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United Nations office of the High Commissioner
for Human Rights
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Luxembourg September 19 2011

Att	: To whom it may concern
Re	: Complaint against Norway
Your reference	: G/SO 215/51 - LUX (GEN)
Sent by	: Mail and fax
Your fax number	: +41 22 91 79 022
Pages	: 7
Attachments	:
Message	: Asking for priority
Copy	: UN Human Rights Committee; International Human Rights bodies

Sir/Ms,

1. INTRODUCTION

On August 15 2011 I filed a complaint against Norway claiming and documenting that Norway, on a continuous basis, is violating the United Nations International Covenant on Civil and Political Rights (ICCPR) Article 14, as the Norwegian Government and the Norwegian Parliament accepts that its courts are composed with "judges" who have refused to take the mandatory judicial oath as well as the mandatory office oath.

On August 22 2011 an unidentified person with the United Nations High Commissioner for Human Rights (UNHCHR) has rejected our complaint on the grounds that:

1. Domestic judicial/administrative remedies do not appear to have been exhausted, and it has not been substantiated that the application of domestic remedies would be unreasonably prolonged or that the remedies would be otherwise unavailable or ineffective.

2. Your petition does not provide sufficient details as to the facts of your case, and/or as to how your rights under the relevant treaty have been violated. According to the Article 2 of the ICCPR Optional Protocol, all claims of alleged violations must be well substantiated. In your communication dated 15 August 2011, you fail to substantiate how the mere fact of the judges not taking an oath adversely affected rights of the persons you are representing.

Before I comment on the above mentioned grounds, a few words need to be said about judicial independence, implications, the fight against human rights violations – in particular; state-abuse of membership to international treaties/bodies – and the United Nations self-proclaimed position as a protector of human rights.

But first: When I discovered, a few years ago, that Norwegian "judges" in huge numbers refuse – and for decades have refused (this in agreement with Norwegian authorities) to take the mandatory judicial oath, I must admit that I was astonished.

Although I have uncovered, through years of investigation, deliberate and systematic violations against Human Rights and in this regard been exposed to state-controlled retaliation in the form of – besides being officially blacklisted – harassments, intimidations, threats, terrorising, smear campaigns, and other materially adverse harm that was meant to dissuade me from further investigations and from filing any objections/complaints against these violations, I must admit that I was not prepared for such an answer from the Human Rights stronghold of Geneva.

The United Nations High Commissioner for Human Rights' last remarks – indicating that the UN sees no harm in member states composing their courts of law with persons that refuse to take the judicial oath[1] – demonstrates either that the High Commissioner (or her subordinate responsible for this answer) has no knowledge or understanding of the concept of "fair trial" and in this regard; the concept of an "independent judiciary", or that ICCPR Article 14 in reality has no legal value, whatsoever. There is obviously a third alternative to the United Nations disturbed stand in this most important democratic matter, but for now I see no reason to elaborate on this.

2. JUDICIAL INDEPENDENCE AND ITS IMPLICATIONS

It is highly agreed that the essentials of judicial independence are impartiality, integrity and freedom from interference.

> *"Judicial independence is not the private right of judges, but the foundation of judicial impartiality and is for the benefit of the public. It is a cornerstone of our system of government in a democratic society and a safeguard of the freedom and rights of the citizen under the rule of law."*[2]

In order for the decisions of the judiciary to be respected and obeyed, the judiciary must be impartial. To be impartial, the judiciary must be independent. To be independent, the judiciary must be free from interference, influence or pressure.[3] For that, it must not only be separate from the other branches of the State or any other body, it must also be able to guarantee that its judges will obey the law and only the law by declaring their independence in the form of a judicial oath.

Judicial independence is not only a matter of appropriate external and operational arrangements. It is also a matter of independent and impartial decision making by each and every judge. The judge's duty is to apply the law as he or she understands it without fear or favour and without regard to whether the decision is popular or not (the latter is obviously not possible to guarantee in cases where the "judge" has refused to take the judicial oath of which explicitly provides this guarantee). This is a cornerstone of the rule of law. Judges individually and collectively should protect, encourage and defend judicial independence (but an acceptance of a "judge's" refusal of taking the mandatory judicial

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[1] Taking the oath is what constitutes an independent judge and in turn; an independent judiciary. Furthermore this oath gives the user of the court a guarantee for the judge's impartiality, as the (Norwegian) judge by taking the oath solemnly promises to "*...neither of hate nor friendship, neither for favour nor gift or by other reason fall away from right and justice.*" A refusal of taking the oath does not only mean that the person in question is not formally qualified as a judge (in addition of the loss (forfeiture) of his/her mandate as a judge), it also means that the person in question has thoroughly considered the request and found that he will not tie himself up to such an oath as he/she – later on – might end up in a situation where he/she could find it proper or even necessary to favour a party, receive a gift from a party, or by any other reason fall away from right and justice. By refusing the oath, the person has disqualified him-/herself from *ever* becoming a judge.

[2] The first part of this declaration has been adopted by many states around the world, inter alia Scotland, Malaysia, Lesotho, Canada etc.

[3] http://www.scotland-judiciary.org.uk/Upload/Documents/JudicialIndependence_2.pdf page 2

oath, as is the case in Norway, is a direct attack against – and strongly contributes to the deterioration of – the said principle of which the United Nations purports being the guardian of). Judicial independence means that judges are not subject to pressure and influence, and are free to make good decisions based solely on fact and law.[4] This meaning of judicial independence would be empty if the given state allows persons – who have refused to declare their independence in form of a judicial oath – to take seat as judges.

In taking the oath, the judge has acknowledged that he/she is primarily accountable to the law which he/she must administer. Opposite; refusing to take the oath the person has declared that he/she is not accountable to the law and that he/she is free to act as he/she may see fit.

In its resolution 2006/23 on the Strengthening Basic Principles of Judicial Conduct, passed by the General Assembly, the United Nations declares its firm belief that corruption of members of the judiciary undermines the rule of law and affects public confidence in the judicial system. Furthermore the UN Assembly is allegedly convinced that "*corruption of members of the judiciary undermines the rule of law and affects public confidence in the judicial system, and, that the integrity, independence and impartiality of judiciary are essential prerequisites for the effectiveness protection of human rights and economic development*", thus the Assembly clearly acknowledges the problem of corruption in the judiciary *and* the importance of a genuinely independent judiciary.

The Bangalore Principles of Judicial Conduct, Value 1, Independence, states that:

> "*Judicial independence is a prerequisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.*"

Furthermore it is stated in the said principles paragraph 1.6. that:

> "*A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary which is fundamental to the maintenance of judicial independence.*"

By refusing to take the judicial oath, and hence silently declaring that he/she will not obey to the law of which he/she is to administer, the person in question has blatantly demonstrated his/her contempt for the law and will by this act – if allowed to take seat as a judge – definitely, and at best, tear down public confidence in the judiciary.

The Bangalore Principles of Judicial Conduct, Value 4, Propriety, paragraph 4.2, states that:

> "*As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.*"

Refusing to take the judicial oath the person in question has demonstrated that he/she will not accept any restrictions to his/her "freedom of movement" within his/her office as a judge. Such behaviour is obviously not consistent with the dignity of any judicial office.

Under the same principle, paragraph 4.14 it is stated that:

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[4] http://www.scotland-judiciary.org.uk/Upload/Documents/JudicialIndependence_2.pdf page 3

"A judge and members of the judge's family, shall neither ask for, nor accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done by the judge in connection with the performance of judicial duties."

A person who refuses to take the mandatory judicial oath has by this action declared that he/she will not obey to this principle and has thus forfeited his/her mandate as a judge. By obvious reason no one will ever have confidence in any person who so clearly have stated that he/she will not obey the law, hence these persons should be kept away from the court of law and any other activity which comprise the assessment of other people's rights and obligations. Sadly the UN has – by its decision of August 22 2011 – accepted this intolerable judicial situation in Norway.

In the United Nations Basic Principles on the Independence of the Judiciary[5] it is stated that:

"...the Universal Declaration of Human Rights enshrines in particular the principles of...the right to a fair and public hearing by a competent, independent and impartial tribunal established by law."

"...the International Covenant... on Civil and Political Rights... guarantee the exercise of those rights."

"...there still exists a gap between the vision underlying those principles and the actual situation."

By the latter of the three declarations the United Nations admits that Member States still do not honour its obligations and commitments towards the United Nations, which in turn should put the UN on the alert to any violations – like the one filed in our complaint – destructive to the said principle.

The basic principles listed in this resolution have been formulated by the Assembly to assist Member States in their task of securing and promoting the independence of the judiciary. Inter alia it is stated that:

"The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary."

By indicating that allowing persons, who have refused to take a mandatory judicial oath, to take seat as judges, the United Nations has undermined its own recommendations and treaties, in particular the ICCPR Article 14, and above all; its own Universal Declaration on Human Rights, Article 10.

"There is a common opinion that an independent judiciary is the strongest guarantee to upholding the rule of law and the protection of human rights."[6]

Why is it then that the United Nations High Commissioner for Human Rights – through her decision of August 22 2011 – has indicated her acceptance of massive and systematic attacks against this independence?

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[5] General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985

[6] The Independence of the Judiciary and Its Role in the Protection of Human Rights under UN Administration Using the Case of Kosovo, by Gjylbehare Murati, Ph.D Candidate at the University of Gent (Belgium), Senior Investigating Lawyer, Ombudsperson Institution in Kosovo. See also THE RULE OF LAW AND THE INDEPENDENCE OF THE JUDICIARY, by Daniel C. Préfontaine, Q.C. & Joanne Lee, Paper prepared for WORLD CONFERENCE ON THE UNIVERSAL DECLARATION OF HUMAN RIGHTS MONTREAL, DECEMBER 7, 8, & 9, 1998.

As Ms. Murati correctly puts it:

> *"The rights of the people administered by the United Nations would be without value if there was no legal system to actively protect their rights."*

This is exactly where we are at present, as the system – the United Nations Human Rights Committee – that supposedly was established to protect the people's rights, in fact fails dramatically in its function.

The International Bar Association adopted their MINIMUM STANDARDS OF JUDICIAL INDEPENDENCE in 1982 in which it is stated, in paragraph 40 and 45, respectively:

> "A judge should always behave in such a manner as to preserve the dignity of his office and the impartiality and independence of the Judiciary.
>
> A judge shall avoid any course of conduct which might give rise to an appearance of partiality."

Again; refusing to take the mandatory judicial oath – which in Norway 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."*

– the person in question behaves in a manner that will not preserve the dignity of his office and the impartiality and independence of the Judiciary, but rather cause a rapid decay of what is left of the pillars and beams of judicial independence.

In conclusion the principle of judicial independence is comprehensible and logical, and its implications are indispensable and fair both to the users of the courts as well as to the judiciary. There is thus no doubt that a refusal of taking the mandatory judicial oath disqualifies, per se, the person in question from ever taking seat as a judge. Hence acting as a judge while at the same time lacking the oath, is a violation of the above mentioned provisions. In this regard it is the responsibility of the United Nations High Commissioner for Human Rights to protect, encourage and defend judicial independence in all its sense. Sadly the UNHCHR's decision of August 22 2011 indicates a commissioner who accepts these violations or at best has no intentions of standing firm, as a protector, against any attacks on the principle.

3. United Nations rejection of August 22 2011 – Comments on No 1 above:
The UNHCHR claims that:

> *"Domestic judicial/administrative remedies do not appear to have been exhausted..."*

We are generally not complaining against *decisions* passed by a court of law, but rather against the fact that my clients' lawsuits are administered/handled/processed by persons not formally qualified as judges.

Acting as a judge, while at the same time refusing to take the judicial oath, is not a *decision* which can be appealed, it is rather an established mode, a state of malpractice, a state of harmful procedure, a state of crisis or ill health within the judiciary, an ongoing illegal process, a continuous violation against numerous international treaties, a *"state of the court"* of which the law gives no remedies to. On top of this the UN are aware of the fact that both the President of the Borgarting Court of Appeals as well as the Norwegian

Parliament have declared that they will not take any action to mend this serious violation of international treaties, thus declaring that Norway has no intention of honouring its obligations and commitments towards the United Nations.

Furthermore the UNHCHR claims that:

> *"...it has not been substantiated that the application of domestic remedies would be unreasonably prolonged or that the remedies would be otherwise unavailable or ineffective."*

As there are no remedies available, logically any attempt to complain/appeal against such a "state of the court" will be an ineffective and futile mission.

4. United Nations rejection of August 22 2011 – Comments on No 2 above:
ICCPR Article 14 states that:

> *"...everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal..."*

As referred to above, ICCPR Article 14 holds the principle of independence in the judiciary, guaranteeing that judges of any court of law are independent in the broadest sense, at the latest, at the time they take seat as judges, and – consequently – guaranteeing that no one can take seat as a judge if they in any way have indicated that they will not obey the law, i.e. by refusing to take the mandatory judicial oath.

Should it nevertheless be proven that a court of law – that is administrating a lawsuit – is composed of one or more persons who have refused to take the judicial oath, then the case in question has not been handled by an independent tribunal, i.e. a court of law, and we are facing a clear violation against the principle of judicial independence enshrined in ICCPR Article 14.

A person who refuses to take a judicial oath is by his/her mere act (of refusal) not independent. Furthermore the act of refusal is regarded as a declaration that he/she will refrain from obeying to the content of the oath, hence this person can never be regarded as independent even if he/she later on should give in and sign the oath (for the sake of peace in regards to the problem in question). As indicated above in footnote # 1, refusing the oath, or even taking the oath under reservation, will automatically lead to cessation of the judge's position and mandate, consequently precluding the person from taking seat as a judge. This is though not the situation in Norway.

"Justice" Anne Ellen Fossum and "justice" Mary-Ann Hedlund – both with the Borgarting Court of Appeals – have for decades refused to take the judicial oath. These two persons are thus not independent, hence they are not judges although they act as such[7]. Leaving this problem unsolved – as the Norwegian Government does – constitutes a violation against the ICCPR Article 14, and is in addition a continuous crime against every single user of this court.

Even though the UNHCHR indicates that the mere fact that a person who has not taken the judicial oath, but still acts as a judge, does not necessarily represent a violation of the said article, it has to be underlined that this "judicial notion" has no legal basis. As the matter of fact this indirect question: *"...you fail to substantiate how the mere fact of the judges not taking an oath adversely affected rights of the persons you are representing."*, should never have been asked for at least two reasons:

[7] It is in this regard worth thinking of the thousands of illegal and invalid decisions these two judges have passed through the decades, and the direct consequences these violations will have on the society when the commoners one day discovers these crimes.

1. Accepting persons, who are unwilling to declare their independence through a mandatory oath, to take seat as judges, is in itself a serious violation of ICCPR Article 14 as well as of the concept of a free democratic society. Thus whether such unlawful activity in turn brings or *can* bring harm to users of the given court of law is of obvious reasons at best an irrelevant question.

2. The question itself shows that the UNHCHR is ready to bend the principle of judicial independence in a direction which clearly will undermine fundamental rights of the world's citizens.

As accounted for above, the ICCPR Article 14 is quite clear, providing any citizen of a Member State a right to have his/her case tried by an *independent* judge / court, and we can only – besides referring to what is stated above – regret the United Nations' stand in this outmost important question of whether the people have a right to access to an independent court of law, or not.

Regardless of the UNHCHR's allegations, we have – in our complaint of August 15 2011 – provided her office with all necessary documents and details as to the facts of the case and as to the violation of rights protected through ICCPR. More precisely the UNHCHR has been provided with: 1) sufficient evidence on illegal activity within the Norwegian judiciary, proving that persons in Borgarting Court of Appeals are acting as judges although they have refused to take the mandatory judicial and office oaths; 2) sufficient evidence that this malpractice is supported by the President of the court in question as well as by the Norwegian Parliament; 3) sufficient description of my clients rights enshrined in the ICCPR and in what way the said activity is violating these rights.

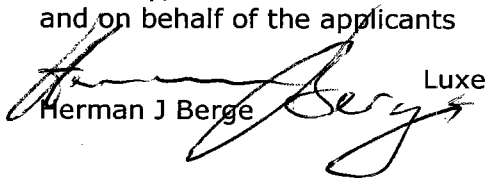
Based on the above grounds I **PETITION** the UNHCHR to resume consideration of the matter.

Having in regard our complaint – sufficiently documented and directly aimed at the Norwegian Government's unlawful system of allowing "judges", who refuse to take the judicial oath, to take seat as such, this in direct violation with the principle of judicial independence enshrined in ICCPR Article 14, - and UNHCHR's decision of August 22 2011, I **PETITION** the UNHCHR to either strongly oppose to the last sentence of paragraph 13 of page 2 of UNHCHR's letter to me of August 22 2011, or pass a declaration that ICCPR Article 14 has no legal value.

Finally I find it necessary to repeat two statements which contain the significance of judicial independence, and which in turn gives us every reason to guard and nurture this principle:

> *"Judicial independence is not the private right of judges, but the foundation of judicial impartiality and is for the benefit of the public. It is a cornerstone of our system of government in a democratic society and a safeguard of the freedom and rights of the citizen under the rule of law."*
>
> *"Judicial independence is a prerequisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects."*

Sincerely,
and on behalf of the applicants



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