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29 August 2012

Public Editor: Sylvia Stead
The Globe and Mail
444 Front Street West,
Toronto, Ontario, M5V 2S9

CC: Prof. Paul Appelbaum

Dear Ms. Stead & Prof. Appelbaum,

RE: Paul Appelbaum: Never label political crimes, like Breivik's, acts of insanity¹.

For Your Information:

[A] Inaccuracy of Mr. Breivik's 'conviction': Breivik's Conviction has been appealed by means of review.

On 27 August 2012 an application (PDF²) was filed with the Norwegian Supreme Court for Review of the Oslo District Court: Breivik Judgement, to set aside (A) the Necessity ruling, and (B) the conviction; to conclude Objective and Subjective Necessity Test Evidentiary Enquiry. The finding of guilt, in the absence of full Objective and Subjective Necessity Test Conclusions renders the Guilt Finding Inadequate.

Specically the Application requests the following orders:

[A.1] Set Aside the Judgements 'Necessity (Nødrett) Ruling'

[A.2] Set Aside Defendant's Conviction (Finding of Guilt) and Remit to Oslo District Court for hearing of Further Evidence to conclude Objective and Subjective Necessity Test Evidentiary Enquiry.

[A.3] If Defendant refuses to cooperate with Further Evidence proceedings; an order to change his plea to 'guilty'; and/or 'Non-Precedent' Setting Declaratory Order

[A.4] If Failure of Justice Irregularity Does not Influence Conviction and/or Sentence Verdict; a 'Non-Precedent Setting' Declaratory Order

¹ <http://www.theglobeandmail.com/commentary/never-label-political-crimes-like-breiviks-acts-of-insanity/article4497745/?cmpid=rss1>

² <http://ecofeminist-v-breivik.weebly.com/nom--affidavit.html>

[B] Set Aside the Judgements Failure to disclose the pending Judicial Ethics violation complaint against Rettens Leder: Wenche Elizabeth Arntzen, filed on 06 June 2012 to the Secretariat for the Supervisory Committee for Judges³, as a violation of Aarhus Convention Article 3.(3)(4)(5) principles, and general ECHR public accountability Transparency (Lithgow & others v United Kingdom) principles

Excerpt: Notice of Motion⁴:

GROUNDS FOR REVIEW:

The application for review is based on the grounds of (A) Irregularities & Illegalities in the Proceedings before the Oslo District Court: in terms of (1) A Failure of Justice and Failure of a True and Correct Interpretation of the Facts; (2) Judicially Un-Investigated Facts; (3) Failure of Application of Mind and (4) Rejection of Admissible or Competent Evidence: (i) Prosecutor & Judges failure to examine objective and subjective necessity test; and (ii) Courts denial of due process to applicants Habeus Mentem and Amicus Curiae applications⁵.

[A.1.a] Necessity Judgement fails to provide any necessity criminal provisions that prohibit killing of Government Officials in case of Necessity.

Judgement provides no details of any Norwegian or International specific necessity criminal provision which specifically prohibits the killing of government or politically active young people, in the event of objective and subjective reasonably determined necessity.⁶

[A.1.b] Necessity Judgement Ignores that Criminal Necessity provisions do not prohibit the killing of Government Officials in case of objective and subjective Necessity.

Applicant is unaware of any International or Norwegian specific necessity criminal provision which specifically prohibits the killing of government or politically active young people, in the event of objective and subjective reasonably determined necessity.

[A.1.c] Necessity Judgement's Erroneous interpretation of Necessity related criminal law provisions and international necessity related human rights law.

Necessity criminal provisions do not specifically allow or disallow the killing of government or politically active young people. Necessity criminal provisions provide for an objective and subjective test that examines each alleged criminal act to objectively and subjectively determine whether necessity existed within the particular criminal act's relevant circumstances.

[A.1.d] Necessity and Guilt Judgement's Failure to conduct required Objective and Subjective Tests for Defendant's Necessity Defence:

The court, prosecution and defence counsel failed to conduct the required subjective and objective tests [LE-2012-76983 Eidsivating Appeal - Judgment of 29 May 2012⁷] to determine (I) objectively whether the defendant's claims - simplistically rephrased as -

³ <http://ecofeminist-v-breivik.weebly.com/secr-supv-comm-judges.html>

⁴ <http://ecofeminist-v-breivik.weebly.com/nom--affidavit.html>

⁵ <http://ecofeminist-v-breivik.weebly.com/oslo-district-court.html>

⁶ LAW-1998-03-20-10-§ 5: Forskrift om sikkerhetsadministrasjon | Regulations relating to security management allows for "security breaches without criminal liability if the terms of the principle of necessity or self defence in criminal law law § 47 or § 48 is met."

⁷ In LE-2012-76983 Eidsivating Appeal - Judgment of 29 May 2012, an Eritrean man was accused of several Perjury related Immigration offences to help his sister to come to Norway. He admitted the facts, but claimed necessity. In court he was found guilty on all counts and sentenced to 90 days' imprisonment. The Court of Appeal suspended the appeal to test his conviction on one point (whether the court a quo had seriously enquired into his necessity defence).

The court agreed with the Defendant's argument that asserted that the court a quo had not considered the circumstances that were invoked as the basis for the existence of a principle of necessity situation. The judgement stated that it is clear that "the courts statement of reasons does not show that the court has considered this argument. Thus it is also clear that the Court's statement of reasons in so far are inadequate."

'Titanic Europe is on a demographic/immigration collision course with Islam Iceberg'; and (II) secondly whether the defendant subjectively perceived the Titanic Europe/Islam Iceberg circumstances this way.

If Defendant subjectively views Europe metaphorically as 'Titanic Europe' then an objective test by means of relevant expert witness testimony and vigorous cross examination of such experts, would need to determine:

- (a) Is Islam an Iceberg or a mirage/illusion on the horizon?
- (b) If an iceberg: Is Titanic Europe unsinkable or an icebreaker?
- (c) If not: how large, how far, how deep is Islam Iceberg and if moving, how fast, in what direction?
- (d) What is the distance between Titanic Europe and Islam Iceberg and at what speeds are they moving towards impending collision?
- (e) Is collision inevitable based on current speed, current and course; or is there still time for altering course and speed; and if so, how much time, before collision is inevitable?
- (f) Subjective Reasonableness Test: If an 'African nationalist' passenger on Titanic Africa's subjective reality is that the collision of Titanic Africa's 770 million passengers with the Greedy Colonial Europe Iceberg is inevitable in the absence of drastic alteration of course and speed within 'for example: 10 000 minutes'; but Titanic Africa's 'Media PR brainwashed Captain' captain and crew all mistakenly believe Titanic Africa is an unsinkable icebreaker and the Colonial Europe Iceberg is a tall ship on the horizon; and the only message the 'Media PR brainwashed Captain' listens to is 'If it Bleeds, it Leads' dead bodies; would an objectively reasonable military minded European / Arab / Latin American / nationalist individual advise the African nationalist passenger to (i) sacrifice 77 Colonial Europe passengers to awaken 770 million Titanic African passengers to the urgency of demanding the captain immediately drastically alter course and speed before the point of imminent collision is reached, or (ii) focus their energy on their own liferaft and make peace with the impending death of Titanic Africa's ignorant and unprepared 770 million?

[A.1.e] Necessity and Guilt Judgement's Absence of Objective and Subjective Test Enquiry and Conclusions Renders it Inadequate

It is clear that the Court's statement of reasons does not show the results of the courts objective and subjective enquiry into the Defendant's claim of necessity. Thus, it is also clear that the Court's statement of reasons, are inadequate.

[A.1.f] Necessity and Guilt Judgement's Absence of Clarification Upon which party the Onus of Proof lies in a Case of Necessity; and how or why their evidence was insufficient renders the Judgements Conclusions inadequate.

The Judgement fails to disclose Norwegian law's Onus of Proof requirements in a case of necessity: i.e. upon which party - Defendant or State - does the Onus of Proof lie in case of Necessity? In South Africa, the proof in a defense of necessity, ruling out the reasonable possibility of an act of necessity, lies on the State. In the absence of the State ruling out the reasonable possibility of an act of necessity, the accused claim of necessity stands.

[A.1.g] Necessity and Guilt Judgement's Absence of Objective and Subjective Test Enquiry and Conclusions Renders it Discriminatory Precedent

It would appear that Norwegian law has both a subjective and objective enquiry test into the necessity defence, which is similar to South African law; namely to test whether objectively there was a situation of necessity, and secondly whether subjectively the defendant sincerely believed there was a real situation of necessity thereby motivating his conduct.

The Court's statement of reasons does not show the results of the courts objective and subjective enquiry into the Defendant's claim of necessity. Thus, it is also clear that the Court's statement of reasons, are not only inadequate, but if not corrected, would set a bad precedent, encouraging other courts to deny necessity defendants their rights to an objective and subjective test of their necessity defence.

Excerpt: Affidavit⁸:

1. **Military Necessity: The Rendulic Rule: Importance of the Subjective Test:**
2. In **The Law of Armed Conflict: International Humanitarian Law in War**, Gary D Solis provides an overview of the Rendulic Rule in evaluation of the subjective test in evaluating a defence of Military Necessity:
3. "Now, the moral point of view derives its legitimacy from the perspective of the actor. When we make moral judgements, we try to recapture that perspective."
4. "In October 1944, Generaloberst Lothar Rendulic was Armed Forces Commander North, which included command of Nazi Forces in Norway. (Between World Wars I and II, Rendulic had practiced law in his native Austria.) Following World War II, he was prosecuted for, among other charges, issuing an order "for the complete destruction of all shelter and means of existence in, and the total evacuation of the entire civilian population of the northern Norwegian province of Finmark..." Entire villages were destroyed, bridges and highways bombed, and port installations wrecked. Tried by an American military commission, Rendulic's defence was military necessity. He presented evidence that the Norwegian population would not voluntarily evacuate and that rapidly approaching Russian forces would use existing housing as shelter and exploit the local population's knowledge of the area to the detriment of retreating German forces. The Tribunal acquitted Rendulic of the charge, finding reasonable his belief that military necessity mandated his orders. His case offers one of the few adjudicated views of what constitutes military necessity.
5. "Obviously, it is especially difficult to render convincing second opinions when assessing, after the fact, the necessity and economy of battlefield tactical decisions. Nevertheless, the very fact that military and civilian tacticians have been accountable to second opinions - for example, to the 'reasonable commander' test - must have some restraining effect on the choice of measures employed in battle.
6. "These extracts are from the record of Rendulic's trial.
7. *From Count two of the group indictment:*
8. 9.a. On or about 10 October 1944, the Commander in Chief of the 20th Mountain Army, the defendant Rendulic, issued an order to troops under his command and jurisdiction, for the complete destruction of all shelter and means of existence in, and the total evacuation of the entire civilian population of, the northern Norwegian province of Finmark. During the months of October and November 1944, this order was effectively and ruthlessly carried out. For no compelling military reasons, and in literal execution of instructions to show no sympathy to the civilian population, the evacuated residents were made to witness the burning of their homes and possessions and the destruction of churches, public buildings, food supplies, barns, livestock, bridges, transport facilities, and natural resources of an area in which they and their families had lived for generations. Relatives and friends were separated, many of the evacuees became ill from cold and disease, hundreds died from exposure or perished at sea in the small boats and fishing smacks used in the evacuation, while still others were summarily shot for refusing to leave their homeland - in all, the thoroughness and brutality of this evacuation left some 61,000 men, women, and children homeless, starving and destitute.
9. *From the opening statement of the Chief Prosecutor, Brigadier General Telford Taylor:*

⁸ <http://ecofeminist-v-breivik.weebly.com/nom--affidavit.html>

10. Late in October 1944, the German High Command... issued the following order to Rendulic....
11. "Because of the unwillingness of the northern Norwegian population to voluntarily evacuate, the Fuehrer has.. ordered that the entire Norwegian population east of the fiord Lyngen be evacuated by force in the interest of their own security and that all homes are to be burned down and destroyed.
12. "[Rendulic] is responsible that the Fuehrer's order is carried out without consideration. Only by this method can it be prevented that the Russians with strong forces, and aided by these homes and the people familiar with the terrain, follow our withdrawal operations... This is not the place for sympathy for the civilian population.
13. "It must be made clear to the troops engaged in this action that the Norwegians will be thankful in a few months that they were saved from bolshevism..."
14. This ruthless and in large part unnecessary decision was carried out by Rendulic's forces according to plan. Northern Norway, from Kirkenes nearly to Tromso, was turned into an Arctic desert.
15. *From the opening statement of Dr. Hans Laternser, one of the accuseds defense counsel:*
16. In the case of the measures with which the defendants here are being charged the principle of military necessity plays an important role. This principle, which formed the basis of all German military measures, was formulated in paragraph 4 of the American "Rules of Land Warfare" as the highest general principle of warfare and recognized to a very far-reaching degree.
17. This principle, however, must not be scrutinized in an abstract manner, but must be considered in connection with the conditions with which the accused were confronted and under which they had to discharge their task.... Nothing of what forms the subject of this trial can be understood if considered apart from the fundamentals, as is done by the prosecution.
18. *From the testimony of the accused justifying the destruction carried out at his order, that portion offered here being only a small portion of his testimony:*
19. Everybody [in the German forces] was aware of the difficulty of the position. From censorship of soldiers male we learned that the morale of the soldiers sometimes bordered on panic... There was a very dangerous crisis among the [German] soldiers especially with regard to confidence in their leaders which could have led to catastrophe... At first sight one might suppose that marching [pursuing Russian] troops would only need the localities along the march route for quarters, but that is not the case... The villages along the march route were never sufficient for the accommodation of the marching troops.
20. Instead, these troops also had to use those places which were a good distance away from the march route.. when it was necessary to quarter them in houses, etc., and that would have undoubtedly been necessary at that time in Finmark because of the climate...
21. The inhabited localities along the coast and along the fjords were of the same significance... It further has to be considered that an army does not only march; it also has to live, especially when it is supposed to prepare for an attack. Then the army is apt to spread over the whole country. Not only do the troops have to be accommodated but there are also many installations to be taken care of such as work shops, hospitals, depots, installations for supply; and for all these installations everything that was there concerning houses, etc., was necessary to accommodate all these operations and that was the military significance of the apparently far distant inhabited localities....
22. .. You must not think that we destroyed wantonly or senselessly. Everything we did was dictated by the needs of the enemy. That was its necessity...

23. ... I did not think it was absolutely necessary to transfer the population to other areas but I could not close my eyes to Hitler's reasons of military necessity. I could not deny that they were justified.
24. Finally, I had to tell myself that it would possibly be better for the population to be transferred to other areas rather than to spend the hard winter in the destroyed country. I participated in both winter battles in Russia. Therefore, I know what flight from cold means. I had to realize that the Russians, if they followed us.... it was certain that they would not spare the population. Therefore, in the final analysis it was the best thing for the population that they were removed....
25. I attached the greatest importance to good relations between myself and the Norwegian population. For this reason alone I insisted that the evacuation should not give any cause for misgivings among the population. You may also rest assured that if any kind of excesses had become known to me, any unnecessary harshness or any inconsideration, I would have taken countermeasures immediately....
26. *From the closing arguments of Mr. Walter Rapp, Associate Prosecution Counsel:*
27. The argument of the defence of military necessity is unconvincing here for several reasons. In the first place... the plea of military necessity can never be used as a defense for taking an unarmed civilian's life...
28. In the second place, it is inconsistent to attempt to defend the same action by the plea of superior orders and also by that of military necessity because the two are mutually exclusive. If an act was committed solely because of superior orders, then presumably there was no military necessity for doing it; whereas if it was done because of military necessity, it would have been done anyhow regardless of the existence or non-existence of superior orders.
29. In the third place, the defence of military necessity flies into the teeth of all the available evidence here....
30. *From the Tribunals opinion:*
31. Military necessity has been invoked by the defendant's as justifying.. the destruction of villages and towns in an occupied territory... The destruction of property to be lawful must be imperatively demanded by the necessities of war... There must be some reasonable connection between the destruction of property and the overcoming of the enemy forces. It is lawful to destroy railways, lines of communication, or any other property that might be utilized by the enemy. Private homes and churches even may be destroyed if necessary for military operations. It does not admit the wanton devastation of a district or the wilful infliction of suffering upon its inhabitants for the sake of suffering alone...
32. The evidence shows that the Russians had very excellent troops in pursuit of the Germans. Two or three land routes were open to them as well as landings by sea behind German lines... The information obtained concerning the intentions of the Russians was limited.. It was with this situation confronting him that he carried out the "scorched earth" policy in the Norwegian province of Finmark.. The destruction was as complete as an efficient army could do it...
33. There is evidence in the record that there was no military necessity for this destruction and devastation. An examination of the facts in retrospect can well sustain this conclusion. But we are obliged to judge the situation as it appeared to the defendant at the time. If the facts were such as would justify the action by the exercise of judgement, after giving consideration to all the factors and existing possibilities, even though the conclusion reached may have been faulty, it cannot be said to be criminal. After giving careful consideration to all the evidence on the subject, we are convinced that the defendant cannot be held criminally responsible although when viewed in retrospect, the danger did not actually exist....

34. We are not called upon to determine whether urgent military necessity for the devastation and destruction in the province of Finmark actually existed. We are concerned with the question whether the defendant at the time of its occurrence acted within the limits of honest judgement on the basis of the conditions prevailing at the time. The course of a military operation by the enemy is loaded with uncertainties... It is our considered opinion that the conditions, as they appeared to the defendant at the time, were sufficient upon which he could honestly conclude that urgent military necessity warranted the decision made. This being true, the defendant may have erred in the exercise of his judgement but he was guilty of no criminal act. We find the defendant not guilty of the charge. (added emphasis)
35. The Rendulic standard remains unchanged. Fifty-four years later, in 2003, the ICTY wrote: "In determining whether an attack was proportionate it is necessary to examine whether a reasonably well-informed person in the circumstances of the actual perpetrator, making reasonable use of the information available to him or her, could have expected excessive civilian casualties to result from the attack."⁹

Respectfully Submitted



Lara Johnstone

Radical Honoursty EcoFeminist

<http://ecofeminist-v-breivik.weebly.com>

Habeus Mentem: Right 2 Legal Sanity

<http://www.facebook.com/Habeus.Mentem>

⁹ Prosecutor v. Galic