result that the election was no longer by secret ballot. This is an error on the part of the Court for the following reasons:

Let us first look at the Supreme Court’s reasoning, which runs as follows: (1) “As clearly stated in the notes to the bill [for an Act on a Constitutional Assembly], it should not be possible to trace ballots back to individual voters.” (2) “It is common knowledge that voters’ names are often written down in the order in which they arrive to cast their votes in order to keep track of how many voters have entered the precinct.” (3) “In view of the information that the ballots were not only identified by a bar code but also numbered in a continuous and consecutive sequence, it must be concluded that it was in fact a very easy matter to write down details next to voters’ names that would allow one to trace them back to the numbers of the ballots provided.”

Since this reasoning is intended to show that the election was not secret, it must be intended as a syllogism resting on the following premises:

- (a) Lists are “often” maintained of the names of voters in the sequence in which they cast their votes [point (2) above]
- (b) It is an “easy matter” to write down “details” of voters in these lists [point (3); presumably, the Court is here referring to the bar codes or some markings that make it possible to find them]
- (c) For this reason, ballot papers can be traced to voters [this must be the implication of point (1)]
- (d) If a ballot paper can be traced back to a voter, then the voting is not by secret ballot [the conclusion that the Court wishes to draw from its reasoning].

This reasoning is of the kind that it can never be stronger than its weakest link; for refutation it is therefore sufficient to show that one of its links will not hold. In fact, none of them holds.

Let us first look at point (a). The Court says that it is “common knowledge” that voters’ names are written down in the order in which they cast their votes. In the description of the complaints before the Court, a letter from the legal counsel of Thorgrimur Thorgrimsson, one of the complainants, is cited to the effect that “it is ... known” that in “some” precincts electoral commissions have maintained such lists “in elections”; when further questioned as to in which precincts such lists were kept, the Court says that Mr. Thorgrimsson “said he knew that this procedure had been employed but that he did not possess information as to which precincts or electoral commissions were involved.” The Court goes on to say: “Mr. Thorgrimsson, who was an official at a polling station in the election, maintains that it is a known procedure in elections for two commission members to mark the electoral register while the third prepared a list of names which is then used to reconcile the entries in the electoral register; this list is then discarded and is not among the formal documents forwarded to district electoral commissions.”

Note that this is a general discussion of certain unspecified electoral commissions at certain unspecified polling stations in certain unspecified elections and the complainant cannot point to any specific instance, and in particular not in the polling station where he was himself was

an official, which, on the face of it, appears to have been the election in question here. Mr. Thorgrímsson's "knowledge" thus appears to be based on rumour and not personal experience. We are not informed either what experience underlies the words of the Supreme Court that it is "common knowledge" that such lists have "often" been kept. But in order to demonstrate that the election to the Constitutional Assembly was not secret for the reasons given it is not sufficient to be aware of rumours of this kind regarding certain unspecified elections; it is not sufficient either to have proof that such lists have been kept on some occasion in some election; it is not even sufficient to say that such lists were kept in some precincts in *this* election; it must be known for a fact that the lists were kept, that they *exist* or *did exist on the tallying day or later*; otherwise the reasoning falls flat. There is no proof of the existence of these lists, and, truth to be told, it appears unlikely that their existence could be proven even if they did exist, but the most likely case is that they do not exist at all. Point (a) of the reasoning has therefore failed the test.

As regards point (b), i.e. the assertion by the Supreme Court that it is an "easy matter" to enter on these lists information which is sufficient to determine the identification code of voters, it is contended here that it must be a matter of debate just how easy it is: The Court can hardly mean that it is an "easy matter" for a polling station official to check the reverse side of each ballot paper and note down a six-figure number from the bar code before the ballot paper is handed over to the voter; the reasoning appears to be based on the assumption that the ballots are handed out in a "continuous and consecutive sequence" so that it would be sufficient to note down the number of the voter at the top of the list and then fill in the numbers of subsequent places in the list by adding the number "1" to each subsequent place on the list. I say "polling station official," because the reasoning must be grounded in the assumption that an official had the calculated criminal intent of discovering how some voters in his or her own precinct voted. No one other than the polling officials could have prepared such a list, but for a polling officer this would constitute criminal conduct, and he could hardly carry out the crime without conspiring with the other officials of the precinct. And keeping a list of this kind would be a delicate matter: one small error, and everything that follows would be off the mark. And how to verify whether the numbering on the list is correct? There are no means of doing so after the fact. In order for link (b) in the reasoning to hold, a conspiracy of the polling officers must be shown, which has not been done and has not been shown as probable. Link (b) of the reasoning therefore will not hold any better than the first.

As regards point (b), the following should be noted: even if we assume that lists with voters' names and their bar code numbers exist somewhere, it does not follow that ballots can be traced back to voters. The list by itself is useless. Anyone in possession of a list who wishes to discover how the voters on the list cast their votes must also have access to the ballots.

It was beyond amusing – I laughed out loud – to read the passage in the Supreme Court Decision where the Court asserts that the bar-coding must be regarded as a "significant deficiency in the conduct of the elections" and then adds "particularly in view of the fact, to be further addressed below, that votes must be tallied in the open and in the presence of agents". Did the Court imagine that someone from the conspiracy of polling officers might bring along their illegal list and rummage around in over 83.000 ballot papers while the tallying was in progress with the intent of uncovering some of the six-figure numbers in the bar codes on the ballots that corresponded to the figures next to the names on their list and then note down the identifying numbers of the candidates that the voter in question had voted for? This is patently impossible to accomplish, let alone without anyone noticing. Even if we assumed that points (a) and (b) held firm, that lists did indeed exist with voters' bar code

numbers, that is still not enough to trace ballots back to voters. This is impossible unless the *same person* has access *both* to the lists *and* to the ballots. It has not been shown that this was the case, and in fact I am virtually certain that it was not the case. Link (c) is therefore also in fragments.

This brings us to the final point, (d). Is it absolutely certain that an election is not secret if it is possible to trace a ballot a voter? In fact it is not certain at all. As I have just said, the *same person* needs to have access to lists containing the bar codes of individual voters and to the ballots themselves if a ballot is to be traced to a voter. Even if both sources of information are somewhere in existence, so that it could theoretically be possible to link ballot papers to voters, this could still be impossible in actual fact, as it might be impossible to access both sources of information at the same time. In the United Kingdom ballot papers are regularly marked with identification codes *and* a list is kept of the identification marks assigned to individual voters. Nevertheless, elections in that country are generally regarded as secret. The reason is that the lists and the ballot papers are kept under lock and key, and there is no way to gain access to them, except for special election courts. It is considered virtually impossible that an election court would permit access to these documents, but the British still regard them as a necessary precautionary measure to be used in judicial proceedings involving election fraud, where it needs to be ascertained whether specific ballots were cast by actual voters; in addition, a voter can request verification that his or her vote was counted. If the counting is by electronic means, these questions can be resolved electronically without anyone involved in the verification process being able to see how a specific voter cast his or her vote. In fact, it is an easy matter to preserve the information in encrypted form, so that it can only be used to respond to certain kinds of queries. It is therefore not self-evident that an election is not secret if ballots can be traced to voters, and I believe, therefore, that I have shown point (b) also to be untenable. Thereby the entire reasoning of the Court is demonstrably wrong.

In addition, it should be clear that the conclusion is also wrong. It has not been shown that any lists exist containing the bar codes of the ballots cast by specific voters, and therefore there is no way of finding the ballots of individual voters or of identifying voters who filled in specific ballot papers. If anyone is of the opinion that this assertion of mine is incorrect, I beg of him to explain to me how he would proceed in unearthing a ballot cast by just one single identified voter.

But let us assume, notwithstanding the above and for the sake of argument, that the conclusion of the Supreme Court is correct, and that it would be possible to link ballots and voters using the bar codes. Even so, the Court cannot assert that the marking of the ballot papers is a “significant deficiency” in the election and sufficient to justify (in combination with other reasons) the invalidation of the election. The Court only needs to order the bar codes to be removed from the ballots by covering them with black ink, so as to make the codes unreadable. This would render the bar codes useless for any purpose, since they would no longer exist; in the event of a need for a recount, this would either have to be done by hand or new random codes would have to be printed on the ballots.

It should be added that this entire line of reasoning is complete rubbish in any case. If anyone had the criminal intent of wishing to ascertain how someone cast his vote, it would not occur to him to do so by using the bar codes; it would be virtually impossible, as recounted above, and there are much simpler ways of going about it. All he would need to do, for example, would be to gain access to the polling station well ahead of the election and plant a tiny camera above the polling booth. It is always possible to think up methods of this kind to

breach the secrecy of an election, but if that alone is sufficient grounds for the invalidation of an election, then every single election would have to be annulled. To invalidate an election it is not sufficient to demonstrate that fraud is imaginable – it is always imaginable – it needs to be shown that fraud in fact occurred.

From the above it is clear that the Supreme Court has not shown that the bar codes on the reverse sides of the ballot papers (possibly in tandem with other factors) is any indication that the election was not secret. This must be seen as a significant deficiency in the Decision of the Supreme Court.

2. Voting booths

It has emerged that some precincts did not use traditional voting booths of the kind normally used in past elections, but that school tables were instead fitted with cardboard partitions which were intended to prevent others from seeing how a voter cast his or her vote. The Supreme Court cites the Act on elections to the Althing, where voting booths are described as follows (Article 69): “The voting booth shall be so furnished that it is possible for voters to cast their votes there without others being able to see for whom they are voting. Each polling booth shall be furnished with a small table which can be used as a writing surface.” The Act also says (in Article 81): “When a voter has received the ballot paper the voter shall take the ballot paper into the voting booth, where he alone is permitted to be present, and to a table located in the booth.” And further on (Article 85): “When a voter has completed his ballot he shall fold the ballot in the same crease that it had when he received it, walk out of the booth to the ballot box and place the ballot in the box in the presence of a representative of the electoral commission.” This assumes that the booth is so constructed as to permit entering and exiting.

In the opinion of the Supreme Court, the cardboard partitions do not meet the necessary criteria to be considered polling booths in the meaning of Act No. 24/2000, “since they do not demarcate a space in which a voter would be able to cast his or her vote in private.” The Court goes on to say: “This arrangement also does not meet the condition of allowing voters to cast their votes without others being able to see how they voted, since the markings on the ballot paper could be seen if one were to stand behind a behind a voter sitting at a cardboard partition to fill out his or her ballot.”

This latter comment of the Court is peculiar. One would think that it would precisely be impossible to see the markings on a ballot paper by standing behind a voter while he is filling in his ballot without the benefit of x-ray eyes to see through the voter.

The summary of the Supreme Court of the complaints submitted by Messrs. Thorgrimur S. Thorgrimsson and Odin Sigthorsson says: “It would have been impossible, it is contended, to prevent voters from glancing at the ballots of the nearest voter, e.g. when standing up from the table after filling out their own ballot paper or when walking past another voter and looking over his shoulder.” It was wise of the Supreme Court in its final Decision not to echo the complainants’ contention that it was possible to “glance” at a ballot while a voter was sitting at his table or by “looking over his shoulder” to see the ballot; this would surely have attracted the attention of polling officials, just as it would attract their attention if someone “glanced” into a traditional voting booth. Instead, the Court asserts that the ballot can be glimpsed by “standing behind” the voter, which appears extremely dubious, as mentioned earlier. There is no indication that the Supreme Court undertook any experiments as to what

sort of acrobatic contortions would be required to look at a ballot paper while it was being filled in by a voter, for instance how far one would need to stretch in order to “look over the shoulder” of a voter, or what sort of manoeuvres would be needed to peek over a partition. I mention this because in a case of this kind the Court has an investigatory function; the Court must verify, or obtain verification of, all the details needed for a case to be regarded as adequately investigated before a decision is made.

It should be noted that partitions of the kind that were used in the election are widely used in elections across the world, and they are generally not regarded as entailing a risk that voters’ ballots might be seen by others. From my own experience, when I was filling in my own ballot paper in the election to the Constitutional Assembly, I think I can safely assert that it would have been completely impossible for anyone to see my ballot paper while I was filling it in, and it would surely have attracted keen attention from a polling station official if anyone had made an attempt to do so. Nevertheless, the Supreme Court asserts that “the markings on the paper ballots could be seen”, apparently without any grounding for this assertion, and then goes on to say that “this was a deficiency in the conduct of the election”.

There remains the fact that it is admittedly debatable whether voters “entered” the voting booth and then “exited” it again, or whether they were “alone” while voting, but it should be noted that the Decision of the Supreme Court is based on legislation on elections to the Althing, which, in turn, is grounded in the stipulation in the Act on a Constitutional Assembly which says that “Precincts, polling stations and the procedure of the polling are in other respects subject to the Act on elections to the Althing, as applicable”. It is obvious that the words “as applicable” require careful interpretation; the question is then what is applicable. It is at the very least open to debate whether the question of the voter “being alone” in the voting booth should weigh heavily as a factor in deciding whether to invalidate the election.

In addition, it must be concluded that the Supreme Court has not succeeded in showing that “the markings on the paper ballots could be seen” notwithstanding the Court’s assertion to that effect. This must be seen as a deficiency in the Decision of the Supreme Court.

3. Folding the ballot

It was protested that “that voters were not permitted to fold their ballot after filling it in”. This was apparently in contradiction of “clear instructions” in Article 85 of the Act on elections to the Althing. The Article in its entirety is as follows: “When a voter has completed his ballot he shall fold the ballot in the same crease that it had when he received it, exit the booth to the ballot box and place the ballot in the box in the presence of a representative of the electoral commission.” The voter shall take care that no one can see how he voted.”

Note that the provisions contain instructions only to voters. In this case, the ballot paper handed to the voter was not folded and therefore had no crease so that the voter could not fold it “in the same crease that it had when he received it”. As recounted earlier, the Act on elections to the Althing applies to the election to the Constitutional Assembly only “as applicable”. This, therefore, is an example of a provision which was not applicable, so that should have been an end to the matter.

The majority of the Supreme Court bench, however, chose to base their conclusion on Article 53 of the Act on elections to the Althing, which stipulates, among other things, that ballot

papers used in elections to the Althing should be folded. The reasoning in the majority opinion is such that it could be mistaken for a joke or parody; here it is in its entirety:

“Article 10 of Act No. 90/2010 includes provisions on the preparation and printing of ballots in connection with the elections to the Constitutional Assembly. The second paragraph thereof includes provisions on the content of ballot papers. The Court is of the opinion that these provisions set out how matters should be handled which are specific to this election, and thus different from the provisions of Article 52 of Act No. 24/2000 on the content of ballot papers in connection with elections to the Althing. As previously mentioned, the final sentence of Article 4 of Act No. 90/2010 provides that elections to the Constitutional Assembly should be conducted by secret ballot. The instructions set out in Article 85 of Act No. 24/2000 to the effect that voters should fold their ballots before depositing them in the ballot box are intended to ensure voters’ rights to cast their votes in secret. No provisions were included in Article 10 of Act No. 90/2010 expressly deviating from these instructions, even though it would have been easy to do so had this been the intent at the time of the passing the Act. For these reasons, and in view of the provision of the first paragraph of Article 11 of the same Act to the effect that the procedure of the polling should be subject to the Act on elections to the Althing, it must be concluded that Article 85 of that Act applied to the election to the Constitutional Assembly, in which case Article 53, for its part, must also be deemed applicable due to the reference made in Article 85 to the substance of that Article. The instructions set out in these statutory provisions were not observed in the election, which must be regarded as a deficiency in its execution.”

What the judges forming the majority appear to be saying is that Article 53 must apply to the election to the Constitutional Assembly for two reasons: (a) because it is not specifically stated in the Act on a Constitutional Assembly that it should not apply, and (b) because Article 85 must apply, as its purpose is to ensure voters’ rights to secrecy, and because Article 85 is based on Article 53, then it follows that Article 53 must also apply.

This makes absolutely no sense. The general provision that the Act on elections to the Althing should apply to the election to the Constitutional Assembly “as applicable” precludes the drawing of conclusions based on specific articles unless it is evident that they are in fact “applicable”. Since the ballot paper was designed differently from ballot papers used in elections to the Althing, *inter alia* for the purpose of making it possible to tally the votes using special machines, the provision does not apply.

The reason given, i.e. that Article 85 must still apply, even though it is not applicable, because it is intended to secure voters’ right to secrecy, is hard to take seriously. In order to read a voter’s unfolded ballot, under the circumstances in the polling stations, the reader would have had to lay down on his back in front of the ballot box with his eyes trained upwards and scan the ballot as it was slid into the ballot box.

This flaw in the reasoning of the majority of the bench must be seen as a deficiency in the Decision of the Supreme Court.

It should be noted that two judges disagreed with the majority opinion on this point.

4. Ballot boxes

The Supreme Court is of the opinion that the design of the ballot boxes “served to compromise the security and secrecy of the elections. This is therefore considered a deficiency in its execution.”

The reasoning of the Court is quite brief: The boxes did not meet the condition set in the Act on elections to the Althing to the effect that it must be possible to lock them. “In addition, the design of the ballot boxes was such that they could be taken apart with little effort in order to gain access to the ballot papers.”

To counter the first argument, it can be pointed out that it is not clear whether the provision of law to the effect that it must be possible to lock the ballot boxes was “applicable” to the election to the Constitutional Assembly; the reason is that the ballot papers were specially designed to enable tallying by machine, and the ballot boxes had to be specially designed to accept such ballots. It was therefore not possible to use the regular ballot boxes. But even though the boxes were not fitted with a lock, it has been established that they were sealed. Boxes of this kind have been used in elections in other countries without any reason being seen to invalidate those elections on account of the boxes used.

As regards the second argument, the following comes to mind: It must be an impossibility to design ballot boxes so that they cannot be taken apart to access the ballot papers, although the breaching could doubtless involve differing degrees of difficulty depending on the type of box. I think I would be more confident, despite my limited knowledge of carpentry, to gain access to ballots in an old fashioned ballot box without significant evidence of tampering than to the plastic boxes that were used. The point is that what matters is not whether the boxes can be breached, but whether they can be breached *without evidence of tampering*. It may be regarded as a deficiency in the Decision of the Supreme Court that this distinction is not made.

5. Tallying in the open and the presence of agents

The Supreme Court is of the opinion that “the fact that tallying did not take place in the open must be considered a deficiency in the conduct of tallying in the elections to the Constitutional Assembly.” Furthermore, the Court considers it to be “a significant deficiency in the conduct of the tallying of votes in the election to the Constitutional Assembly that the National Electoral Commission failed to appoint agents to attend the tallying on behalf of candidates, as required by the second paragraph of Article 98 of Act No. 24/2000.”

Although these conclusions could be discussed at length, *pro* and *con*, I will refrain and instead discuss the fact that this is where the Supreme Court commits its most serious error: The Court does not distinguish between the conduct of the election itself and the tallying of the votes. If the Court is of the opinion that the conduct of the tallying was defective, then the Court should have ordered a recount. A deficiency in tallying, which can be easily rectified by a recount, can never constitute grounds for invalidating the election itself.

Thus, when the Supreme Court “considered collectively” the matters which it regarded as justification of its invalidation of the election, it should have excluded from its consideration all the purported deficiencies in the tallying of the votes.

This error of the Supreme Court is all the more surprising as one of the complainants, Mr. Skafti Hardarson, specifically requested a recount of the ballots in his complaint. It is

reasonable to assume that the Supreme Court had an obligation to take a position regarding this request, since the complaint was admitted at all, instead of all the complaints being dismissed from court, as the Supreme Court could easily have done (and probably should have done) since according to the first paragraph of Article 15 of the Act on a Constitutional Assembly it is only possible to protest the election of individual candidates, and not the election as a whole. But it appears that the Court simply forgot this request of Mr. Hardarson.

This error must be seen as a serious deficiency in the Decision of the Supreme Court.

6. Conclusions

The inevitable conclusion appears to be that the Decision of the Supreme Court to invalidate the election to the Constitutional Assembly is completely without merit. This leaves the question of whether the Supreme Court was empowered to invalidate the election, even if the Court had been correct with regard to the matters which it regarded as deficiencies. That appears extremely doubtful.

Let us first note, carefully and clearly, that the Court does not point out any actual deficiencies in the conduct of the election at all and makes no attempt to do so; what the Court calls “deficiencies in the conduct of the election” are simply matters which could conceivably have led to deficiencies in the conduct of the election if someone had deliberately set out to break the law governing elections. I believe that I have adequately demonstrated that the Court did not even succeed in doing that.

Mr. Eiríkur Tómasson, a professor of law, has expressed his doubts in the media, citing provisions of law, that the Supreme Court is empowered to invalidate elections, notwithstanding any deficiencies in procedure, in the absence of proof that any serious wrongdoing occurred in the conduct of the election.

It also appears clear that if the Supreme Court is granted powers to intervene in democratic elections and invalidate them, notwithstanding their lawful conduct, the absence of any real deficiencies in their conduct, a complete clarity of their results in accordance with the will of the people, then superior viewpoints of jurisprudence must give rise to the argument that such powers would pose a dangerous risk to the very foundations of democracy and the separation of powers between the judiciary and the legislature. It opens up the possibility that the courts could invalidate elections simply because they are dissatisfied with their democratic outcome.

It is common knowledge that the conduct of the election to the Constitutional Assembly was quite excellent in every respect. The election was competently organised and carried out. None of the so-called “deficiencies” of the Supreme Court had the slightest effect on the conduct of the election. Nothing went wrong. The daily newspaper *Morgunbladid* says in a news article published on Saturday 29 January that none of the polling officials were aware of any failings in the procedure; the only incident worth mentioning was that the Electoral Commission in Reykjavik “received a telephone call where the caller said that a man was standing behind his wife while she voted. No issue was made of the matter.” (Perhaps it was the Man with the X-ray Eyes?)

The only real and only significant deficiency in the election was that the Supreme Court spoiled it by a Decision which is demonstrably based on false reasoning and dubious sources of law.

The Decision of the Supreme Court is not a judgment. It would therefore doubtless be theoretically possible to refer it to the courts of law; if the case then returns to the Supreme Court, all the judges of the Court would be disqualified and new judges would need to be appointed *ad hoc*. It is very unlikely that this route will be taken. As a result, the Decision of the Supreme Court will no doubt be allowed to stand as an extremely dangerous precedent in the history of the Icelandic judiciary.

There are international organisations, in our region of the world this is first and foremost the Organisation for Security and Co-operation in Europe, who offer their services in monitoring elections in their member states. Monitoring of this kind is intended to defend democracy and to prevent government authorities from resorting to fraud and violence in democratic elections. Perhaps in our next elections we should call for the assistance of the Organisation to protect Icelandic democracy from our highest court?