The Deliberation Process in the Norwegian Supreme Court

Justice Magnus Matningsdal

To understand how we work in the Norwegian deliberation process it’s important to start with how our court system is organized. In Norway we don’t have administrative courts. Administrative as well as other cases are decided by our ordinary courts – 63 district courts and after appeal by one of our six court of appeal.

We have no judge career system and our judges have a very different background. Many of them have been advocates, others come from the prosecuting authority and the third important group come from different administrative agencies. A small minority are academics. I belong to this minority.

In our court we don’t practise specialization at all.

The number of justices in our Supreme Court is 20, and in addition we have 25 judicial assistants. They work for the Interlocutory Appeals Committee and are not assigned to a single justice.

The last years approximately 900 judgments are appealed to our court. All appeals are prepared by one of the judicial assistants before they are decided by the Interlocutory Appeals Committee that has two important functions. Most of the time is spent to decide appeals against different procedural questions in the lower courts. For the purpose of this seminar I will concentrate on our work with appeals against judgments. In civil as well as criminal
cases we have a strict filtering system. Consent to a hearing in Supreme Court can only be given when the appeal is concerned with issues whose significance extends beyond the current case, or it is for other reasons especially important to have the case tried in the Supreme Court. Such consent has the last years been given in 11 to 13 per cent of the cases.

Each year we try around 120 cases. Around 70 of these cases are civil cases. The number of administrative cases differs from year to year. On the average 1/3 of the civil cases are administrative cases.

That brings me over to the composition of the court in each case: We use a rotation system and operate with tableaus over each five weeks. Five of the justices are placed in the Interlocutory Appeals Committee. The other 15 justices work in court with appeals over judgments. We work in two parallel sections with five justices in each section. In practice this means that five justices are free from court one week during the tableau. Thus the composition of the court normally differs from week to week.

We compose the court in accordance with a seniority system. Our chief justice, if she is member of one of the divisions, is of course chairman of that division. Number two in seniority is chairman of the other division. Number three in seniority is together with number one, and so on. As we don’t use any specialization it means that I, who have written a big commentary to the Norwegian penal code, can be chairman of a tax case, while a colleague who is expert of tax law, the same week is member of
the other division to try criminal judgments. This has a long tradition and is done to avoid speculations that our chief justice has composed the court to get the result she prefers.

In all appeals where consent is given we have an oral, main hearing. The average time we spend on the oral hearings in civil cases is 1 ½ day, but in some cases we spend more days. Last November I was for example chairman of a case where we spent six days in court. In these oral hearings both sides argue all questions we shall try, and we ask the questions we find necessary. But we don’t ask as many questions that I understand is done in this country. Most of the time both sides are given time to argue without interruption.

After the oral hearing of the case, we spend some time to prepare our deliberation of the case. If the case has been argued during 1 ½ day, the deliberation normally starts next morning – often at ten o’clock. The chairman starts the deliberation and he/she shall discuss and conclude on all questions of the case. It’s quite normal that the chairman in a normal civil case spends one hour on his/her analysis of the case. In criminal cases the chairman spends less time, but it depends on the circumstances in each case. Then the other justices get the word according to seniority. After this round we have a second, often short, round before all justices are invited to give further comments.

In some cases the judicial assistant who has prepared the case in the filtering process is present on the deliberation. If we need help for a deeper study of a question, this assistant is asked to do
it. And if we identify legal or factual problems of importance for the solution of the case that has not been addressed during the oral hearings, we contact the parties and give them the opportunity to give a comment. In our opinion this is our duty.

In our system we have personal votes. The chairman points out in accordance with a rotation system which justice shall be the first-voting judge. But if this justice has a dissenting opinion, or a dissenting reasoning, the role as first-voting judge is given to one of the other justices who belong to the majority.

Some days later we get a draft from the first-voting judge. The other justices then give a written comment to this draft, and the chairman, who never is first-voting, has a special responsibility on the final result. After this round we get a second draft, and then we meet to discuss the draft and vote. Sometimes it’s necessary with two or three more rounds. When we vote justices who agree with the first-voting justice only say that they agree and don’t write their own reasoning. This means that in most cases we only have one vote. In our opinion this is important for the later use of the judgment. The number of dissenting votes differs from year to year, but in civil cases the average is 15 to 20 percentage of the cases and in criminal cases around 10 percentage.

The average time from we get the appeal until we have our main hearing is in civil cases seven months and in criminal cases three months. The average time thereafter before we vote with a reasoned judgment is between two and three weeks.
I can also mention that in more important cases we can compose the court as grand chamber with 11 justices and in the most important cases – especially constitutional cases – we meet in a plenary session. Plenary session is necessary if we shall conclude that a statutory provision is unconstitutional. Constitutional control has a long tradition in Norway. It dates back to around 1850.