HERMAN J BERGE
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Statsministerens kontor
Postboks 8001 Dep
0030 Oslo
Norway

Luxembourg 24. august 2011

Att	: Statsministeren og Statsrådet
Ad	: Manglende embetsed og dommerforsikring i norske domstoler
Saksnr	: 08-127677 og 10-096823 (begge Borgarting lagmannsrett)
Deres Referanser	:
Vår Referanse	:
Oversendelse	: Fax og brev
Deres faks nr	: +47 22 24 95 00
Antall sider	: 15
Vedlegg	: 1 (13 s)
Kopi	: Domstoladministrasjonen; Kongen; Europarådet.
Melding til mottaker	:

Vedlagt følger vår klage til FN's menneskerettighetskomité.

Det er et faktum at Norge har signert og ratifisert Den europeiske menneskerettighetskonvensjon (ECHR), De forente nasjoners konvensjon om sivile og politiske rettigheter (ICCPR), samt De forente nasjoners valgfrie protokoll til konvensjonen om sivile og politiske rettigheter hvor sistnevnte gir FN's menneskerettighetskomité kompetanse til å prøve klager mot stater som påstås å ha krenket ICCPR. Idet Norge har signert og ratifisert de nevnte traktater må man også kunne forvente at Norge respekterer disse, hvilket ovennevnte saker demonstrerer at ikke er tilfelle.

ECHR art. 6 og ICCPR art. 14 sørger begge for å sikre at de borgerne som ønsker å få prøvet sine rettigheter skal få dette utført av en uavhengig domstol. En rett/domstol hvor én eller flere av dommerne – uavhengig av grunn – har nektet å avgi dommerforsikring, og/eller embetsed overfor Konstitusjonen og Kongen, er ikke å anse som en domstol i medhold av de to ovennevnte artikler, en sammensetning som følgelig vil anses å være konvensjonsstridig. I tillegg vil en slik domstol, også etter norsk lov, være å anse som satt i strid med lov, jf. dl § 60 og grl § 21, annet pkt., hvilket automatisk medfører ugyldighet for alle dens handlinger.

Som det fremgår av klagen har Lundquist klaget over og satt seg imot at to "dommere" – som nekter å avgi embetsed og dommerforsikring og som derved ikke er dommere etter loven – behandler deres anker i Borgarting lagmannsrett. Det fremgår videre av klagen at Borgarting lagmannsrett nekter å følge loven i sitt daglige arbeid, hvor domstolen bl.a. nekter å administrere rettssaker i tråd med de ovennevnte traktater, hvilket tilkjennegis ved at domstolen nekter å behandle og ta stilling til Lundquists innsigelser mot at de to "dommerne" kan opptre som dommere til tross for at disse to personene nekter å

oppfylle de ufravikelige bestemmelsene i dl § 60 og grl § 21 og derved – med domstollederens tillatelse – krenker ECHR art. 6 og ICCPR art. 14.

Videre fremgår det at Stortinget, som har gitt lovene, nekter å forholde seg til det faktum at landets domstoler ikke forvalter lovverket – deriblant Den europeiske menneskerettighetskonvensjonen og FN's konvensjon om sivile og politiske rettigheter – i tråd med det Stortinget selv har bestemt. Konsekvensen av krenkelsene, er at Lundquist er blitt frarøvet sin konvensjonsbeskyttede rett til å få sine rettigheter behandlet av en kompetent og uavhengig domstol. Videre er Lundquist blitt frarøvet sin rett til å få sine innsigelser – mot at deres rettigheter skal bli prøvet av dommere som nekter å avgi dommerforsikring og embetsed – prøvet.

Det er selvsagt regjeringens plikt å rette opp i forholdet når utøvende og dømmende myndighet nekter å forholde seg til de lover Stortinget gir.

Avslutningsvis ønsker jeg å rette fokus mot Jens Stoltenbergs uttalelser til BBC i etterkant av Utøya-massakren hvor han den 25. juli 2011 – etter en problematisering fra journalisten om hvordan Norge på den ene siden mener å kunne fremstå som et åpent demokrati mens man i praksis kjører lukkede rettsmøter – noe beklemt uttalte at han aldri legger seg opp i domstolenes arbeid.

Som statsminister har Stoltenberg ingen anledning til å uttale seg slik. Dersom det viser seg at domstolene løsriver seg fra de plikter og regler de er satt til å forvalte lovverket under – slik de har gjort i herværende saker – fremstår det som åpenbart at "noen" må gripe inn og rette opp i de feil og mangler som måtte finnes. Stoltenberg er i så måte forpliktet til å informere Stortinget, jf. ansvarlighetslovens kapittel 2. Regjeringen er utøvende myndighet og har kompetanse til å iverksette reparasjon av enhver lovovertredelse eller konvensjonskrenkelse som nevnt i dette brev.

Mot denne bakgrunn, og idet jeg minner om ansvarlighetslovens kapittel 2, begjærer vi Statsministerens og regjeringens umiddelbare intervensjon.

For ordens skyld nevner jeg at i og med at Mary-Ann Hedlund og Anne Ellen Fossum har nektet å avgi sin dommerforsikring, er de heller ikke dommere. Statsministerens og regjeringens intervensjon vil i så måte ikke komme i konflikt med maktfordelingsprinsippet.

Med hilsen

Luxembourg 24. august 2011

Herman J Berge

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Human Rights Committee
Petitions Team
Office of the High Commissioner for Human Rights
United Nations Office at Geneva
CH-1211 Genève 10
Schweiz

Luxembourg August 15 2011

Att	: To whom it may concern
Re	: Complaint against Norway
Application number	:
Sent by	: Mail and fax
Your fax number	: +41 22 91 79 022
Pages	: 42
Attachments	: 12 (29 p. including power of attorney)
Message	: Asking for priority

Dear Sir/Ms.

Please find attached Arild and Terje Lundquist's complaint of August 15 2011.

Sincerely,
and on behalf of the applicants

Luxembourg August 15 2011

Herman J Berge

COMPLAINT

Communications under the Optional Protocol to the International Covenant on Civil and Political Rights (March 23, 1976).

I. Information on the complainant:

Name:	**Berge**
First name(s):	**Herman J**
Nationality:	**Norwegian**
Date and place of birth:	**09.08.1964, Norway**
Address for correspondence on this complaint:	**665, rue de Neudorf, L-2220 Luxembourg, Luxembourg**
Submitting the communication on behalf of another person:	**Yes**
If the complaint is being submitted on behalf of another person: Please provide the following personal details of that other person	
Name:	**Lundquist**
First name(s):	**Arild** and **Terje**
Nationality:	**Norwegians**
Date and place of birth:	**10.02.1963 and 15.02.1958, Gudfjelløya, Norway**
Address or current whereabouts:	**Gudfjelløya, 7898 Limingen, Norway**
If you are acting with the knowledge and consent of that person, please provide that person's authorization for you to bring this complaint:	**Power of Attorney, dated August 15 2011**

II. State concerned/Articles violated

Name of the State that is either a party to the Optional Protocol (in the case of a complaint to the Human Rights Committee) or

has made the relevant declaration (in the case of complaints to the Committee against Torture or the Committee on the Elimination of Racial Discrimination): **Norway**

Articles of the Covenant or Convention alleged to have been violated: **Article 14** of the International Covenant on Civil and Political Rights.

III. Exhaustion of domestic remedies/Application to other international procedures

STEPS TAKEN BY OR ON BEHALF OF THE ALLEGED VICTIMS TO OBTAIN REDRESS WITHIN THE STATE CONCERNED FOR THE ALLEGED VIOLATION – DETAIL WHICH PROCEDURES HAVE BEEN PURSUED, INCLUDING RECOURSE TO THE COURTS AND OTHER PUBLIC AUTHORITIES, WHICH CLAIMS YOU HAVE MADE, AT WHICH TIMES, AND WITH WHICH OUTCOMES:

I am representing Arild and Terje Lundquist in legal matters. Two lawsuits filed by Lundquist are at present handled by, respectively, "justice" Anne Ellen Fossum and "justice" Mary-Ann Hedlund, both with the Borgarting Court of Appeals, Oslo, Norway.

According to principles enshrined both in the International Covenant on Civil and Political Rights (ICCP article 14) and the European Convention on Human Rights (ECHR article 6), a court hearing will be considered carried out in violation of the said provisions if the court in question was *not* independent at the time of its deliberation. In this regard it is sufficient to conclude violation of the said provisions if only one of the judges taking part in the proceedings is considered not independent.

ICCP Article 14 reads:

"In the determination ... of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."

ECHR Article 6 reads:

"In the determination of his civil rights and obligations...everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

Fossum has been acting as a judge since 1999 while Hedlund has been acting as a judge since 1990. On August 16 2010 it was revealed that neither Fossum nor Hedlund has signed their oath / declaration of independence according to the Norwegian Procedural Act § 60 (the judicial oath), nor have they signed their office oath in accordance with the Norwegian Constitution § 21. The problem in this matter is, as just indicated, that the said justices have refused to take their oath, and are by this reason *not* acting as independent judges. As it will be revealed in this document, the President of Borgarting Court of Appeals accepts this intolerable situation and sees no reason to comply with our request of having the said lawsuits tried by independent judges.

In this regard I find it necessary to provide the Committee with some information about the principle of independence of the judiciary, its legal basis and in this regard; which interests are supposed to be protected by this principle.

In his formative study "Judicial Ethics in Australia" (1988), Justice James Burrows Thomas has described the judge and the impact of his/her actions in this manner:

> *"We form a particular group in the community. We comprise a select part of an honourable profession. We are entrusted, day after day, with the exercise of considerable power. Its exercise has dramatic effects upon the lives and fortunes of those who come before us. Citizens cannot be sure that they or their fortunes will not some day depend upon our judgment. They will not wish such power to be reposed in anyone whose honesty, ability or personal standards are questionable. It is necessary for the continuity of the system of law as we know it, that there be standards of conduct, both in and out of court, which are designed to maintain confidence in those expectations."*

The judiciary in general and the judge in particular have – out of necessity – been provided with immense power. It is therefore of great importance that this power is used not only wisely but also in accordance with the given provisions. And if this power is misused in any way, there must – of obvious reasons – exist an efficient system immediately locating and eliminating the problem.

According to Recommendation No. R (94) 12, its preamble, the Committee of Ministers[1] has noted the essential role judges have in ensuring the protection of Human Rights. Furthermore this committee has declared its desire to promote the independence of judges, this in order to strengthen the Rule of Law. The committee was said to be aware of the need to reinforce the position and powers of judges this in order to achieve an efficient and fair legal system. It was also conscious of the desirability of ensuring the proper exercise of judicial responsibilities which the committee found are a collection of judicial duties and powers aimed at protecting the interests of all persons. On this basis the Committee of Ministers recommended that governments of the member states were to adopt or reinforce all measures necessary to promote the role of individual judges and the judiciary as a whole and strengthen their independence and efficiency, by implementing, in particular, the following principle:

Principle I - General principles on the independence of judges

> *"All necessary measures should be taken to respect, protect and promote the independence of judges."* cf. No. 1.
>
> *"The executive and legislative powers should ensure that judges are independent and that steps are not taken which could endanger the independence of judges."* cf. No. 2 b.

By this the Committee of Ministers recognizes and emphasizes the importance of an independent judiciary, as well as the protection of this independence. This is also expressed in the "Explanatory Memorandum", "Commentary on the principles" No. 12 of the Recommendation No. R (94) which reads:

[1] Council of Europe

"Support for the independence of the judges is expressed in the first principle which calls for all necessary measures to be taken to respect, protect and promote the independence of judges."

And in No. 13:

"The independence of judges should be guaranteed pursuant to the provisions of the Convention and constitutional principles (cf. paragraph 2 a. of this principle). This requirement implies that the independence of judges must be guaranteed in one way or another under domestic law."

A person, who has been appointed / elected as a judge and is ready to start his duty, might feel convinced or even knows by himself that he/she is as independent as it can get. Such an assurance – towards the society and the users of the court – that the independence by this "feeling" has been identified, secured and protected, is though obviously insufficient. Most legal societies thus require an oath or a declaration from judges, before they take their seats. Professor Jacob Katz Cogan has in his Essay: "Competition and Control in International Adjudication" described the motivation for this judicial oath:[2]

"Foremost, international judges are limited by the professional norms associated with their office, primarily independence and impartiality. Though such norms exist as a necessary consequence of a judge's election, "for [a new] international judge to conduct himself in an impartial and independent way," writes Judge Theodor Meron, "may require adaptation and discipline." As part of this process, the statutes of most international courts require that judges, before they take their seats, make a solemn declaration that is designed to impart notions of impartiality and conscientiousness to the persons taking the oath—in other words to appeal to their "internal compass." To bolster their effect, oaths are administered publicly. This is intended to suggest to the judge that he or she is publicly accountable in the event of a failure to abide by judicial norms of conduct. It is also intended to satisfy the audience that the judge will act in accordance with the norms expected of him or her. Professional norms thus act upon judges in two ways: as a reminder of agreed judicial standards and as a reminder of the possible consequences resulting from the failure to abide by those standards."

The judicial oath holds two indispensable parts of what finally (when signed or orally submitted) should constitute what you could call a judge per se; 1) the anticipated independency and impartiality, and 2) the appointed person's voluntarily acceptance of the constraints tied to the title. In other words; if an elected judge for some reason or other refuses to declare his/her independence and impartiality, he/she is not a judge and is obviously not allowed to take seat as a judge.

In his "Commentaries on the Norwegian Administration of Courts Act" (2000), Justice Anders Bøhn, Norway, states that it is a mandatory requirement to submit a written judicial oath to the National Court Administration (NCA) before the judge is allowed to take seat. Bøhn then continues with a remarkable and astonishing statement:

[2] Although professor Cogan's Essay is dealing with legitimacy, accountability, and good governance of international organizations, and in particular control and independence of international courts, his review of the motives of the required oath / declaration applies to national judiciaries and judges as well.

"There is reason to believe that the judicial oath pursuant to the Procedural Act § 60 have not been submitted in several cases."[3]

Consequently an unknown number of persons ("judges") in Norwegian courts have not declared their independence and impartiality, and are by definition not considered as judges.

In January 2008 I started investigating the matter. My preliminary findings give reasons to believe that the number of "judges" in Norway which has not signed the judicial oath is significantly higher than what Bøhn vaguely indicates in his book. My findings suggest that as many as 50 % of Norwegian judges have not taken their oath. The problem though is that none of the relevant authorities in Norway seems to take this vast problem[4] seriously. The NCA, which is supposed to receive and file all judicial oaths, has in this regard been unwilling to provide me with (most of the) requested written oaths or any other information concerning this issue, which then should indicate that close to 90 % of the judges have refused to take their oath.

Through articles on the Internet and by other means I have been advising users of Norwegian Courts to request for the judicial oath whenever approaching a judge. This has - all taken into consideration - led to tremendous feedback, giving me access to documents that confirms that; 1) a significant percentage of the "judges" has not signed their judicial or office oath; 2) some have signed a *home-made*[5] oath; and 3) that there is no system safeguarding the procedure from the point of appointment to the point where the judge actually take the seat as a judge. This systematic malfunction in the Norwegian judiciary is most likely the main reason why so many individuals in Norway have been able to take seat as judges without being asked to declare their independence and impartiality.

This problem has now materialised in the two above mentioned lawsuits in Borgarting Court of Appeals. As a consequence of the fact that the said two persons have refused to declare their independence and impartiality and thus are not considered as judges according to law, we have petitioned the President of the Court in question, as well as the NCA to remove these two persons, and distribute the two cases to judges who have signed their judicial oath *before* they took seat.[6] In addition we have petitioned the Norwegian Parliament to safeguard the required independence of the judiciary as well as launching a probe to investigate and identify the problem.

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In our pleadings of August 18 2010 I informed the Court of Appeals about our findings; that the judges in question had not (had refused) taken any oath, and that we, based on this new information, petitioned the President of the court to remove the said judges, and to assign the cases to new lawfully inaugurated judges.

Appendix # 1: Pleadings of August 18 2010.

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[3] Page 161.

[4] Any decision which has been passed by a person who has not signed his/her judicial oath is considered null and void. As for Norway the number of decisions regarded as null and void is exceeding what is intelligible. In this regard it is also worth noting that a person who wilfully gives oneself out to be a judge is violating the Norwegian Criminal Act chapter 11 and 12.

[5] I.e. using their own words, hence suspending the exact mandatory words as described in the Royal Decree of May 13 1927.

[6] It goes without saying that a person which hasn't declared his/her independence can not carry out judicial activity and can thus not administer a court case.

The court refrained from responding to our petitions.

In our pleadings of August 25 2010 I reminded the President of the Court of Appeals about our previous pleadings and reiterated our requests / petitions. Furthermore we informed the President that we of obvious reasons could not obey to any letters, decisions or demands from these two "judges" as they are not lawfully inaugurated and hence are not entitled to act as judges whatsoever.

Appendix # 2: Pleadings of August 25 2010.

On August 30 2010 Lundquist filed a criminal complaint against Ms. Fossum as she had 1) on a continuous basis deliberately acted as a judge although she was fully aware of the fact that the conditions necessary to be a judge had not been met, and 2) that she had committed fraudulent concealment as she had failed to inform both me as well as my clients about the fact that she had refused to take the said oath.

Appendix # 3: Criminal complaint against "justice" Fossum of August 30 2010.

On August 31 2010 we petitioned the NCA to intervene and suspend Ms. Fossum.

Appendix # 4: Petition to the NCA of August 31 2010.

The same day, August 31 2010, we petitioned the Norwegian Parliament to intervene in order to safeguard the independence of the judiciary in general and thus ensuring that my clients' lawsuits were duly taken care of by certified and lawfully elected judges.

Appendix # 5: Petition to the Norwegian Parliament of August 31 2010.

On September 21 2010 Lundquist filed a criminal complaint against Ms. Hedlund based on similar legal grounds as for the case-Fossum.

Appendix # 6: Criminal complaint against "justice" Hedlund of September 21 2010.

In his letters to me of September 21 and 22 2010 the President of the Court of Appeals made it clear that he couldn't see any problem in letting persons / his staff acting as judges although lacking the mandatory oath, consequently he refused to comply with our petitions.

Appendix # 7: Letter of September 21 2010 from the President of the Court of Appeals regarding "justice" Hedlund.

Appendix # 8: Letter of September 22 2010 from the President of the Court of Appeals regarding "justice" Fossum.

The two "judges" in question could thus continue to administer the appeals blatantly violating both Norwegian law as well as international treaties.

On October 8 2010 I approached the Parliament again, reminding it about my previous correspondence and petitions. Furthermore I informed the Parliament about the ongoing violation of international treaties in regards to the independence of the judiciary (accepting that *one* of its judges refuses to take the oath is bad in itself, accepting that more than 50 % of its judges refuse to take the oath is a Human Rights catastrophe).

Appendix # 9: Letter of October 8 2010 to the Norwegian Parliament.

The Parliament refrained from answering upon my petitions.

In my letter of October 22 2010 I informed the Parliament about new findings from our investigation of this problem; that even the President of the Court of Appeals, Mr. Ola Dahl, had acted as a judge for more than a decade before he on July 26 2010 signed his judicial oath.

Appendix # 10: Letter of October 22 2010 to the Norwegian Parliament.

It is evident that Ola Dahl has acted as a judge in Borgarting Court of Appeals since February 25 1998, at the latest. Dahl allegedly signed his office oath a year later, on January 28 1999. This oath was received by the relevant authority (the National Court Administration) on February 24 2010, more than eleven years after it was supposed to have been submitted.

It has also been revealed that Dahl declared his independence as a judge by signing and submitting his declaration on July 26 2010.

As previously explained no one can take seat as a judge if the person concerned refuses to sign the said declaration, cf. the Norwegian Administration of Courts Act § 60. In addition an appointed / elected person can not take office before he/she has sworn an oath to the Constitution and the King, cf. the Norwegian Constitution § 21. This is done in writing hence the oath is not taken unless the document has been submitted to and received by relevant authority, which was done on February 24 2010 in regards to Dahl's office oath. It should be noted that if this oath has not been taken within a limited time, the appointment and the office will lapse, cf. the Norwegian Office Oath Act § 3.

Dahl refused to sign the office oath before he took seat as a judge in 1997/98, this in violation with the said regulations. Dahl's office oath is allegedly signed in 1999, but as mentioned it was not received and filed by relevant Norwegian authorities until February 2010. The oath has obviously no legality or power if it is stashed away somewhere in Dahl's belongings. According to law the oath is supposed to be submitted to the relevant authority *before* the elected person takes office, cf. the Norwegian Office Oath Act § 3. This is clearly not the case in regards to Dahl as he has acted as a "justice" for more than 12 years before he – for some unknown reason – chose to dispatch his oath to the National Court Administration in February 2010.

Furthermore, for 12-13 years Dahl refused to sign and submit his declaration of independence (the judicial oath), and it wasn't before last summer that Dahl for some reason or other found it convenient to sign and submit this declaration. In English the declaration reads as follows:

> *"I declare that I conscientiously will fulfil my duties as a judge – and that I will act and judge in such manner as I according to law and my consciousness can defend, and neither of hate nor friendship, neither for favour nor gift or by other reason fall away from right and justice."*

It seems that we have found one reason why Dahl refuses to act in accordance with law in regards to "justice" Fossum's and "justice" Hedlund's refusal of taking the oath: He can't find any reason why they should take an oath as long as he didn't.

In conclusion the "President" of the Borgarting Court of Appeals, Ola Dahl, has *acted* as a justice for 12-13 years without meeting the formal and absolute qualifications as a justice. Signing these documents today – for reasons of convenience or after instruction – will not make Dahl "more a judge" than he has been the previous 12-13 years. In this regard it is a fact that he has refused to sign these documents for more than a decade, hence he has – every day of his duty as a "judge" – scorned the universal motives of what the said provisions are built upon, provisions which were established to safeguard the independence of the judiciary and to protect the users of the court. No one can trust or believe that Dahl really mean what he has signed on July 26 2010 as he for more than a decade refused to sign these words of independence. This conclusion is heavily supported by the fact that Dahl, as the President of the Court of Appeals, still accepts that his court is occupied by "justices" who consistently refuse to; 1) take an office oath and 2) sign their declaration of independence (the judicial oath).

Let me underline the fact that Norway *has* signed and ratified the Covenant and relevant protocols and thus has freely and formally promised to honour the said Covenant, its protocols, obligations and commitments.

The consequences of the President's reluctance to take the oath is that any decisions of which he has taken part in since he unlawfully took seat as a judge in 1998 is regarded null and void. Furthermore, according to the Norwegian Criminal Code, paragraph 110, it is a criminal offence to act against one's better judgement regardless of the motivation or outcome of the act. The President has in line with his like-minded "judges" violated the said paragraph on a daily basis since they took seat as "judges". In the light of the President's offences his oath should have been rejected, flatly.

The Parliamentary Standing Committee on Justice's response to our petition, dated October 27 2010, is in itself a violation of the Norwegian Constitution stating that:

> *"Internal issues[7] within the judiciary does not fall under the responsibility of the committee, hence the committee finds no reason to go further into the matter. "*

Appendix # 11: Letter of October 27 2010 from the Parliamentary Standing Committee on Justice.

The NCA and the Minister of Justice still remain silent.

In the light of the accounts made above, my clients are obviously not offered a fair hearing by an *independent* tribunal in Norway. On the contrary, the silence from the Norwegian Court Administration and the unmistakable response from the Norwegian Court of Appeals and from the Norwegian Parliament demonstrates; 1) a continuous, systematic and above all – accepted violation of the said provisions, hence the administration of the lawsuits in question are on a continuous basis in violation with Article 14 of the Covenant, and 2) that there are no domestic remedies available to exhaust, which in turn answers the question whether steps have been taken to obtain redress within the state concerned for the alleged violation.

* * *

[7] I.e. whether a person is allowed to refuse to take the oath and still act as a judge.

IF YOU HAVE NOT EXHAUSTED THESE REMEDIES ON THE BASIS THAT THEIR APPLICATION WOULD BE UNDULY PROLONGED, THAT THEY WOULD NOT BE EFFECTIVE, THAT THEY ARE NOT AVAILABLE TO YOU, OR FOR ANY OTHER REASON, PLEASE EXPLAIN YOUR REASONS IN DETAIL:

Based on the facts and reasons mentioned above, any attempts to redress the said judicial situation in Norway will be futile and ineffective.

* * *

HAVE YOU SUBMITTED THE SAME MATTER FOR EXAMINATION UNDER ANOTHER PROCEDURE OF INTERNATIONAL INVESTIGATION OR SETTLEMENT (E.G. THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, THE EUROPEAN COURT OF HUMAN RIGHTS, OR THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS)?

Yes. On November 8 2010 Lundquists filed an application to the European Court of Human Rights in Strasbourg, claiming violations against ECHR Article 6 and 13.

* * *

IF SO, DETAIL WHICH PROCEDURE(S) HAVE BEEN, OR ARE BEING, PURSUED, WHICH CLAIMS YOU HAVE MADE, AT WHICH TIMES, AND WITH WHICH OUTCOMES:

On May 31 2011 the application was declared inadmissible, as the court (single-judge decision) had found that the *requirements* of the Convention had not been met. The merits of the complaint / application were not assessed by the court.

IV. Facts of the complaint

DETAIL, IN CHRONOLOGICAL ORDER, THE FACTS AND CIRCUMSTANCES OF THE ALLEGED VIOLATIONS. INCLUDE ALL MATTERS WHICH MAY BE RELEVANT TO THE ASSESSMENT AND CONSIDERATION OF YOUR PARTICULAR CASE. PLEASE EXPLAIN HOW YOU CONSIDER THAT THE FACTS AND CIRCUMSTANCES DESCRIBED VIOLATE YOUR RIGHTS.

In regards to the facts of this complaint I refer to what is stated under section III above.

I have already mentioned that any individual under the Covenant who's rights or obligations are at stake, are entitled to have the said rights and obligations tried through (assessed by) a fair and public hearing by an independent and impartial tribunal established by law.

A person elected to serve as a judge is for reasons mentioned above obliged to declare his/her independence *before* taking seat, which is done by taking an oath. This in turn means that any individual under the Covenant is entitled to have his/her rights and obligations tried by a court compiled by judges who have taken their mandatory oath.

Should the elected person reject or by any other act refrain from taking the said oath, this person can not take seat as a judge. Should this nevertheless happen – which seems to be the case in most courts in Norway – any decision passed by a tribunal compiled by such a person is regarded as null and void. Another consequence of such proceedings is that the given individual's rights, enshrined in the Covenant's Article 14, have been violated.

It is a fact that both "justice" Hedlund as well as "justice" Fossum – although refusing to take their mandatory oath (which in turn means that these two persons are not judges) – continue to administer/handle/process the above mentioned lawsuits, *against* my clients' well-founded protests and their conventional rights.

Furthermore it is a fact that the President of the Court of Appeals as well as the Norwegian Parliament and the Minister of Justice accept the unlawful situation, this to the detriment of my clients.

Finally I would like to underline the consequences of the Norwegian Parliament's and the President of the Court of Appeal's approach to the problem (please see app. ## 7, 8 and 11 above):

By these letters the authors clearly states; 1) that they don't care whether the judges have declared their independence and submitted their oath or not, and 2) that neither the President of the Court of Appeals nor the Parliament will obey any treaties or recommendations enshrining the notion that: *"All measures should be taken to respect, protect and promote the independence of judges."*

The justices' actions as well as the Government's and the Parliament's acceptance of this illegal practice, are in blatant violation of Article 14 of the Covenant. The said violation is obvious, documented and undisputable.

* * *

A few words needs to be said about the above mentioned court cases in Borgarting Court of Appeals, this to give the Committee a picture of *why* Lundquists' requests for a fair trial are turned down again and again by the President of this court.

The lawsuit that Mary-Ann Hedlund is set to manage in the Court of Appeals concerns compensation claims against the Department of Justice and Police. It is ascertained that the state has committed a series of official registration errors on Lundquist's property (where unauthorized persons through these illegal registrations have taken control over some 90 % of Lundquist's property) with the consequence that the courts in 1992 wrongly deprived Lundquist almost all of their property which up to that point had been in the family since 1885. By this reason Lundquist lost their economic base and livelihood and has since had to live on the remaining land which could only produce at a subsistence level.

In 2005 Lundquist found the evidence (a property document from 1886) which clearly documented the said registration errors and thus the courts' erroneous decision. On this basis, Lundquist brought compensation claims against the Ministry of Justice and Police.

Lundquist lost the compensation lawsuit against the government in the Oslo City Court. Later on it has become clear that the judge who administered the court case in the City Court, Helen Andenæs Sekulić, had not declared her independence (the judicial oath) nor had she taken her office oath at the time she decided on the case.

Lundquist appealed the decision to Borgarting Court of Appeals, but as it has turned out not even Mary-Ann Hedlund has declared her independence or taken the office oath. Based on these reasons the President of the Court of Appeals is obliged (ex officio) to refer the case to the City Court for a retrial, but as we by now know the President will obviously not comply with this request (until the international society puts an end to this unlawful practice) as he sees no problem in letting "justices" lacking the judicial oath participate in judicial adjudication.

The lawsuit that Anne Ellen Fossum is set to manage in Borgarting Court of Appeals concerns a lawsuit against the ministry of Agriculture and Food where the Norwegian Parliament repealed a law – regarding expropriation – with retroactive effect, and with the consequence that Lundquist was struck directly and personally by this amendment.

As a consequence of the fact that the Government (through the above mentioned decision of 1992) due to unlawful procedure had deprived Lundquist of some 90 % of their property and thus most of their economic base, Lundquist requested (in 2004) the government for help to buy additional property – through compulsory purchase – and by this improve their economic basis and livelihood. The application was considered by the Norwegian Agricultural Authority, where it remained until the Parliament had repealed the expropriation clause of the Land Act with retroactive effect, and with the consequence that Lundquist's application was rejected, flatly.

Lundquist were informed that their application for expropriation was the only application that was under consideration at the time of the amendment, which means that the amendment was intended to strike Lundquist personally.

Lundquist has later on demanded access to and the release of the preparatory work[8] for the unfounded deletion of the expropriation clause of the Land Act, but the Government refused to disclose these evidences. Consequently Lundquist brought the case to court claiming that the Government had to present these documents. The government nevertheless refused to comply with the petition for discovery.

Judge Oddmund Svarteberg was appointed to administer the court case in the Oslo District Court and postponed further proceedings of the case until the Government had complied with the petition and presented the said evidence. The Government refused, and the judge subsequently warned the Government of the consequences, inter alia, a possible default trial against the Government should it continue to refuse to submit the said evidence within a given deadline.

The night before the Lundquists were to attend the main hearing in the Oslo City Court, they were informed that judge Svarteberg had been removed from the case and that Judge Jannicke Johannesen had been picked as the new judge.

Lundquist immediately protested against the change of the judge, to no avail. The President of the City Court, Geir Engebretsen, had in fact hand-picked judge Johannesen as the new judge and at the opening of the main hearing Engebretsen appeared in court, confirmed the appointment, and for some reason doubled it up with re-electing her at the spot. The change of judge in this matter is a criminal offence as neither the President, nor anyone else, is –

[8] I.e. internal memos, internal communications and other correspondence, etc. between the Ministry of Agriculture and other ministries regarding the preparatory work on the law of 8th December 2006 No. 68 regarding amendments in the Land Act, etc.

based on the reasons given – allowed to remove a case from a judge and hand it over to a hand-picked judge to continue the proceedings in favour of the Government.

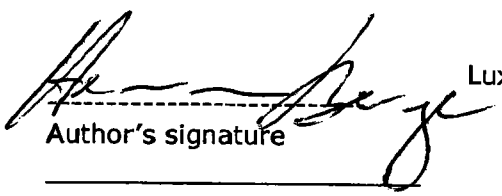
In retrospect, it has been confirmed that not even Johannesen has signed her independence (the judicial oath) or an office oath. Hence it is not surprising that Johannesen, in line with the government's interest, refused to follow up on Svarteberg's decision on discovery and the anticipated notice of judgement by default against the Government. During the main hearing – where Johannesen deliberately had thwarted Lundquist's petitions for disclosure of evidence (discovery) – she found, of course, no evidence that could support the allegations that the government had repealed the law to harm/strike Lundquist.

As shown by what is stated above under section III and IV, it appears reasonably clear that neither the Government nor the Parliament have any desire to help correct the Norwegian court's lack of independence from the Government. In this respect it seems that both the Government and the Parliament finds it especially comfortable when they are "allowed" to hire or appoint judges who refuse to declare their independence to the State. In cases where the Government and the Parliament have committed abuses against the population, the National Court Administration, therefore, in collaboration with the Government and the Parliament, can freely and without risk hand-pick judges who are on *"their side"*, the so-called government-friendly judges. Governmental abuse of the population will of these reasons never be revealed in Norway.

Let me add some quite essential information about the courts in general: The courts are there to establish law (administer justice) and not to act on the state's or on a single party's interest. If a society can not offer its citizens an independent judiciary of high quality, then it can not function. There are therefore grounds to impose substantial demands on judges and courts. Characteristic of a constitutional state is that the judiciary is independent of political power. Today, it is also considered as a matter of course that the courts should be autonomous and independent in this regard. Of particular importance is the courts' task in a constitutional state: to provide a protection for the individual citizen against abuse of power from the public.[9] Summing this up one can conclude that by accepting the aforementioned practice the Norwegian Government is not only violating Article 14 of the Covenant, but all the principles that these important words are based upon.

The lack of office oath as well as the judicial oath within the Norwegian judiciary is the most visible evidence that the Government does not demand nor does it expect the given appointed judge to protect citizens against abuse from the public. Norwegian judges' main task is no longer to protect citizens against abuse/infringement from the public, but rather to let themselves be hand-picked whenever needed by the Government, and furthermore to be used (and to a certain extent; exploited) by the government to cover up any abuse/infringement committed by the Government and the Parliament (and other government agencies), and finally to pass decisions in favour of the Government and thereby protect the Government's interests and acts regardless of their legality.

Based upon these grounds we ask the Committee to find Norway in violation of Article 14 of the International Covenant on Civil and Political Rights.



Luxembourg August 15 2011

Author's signature

Place and date

[9] Domaren i Sverige inför framtiden, Section A (SOU 1994:99), p 31 – 41.