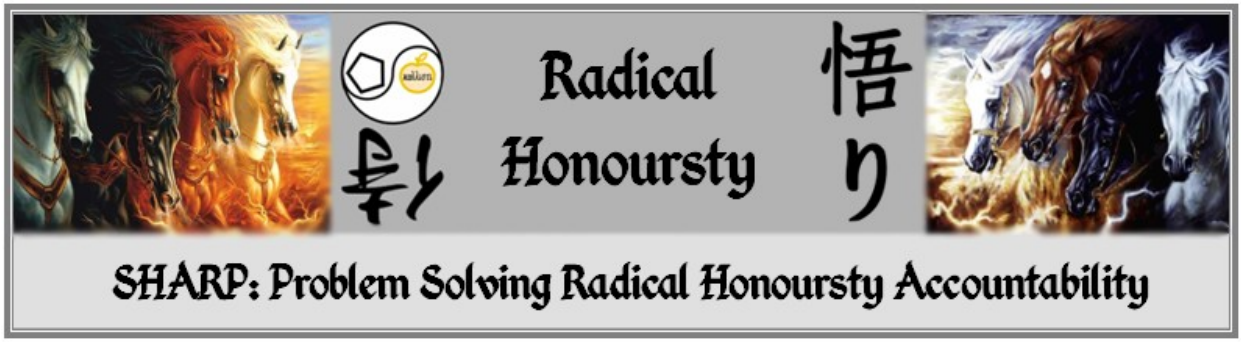

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31 August 2012

Mr. Elias Groll
Editor
FOREIGN POLICY (FP)
11 Dupont Circle NW, Suite 600
Washington, DC 20036
Phone: (202) 728-7300 | Fax: (202) 728-7342

Dear Mr. Groll and Foreign Policy Editor,

RE: Foreign Policy: William Turville: Breivik Won[1].

For Your Information:

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

On 27 August 2012 an application (PDF[2]) 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; and remit to the Oslo District Court for the hearing of further evidence 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.

Specifically 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.foreignpolicy.com/articles/2012/08/24/breivik_won

[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 Judges[3], 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 Motion[4]:

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 applications[5].

[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 2012[7]] 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 Bleads, 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: Affidavit[8]:

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. [..]

[8] http://ecofeminist-v-breivik.weebly.com/nom--affidavit.html

10. *From the closing arguments of Mr. Walter Rapp, Associate Prosecution Counsel*:

11. 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...

12. 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.

13. In the third place, the defence of military necessity flies into the teeth of all the available evidence here....

14. *From the Tribunals opinion*:

15. 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...

16. 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...

17. 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....

18. ..... **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)

19. 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]

[9] Prosecutor v. Galic

[B] The 'Rule of Law' in Norway: Norway v. Breivik Judicial Ethics and Attorney Ethics Complaints Pending:

There are currently three complaints[10] pending with the Secretariat for the Supervisory Committee for Judges against Judge's Nina Opsahl, Wenche Arntzen and Tore Schei. (Annex: ENCL: Parliamentary Ombudsman: Case 2012-1943: Slow Case Processing by Supervisory Committee for Judges)

Respectfully Submitted

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ENCL: Parliamentary Ombudsman: Case 2012-1943: Slow Case Processing by Supervisory Committee for Judges

[10] http://ecofeminist-v-breivik.weebly.com/secr-supv-comm-judges.html

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S|OM

Our ref.	*Your ref.*	*Enquiries to*	*Date*
2012/1943		Torbjørn Hagerup Nagelhus	11.07.2012

LACK OF RESPONSE FROM THE SUPERVISORY COMMITTEE FOR JUDGES

Reference is made to your letter of 4 July 2012 with attachments.

Your complaint regards the lack of response to your three complaints 30 May 2012 to the Supervisory Committee for Judges (Tilsynsutvalget for dommere).

Anyone who believes to be the victim of injustice from the public administration, can file a complaint to the Ombudsman. The Ombudsman's control is subsequent to the administration's handling of the case, which means that a case can only be processed here when the administration has taken a final decision to the question for this case.

The Ombudsman can still handle complaints about the lack of response, before the case is processed in the administration (slow case processing). It is a condition that you have made a written approach to the administration, and that a written reminder has been sent.

Therefore, you should give a written request to Tilsynsutvalget for dommere, where you call for answers to your applications. If you do not receive a response to this request within a reasonable time, you can contact the Ombudsman, with an enclosed copy of the last request to Tilsynsutvalget for dommere.

On behalf of the Ombudsman

Berit Sollie
Head of Division

Torbjørn Hagerup Nagelhus
Adviser