DEMOCRACY AND RULE OF LAW

INTRODUCTION

Before a judge can assume office, i.e. the position of judge, he/she must give a judicial oath and oath of office. According to the Norwegian Constitution, the Norwegian Office Oath Act and the Norwegian Courts of Justice Act, this is an absolute requirement, which means that these oaths **must be taken** voluntarily and prior to entering office. In 2011/2012, systematic violations of these provisions were revealed, which led to a large-scale "remedial operation" where judges and the Norwegian Courts Administration (NCA) desperately tried to suppress the matter and "remedy" the problem. They received strong support from Prime Minister Jens Stoltenberg via the Office of the Attorney General of Norway. Stoltenberg understood the extent of the legal scandal that had been uncovered, and that the Prime Minister stood directly in the line of sight if the Norwegian Constitution, the Norwegian Office Oath Act, and the Norwegian Courts of Justice Act should be followed, not to mention the Norwegian Dispute Act and the General Civil Penal Code of Norway. Something had to be done quickly, in the "back room", behind closed doors, and in violation of Norwegian law to avoid a scandal and public allocation of responsibility.

This paper deals with (parts of) the sequence of events for the judges of the country's highest court, the Supreme Court of Norway, as well as the democratic and legal consequences these breaches of the law have had in relation to Norway's constitutional indirect democracy, namely the elected government itself. The issue is the people's demand for and their right to a "free and independent judiciary", as well as the trust in a Storting and a Government, which is "given by the people" and not as "a state within a state". It is about fundamental democratic processes, where the country's elected representatives do not simply "wash their hands of the matter" and let the Supreme Court take care of the problem on its own by rewriting and circumventing the Norwegian Constitution, thereby acting as the legislative, executive and judicial powers at one and the same time, moreover in its own case.

First, some math

In mathematics, there is a discipline called the calculus of probability. A simple example is a stack of 100 raffle tickets where there are 50 winning tickets and 50 losing tickets. To be 100 per cent certain of winning something, you must thus buy 51 tickets. The fewer tickets you buy, the smaller your chances of winning, and in mathematics, we talk of the probability coefficient. Mathematicians often make a probability tree diagram, which is nothing more than a method of identifying the relationship between events and calculating their probability, i.e. the probability coefficient for the occurrence of one or several events; in short, the probability that something has happened randomly and naturally, i.e. without influence, manipulation, or as a result of outright deceit.

How likely are the following events?

- Four Supreme Court Justices, taking office at widely times (1986, 1988, 1991, and 2001), have ostensibly all taken their judicial oath (an absolute requirement of the

Norwegian Constitution and the Norwegian Courts of Justice Act) on exactly the same date, 26 August 2002.

- Two of the aforementioned judges had been keeping their judicial oath "in the drawer" for nine and a half years – for exactly the same length of time, to the day – until the oath was stamped and archived in accordance with Norwegian law.

- Two of the aforementioned judicial oaths have still not yet been stamped/registered in accordance with the law.

- Another three Supreme Court Justices, taking office in 1997, 1998 and 1999, respectively, have all apparently taken their judicial oath one month after the first four, above, on 24, 25 and 26 September 2002, respectively.

- Five of the seven aforementioned Supreme Court Justices have apparently kept their judicial oath "in the drawer" for nine and a half years – two of them for exactly the same length of time, to the day – and three of them for one month less, before all five were stamped/registered on exactly the same date, 17 January 2012.

(More on this later)

I submit the following: If we are to give credence to the above sequence of events, it means that we not only believe in one, two or three coincidences, but a series of coincidences, i.e. a statistical impossibility. If it is not a matter of chance, it is a matter of antedating, i.e. document forgeries and counterfeits have been perpetrated by judges of the Supreme Court of Norway, probably with the assistance of the NCA. Perhaps worst of all is that, in all probability, this was done with former Prime Minister Jens Stoltenberg's knowledge and approval, to "save his own skin", while the Storting and the Government "have looked the other way".

Section 129 of the General Civil Penal Code of Norway states: "Any person who without being so authorised exercises any public authority, or who aids and abets thereto, shall be liable to fines or imprisonment for a term not exceeding six months, but not exceeding two years if he has acted for the purpose of obtaining an unlawful gain for himself or another or of injuring another person."

Section 163 of the General Civil Penal Code of Norway states: "Any person who gives false testimony in court after making an affirmation shall be liable to imprisonment for a term not exceeding five years. The same penalty shall apply to any person who gives false testimony outside court after making an affirmation in cases in which the use of an affirmation is legally authorised."

When the Supreme Court treats issues regarding the Supreme Court

When the Supreme Court treats the issue of an invalid judicial oath in connection with a judge of the Court of Appeal, and First Justice Matheson and the four other Supreme Court Justices

at the time of the case and the judgement have **not** in fact given valid judicial oaths and/or valid oaths of office in accordance with the Norwegian Constitution and the Norwegian Courts of Justice Act, what outcome can we expect?

To put it another way: What kind of justice system we have adopted if Supreme Court Justices preside over matters that primarily concern them? What does this say about due process in Norway? Is it right that the Supreme Court and Supreme Court Justices in practice make a constitutional amendment, which normally requires a two-thirds parliamentary majority, in a case that concerns them? What do the legislature, the Storting, and the executive body, the Government, think about the Supreme Court and Supreme Court Justices in practice acting as the legislative, executive and judicial powers all at once? What is the term for nations founded on this type of conduct? What confidence can citizens have in the legal system? And why do we need a Court of Impeachment if we do not use it for this fundamental violation against our constitutional right to an indirect democracy?

The European Convention on Human Rights (ECHR) on impartiality

Former President of the European Court of Human Rights (ECtHR), Wildhaber stated the following in his summing up of the impartiality requirements for courts and judges:

"The guiding principle is that where there are ascertainable facts which suggest to the external and objective observer that the judge or the jury cannot approach the case with an entirely open mind, then his objective impartiality may be questioned, even if his subjective state of mind is beyond reproach."

(Ref.: http://www.concourt.am/hr/ccl/vestnik/2.12-2001/wildhaber-eng.htm)

If this is the case, it is sufficient that there is a question of a judge's objectivity and impartiality. This is regardless of whether the judge is of the opinion that he/she is impartial.

In other words, according ECtHR President Wildhaber's reasoning, First Justice Matheson is "absolutely" legally incompetent, both based on objective and subjective criteria; thus Supreme Court Justice Matheson and his colleagues on the Supreme Court are committing a fundamental breach of Article 6 of the ECHR, the fair trial principle. The European Human Rights Act (EHRA) is part of Norwegian law, and because it is inconceivable that Supreme Court Justice Matheson and his colleagues are not aware of this fundamental breach, there is much to suggest that it represents a violation of the General Civil Penal Code of Norway.

If this breach also involves extensive antedating of judicial oaths and oaths of office, what is the penal provision for these actions, collectively?

Perhaps more importantly: What does all this say about parliamentarism, i.e. the exercise of our indirect democracy (the elected government); more specifically, what does it say about the exercise of democracy through the people's authority and trust in the legislative power (the Storting), the executive power (the Government) and the judicial power (the Court)?

KEY ASSUMPTIONS FOR A CONSTITUTIONAL STATE

The main function of a constitutional state is to serve the truth. The moral authority of a legal system is contingent on the fulfilment of this purpose. When the law no longer protects the individual, but becomes an instrument in the hands of the state, freedom dies – regardless of the form of government.

Absolutely essential for the above is the independence of the court, and in particular the Supreme Court. The independence of the court is related to and dependent on a democracy that adheres to the principle of the separation of powers; simply put, that there is a sharp distinction between the legislative, executive and judicial powers.

If e.g. the court suddenly decides to ***"take the law into its own hands"*** and makes judgements in violation of the law, i.e. contrary to legislation passed by the Storting, then the court itself has broken the law. Then, what essentially needs to happen is that the Government, via the Minister of Justice, must respond by ensuring that the court's offence remedied and that the offence has consequences. If the Government fails to do so, the Storting, which is the legislative power, must step in. If neither the Government nor the Storting respond to the situation, we have a constitutional crisis on our hands in the sense that our elected officials have violated the basic premise of the Constitution, the very "social contract" upon which our indirect democracy is based. In short, we are left with a situation where our elected officials have violated the premise of being elected.

The paradox and vulnerability of democracy

To understand this important premise of an indirect democracy in the form of an elected government, you must also understand the implicit weakness or contradiction such governance entails. In reality, democracy can actually dismantle itself. If a majority of the members of the Storting were to decide that they would prefer despotism or an autocracy, they could change the system of government by passing a resolution with a majority vote. Most people would say that such a majority decision has nothing to do with democracy, and argue that one can prevent this kind of thing from happening by introducing a law that forbids the Storting from making such a decision. However, forbidding a majority decision is contrary to the premise of democracy and we have therefore an apparently insoluble problem.

However, this is not our main concern or even the point because, after all, the chances of it happening are small. It is highly unlikely that a democratically elected Storting would do something so drastic. The point is rather to comprehend the fragility of democracy, that "the democratic pendulum" constantly swings between two extremes, freedom and oppression, and why it is so important to prevent "power from going astray." When our elected representatives in the Storting and in the Government continue to propose and adopt more laws, regulations, orders, guidelines and restrictions, our rights are simultaneously replaced by privileges, and with privileges, there is always someone who has more than others. Moreover, the fact is that more and more laws and regulations inexorably give state institutions and the courts more power, which in turn leads to abuse of power and fewer rights for citizens. It is embedded in the nature of the matter because the lack of freedom, abuse of power, discrimination and the violation of citizens' rights becomes systematised. It is not useful to single out a specific

judge, a specific bureaucrat in public administration, or a specific matter to point out that something is wrong, because it is the system itself that is flawed.

If we can understand these simple correlations, then we can understand how vulnerable our democracy really is, and also how important the separation of powers is in order to guarantee the sharp distinction that must be maintained between the legislative, executive and judicial powers, almost at any cost. This is something that our elected officials should be the first to understand, because it forms the basis of their power, which comes from the people; in other words, not from a branch of government.

INDEPENDENCE OF THE COURT

As illustrated by this paper, there is every reason to question the independence of the court, and in particular the independence of the Supreme Court. There are strong indications that the Supreme Court has violated Norwegian law, both civil and criminal law, and that the Supreme Court has attempted to remedy its offence(s) through a subsequent self-directed remedial operation through, among other things, document manipulation and the treatment of the question of the validly judicial oaths and oaths of office in a case where the Supreme Court has had a strong vested interest in the outcome. When the Supreme Court in effect assumes legislative power and on its own accord rewrites or amends the Constitution (which normally requires a two-thirds parliamentary majority), then we have a constitutional crisis in which our indirect democracy and the rule of law in practice has dismantled itself. That the Supreme Court, the Storting and the Government do not perceive this has no significance to the matter, aside from indicating how far we have removed ourselves from a democracy deriving from the people, and how close we have come to a democracy deriving from a branch of government.

This is probably why Thomas Jefferson, author of the American Declaration of Independence and a strong supporter of the principle of the "separation of powers" stated the following:

"THE ISSUE TODAY IS THE SAME AS IT HAS BEEN THROUGHOUT ALL OF HISTORY, WHETHER MAN SHALL BE ALLOWED TO GOVERN HIMSELF OR BE RULED BY A SMALL ELITE"

JUDICIAL OATH AND OATH OF OFFICE

Just as in all other professions, judges are required to exercise their profession and judicial actions in accordance with Norwegian law. Many will rightly argue that the judiciary, as society's ultimate administrator of "right and wrong", i.e. administrator of the executive power and custodian of the rule of law, is in a unique position, which requires a rigorous approach to its *"work instructions"*, i.e. its power and authority to assess, evaluate and judge people, groups and organisations on the basis of objective criteria. That is why the principle of "the independence of the court" is so important. We, in the sense of the people, should know and demand that our guarantee of due process of law is in the best, neutral, objective and competent hands.

As with most other professions, the judiciary is therefore required to have a valid **authorisation** to exercise its **office.** I deliberately emphasise **authorisation and office**

because it is somewhat more serious to be authorised as a **public official,** especially when it concerns the administration of the courts and the legal rights of citizens, than it is to be authorised as e.g. a carpenter or plumber with a valid trade certificate, not that I thereby intend to imply anything negative about either carpenters or plumbers. The court and judges should be "beyond reproach" in the sense of their unassailable objectivity and neutrality, which implies a rigorous approach to control and authorisation in connection with the execution of their office.

STATE DOMINANCE AND GUARANTEED DUE PROCESS OF LAW

Judicial oaths and oaths of office are particularly important in a country like Norway, where the Supreme Court in effect selects and appoints its own judges (i.e. through an undemocratic process), in reality with Chief Justice Tore Schei holding a veto, and where these judges, almost without exception, are recruited from a single source, government offices and the civil service, which has been dominated by the Labour party for the last 60–70 years, and with the significant majority of rulings in favour of the state. It is not without reason that the Supreme Court is often called the Labour Party Court.

It should therefore not surprise anyone that, in a newspaper article in Bergens Tidende a few years ago, the Attorney General Sven Ole Fagernæs amazingly enough said that the state should win more often. He asserts that *"the more overarching societal concerns – and general and principled legal thought on the whole – have lost out to the importance of specific and individual fairness"*. Fagernæs is of the opinion that, in the end, the application of general principles is fairer, and that the court should place less emphasis on *"the concrete fairness in individual cases"*. Fagernæs is looking to bring about a discussion of the "presumption of innocence" itself, and is actually reiterating Thomas Moore in *A Man for All Seasons*:

"Why should the guilty have the benefit of the law?" Unlike Fagernæs, Thomas Moore cleverly answered, ***"When law is disregarded to better pursue the guilty, it is also taken away from the innocent."***

In other words, Fagernæs believes the interests of the individual should give way to the application of general legal principles and thus, without Fagernæs necessarily having thought so far ahead, the consideration of the presumption of innocence. This is a radical and dangerous thought. Fagernæs wants a future where *"the pendulum swings back somewhat from the individual toward a stronger focus on communal thinking"*. Put simply, Fagernæs wants to ignore the European Human Rights Act (EHRA), which is actually an integral part of Norwegian law. Attorney General Fagernæs has misunderstood that the European Convention on Human Rights (ECHR) and EHRA are derived from a basic assumption of the individual's inalienable rights, the cornerstone of democracy and a functioning state based on the rule of law, where the presumption of innocence is central.

Unfortunately, Fagernæs is not alone in such a perverted view of the law. The introduction over time of "the administrative state" where, in accordance with Fagernæs' "*overarching societal concerns*", the State gives and takes privileges to and from its citizens at its sole discretion, has become the "modus operandi" in a country where citizens obediently must comply with state authority to defend their rightful place in society. Supporters of the administrative state, of which there are far too many in Norway, are probably of the same opinion as the fascist Benito Mussolini when he stated the following:

"We were the first to assert that the more complicated the forms assumed by civilization, the more restricted the freedom of the individual must become."

For Fagernæs, and other "obedient" social democrats, the notion of *"overarching societal concerns"* is so paramount that they do not understand that they are essentially genuflecting before a mind-set and a political system that, from a historical perspective, has inflicted great suffering upon our ancestors.

Consideration for the legal rights of the individual

Consideration for the legal rights of citizens and the independence of the court are, however, are considered so essential and important that they (in their time) were/are regulated by the Norwegian Constitution and the Norwegian Courts of Justice Act. This was done to avoid this kind of misunderstanding about the guarantee of due process of law as expressed by Attorney General Fagernæs. This is why, in accordance with the Norwegian Constitution, judges are appointed and not employed, and therefore, all appointed judges give a judicial oath and oath of office, which are signed and registered/stamped before they enter office, and the oath of office must also be countersigned by the "King", i.e. the Prime Minister. Without so doing, the judge has not officially entered office and the appointment is thus contrary to the Norwegian Constitution and the Norwegian Courts of Justice Act. The appointment is invalid.

That is why this is an absolute requirement as laid down in Section 21 of the Norwegian Constitution, and why Section 60 of the Norwegian Courts of Justice Act stipulates the following:

"All judges except lay judges and judicial assessment members shall give a written affirmation that they will perform their duties conscientiously."

SUPREME COURT JUSTICES AND THE NORWEGIAN CONSTITUTION

It is important to stress that what follows below is based on publicly available information, including from the NCA, www.domstol.no, and the Government's website www.regjering.no. What I discovered in my review of judicial oaths and oaths of office was so peculiar that I repeatedly had to "pinch myself to make sure I wasn't dreaming". It is therefore not without reason that I quote the actor James Stewart from the Hollywood classic "Mr Smith goes to Washington", when he states the following before the Senate:

"I'm sorry gentlemen. I know I am being disrespectful to this honourable body, I know that. A guy like me should never be allowed to get in here in the first place. I know that. And I hate to stand here and try your patience like this, but either I am dead right or I'm crazy!"

Mr Smith was not "crazy" but "dead right". He spoke about unacceptable conditions, and it was uncomfortable for the Senate to hear. However, this is often how it is with the truth. It can be brutal and uncomfortable.

Even so, the truth must still come out, no matter how uncomfortable it might be, something for which the country's highest court should be the foremost proponent. There are strong indications that the Supreme Court has been concerned with the exact opposite, with secrecy, prevarication, misdirection and the circumvention of both the law and the truth. When the

Supreme Court does not understand that this is wrong, then the Storting and the Government have a constitutional duty to rectify the matter.

In this paper, I will base my discussion of this issue on two cases that have been treated by the Supreme Court, namely:

1. HR-2010-568-A - Rt-2010-402 – "Anonymous plaintiffs".

2. HR-2012-01312-A, (case No. 2012/398) – "Flexiped".

Supreme Court Justice Matheson's consultations with himself

One of the most interesting things about these Supreme Court rulings, particularly in the "Flexiped" case is that Supreme Court Justice and First Justice Matheson, who has not given a judicial oath in accordance with Norwegian law, and thus should have declared himself incompetent, entered into a kind of imaginary consultation or discussion with himself, only finally to conclude, at no surprise to anyone, that violations of the Norwegian Constitution and the Norwegian Courts of Justice Act, etc. are actually perfectly OK, as long as the violation is made by the court and by judges, himself included. In consultation with himself, "in his own cause", he comes to the conclusion that the absolute requirement for a judicial oath and oath of office stipulated by the Norwegian Constitution and the Norwegian Courts of Justice Act, is not really anything more than a kind of "rule of general conduct", a sort of "be a good boy" provision.

Question: Imagine the state of the rule of law if everyone in society could do like Matheson by introducing a simple rule of general conduct they themselves could decide whether they have broken or not?

The ruling in the first case was made on 7 April 2010. The ruling was issued by Supreme Court Justices Endresen, Matheson, Bårdsen, Tønder and Stabel. Note the names because they recur in connection with the lack of judicial oath and oath of office and the Supreme Court's vested interest in suppressing and explaining away the matter.

The ruling in the second case was made on 26 June 2012. The ruling was issued by Supreme Court Justices Matheson, Bull, Normann, Endresen and Øie. Again, note the names.

SUPREME COURT JUSTICES AND THEIR LACK OF JUDICIAL OATH AND OATH OF OFFICE

The following publicly available documentation is recorded and available on either the NCA or the Government's websites:

Chief Justice Tore Schei (entered office 3 January 1986) has not given a valid judicial oath due to the fact that the oath, ostensibly signed on 28 August 2002, was not registered/stamped and archived until 17 January 2012, cf. Section 60 of the Norwegian Courts of Justice Act. How likely is it that Schei, who presumably knows the law better than most, has allowed his oath to be left "lying in the drawer" for nine and a half years before he apparently got around to signing it? How likely is it that several other Supreme Court Justices, entering office on very different dates, have done exactly the same as Schei at exactly the same time, see

NOTE, below. According to the Prime Minister's office, Schei gave his oath of office on 2 May 1982.

If we are to give credence to the above, then Chief Justice Schei acted as Supreme Court Justice for approximately 26 years without authorisation. If we are to adhere to the Norwegian Constitution, with which the court, and especially the Supreme Court is very concerned when it comes to the rest of the population, then Chief Justice Schei is still not authorised to practice as a Supreme Court Justice, because judicial oaths must be given, registered and archived stamped ***before*** entering office as a judge.

NOTE: Three other Supreme Court Justices, entering office at widely different time points (separated by 15 years) have ostensibly, and in the same manner as Chief Justice Schei, given their judicial oaths at exactly the same time as Schei, on 28 August 2002.

The judicial oath of **Supreme Court Justice Stabel** was apparently also registered nine and a half years later, on the exact same date as Schei, 17 January 2012. If we are to give credence to the signing date and registration date, we must thus trust that both Schei and Stabel kept their judicial oaths "in the drawer" for exactly the same length of time to the day, for nine and a half years, in addition to the fact that Stable "entered office" 15 years after Schei.

The last two, **Supreme Court Justices L. Gjølstad and S. Tjomsland**, who ostensibly also both gave their oaths on the exact same date as Schei and Stabel, 26 August 2002, as stated on their oaths, and thirteen and a half years later, they have still not been registered/stamped and archived. Have they also "forgotten their oaths in the drawer" all this time or is there another logical explanation for why this has not yet been done? The fact is that both Gjølstad and Tjomsland continue to serve as Supreme Court Justices without authorisation, i.e. in violation of the Norwegian Constitution and the Norwegian Courts of Justice Act. As long as the Storting and the Government do not care, however, there are no consequences.

It is important to emphasise that there is a difference between "signing" and "giving" in the sense that if you sign and leave your oath in the drawer for, e.g. nine and a half years before having it registered/stamped and archived, then the oath is considered to be given at a later date, i.e. nine and a half years later. As mentioned, however, under the law, this written oath must be given ***before*** entering office to be valid.

Another three Supreme Court Justices, **Matningsdal, Skoghøy and Utgård**, also entering office at completely different times, have ostensibly signed their judicial oath within three (hectic) days, 24, 25 and 26 September 2002, respectively, i.e. just one month after the first four judges, see above. As of March 2014, i.e. thirteen and a half years after apparently having signed their judicial oath, it does not appear that any of these oaths have been registered/stamped and archived. Supreme Court Justices Matningsdal, Skoghøy and Utgård in reality continue to act as Supreme Court Justices without authorisation, in violation of the law.

For any other profession, where a licence or other form of authorisation is a prerequisite for professional practice, such a lack of authorisation is considered as a violation of the law, and in most cases results in an immediate ban from professional practice and both civil and criminal consequences. The Supreme Court Justices are clearly of the opinion that they are above the law in relation to other professions. The Storting and the Government are apparently of the same opinion. They think it is just fine to have "a state within a state".

Where are the Justice Minister, the Justice Committee and the Auditor General?

You do not need to be "Nancy Drew" to question the above sequence of events. Simply put, there are too many coincidences to have any confidence in the court. Thus, and based on the dates of entering office, judicial oaths and the archive stamp date, there should be a thorough investigation to ascertain what actually happened in connection with the said judicial oaths and oaths of office, a sequence of events spanning a period of 28 years, with judges entering office on very different dates, but giving their judicial oath on nearly the exact same date and then waiting almost ten years before any of the judicial oaths were registered; others are still not.

It is natural to assume that what we are faced with is antedating and document forgery, and that most, probably all of the aforementioned Supreme Court Justices, continue to act as judges without the necessary authorisation, and thus in violation of Norwegian law. For this reason, all documentation, including the original judicial oaths should be reviewed, also by font experts, to verify that the aforementioned Supreme Court Justices and the NCA have not committed criminal acts.

More about the lack of judicial oaths in the Supreme Court of Norway

When it comes to the matter of the "anonymous plaintiffs", it is interesting to note the following:

Supreme Court Justice Endresen ostensibly signed his judicial oath on 27 April 2006, but it has not been registered/stamped, and is therefore considered invalid. Neither is his oath of office of the same date stamped/witnessed/countersigned. Question: Is one or both actions antedated?

Supreme Court Justice Bårdsen ostensibly signed his judicial oath on 11 July 2004, when he was a Judge of the Court of Appeal, but it has not been registered/stamped and is therefore invalid. The same applies to his oath of office of the same date. Question: Is one or both actions antedated?

NOTE: The Norwegian Constitution should be interpreted such that upon entering each (new) office, a new judicial oath must be given. It appears that Supreme Court Justice Bårdsen has violated the Norwegian Constitution.

Supreme Court Justice Tønder has ostensibly given his judicial oath on 1 May 2006, without it being registered/stamped. The same applies to his oath of office of the same date. Question: Is one or both actions antedated? Why are these documents still not registered, countersigned and archived as required by law?

Supreme Court Judge Stabel, who entered office as a Supreme Court Justice 15 years after Schei, ostensibly signed her judicial oath on the same date as Schei, see above, i.e. on 26 August 2002, which was also stamped nine and a half years later, and on the same date as Schei and the three other judges, namely 17 January 2012. If we are to give credence to this, then, as mentioned, Stabel also forgot her judicial oath "in the drawer" for nine and a half years, exactly as long as Chief Justice Schei to the day. Stabel has apparently given an oath of office on two occasions, on 31 July 1979 and 30 December 1993, respectively. Both oaths of

office are, however, completely identical and dated 30 December 1993, and stamped on the same date, 5 January 1994. Question: Is one or both actions antedated?

Supreme Court Justice Matheson ostensibly signed his judicial oath on 13 August 2009, but his judicial oath has not been registered/stamped either. The same applies to his oath of office of the same date. Question: Is one or both actions antedated?

Attached to this paper is a summary of the dates the judges entered office and relevant dates in connection with judicial oaths.

NOTE:

The judicial oath for each judge can be found at:

http://www.domstol.no/Domstoladministrasjonenno/Offentlighet-og-innsyn/Dommerforsikringer1/dommerforsikringer/

The oath of office for each judge can be found at:

http://www.regjeringen.no/nb/dep/smk/dok/andre/embetseder1.html?id=676766

LEGAL CONSEQUENCES OF THE FAILURE TO GIVE A JUDICIAL OATH AND/OR OATH OF OFFICE

The first case mentioned above concerns the Supreme Court ruling of 7 April 2010. At the time of the ruling, none of the aforementioned Supreme Court Justices had given a valid judicial oath and/or oath of office. Pursuant to Section 29-21(2) b) of the Norwegian Dispute Act, the consequence of this is that there was an ***"unlawful composition of the court"*** and the ruling was therefore invalid. This is an absolute requirement, but as will be elucidated below, the Supreme Court has circumvented this requirement after the fact by presiding over a case where the issue before the court was specifically that of invalid/lack of judicial oath, and the Supreme Court Justices therefore had significant vested interest in the outcome, see case No. 2, Appendix 2.

As if that is not enough, Supreme Court Justices Matheson and Endresen were directly involved in both the aforementioned cases, Matheson as the First Justice in the one case, Endresen in the other case. This is basically tantamount to allowing a burglar to act as judge in his own case. The result is, naturally enough, full acquittal.

NOTE: The aforementioned "pile of evidence" should also be reviewed by an impartial body, including a font expert to ensure that the Supreme Court Justices, the NCA, and the Prime Minister's office via the Office of the Attorney General of Norway have not committed forgery.

I assume that Chief Justice Schei, the aforementioned Supreme Court Justices, the NCA, the Justice Minister/Committee, and perhaps the Office of the Auditor General of Norway, are familiar with the relevant legislation, but present the following list (not exhaustive) for the record:

- The Norwegian Courts of Justice Act, Sections 60, 160, 108
- The General Civil Penal Code of Norway, Sections 110, 123, 324, 325
- The Norwegian Constitution, Sections 21, 31, 49
- The Norwegian Dispute Act, Section 29-21
- The Norwegian Office Oath Act, Section 3
- The Norwegian Archive Act, Section 6
- The Norwegian Archive Regulations, Sections 2-6 and 2-7

Rules of general conduct and immunity from the law

If we are to believe this country's highest court, then all the aforementioned legislation is not really that important; they are nothing more than troublesome "rules of general conduct" for Supreme Court Chief Justice Schei and the other Supreme Court Justices. Since all other members of society must follow the law and are punished severely for breaking it, the question then becomes whether the Supreme Court and Supreme Court Justices are above the law. Do they, like the royal family, have immunity from crimes they commit? And, how can the Supreme Court of Norway, Norwegian courts in general, the Storting and the Government, expect Norwegian citizens to respect the law and the rule of law when they set one standard for the people and quite another for those who are asked to administer it?

COMMENTS ON THE CONSEQUENCES OF THE FAILURE TO GIVE A JUDICIAL OATH AND OATH OF OFFICE

John Christian Elden's remarks of 22 February 2012 to Section 60 of the Norwegian Courts of Justice Act on lovdata.no (Public remarks – Section 60 of Act No. 19150813-005, John Christian Elden, 22 February 2012 at 5:24 p.m.):

"***An article on ABC News today indicates that half of the country's judges have not submitted their judicial oath to the NCA, cf. I hope this does not mean anything more than that these oaths have been given under the old rules, but this should be ascertained as soon as possible. A ruling passed by a judge who has not given a judicial oath is undoubtedly invalid, cf. e.g. Rt 1991 p. 900, LH-1996-348 and RG-1999-1231, and will result in its annulment, whether there are any other grounds of appeal or not. It is also grounds for the case to be reopened pursuant to Section 390 of the Norwegian Criminal Procedure Act."***

Supreme Court Justices who lack authorisation cannot practice as judges. It can be compared to a doctor or a lawyer without a licence, circumstances that are punished harshly by prosecutors and the courts, as well as "running the gauntlet" of public humiliation in the press. For judges in general, and Supreme Court Justices in particular, this lack of authorisation is far more serious, because it is the court and the independence of the rule of law we are talking about. In other words, the legitimacy of our democracy. In this context, it is important to understand that judges cannot be removed from office and that the judicial oath must therefore be voluntary for it not to lose its legitimacy.

What many people, including the Supreme Court itself have difficulty understanding – obviously – is that if a judge has not given a judicial oath, then he/she is not authorised to be a judge, and consequently cannot sit as a judge. The judicial oath and oath of office first – judicial responsibilities afterwards. Quite logical really.

What about judicial oaths or oaths of office given after the fact?

If a judicial oath is given after the individual has started exercising his/her office, it would be problematic given the phrasing of the Norwegian Constitution and legislation. Firstly, a judicial oath is not retroactive. Secondly, the oath must be given without anyone requesting it. With regard to the appointment of judges, most often called the commission of appointment/letter of appointment, which is not performed in accordance with the Norwegian Constitution, the appointment will be invalid from the outset, if an oath of office has not already been given at the time of the commission of appointment by the King (the signing and the Prime Minister's countersigning of the letter of appointment).

The Norwegian Office Oath Act versus the Norwegian Constitution

Section 3 of the Norwegian Office Oath Act, issued by the Ministry in 1981 is categorically erroneous. It is not in accordance with Section 21 of the Norwegian Constitution after it was amended in 1980. The latter stipulates that the oath of office must be given **BEFORE** appointment, while Section 3 of the Norwegian Office Oath Act states that "the oath of office must be given BEFORE the individual enters office". Neither is the final sentence/point – that the Ministry sets more specific deadline – in accordance with Section 21 of the Norwegian Constitution. In other words, Section 21 of the Norwegian Constitution plainly states that the oath of office shall be given **BEFORE** appointment. Ergo the appointment becomes invalid if the individual has not given an oath of office before the appointment.

The only way to avoid the above problem is to do as Supreme Court Justice Matheson and rewrite or circumvent the Constitution; in fact making a constitutional amendment on his own, with the hope or the assurance that the Storting and the Government do not care about these offences.

A political court and political cronyism

The court and the Norwegian authorities have been "given a hot potato", but it is self-inflicted and lack of interest in resolving the matter cannot be excused. The previous Government did nothing. The new Storing and the new Government have a unique opportunity to show the people that they are worthy of the trust they were given in the last general election, by acting in accordance with the law.

For the Supreme Court's legitimacy, the situation is critical, almost irreparable. The Supreme Court has replaced its mandate as an independent court, granted by the people and based on an objective approach to the law, by acting as any other political interest group, exerting decisive political influence over their own work, in breach of the Norwegian Constitution, the Norwegian Courts of Justice Act, the Norwegian Dispute Act and the General Civil Penal Code of Norway. Instead of remedying the situation democratically and in accordance with Norwegian law, as all other citizens must do when they commit crimes, the Supreme Court and the courts in general are conducting a large-scale remedial operation, with all sorts of ingenious solutions, such as obtaining oaths of office after the fact, then claiming that everything is in order, to finally shelve the matter in the form of a ruling in favour of themselves.

UNLAWFUL CIRCUMVENTION OF THE LAW

To try to "sneak around" this problem, the NCA introduced something new in spring 2012, a so-called *renewed oath.* As mentioned, this is nothing more than a non-statutory remedial operation. Of course there is nothing called a "renewed oath". It is like renewing a marriage vow. For some married people, there are certainly many emotional reasons for doing so, without it having the slightest legal implication between the couple. But a judge? Why? What is the rationale? There is only one reason and that is that the oath was lacking to start, and that this is an attempt to remedy this fact by requiring a so-called "renewed oath". This is deceitful, because it is impossible to renew something that never existed. In other words, it is impossible to require a judge who has already taken office to give an oath. An oath shall be given voluntarily, and not by compulsion. This is the nature of an oath. The requirement for a renewed oath is based on compulsion, and an oath given under such circumstances, will of course never be valid.

It is worth repeating the following:

According to the Norwegian Constitution, the oath of office must be given ***before*** the person is appointed. The same must be said of a judicial oath; in the sense that it must be given (and have been received, registered and archived) before the judge takes his seat. The only thing that can remedy the situation where a sitting judge has not given a judicial oath, is to deprive the individual of his/her position and possibly – if people really want him/her – let the "King" via the Government reappoint that person, and to require a judicial oath ***before*** the judge takes his/her seat.

Although I use the term "require", it is nothing more than a reiteration of statutory requirements; if you want to act as a judge, you must first give an oath. Although the act of giving the oath is of course voluntary. If a person does not want to give this oath, he/she does not have to, but then the individual will never be able to be authorised as a judge, and will have to find something else to do. There is no other solution, at least not if we follow Norwegian law.

MORE ABOUT THE AFOREMENTIONED SUPREME COURT RULINGS?

The natural legal consequence is that the ruling dated 7 April 2010 "anonymous plaintiffs" be declared invalid for several reasons, including ***that the court was not properly constituted***, as it is called in legal language. That the court is properly constituted is an absolute requirement, meaning mandatory.

In the so-called "Flexiped" ruling, funnily enough, the fact is that Supreme Court Justice Matheson, who apparently has not given a valid judicial oath or oath of office, acted as the First Justice in a case, yes, and funnily enough, related to the exact same circumstances, namely the lack of judicial oath of Judge Øystein Hermansen. Supreme Court Justice Matheson, in other words, treated circumstances concerning himself. It cannot surprise anyone that Supreme Court Justice Matheson therefore thinks it is fine that Judge Hermansen worked without authorisation and in violation of Norwegian law, when Supreme Court Justice Matheson does exactly the same.

The other Supreme Court Justices in the Flexiped case were:

C. Endresen – Unstamped judicial oath/oath of office

H. Bull – Unstamped judicial oath/oath of office

K. Normann – Judicial oath stamped 16 days after entering office/unstamped oath of office

T.M. Øie – Unstamped judicial oath/stamped oath of office

Supreme Court Justice Skoghøy

Ironically, or rather tragically, First Justice of the Supreme Court Matheson makes reference in his ruling to legal theory penned by another Supreme Court Justice, Skoghøy, in support of the ruling in the "Flexiped" case, page 11, point 83, bottom.

The interesting thing about Supreme Court Justice J.E. Skoghøy is that he also has a problem with regard to his judicial oath and oath of office. Skoghøy entered office as a Supreme Court Justice on 15 August 1998. Like several of the judges mentioned above, he ostensibly waited until the fall of 2002 before he "managed to get around" to signing his judicial oath and he waited, like several of the judges mentioned above, another nine and a half years before he had his judicial oath stamped/registered, on exactly the same day as Schei, Matningsdal, Utgård and Stabel, 17 January 2012. He apparently gave his oath of office on 9 February 1998 and it remains unstamped and has not been countersigned. If we are to give credence to the reliability of the NCA's own data, Supreme Court Justice Skoghøy is thus working without authorisation, i.e. in violation of Norwegian law.

Question: Is one or both antedated?

The First Justice of the Supreme Court, Justice Matheson, and the other Supreme Court Justices are naturally *"absolutely legally incompetent"*, with a strong vested interest in the case, which reinforces the fact that the Norwegian legal system is astray. The result is as described in the introduction; Supreme Court Justice Matheson shows contempt for the Norwegian Constitution, the Norwegian Courts of Justice Act and associated and relevant laws because these laws have an immediate and very negative impact on Matheson's lack of authorisation as a public servant. Matheson does *"not accept"* this, and because, as a Supreme Court Justice, he represents Norway's highest court, he simply decides to set aside the Norwegian Constitution, the Norwegian Courts of Justice Act, etc., in accordance with his own and other judges' personal interests. Again, imagine if all citizens could do the same whenever it suited us.

Supreme Court Judge Matheson's amazing feat

So, how does Matheson manage to pull off this "amazing feat"? Well, he simply rewrites or make a constitutional amendment as follows:

- Section 60 of the Norwegian Courts of Justice Act: All judges except lay judges and judicial assessment members shall give a written affirmation that they will perform their duties conscientiously.

- The Supreme Court, in premise No. 68 to the Flexiped case from mid-June 2012:

"Giving a judicial oath pursuant to Section 60 is not specified as a condition of being appointed as a judge."

- In other words, in other words the Supreme Court and Supreme Court Justice Matheson have simply assumed the legislative role of the Storting and thus intervened in Section 49 of the Norwegian Constitution.

- A constitutional amendment, which normally, and according to Norwegian law, requires thorough study and review, including several rounds of parliamentary debate, both within the Government and by consultative bodies, as well as the adoption of a parliamentary decision by a two thirds majority, is in fact removed from the Constitution with "a stroke of the pen".

In this way, an "absolutely legally incompetent" Supreme Court Justice Matheson and the rest of the Supreme Court of Norway take the law into their own hands and act as the Storting and the Government, as if the Supreme Court suddenly, and as a result of a kind of martial law, has a monopoly on the legislative, executive and judicial powers. In a functioning democracy based on the rule of law, such an action would be unthinkable.

The only reason that the Supreme Court and Matheson can get away with such a fundamental breach of the constitutional indirect democracy is that the Storing and the Government let it happen, i.e. ***they look the other way.*** As mentioned, we then have a constitutional crisis, where trust in our elected representatives and our courts is by definition broken, in the sense that our elected representatives in the Storting and the Government have violated the conditions for representing the people. It is important to understand that this is about trust in a system, more precisely the constitutional democracy. It is not about whether every "Tom, Dick and Harry" detect these offences and what they think about it, even though that is important. Instead, it is about the "self-correction" that is implicit in a working people's democracy, based on the principle of a functional separation of powers, i.e. the division of responsibility between the legislative, executive and judicial powers. An abdication from the principle of the separation of powers is also an abdication from democracy and the rule of law. Call it the ultimate systemic crisis.

Question: What kind of legal situation, would we have if each citizen were allowed to act as judge in his own case? Well, every single one of us would be able to just decide for ourselves if we have done something wrong or not. What is the point of a court, then?

Answer: There is no point, or rather: the court has no point.

WHAT DOES THE EUROPEAN CONVENTION ON HUMAN RIGHTS SAY ABOUT THIS?

Article 6, No. 1 of the ECHR 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****" (my emphasis).*

Article 14 of the ICCPR reads:

"In the determination of any criminal charge against him, or 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****" (my emphasis).*

Question: In the aforementioned case, where the Supreme Court Justices had a strong vested interest in the outcome, and they themselves considered the case and passed a ruling in their favour, including by setting aside the Norwegian Constitution and the Norwegian Courts of Justice Act, has the court then met the above requirements of the ECHR?

We can find the answer in several judgements considered by the ECtHR, viz.:

"34. According to the Court's case law, the object of the term "established by law" in Article 6 of the Convention is to ensure that the judicial organization in a democratic society does not depend on the discretion of the executive, but that it is regulated by law emanating from Parliament (see Zand v. Austria)

35. The phrase "established by law" covers not only the legal basis for the very existence of a "tribunal" but also the composition of the bench in each case (see Posokhov v. Russia, no 63486/90, § 39, ECHR 2003-IV)

36. A tribunal established by law must satisfy a series of conditions such as the independence of its members and their length of term of office, impartiality, and the existence of procedural safeguards (see Coeme and Others v. Belgium)

37. It is not disputed in the present case that the term of office of Judge V.D. expired some time before he sat in the applicant's case. Moreover, the Government admitted that at the time there was a practice of allowing judges to exercise their functions for an undetermined period of time after expiry of their term in office, until the question of their tenure had been decided by the President, and that the matter was not regulated by any law emanating from Parliament. ***In such circumstances, the Court considers that there were no legal grounds for the participation of Judge V.D. at the hearing of the applicant's appeal on points of law. Moreover, this practice was a contradiction with the principle that the judicial organisation in a democratic society should not depend on the discretion of the executive.*** (My emphasis)

38. These circumstances, cumulatively, do not permit the Court to conclude that the Court of Appeal which heard the Applicants case on 16 April 2002 could be regarded as a "tribunal established by law".

39. There has accordingly been a violation of Article 6 § 1 of the Convention."

It cannot be put much more clearly than that

Section 60 of the Norwegian Courts of Justice Act sets as an indisputable requirement that a judge, before he takes his seat, shall give a judicial oath, the text of which is determined by law (e.g. in regulations pursuant to the Act). If we take into account how the European Court of Human Rights (ECtHR) interprets this, then a Norwegian court is not composed "according to law" when a judge participating in the court has not given a judicial oath.

According to the judicial precedents set by the European Court of Human Rights (ECtHR), the concept of *"established by law"* in Article 6 entails ensuring ***"that the judicial organisation in a democratic society does not depend on the discretion of the executive***

power, but that it is regulated by the legislative power." This is where Supreme Court Justice Matheson and the Supreme Court of Norway have broken the law. The European Association for the Defence of Human Rights (AEDH) and the ECtHR require that the court be constituted as prescribed by law, and that requirements shall be stipulated by law. The judicial precedents set by the ECtHR entail that a person cannot act as a judge if he does not meet the legislator's requirements for the judicial position he is supposed to have. This is a violation of Article 6, Section 1 of the ECHR and will therefore be **absolute grounds for repeal** of the rulings passed by a judge who has not given a timely and registered judicial oath and oath of office.

In this respect, the ECHR is in line with the Norwegian Constitution, the Norwegian Courts of Justice Act, the Norwegian Office Oath Act and the Norwegian Archive Act, which also set an absolute requirement that the judicial oath and oath of office be given prior to entering office. The difference between the ECHR/ECtHR and Norway is that the Supreme Court of Norway simply ignores these laws in its own self-interest, and with the conviction that neither the Storting nor the Government will do anything when the Supreme Court takes the law into its own hands.

BJØRVIK (TROMSØ) CASE

Law student Truls Bjørvik filed a lawsuit against the Norwegian State because of the requirement that he was obliged give a graduate oath to receive his diploma from the Faculty of Law, i.e. similar to a "judicial oath" or "judge's oath of office". The university and appellate authority's decision regarding the graduate oath was upheld throughout the entire court system, namely that the graduate oath contributes to safeguarding the academic quality of the law school. The ruling stated that *"the oath corresponds well with established and irrefutable ethical minimum standards for exercising the legal profession. If you cannot stand for the requirements set by the oath, you should not really be a lawyer"*. Bjørvik lost in all instances.

The above is unduly discriminatory and in violation of Article 6, Section 1 of the ECHR. In plain English, there is one law for Bjørvik and one law for judges. Bjørvik must follow the law; Supreme Court Justices can break it. Even worse is the fact that Justice Endresen in the Bjørvik case voted for the graduate oath as an absolute requirement for practising law, while he voted against the same question eleven months later when it was considered by the Supreme Court, where he was one of the five judges in the case. If this is not bad enough, it turns out that Supreme Court Justice Endresen has given neither a valid judicial oath nor an oath of office, see below.

Law student Bjørvik must follow the law, according to Supreme Court Justice Endresen. For himself, Endresen decides that the same law is only a "rule of general conduct" of which he is aware, but does not have to follow.

INDEPENDENCE OF THE COURT

The above factors essentially concern the court's independence, including as set out in the ECHR and the UN Charter, and well described by former President of the European Court of Justice Wildhaber in his judicial report on impartiality. Wildhaber concludes that it is simply not sufficient for a court or a judge to be competent (objective/impartial), because this also must be perceived to be true (by an outside third party).

Question: Can First Justice of the Supreme Court Matheson and the rest of the other Supreme Court judges "honestly" be perceived as objective and impartial by an outside third party?

Even Matheson cannot believe that. If he does, his judicial oath, and the oath of office he still has not legally given, should be revoked.

Here are some online resources about this issue:

http://www.resf.no/DF/dommerforsikring.html

http://www.resf.no/DF/do-beskr.html

Legal offences

We are facing a number of circumstances, which individually and collectively, with great probability are violations of and contempt for the Norwegian Constitution, the Norwegian Courts of Justice Act, the Norwegian Dispute Act, the Norwegian Civil Service Act, etc. These also in all likelihood represent criminal offences and should therefore be investigated by an impartial police, prosecution and court authority, which, unfortunately, and frighteningly are nowhere to be found in Norway.

Why is nothing being done?

The simple answer is that the Supreme Court believes it is above the law and that the state administration finds the situation so embarrassing that it would rather *"stick its head in the sand"* and hope the problem goes away by itself.

The correct answer is that democracy and a functioning objective state based on the rule of law has gradually been replaced by an administrative form of government, consisting of an elite of senior civil servants, bureaucrats and politicians, with the media in tow, where many have a common interest in protecting the status quo, i.e. the extensive and arbitrary state power exercised against its citizens, contrary to democratic processes and human rights, i.e. to protect their own positions of power, i.e. to protect themselves and the network of which they are all are a part. It is not without reason we are getting slightly exasperated smiles from Europe and the ECHR/ECtHR.

That this lack of guaranteed due process is the result of the Norwegian Labour Party's power and influence throughout much of the post-war era and into the 21st century is probably an accurate description. I do not think anyone in our society has a sufficient overview of how widespread and harmful this has been and for democracy and protection under the law, aside from, perhaps, past and current Labour Party leaders, such as Jens Stoltenberg.

Question: Can democracy survive without a functioning legal system? History's answer to that is no. Can the court system be rectified without the courts, the NCA and the country's Supreme Court being held responsible for their actions? Again, the answer is no. If the Prime Minister, Justice Minister, the Storting and the Government do not do something about this, what system of government do we really have? History gives us the answer here too: despotism.

CONSEQUENCE

It is obvious what needs to be done in relation to a state under the rule of law, where the country's Supreme Court and its judges are no longer able to carry out their functions democratically and legally, but act as monopolists in relation to the legislative, executive and judicial powers. The Prime Minister and Minister of Justice have a duty to hold the NCA and the Supreme Court accountable, and since there is no higher court than the Supreme Court, this must be done by an impartial body, first by investigating the circumstances, and secondly by that our top political leadership rectify the matter. The process must be open in order to avoid what thus far appears to be a remedial operation and a cover-up, and finally dealt with through democratic rules and the principles of the rule of law.

NORWAY AS A STATE BASED ON THE RULE OF LAW

"Experience hath shewn, that even under the best forms of government those entrusted with power have, in time, and by slow operations, perverted it into tyranny."

- Thomas Jefferson

In Norway, we like to think that we are so much better than everyone else, that "everything is in order" and that the abuse of power and corruption is something we find everywhere else but here. When the country's Supreme Court does not respect the law they are set to administer, but instead engages in document manipulation and worse, and when judges preside over a case where *"they are on trial"*, what confidence can the people then have in the law and the courts, ultimately in the Parliament and the Government? Most importantly, what type of society have we then introduced?

March 2014/heo