

**ASSOCIATION OF THE COUNCILS OF STATE AND SUPREME
ADMINISTRATIVE JURISDICTIONS OF THE EUROPEAN UNION**

CONFERENCE OF 7 JUNE 2010:

"PREVENTING BACKLOG IN ADMINISTRATIVE JUSTICE"

INTRODUCTORY REMARKS:

The Supreme Court of Norway (*Norges Høyesterett*) is the court of final instance in the Norwegian Court system. The Supreme Court handles appeals from all courts of appeal and has jurisdiction in all fields of law. Thus, the Norwegian court system does not include separate administrative courts. In the following, the questions will be answered with an emphasis on the procedures related to civil cases, but existing regulations will be mentioned also in relation to criminal cases, where this is found relevant.

In general, there is no delay in the hearings for the Supreme Court, and all cases are heard as soon as it is possible with regard to the lawyers' preparations and their program. However, existing backlogs have been an issue also for the Norwegian Courts, and according to section 9-6 of the Norwegian Dispute Act of 17 June 2005 No. 90 (that entered into force the first of January 2008) the court shall actively and systematically manage the preparation of the case to ensure that it is dealt with in a swift, cost effective and sound manner. Further, the main hearing of a case shall take place within six months from the submission of the writ of summons (or the appeal) of the parties – unless special circumstances require otherwise.

QUESTIONNAIRE:

I. Techniques for limiting the number of appeals

1) Must those wishing to refer a matter to the Supreme Administrative Court be represented by a lawyer? If so, are there any dispensations to this requirement? Are there any criteria regarding the lawyer's qualifications or seniority?

As a general rule, individuals in a civil case before the Supreme Court of Norway (*Norges Høyesterett*) are not required to be represented by a lawyer. However, in certain cases, the Court may appoint a lawyer ad litem, cf. the Norwegian Dispute Act section 3-2 (if a party without counsel is unable to present the case in a comprehensive manner).

Only lawyers who are entitled to conduct cases before the Supreme Court can be engaged as counsel involving oral proceedings, cf. the Dispute Act section 3-3. (To appear before the Supreme Court, a lawyer must have practised as a lawyer for at least one year, and prove suitability for Supreme Court litigation in an evaluation by the Supreme Court. The evaluation consists of presenting two cases, of which at least one must be a civil case where the lawyer represents the appealing party.)

Any lawyer may be engaged as counsel in cases involving written proceedings before the Supreme Court or the Appeals Committee of the Supreme Court (*Høyesteretts ankeutvalg*).

The Supreme Court may decide that another person acts as counsel in a particular case if special circumstances suggest so.

2) *Is the Supreme Administrative Court's jurisdiction limited to points of law ('administrative cassation') or can it also rule as an appeals court with cognizance of points of fact?*

The Supreme Court has the power to annul or amend decisions by the lower Courts in individual cases and has in general the full jurisdiction to assess both facts and law. In criminal cases, however, the jurisdiction of the Supreme Court is limited so that an error in the assessment of evidence in relation to the issue of guilt cannot be ground for appeal. Further, the Supreme Court has limited jurisdiction in certain interlocutory appeals.

The courts, headed by the Supreme Court, are empowered to review whether decisions by the Government and other official bodies comply with the law and whether legislation adopted by the Parliament is constitutional. In addition, the Supreme Court can review whether the decisions contain errors in the assessment of the facts. However, where the jurisdiction of the administrative authorities is defined using vague or very discretionary criteria, the Supreme Court's right to review is limited to controlling that the discretion exercised falls within the limits laid down by statute, that the administrative authorities have adhered to the relevant rules of procedure and that the discretion exercised is justifiable.

3) *Is the right of appeal to the Supreme Administrative Court an absolute right or are there limitations? If there are, under what circumstances? Provide a short summary of how your Court interprets these limitations.*

According to the Dispute Act section 30-6 there are limitations in the right to appeal in civil cases where an appeal to the Court of Appeal has been determined by way of interlocutory order. In these cases, a *second-tier appeal* is only available if one of the following conditions are fulfilled:

- 1) The ruling dismisses a case from the lower courts on the grounds that the courts lack jurisdiction over the case or that the case has been determined by an unappealable final judgement;
- 2) the appeal is based on the procedure of the case before the Court of Appeal;
- 3) the appeal is based on the general legal interpretation of a written legal rule; or
- 4) the appeal is based on a ruling concerning access to evidence.

Further, it follows from the Dispute Act section 30-5 that an appeal against an *interlocutory order* or a *decision* may be dismissed if it does not raise issues whose significance extends beyond the current case, and other concerns do not suggest that the appeal should be tried on its merits.

In criminal cases, the jurisdiction of the Supreme Court is limited both in relation to appeals against judgements and appeals against interlocutory orders and decisions – as described also under question 1 2) above. The further details of the provisions laid down in the Norwegian Criminal Procedure Act will, however, not be dealt with in the following.

4) *Are there any penalties for abuse of appeals (e.g. fines for rash or persecutory appeals)? If so, are there applied at the request of the respondent or by the court as a matter of course?*

Does the procedure respect the principle of the right to be heard? Are reasons provided for the decision? Is the session heard by several judges or just one?

Yes. According to the Norwegian Courts Act section 202 and 203 a party may be imposed fines for clearly unfounded or persecutory appeals. The penalties may be applied by the court as a matter of course or after request from a party. Further, it follows from case-law of the Supreme Court relating to the Courts Act section 215 (cf. i.a. Rt-2006-1338 and Rt-1997- 1019) that the procedure must respect the right for the party to be heard as laid down i.a. in ECHR Article 6 § 1 and § 3. A reason is provided for the decision, which shall be included in the judgement or the interlocutory order determining the case, cf. the Courts Act section 214. Whether the session is heard by several or just one judge will vary according to the Court level handling the case.

5) Do appeals have to go through an admission or authorisation procedure before being brought before the Supreme Administrative Court? If so, describe the procedure and the main conditions that would lead to an appeal being refused admission or authorisation ('leave of appeal').

According to the Norwegian Constitution section 88 limitations on the right to bring a case before the Supreme Court may be prescribed by law. The role of the Supreme Court is to achieve legal unification, legal clarification and to develop the law. As a consequence, no appeal *against judgements* shall be admitted to the Supreme Court unless leave to appeal has been granted by the Appeals Committee of the Supreme Court. The Appeals Committee consists of four judges at the time; three judges take part in the handling of each case. The issue of leave to appeal is determined by a *decision* by the Appeals Committee.

According to the Dispute Act section 30-4 and the Criminal Procedure Act section 323 leave to appeal shall only be given if the appeal is concerned with issues whose significance extends beyond the current case, or if it for other reasons is important to have the case heard by the Supreme Court. This implies that leave to appeal will be given almost only in cases that raise important questions of law. Further, leave to appeal may be limited to specific claims and to specific grounds of appeal. Refusal of or limited leave to appeal requires unanimity.

Leave to appeal is denied in about 85 % of the cases. For more detailed information, please refer to question III 5) below.

Appeals brought against *interlocutory orders* and *decisions* are determined by the Appeals Committee. As a main rule, when deciding interlocutory appeals the Appeals Committee must render reasoned decisions. However, if the Appeals Committee unanimously finds that an interlocutory appeal shall clearly not succeed, the appeal may be summarily dismissed or dismissed, cf. the Dispute Act section 30-9 and the Criminal Procedure Act section 387a.

II. Techniques to speed up proceedings

1. Are there accelerated procedures for emergency situations (apart from proceedings for interim relief which do not issue preliminary rulings on merits of the case)? If so, describe the main conditions (whether these are adversary procedures, the reasoning behind the decision, whether the session is heard by one or more judges, whether the advisory body – if

there is one – is involved, whether there is an investigation, whether there is a hearing, shorter deadlines for submitting documents of statements, etc.).

No. However, it follows from the Dispute Act section 36-5 that in cases concerning administrative decisions relating to coercion shall the case be given high priority, and shall be dealt with as swiftly as possible in view of the need for the case to be proceeded in a sound manner. Criminal cases in general have high priority, and in particular cases involving ECHR article 5 (3) (custody/detention).

2) Are there accelerated procedures for appeals that are clearly founded, unfounded or inadmissible? If so, refer to the questions listed under

No.

3) Are there accelerated procedures for cases that should be straight fbrward? If so, refer to the questions listed under

No.

4) Other than for proceedings fbr interim relief that do not issue preliminary rulings on the merits of the case, are there sessions where appeals are heard by a single judge and if so, for what kinds of cases? Can this single judge refer the case to be heard in a session presided over by several judges?

No.

5) Can the obligation to provide grounds be relaxed? (e.g. relaxation of the obligation to respond to all arguments or statements; grounds provided simply by referring to the relevant provisions, etc.).

Yes. As described under question I 5) above, it follows from the Dispute Act section 30-9 and the Criminal Procedure Act section 387a that in cases where the Appeals Committee unanimously finds that an interlocutory appeal shall clearly not succeed, the appeal may be summarily dismissed or dismissed. Further, the issue of leave to appeal is determined by a *decision* by the Appeals Committee, and as a consequence - according to the Dispute Act section 19-6 – there is no general obligation for the Supreme Court to provide grounds other than referring to the relevant provisions. According to the specific circumstances of the case (and recent case-law related to the requirements laid down in i.a. ECHR article 6 § 1 and the International Covenant on Civil and Political Rights article 14) however, an obligation to provide grounds may be deduced in individual cases.

6) Is it possible to conduct procedures entirely in writing, with no need for a hearing?

Yes. The proceedings before the Appeals Committee are in writing, and decisions are rendered on the basis of the documents submitted in the particular case. Further, the Appeals Committee may in a case where leave to appeal is given, decide that the case will be deten-nined after procedures in writing – if the issues raised by the case are suited for being dealt with in such a manner, cf. the Dispute Act section 30-10.

7) *Can any party not cooperating with the procedure be penalised?*

No. However, a party may according to the Dispute Act section 20-4 be awarded costs related to the case in full or in part irrespective of the outcome of the case, if i.a. the action has been brought for no good reason, and the party accepts the claim at the earliest opportunity or the costs have arisen due to the negligence of the opposite party.

8) *Do judges raising legal arguments of the court 's own motion always have to order deliberations to be begun again or do they have to authorise the parties to submit new conclusions?*

No.

9) *Does the procedure allow the deadlines for submitting statements and documents to be shortened?*

When a case is appealed to the Supreme Court within the time limit/deadline prescribed in the Dispute Act or the Criminal Procedures Act, the Supreme Court has in general the discretion to decide the length of the deadlines for eventual supplementary submitting of statements and/or documents.

10) *Does the procedure allow the appeal, the statements, written submissions and the documents to be submitted electronically?*

No (not yet – due to the lack of relevant technical solutions).

11) *Must statements, written submissions and documents be submitted in strict accordance with the deadlines, with the case being inadmissible if they are not submitted in time? If so, are there exceptions to this rule.*

As the main rule, statements, submissions and documents must be submitted according to deadlines (laid down in the legislation or decided by the Court), but exemptions may be made according to the circumstances in each individual case. Please also refer to question II 9) above.

12) *Is there a limit to the number of statements or written submissions that may be submitted? Can additional statements or written submissions and documents be submitted?*

In general there is no limit to the number of statements or written submissions that may be submitted to the Supreme Court, and as the main rule additional statements or written submissions can be submitted at all times of the procedure. According to the Dispute Act section 30-7, however, after an eventual leave to appeal has been given, the prayer for relief in respect of the claims made may not be widened and new factual basis or evidence may not be submitted, unless it is determined by the Appeals Committee that special grounds suggest otherwise.

Further, a time limit may be set by the Appeals Committee for additions or amendments in respect of appeals against interlocutory orders and decisions.

13) Is it compulsory to submit a summary statement closing the written submissions?

Not in proceedings before the Supreme Court, cf. the Dispute Act section 30-8.

14) Once the investigation has been closed, it is possible to submit new documents, written submissions or written observations at the last minute?

Please refer to question II 12) above.

15) Can new arguments be raised during the procedure?

Please refer to question II 12) above.

16) Can new arguments be raised on appeal?

There are no general provisions prohibiting that new arguments are raised on appeal. Please confer, however, to the limitations in the jurisdiction of the Supreme Court described under question I 5) above.

17) Are there appeal channels for accelerating the course of the procedure or applying a penalty far exceeding 'reasonable time', in accordance with the judgement in the case Kudla v. Poland, delivered on 26 October 2000 by the European Court of Human Rights?

No specific legislation has been passed relating to the course of procedure itself. However, according to the Dispute Act section 11-7 second paragraph, the administrator of the court may – on request from one of the parties – transfer the case to another judge within the same court or take over the case him/herself, if a case is not dealt with in an efficient and sound manner. If the administrator of the court is the preparing judge, or if he/she is disqualified, a superior court will handle the request.

Further, an excessive delay may constitute a procedural error as mentioned in the Dispute Act and the Criminal Procedure Act, leading the appellate court to quash a decision from the lower court, though this is unusual.

In cases where an excessive delay in the judicial proceedings has resulted in an economic loss, a lawsuit may be filed in order to compensate for such loss. Further, in criminal cases where there have been excessive delays in the judicial proceedings, the courts shall acknowledge that such delays have taken place. In addition, the courts shall reduce the sentence.

18) What does the court understand by 'reasonable time' for a hearing within the meaning of Article 6 under the European Convention on Human Rights? If applicable, mention some cases where sanctions were applied because a hearing did not take place in reasonable time.

The criteria used for assessing the reasonableness of the duration of the proceedings are the same as the criteria applied by the European Court of Human Rights in respect of ECHR Article 6 § 1. The Human Rights Act of 1999 gave the ECHR the legal force of national parliamentary legislation. The Convention is therefore invoked directly before the national courts, and Article 6 § 1 sets binding limits on the length of judicial proceedings.

Furthermore, the Human Rights Act states that the convention shall prevail over any other conflicting statutory provisions.

The Criminal Procedure Act sets forth certain time limits with regards to the handling of cases where the defendant is held in custody. In both criminal cases and civil cases, there are statutory guidelines as to when a decision should be handed down after the closing of oral proceedings.

Examples: Rt-2009-397, Rt-2008-1686.

III. Performance criteria

1) Are there quantitative and qualitative criteria for measuring the 'performance' of court activity? What is the judicial value of these criteria and what body issued them?

Management efficiency is monitored by the Supreme Court itself. However, there are no self-evaluation mechanisms of the Court concerning the quality of the proceedings. There is no internal control tool in the Court.

The Norwegian Courts Administration (Domstoladministrasjonen) issues every year an annual report containing i.a. a study of the general trust of the citizens in the judicial system. The study also compares the results with the trust in other governmental bodies.

2) Are there statistical data on the average length of proceedings in the Supreme Administrative Court and the average length of a procedure from the court of first instance to the final decision by the Supreme Administrative Court?

The Supreme Court issues every year an annual report where statistics on the average length of proceedings both for the Appeals Committee and the Supreme Court is included. In addition, the annual report from the Norwegian Courts Administration contains statistical data from all the Norwegian courts on the length of proceedings.

3) Are there significant differences in the length of procedures depending on the nature of the case?

As mentioned in the introductory remarks, there is as the main rule no delay in the hearings for the Supreme Court, and all cases are heard as soon as it is possible with regard to the lawyers' preparations and their program. The average time from an appeal is brought for the Supreme Court until the Appeals Committee has made its decision is less than a month. The average length of the procedure from a case is appealed until the case is heard by the Supreme Court is around three months in criminal cases and six months in civil cases.

4) During proceedings, are lower courts authorized to request the Supreme Administrative Court's opinion on a new point of law in the aim of guaranteeing judicial security and preventing an influx of disputes?

No. The Supreme Court does not have a consultative role vis-à-vis the lower courts.

5) *What is the ratio between die number of udges in the Supreme Administrative Court and die number of cases settled each year?*

The Supreme Court consists of 18 Justices and a Chief Justice presiding the Court. (The number will increase to 19 Justices in addition to the Chief Justice within 2010). The Supreme Court normally sits in two parallel divisions, each consisting of five Justices. In cases of particular importance, e.g. concerning judicial review of legislation, the Supreme Court will sit in a grand chamber consisting of 11 Justices. In a very limited number of cases of absolute extraordinary importance, the Court can even sit in a plenary session.

The Supreme Court Justices sit in both divisions of the Supreme Court and in the Appeals Committee in accordance with a rota system.

In 2009, 482 appeals *against judgements* and 478 appeals against *interlocutory orders and decisions* in civil cases (a total of 960) and 410 appeals *against judgements* and 644 appeals against *interlocutory orders and decisions* (a total of 1054) in criminal cases were handled by the Appeals Committee of the Supreme Court. The Supreme Court heard a total of 60 civil and 77 criminal cases. This implies that leave to appeal (against judgements) was given in 12 % of the civil cases and in 17 % of the criminal cases brought before the Supreme Court.

The number of cases pending for the judicial secretariat and the Appeals Committee as of 6 January 2010 is 130, and the total number of cases pending for the two divisions of the Supreme Court is 32.

6) *What is the ratio between the number of judges and the number of assistants?*

The office of the Supreme Court is headed by a Secretary General. The Supreme Court has a Judicial Secretariat consisting of 17 law clerks (including the head and deputy head of the secretariat). Although the function of the Secretariat is primarily to assist the Appeals Committee, it also performs some other duties for the Supreme Court justices and the Secretary General.

Two (three) clerks of the record, who are also legally qualified, serve in the two divisions of the Supreme Court. In addition, the staff of the Supreme Court encompasses a Deputy Secretary-General and an information officer, an office manager, two court messengers, a librarian and 14 office assistants (including IT-personnel).

7) *Are there specialized judges within the Supreme Administrative Court who only deal with a certain kind of cases? Does this specialization have a basis in law or is it a result of internai work distribution?*

No, there is no specialization within the Supreme Court.