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"OPPGJØRETS TIME"

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THE LEGAL BASIS FOR THE NATIONAL TREASON TRIALS
IN NORWAY AFTER
THE SECOND WORLD WAR

by
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The Court of Impeachment where the judges are members of the Supreme Court and the "Lagting" (a smaller division of the Norwegian Parliament) have on a few occasions since 1814 considered cases where the underlying motives were political. Such cases have seldom come up in the ordinary courts. The best known example is the case against Marcus Thrane in the 1850s where he was tried for political agitation. In retrospect this case is considered to be one of the most shameful in Norwegian legal history.

Although politicians and to some extent lawyers have averred that the court cases grouped in under the so-called national treason trials after the end of the war in 1945 were not of a political nature, this opinion is today no longer current. It is quite clear that political thinking and ruling was the basis for the judgements and convictions.

Several politicians and lawyers got together in 1944-45 as the war seemed to draw to its close with an allied victory, to prepare an accounting with those who were on "the other side", first and foremost Vidkun Quisling, his government and members of his party, the Nasjonal Samling. It was also an object to punish those who had co-operated with the German occupation forces, the so-called profiteers. Which politicians and lawyers took part in the preparation of what came to be known as the national treason trials is still a secret, only a few names are known. The preparatory work for the legal framework which was established is not publicly available. The judges under the trials, with the possible exception of the Supreme Court Judges, had to manage without this vital source of interpretation of the legislation enacted by the Nygaardsvold government in London, seemingly in close co-operation with the leaders of the resistance movement at home in Norway. The accused, their judges and prosecutors, had only lay magistrate Erik Solem's book "The Treason Ordinances" and the (obligatory) guidelines from Public Prosecutor Sven Arntzen for reference. Since, according to information that has been leaked, both the lay magistrate and the Public Prosecutor were prominent participants in the preparation of the ordinances which were given, it follows that the benefit of objective information and guidelines did not fall to the accused.

An apparent insurmountable difficulty for those who were to prepare the trials was that in Norway we had no suitable Criminal law which could be used, at least when the object seemed to be to make it a criminal offence and try as many people as possible, especially those who had been members of the Nasjonal Samling. Completely new independent punitive legislation could not be enacted as pursuant to the Constitution's Article 97 "No Law shall have retroactive effect". New legislation had to be built on the existing criminal legislation. The provisions of the Criminal law of 1902 to which the conceivers found it natural to link to the new planned legislature were Article 86 which made it punishable to aid an enemy and Article 98 which concerned attacks on the kingdom's constitution. The first statutory provision makes it punishable for anyone who, in a war in which Norway participates, or with such war imminent, assists the enemy by word or deed or impairs the fighting capacity of Norway or any nation associated with Norway. The other statutory provision Article 98 makes it punishable for anyone who attempts to or helps to change the nation's constitution by illegal means.

The issue of evidence was indubitably extremely troublesome. Article 86 deals only with aid to the enemy in connection with acts of war, as well as spying and similar acts. Article 98 applies to illegal attempts to change the nation's constitution. It appeared impossible to convict very many Nasjonal Samling members according to the prevailing statutory provisions. It would have been especially difficult because one precondition of the Criminal law's Article 40 relevant to the above-mentioned provisions is that the accused has acted with intent.

The lawyers preparing the post-war proceedings undoubtedly faced a very difficult task. It is hardly an exaggeration to say that the urge to inflict punishment conflicted with the time-honoured concept of justice as expressed in the Constitution and penal legislature. It was probably in order to conceal the intent of the new legislation that lay magistrate Solem, the most central man as legislator and judge, wrote in his above-mentioned book (p 45) that "In its penal provisions the ordinance has attempted to create a milder and more flexible alternative to the stricter provisions in the Criminal law's chapters 8 and 9 and the articles of war in the military Penal Code." Articles 86 and 98 of the Criminal law are included in said chapters. When reading the lay magistrate's note one should bear in mind the fact that legal theory and practice had formerly accepted that penal provisions could have retroactive effect if they provided for milder sentencing than earlier laws.

The new legislation was implemented in the form of so-called Provisional Ordinances. Altogether 5 such ordinances were given, which were to form the basis for the coming proceedings. It would be too much to go into further detail regarding the content of all of these ordinances. I shall limit myself to summarily mention: The Ordinance of 3 October 1941 which introduced the death penalty for offences for which one could be sentenced to life imprisonment pursuant to the Criminal law's chapters 8 and 9. The Provisional Ordinance of 22 January 1942 introduced a totally new sentence category, namely loss of public trust. This sentence could be used in addition to another sentence. The Provisional Ordinance of 26 February 1943 prescribed discharge from public service if, among other things, the person had been a member of the Nasjonal Samling. The Provisional Ordinance of 3 September 1943 removed the limit for fines. The standard exemption requirement for the debtor in connection with the enforced collection of fines, that he and his family should not be left totally without means, was removed. The penalty of a fine could be imposed in addition to the main sentence of death, imprisonment and dismissal from public service.

The unifying and probably most important Provisional Ordinance for most of the accused was provided by the government in London on 15 December 1944, the so-called Treason Ordinance. It also contained much of what was established in earlier ordinances. Pursuant to its section 1 it applies when it considered warrantable on the basis of the defendant's circumstances and the nature of the offence and general considerations dictate that the act should be tried according to stricter provisions in the civilian Criminal law's chapters 8 or 9 (which contain articles 86 and 98) or the military Penal Code's Articles of war. The ordinance's Article 3 contains provisions regarding the sentencing framework: Up to 3 years imprisonment or forced labour, fines, loss of general trust or limited loss of rights. It was also possible to forbid the person to visit certain places. Among the other provisions was one that inadvertent infractions were punishable by not more than 6 months imprisonment or forced labour!

As mentioned, lay magistrate Solem asserted that the Treason Ordinance contained mitigating rather than aggravating features! It is difficult to be of that opinion after the introduction of fines and forfeiture as additional penalties (the convicted person and his family could be deprived of all means of subsistence), the dishonour provision of deprivation of general trust or loss of rights and culpability was sufficient instead of the subjective grounds for conviction. Finally the Ordinance's Article 25 introduced joint and several responsibility for the alleged damage the Nasjonal Samling had caused by governing the country unlawfully. (The joint and several liability clause was later dropped). We also should take into consideration the fact that the Ordinance should be applied to passive members of the Nasjonal Samling only. It was assumed that the provisions of the Criminal law would apply for those who had been partially active, i.e. those with honorary functions etc.

It is correct to assert that it would have been impossible to present tenable evidence for culpable treason against most, if not all of the members of the Nasjonal Samling even if they had been significantly active. It can obviously not be documented, partly because all the preparatory work for the Provisional Ordinances has not been publicised but in all likelihood the purpose of the Treason Ordinance was to enable the authorities to have some hope of getting the courts to judge the majority of those who were to be indicted. That was probably also the reason it was considered necessary to introduce the concept of "inculpable treason"!

I shall now describe the concrete circumstances which were made punishable by the Treason Ordinance. The most important was membership in the Nasjonal Samling or associated organisations such as the "Hird" (Quisling's elite guard). If one could establish such membership, which was extremely easy to do because the party did not destroy the membership file, the accused was to be sentenced according to the Ordinance. By being listed as a member the accused was liable to punishment for treason, which made it easy for the judges to add on to the punishment for acts over and above membership and accord these acts the stricter subjective sentencing conditions laid down in accordance with Article 86 of the Criminal law. The subjective conditions for being liable for conviction pursuant to the Criminal law's Article 86 were present. In actual fact the norm was that neither the prosecutor nor the judge asked the accused if he had understood or been aware of the fact that he had aided the enemy. Despite this, in the judgement as entered, the court found that it had been proven that the accused was aware that he/she by the act of becoming a member of the Nasjonal Samling, had aided the enemy.

Which acts did the accused have to have perpetrated in order for the basis for a criminal sentence to exist? According to the Treason Ordinance's Article 2 it was made a punishable offence to have been a member of the Nasjonal Samling party or any organisation linked to the party after 8 April 1940 or to have applied for or agreed to such membership. Commercial activity for the enemy was also punishable. Other punishable offences are mentioned, but were,in practice, of little interest. As mentioned earlier even inculpable violations were punishable.

Lay magistrate Solem wrote in his commentary to Article 2 (p.53):
"In order to establish a punishable offence pursuant to the ordinance it is sufficient to prove that the accused has been a member or has applied for or agreed to membership. It is totally unnecessary to investigate his particular circumstances in relation to each individual provision

in the Criminal law which applies to all Nasjonal Samling members. It is sufficient to prove membership to invoke the ordinance.

Consequently membership in the Nasjonal Samling was made a criminal offence. Sentences were passed without inquiry having been made as to whether the accused consciously aided the enemy in accordance with the provisions required for a conviction under the terms of Criminal law.

The entire process and the possibility of obtaining convictions for the "lesser sinners" (in reality nearly all Nasjonal Samling members) would depend on whether the public prosecuting authorities could gain acceptance for the Treason Ordinance's postulate that the Nasjonal Samling and its sub-organisations constituted an organisation of traitors.

The courts, with the Supreme Court as the court of last resort, would have to rule on this issue. This occurred in connection the Supreme Court's judgement in re Reidar Haaland 9 August 1945. The decision was reported in "Norsk Rettstidende" ("The Norwegian Legal Times") for 1946 p.13. A majority of 7 judges ruled that enrolment in the Nasjonal Samling during the occupation came within the scope of the treason provisions of the Criminal law's Article 86. A minority of 4 disagreed. The minority judges argued that co-operation was not an offence under the said provision. Further, reference was made to the fact that pursuant to the article a person had to have borne arms against Norway or have personally in some other way aided the enemy through word or deed. This meant that one through word or deed, in other words by a positive activity had procured a provable benefit for the enemy military power or enemy nation. On this basis the 4 judges found that passive membership was not punishable. This should be interpreted to mean that the London government's Treason Ordinance which made membership of the Nasjonal Samling punishable per se was deemed invalid by almost half of the Supreme Court judges. In order to be convicted, in these judges' opinion, the individual had to have committed an offence by performing a positive action in accordance with the conditions laid down pursuant to Article 86 of the Criminal law. The majority of the court based their arguments on the so-called Elverum mandate supplemented by constitutional necessity. This can be taken to mean that the government in exile had the statutory authority to pass an entirely new Criminal provision even if this went further in extending punishable offences than under the then existing law. I shall not touch on the issue as to whether the Elverum mandate is open to the interpretation of the majority in the Supreme Court, I merely mention that this viewpoint was highly controversial. The majority said nothing about whether membership in the Nasjonal Samling came within the scope of Article 86. Reference was simply made to the High Court's reasoning for its decision, to which I shall revert.

I find it natural in connection with above-mentioned Supreme Court ruling and the majority's decision to quote from "The Draft for a General Civilian Criminal law" of 1896 which was the preliminary to our Criminal law of 22 May 1902. In connection with the proposal for Article 98 concerning attempts to change the constitution, page 145, it says: "It should be noted with regard to the punishment that only light detention is applicable. Unquestionably there may be cases where the act may have sprung from such inexcusable motives that imprisonment would be appropriate, however it is readily apparent that in politically disturbed times a court whose members belonged to the opposition view might easily find the acts of

revolutionaries to be unconditionally worthy of condemnation, even where their motives were honourable."

Wise words, which more than just the minority judges in this case should have considered. These words naturally are equally relevant to the application of Article 86 as to the application of Article 98.

Let us take a closer look at some of the terms and reasoning upon which the majority in the Haaland case based their judgement.

Provisional ordinances have their authority in law in the Constitution's paragraph 17 which stipulates that the King (i.e. the government) can make and repeal ordinances concerning trade, customs, business and the police, however, they may not be contrary to the Constitution and parliamentary laws. The ordinances are effective provisionally until the next session of parliament.

Section 17 says nothing about being able to change or add to the Criminal law by means of a provisional ordinance. The majority judgement in the Haaland case quoted and agreed with a statement from Supreme Court Judge Schjelderup in an earlier decision regarding the composition of the court. Among other things it states here that: "The steps which it has been necessary for the King to be able to take are certainly to a large extent outside the framework of the Constitution's paragraph 17. On the other hand the situation in 1940 which made it imperative for extraordinary constitutional reasons is said to have a close parallel in the foundation for the jurisdiction given statutory authority through Article 17." Judge Schjelderup also mentions the so-called Elverum mandate which expanded the government's authority in law for issuing the type of provisional ordinances discussed hereunder. He notes among other things: "But the totally correct and decisive opinion expressed (during the Parliament's meeting at Elverum): that it was a completely extraordinary situation unforeseen by the founders of the Constitution - Norway's occupation by enemies in wartime - that by implication provided all the necessary authority."

Is this not reminiscent of the declarations generally made by dictatorial regimes when seizing power under revolutionary conditions?

In the case against Carl Stephanson ("Rettstidende" 1945 p. 26 onwards) the Supreme Court took up the issue of whether the Treason Ordinance of 15 December 1944 should be declared invalid because it had not been publicised. The majority of the court rejected the defendant's argument to that effect, among other things with reference to the fact the ordinance prescribed milder sentencing than the provisions of the Criminal law. Judge Einar Hanssen disagreed with this and stated the reasons for his standpoint in a lengthy dissenting argument. Two other judges concurred.

The issue of the Criminal law's Article 98 which makes it a punishable offence for a person to bring about or contribute to changing the nation's constitution by illegal means came up for consideration in the Supreme Court judgement of 20 September 1945 ("Rettstidende 1945 p. 71 onwards) where the first judgement simply noted that "It is quite clear that the Nasjonal Samling's leaders sought by illegal means to change the nation's constitution during the war. However, the Criminal law's Article 98 also makes it punishable to co-operate and I therefor

assume that it also applies to regular members of the Nasjonal Samling and the Germanic SS Norway when they intentionally through their membership participated in the work of setting aside the constitution by illegal means." In his dissenting judgement in the cases against ministers Kjeld Irgens and Axel Stang ("Rettstidende for 1946 p. 75) Supreme Court Judge Einar Hanssen touched on the application of the Criminal law's Article 98. After giving an account of the acts that took place with regard to changing the Constitution during the occupation, the judge concluded that neither of the two could be convicted of having violating the provisions of the section. As far as one can tell the other judges in the case contented themselves with referring to the above-mentioned decision of 20 September 1945.

One issue which was of totally decisive significance for whether the Criminal law's Article 86 could be applied was brought up by the attorney for the defence in the case against minister Ragnar Schancke. According to its wording the statutory provision could only be applied for acts "in a war in which Norway participates." The argument of the attorney for the defence that Norway was no longer at war after the capitulation treaty which was entered into in Trondheim on 10 June 1940 between authorised personnel from the Norwegian and the German high command was not accepted. It would be too much to discuss this treaty, the consequences of which have been disputed ever since 1945. A prominent historian based his standpoint on an obvious error in the translation of the treaty's German text which in cases of doubt was to take precedence over the Norwegian text. On this basis the courts agreed with his assertion that the treaty which was entered into only implied local capitulation by the troops fighting in northern Norway and not a capitulation which took Norway out of the war. One factor here which I have not seen maintained to a great extent is that the Parliament's presidency obviously were of the opinion that the war had ended when it started negotiations with the German authorities in the summer of 1940 to establish a Norwegian administrative unit, i.e. a Council of the Realm. The presidency was willing to go in for removing both the King and the Nygaardsvold government and received approval for this from a majority of the members of parliament after a vote within the different political parties. If the majority of the members of parliament thought that the war continued after the signing of capitulation treaty of 10 June 1940 they obviously could not have gone in for the removal of the upper war leadership. The purpose of the Council of the Realm was to act in lieu of the king and the government.

On the basis of these decisions to which I have referred and which I have given a partial account of, it is obvious that there was major dissent within the Norwegian Supreme Court about the important, indeed decisive issue as to whether there was a safe, legal foundation for the great settlement. Since in this instance it concerns what was most definitely the most significant issue which has ever been tried and decided by Norwegian courts of law, namely whether a large number of Norwegian citizens were traitors, it would have been natural and reasonable to give the large group of accused the benefit of the doubt. The courts would have been able to reach a decision on the basis of the Criminal law's Article 57 which states: "In the event that a person was deluded in regard to the legal nature of an act when he committed it, if the court does not on that basis find reason to acquit him he should be sentenced to the minimum sentence provided for the act and to a milder form of punishment."

The situation as to whether the issue of the Treason Ordinance was valid Norwegian law was presented to the Supreme Court in a case where the defendant, in addition to membership in the Nasjonal Samling and the "Hird", was also accused of torturing prisoners (while he was

in the German army), and was convicted of this. The latter could have influenced the sentence for membership. If a pure membership case had been presented to the highest court in the realm one would have had a clear judgement unaffected by the defendant's other actions. Well, this is pure speculation, in which several others have been involved.

If the Supreme Court did not use the provisions of Article 57 or acquitted a defendant in accordance with the Treason Ordinance because it could not be considered a valid law, based on the strong dissent the government and the Public Prosecutor should have considered dropping cases where membership was the only basis for the indictment. As far as I know that issue was never deliberated.

Supreme Court Judge Schjelderup may have used other language than the reference to his pronouncement in the case of 9 August 1945 against Reidar Haaland included earlier, but what he meant to express was his belief that a form of constitutional emergency could be applied and make the Treason Ordinance legally valid. The "legal need" arose when the war ended and normal conditions were restored in the country. The conceivers of the laws must have been in doubt as to whether the Provisional Ordinance would be considered valid as otherwise it would have been less urgent. They had the Criminal law's Article 86 and could have enacted a new law as a supplement to this provision if, as lay magistrate Solem asserted, the purpose of the provision was to provide milder punishment than that which was prescribed in the Criminal law's provisions. The Ordinance could not have a deterrent effect on those considering joining the Nasjonal Samling as long as it was not publicised either in England or Norway, thus no one was frightened.

As time went by there were several strong attacks upon the manner in which the trials were organised, in regard to both the legal foundation and scope. I shall limit myself to giving an account of the comments of Professor Jon Skeie, our unequivocally most highly regarded criminal lawyer for many years. Shortly after the German capitulation he published a pamphlet entitled "Treason" (dated 29 July 1945). In it the Professor directed a searing attack on the entire trial proceedings. He maintained (p. 19) that all the Provisional Ordinances made by the government in London regarding treason were legally invalid and he presented detailed arguments to this effect. He maintained that the so-called Elverum mandate did not provide any authority in law for the ordinances. He rejected the contention that statutory authority for the ordinances could be sought in constitutional emergency. The Professor believed that the legal proceedings had to be based on the pre-war criminal provisions. With reference to the subjective conditions for criminality he wrote, among other things, that if a defendant asserted that he did not see that the Nasjonal Samling supported Germans but that, to the contrary, it tried its best to save us from the Germans, and this was believed by the judges, he could not be convicted. Harsh words from one of the most respected lawyers Norway ever produced!

Professor Skeie was far from being the only critic of the legal proceedings. Several prominent lawyers expressed severe criticism. The Judges Association had some weighty objections. Nothing was effective on those who were in a position to reverse or reduce the continuation of the trials. It should be mentioned, however, that several judges refused to preside over the trials so substitute judges had to be appointed for treason cases.

In time the courts became so overburdened that the whole process was in danger of coming to a standstill. The solution was that several of the defendants were given the opportunity to have their cases settled through the imposition of a fine. Many accepted to avoid further harassment for their own and their family's sakes. In settlement of their cases they signed a form and paid an amount, which many people managed to haggle down to a few hundred Norwegian kroner. It must have been virtually the only place in the world where you could settle an accusation of treason in this manner! This arrangement cast a ludicrous tinge over the tragic court proceedings.

I return to the Haaland case (Rettstidende 1945 p. 13 onwards) where the Treason Ordinance was judged to be valid Norwegian criminal law. The deciding factor here was whether membership in the Nasjonal Samling fell under the provisions of the description of the offence constituted in Article 86 of the Criminal law concerning aid to the enemy in a war in which Norway participates. As mentioned the majority of the court referred to the terms of the High Court's judgement on whether the issue of membership was under Article 86 of the Criminal law and concurred. The High Court, led by lay magistrate Erik Solem made this relevant statement (Rettstidende p. 21-22): "In the court's opinion registration and membership of the Nasjonal Samling after 8 April 1940 must be characterised as aid to the enemy in word and deed." In this connection it sufficient to mention the notorious facts which follow: In his radio speech of 9 April 1940 Quisling declared himself prime minister regardless of the fact that the King, the Government and Parliament were all gathered in Elverum. Quisling also countermanded the mobilisation orders the Government had issued to gather the nation's fighting forces to do battle against the enemy. Quisling acted in the capacity of leader of the Nasjonal Samling which, according to him, was the only party that had the right to seize power. It was as head of the Nasjonal Samling he obstructed the legal authorities' fight against the enemy. In his speech of 25 September 1940 in which he appointed the provisional cabinet ministers, Terboven announced that he had dissolved all other political parties and that the Nasjonal Samling was the only political party with which the enemy could co-operate.

In the court's opinion this clearly demonstrates that the Nasjonal Samling went from being a regular political party to be an organisation that supported the enemy and co-operated with them so that they could win the war. This "ipso facto" had to be obvious to each and all. Whoever joined the Nasjonal Samling had to understand that the Nasjonal Samling assisted the German war effort and that each individual membership here was of significance. "

This quote from the High Court judgement is the only place where it is stated that membership of the Nasjonal Samling was aid to the enemy in word and deed. The acts and statements referred to therein formed the basis for the charges against Vidkun Quisling for which he was convicted. But what did this have to do with old and new members of the party? They had not been consulted. The members had absolutely no influence over what Quisling did in April of 1940. Further, the Nasjonal Samling members obviously had neither any responsibility for nor influence on Terboven's speech. No attempt was made in the judgement to justify collective criminal responsibility by the party's members. To institutionalise that type of responsibility would clearly be in fundamental conflict with the Norwegian legal principle that the individual is responsible for his own acts and not those of others. The contention regarding the members' responsibility is so absurd that under normal circumstances it would never have been taken seriously in any court of law.

The same applies to Terboven's speech: It is inconceivable that any member of the Nasjonal Samling, indeed, any Norwegian citizen had even the faintest influence. In the interests of truth the High Court should have included the end of Terboven's speech where he stated: "For a future Norwegian solution to the present situation, i.e. for a solution which is aimed in the widest possible way at winning back freedom and independence for the Norwegian people, only one path is available, that leads to the Nasjonal Samling. The innermost concern of the Norwegian people now is to make up its mind!

The main issue upon which the High Court under Erik Solem's leadership never touched is: What aid in word or deed did the Germans receive through the Norwegian individuals who remained in or joined the Nasjonal Samling party? In order to have the authority to convict under Article 86 of the Criminal law it was obviously necessary to answer this question.

My natural conclusion is that if membership in the Nasjonal Samling had not been made objectively punishable through the Treason Ordinance and the courts had had to apply Article 86 of the Criminal law the issue of proof of violation of this section would have been extremely difficult, in most cases impossible. Posterity will, I presume, concur with the four dissenting judges in the Haaland case.

Previously I have only discussed the question as to whether membership of the Nasjonal Samling was objectively punishable. Of course individual acts of a criminal nature are an entirely different matter to the extent that such actions are punishable according to Criminal or other law. I have in mind, for instance, murder and torture which were also prosecuted during the occupation. Many so-called "liquidations" were never solved. It has been maintained that the Resistance leaders ordered or sanctioned these killings. Neither those leaders nor others appear to have been interested in closer investigation of the murders. It could be interesting to officially clarify what kind of prosecuting authority and jurisdiction the Risistance was given, and the issuing authority. Delegation of jurisdiction is an otherwise unknown point of Norwegian law.

The leaders of the Nasjonal Samling headed by Quisling and the party members had two main objectives during the occupation:

The foremost was re-establishing Norway's' freedom and independence as soon as possible, preferably before the main war was over. Time and again the highest German authorities were approached in an effort to achieve this. Hitler gave priority to the war and postponed the decision. He did, however, give definite assurances that the Norwegian wish would be granted after the war ended.

The other main goal was to administer the country as well as possible while the occupation lasted. It was a matter of securing sufficient provisions for the population to the extent that this was possible considering the country's very low degree of self-sufficiency. Without German aid in the form of items like grains things would not have gone as well as they actually did. It was also important to curtail the occupation authorities' intervention in administration and so many other areas. It is an indisputable fact that Reich Commissioner Terboven and his people held the highest civilian authority in Norway. They succeeded along the way in having more and more of this authority in several areas transferred to the Norwegian government for the good of Norwegians. In order to achieve this it was important

to prove that the government and local administrations were able to do the job. This again depended on gaining the confidence of the population. No matter what has been asserted later, in many parts of the nation, especially out in the countryside, there was good co-operation between the administration and the general population. There is no doubt that this was one reason why Norway's population survived the occupation years far better than was the case in many other countries in the same position. Many disputes arose between the Norwegian and the German administration. All in all there was a lot more conflict than co-operation. Sometimes it got so heated that German authorities demanded the removal of Norwegian senior government officials, civil servants and others in the administration. By the same token Terboven demanded the removal of several ministers/cabinet ministers and Quisling was obliged to acquiesce.

In my opinion it was in order to help achieve these two afore-mentioned main goals that men, women and youths joined the Nasjonal Samling. They believed that in this way they were promoting the interests of the country. I am convinced that the idea that by means of their membership they aided the occupation power and promoted its interests was alien to the majority of the party members. The reason why so few withdrew their membership when the tide of the battle appeared to turn against the Germans was probably fear of Soviet occupation and a de facto capture of the country. Everyone feared that an occupation by the Soviets would be permanent.

During the occupation the entire Norwegian population was nationalistic. There is surely no basis for asserting that there was less patriotism on one side than on the other. There were Norwegians on both sides of the front and many gave their lives. It should at least be time to concede that they were all fighting for what they believed were the interests of their fatherland.

It was therefore not surprising that those indicted for treason, whether pursuant to the Criminal law's Article 86 or the Treason Ordinance, were totally dumbfounded by the accusations expressed in the prosecution's case or eventual sentence. They could not comprehend that they, to use the criminal provision's terminology: had aided the enemy in word or deed or impaired the fighting capacity of Norway or any country associated with Norway. They believed that they had been members of a political party that, to the contrary, had resisted the enemy's efforts to annex Norway or give it dependency status. They also believed that the party had worked to ease the problems of the population during the occupation and to achieve independence and national freedom during or at latest by the end of the war. They had no intention of aiding the occupation forces but quite the opposite, to work for Norwegian interests. The judges' presumptions and sentencing were totally incomprehensible to the convicted.

Actually it is therefor rational that the judges in the Haaland case, which was to decide whether the Nasjonal Samling, as a party had committed collective treason, had to resort to Quislings actions of 9 April 1940 and the time immediately after and Reich Commissioner Terboven's speech to justify the charge of treason for acts and speeches outwith the influence of regular members of the Nasjonal Samling. There were quite simply no actual acts of a treasonable nature for which the members could be held liable.

I remind you that according to the provisions of Criminal law to be found guilty the accused must have acted with intent. Without the Treason Ordinance, which simply required evidence of membership in the Nasjonal Samling or organisations within the party, the courts would have had an extremely difficult task providing that they followed the underlying principle of Norwegian law that subjective guilt had to be proven.

Despite the severe pressure which prevailed both inside and outside the courtrooms very few of the accused, when questioned by the judge, declared themselves guilty of the charge of treason. Those who deviated from the norm and declared themselves guilty probably did so in expectation of a mitigated sentence. The general public demanded that unless the accused confessed and repented they should be excluded from employment opportunities and that they and their families should continue to be harassed.

A study of sentences handed down during the extensive proceedings shows that the judges did not even try to understand what the Nasjonal Samling party and its members were trying to achieve. This view is supported by a study of lay magistrate Solem's comments on the legislation and other books and articles which were published during the trials. There is hardly a word about the main objectives the party worked towards and of which I have given an account, namely to achieve freedom and independence for Norway and lessen the consequences of the occupation. Assistance given to countrymen imprisoned or sentenced to death had no mitigating effect on sentencing. Nothing indicated that the judges, prosecutors or hardly even the defendants' representatives showed willingness to acquaint themselves with the intentions and objectives of the party and its members.

The basis for the judgements was obviously what the High Court declared in its judgement of Reidar Haaland, and with which the majority of Supreme Court concurred: "Whoever joined the Nasjonal Samling had to understand that the Nasjonal Samling helped the Germans wage war and that each individual's membership here was of significance."

That the explanations of the accused suggested the opposite, namely that they had been fighting against the Germans' injustices and that the objective was to get the German troops and the German administration out of the country, at least by the end of war was lost on the judges. The only the Resistance movement's and the London government's version of the Nasjonal Samling and the party's deeds and objectives formed the basis for the judgements. They were not looking for truth and reality, the actual basis for the judgements was therefor totally incorrect. It is tempting to quote Ibsen; "When the point of departure is most insane the result is often most original. " More of a search for truth and justice could have prevented a great deal of undeserved suffering and also the feeling of injustice and bitterness which continue to exist.