



Consiglio di Stato



**Seminar organized by the Council of State of Italy and ACA-
Europe**

**“Techniques for the protection of private subjects in
contrast with public authorities: actions and remedies
– liability and compliance”**

Rome, 23 May 2022

Answers to questionnaire: Norway



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“TECHNIQUES FOR THE PROTECTION OF PRIVATE SUBJECTS IN CONTRAST WITH PUBLIC AUTHORITIES: ACTIONS AND REMEDIES - LIABILITY AND COMPLIANCE”.

INTRODUCTION

The seminar will analyse the types of actions that can be brought before the administrative judge: action of annulment, action of declaration and action of condemnation. With particular reference to the latter, the seminar will focus on compensatory measures, including damages for loss of opportunity and damages as a result of delay.

The seminar also intends to examine the possibility of any and eventual special or fast-track procedure, for introductory terms and methods which pertain to certain subjects under consideration, for example, for their economic or political relevance, such as those to be found in the sphere of public contracts (see also transversal analysis).

The aim of this questionnaire and of the subsequent seminar is to provide a wider comprehension of the similarities and differences that exist among the various legal systems of the member States insofar as they apply to the situations to be dealt with by the administrative court, paying particular attention to the content and subject matter of the relative rulings.

SESSION I

LEGAL PROCEEDINGS THAT CAN BE BROUGHT BEFORE THE ADMINISTRATIVE COURT

- 1. In your legal system, which judges are competent to pronounce on disputes in which one of the parties is the public administration?**
 - An ordinary judge
 - An administrative judge
 - A judge who deals with special areas
 - Others



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Norwegian reply

In the Norwegian legal system, disputes involving the public administration are dealt with by ordinary judges following the procedure set out in the Norwegian act relating to mediation and procedure in civil disputes (Nw. *tvisteloven*) (the “**Dispute Act**”). Consequently, the Norwegian legal system does not consist of administrative judges or general administrative courts.

2. Which actions can be brought before the administrative court in view of the exercise of administrative powers?

- Annulment of administrative acts
- action of condemnation
- Other actions

If you have replied ‘other actions’, please clarify which.

Norwegian reply

Not applicable.

3. From which sources can actions be proposed brought before the administrative court?

- Law
- Public authority regulations
- Guidelines
- Supreme Court rulings
- Other

Norwegian reply

Not applicable.

4. Which administrative decisions can be challenged?

- Administrative acts which have a specific recipient
- General acts and regulations
- Acts inherent to the procedure
- Political acts

Norwegian reply

Both administrative acts with a specific recipient, general acts and regulations and acts inherent to the procedure may be challenged before the Norwegian courts. However, Norwegian courts will not test political manifests etc., and will generally be careful when re-examining decisions by the public administration with elements of political assessments and opinions.



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5. On the grounds of which defects can the annulment of an administrative act be requested?

- Breaches of the law
- Breaches of competence
- Technicalities and procedural defects
- Breaches of general principles
- Other

Norwegian reply

In the Norwegian legal system, all grounds indicated above are relevant when requesting annulment of an administrative act. However, the breach of formal rules, procedures and principles will normally not result in the annulment of the act, unless such breach has affected the material content of the act, decision etc.

6. Can the judge partially annul the challenged administrative act?

- Yes
- No

If your reply is yes, please elaborate.

Norwegian reply

A Norwegian court can partially annul the challenged administrative act, for instance by disregarding a condition for a permit granted by the public administration.

7. Can the judge substitute the Administration by modifying the content of the administrative act?

- Yes
- No

If your reply is yes, please elaborate.

Norwegian reply

The competence of the Norwegian courts when reviewing administrative decisions is limited to a validity test. The court may only in certain special circumstances pass a judgement on the reality of the underlying claim.

8. When the judge annuls the challenged act, can he dictate provisions which the P.A. must abide by in the review proceedings of the subject-matter of the litigation?

- Yes



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- No

If your reply is affirmative, please elaborate.

Norwegian reply

A Norwegian court will generally describe its understanding of the relevant law in its judgement, and the merits of the judgement will function as binding precedent pertaining to the interpretation and application of the law. Such precedent will be considered binding to public administration for the future.

9. When do the effects of the jurisdictional annulment of an administrative act become applicable?

- From the date of the adoption of the act (*ex tunc*)
- From the date on which the judgement becomes final (*ex nunc*)
- Other

Norwegian reply

Annulment of interventionary decisions, prohibitions, injunctions etc. will generally have effect from the date of the adoption of the decision (*ex tunc*). Decisions concerning a beneficial right (permits, benefits) will have effect when the judgement on annulment becomes final, i.e. *ex nunc*.

10. Can the judge modulate the effects over time of the ruling of annulment of an administrative act?

- Yes
- No
- Other

Norwegian reply

No.

11. Can the act of ordering payments for damages be proposed autonomously or must it always be proposed together with other kinds of actions?

- Yes
- No
- Only in certain cases

If your reply is yes, please elaborate

Norwegian reply



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Yes, compensation for damages can also be proposed autonomously.

12. In the light of what kind of behaviour is the compensatory action for damages feasible when dealing with a Public Administration?

- Implementation of an illegal and detrimental administrative act
- Non-observance of the deadline of the procedure
- Lesion of good faith and trust
- Resultant behaviour of the public administration
- Other

Please elaborate

Norwegian reply

Generally, compensatory actions after dealing with the public administration presupposes that the administration's act is unlawful, in one way or another. It doesn't matter whether it's an unlawful actual act, norm or decision. The latter may be unlawful due to its material content or breach of procedural rules. However, it is not sufficient that an act is unlawful, as compensation under Norwegian law generally requires a causal link and a financial loss.

13. Which are the different kinds of reimbursable damages?

- Material damage
- Non-material damage
- Loss of opportunity

Norwegian reply

Compensatory actions require a financial loss, typically material damages or loss of earnings etc.

14. Does the omission of lodging an action of annulment result in elision or reduction of the compensatory damages?

- Yes
- No
- Other

Norwegian reply

A Norwegian court may reduce the compensatory damages due to, for example, circumstances at the injured party's hand (typically if the loss could have been reduced).



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15. In order to award compensatory damages, is proof of the responsibility of the public administration required? If your reply is affirmative, which party is obliged to provide said proof?

- Yes – the party with burden of proof is...
- No

Norwegian reply

There are various grounds for awarding a private party compensation as a result of the public administration's acts or decisions. For certain interventionary decisions (Nw. *inngripende vedtak*), responsibility of the public administration is not required to establish liability. In other cases (typically building permits), responsibility is required and the private party will generally have the burden of proof. Certain exceptions arise in the assessment of causality and financial loss, if the question at hand is whether the alternative to the unlawful decision would have been a valid decision.

16. Can the judge convert *ex officio* one action into another?

- Yes
- No

If the reply is yes, please elaborate

Norwegian reply

No.

17. Is there a time-limit for the proposition of the compensatory action?

- Yes
- No

If the reply is yes, please elaborate

Norwegian reply

With certain exceptions for special areas of law, there is no time-limit for the proposition of the compensatory action. However, the proposition of compensatory actions may be limited by general rules regarding limitation periods.

18. Can the judge rule that the Administration implement an administrative act? If your reply is affirmative, what are the prerequisites for implementation?

- Yes – explain
- No



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Norwegian reply

No.



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SESSION II – SPECIAL PROCEDURES

1. Does your administration have provisions for special procedures

- Yes
- No

If the reply is yes, please elaborate

Norwegian reply

The Norwegian act relating to procedure in cases concerning the public administration (Nw. *forvaltningsloven*) (the “**Public Administration Act**”) applies to the Norwegian administration irrespective of whether there is a pending case before the Norwegian courts. The Administration Act contains provisions regarding the right to access the documents in the case, the administration’s right to decide that the private party must exhaust his or hers right to appeal within the public administration before proceeding with legal actions (except if the appeal body has not made its decision within six months from the complaint was filed), the right for the administration to reverse a decision in the absence of appeal, the private party’s right to be compensated with accrued costs necessary to have an administrative decision altered, deferred implementation of an administrative decision, the courts competence to review all aspects of a case concerning administrative sanctions, etc. Additionally, special procedures are set out in acts relating to specific areas of law within the public administration, for instance the Norwegian Immigration Act.

The Norwegian Dispute Act also contain certain provisions particularly relevant for cases against the public administration. For instance, it is set out in section 1-5 that an action concerning the validity of an administrative decision shall be brought against the authority that made the decision in the final instance.

2. What do the specialities consist of?

- Ways of introducing the appeal
- Procedural time-limits
- Jurisdiction of the court
- Other

Norwegian reply

Please see the reply to question 1 above. Other than as set out above, there are limited special rules for cases against the public administration going before the Norwegian courts. The Norwegian Dispute Act does not contain special rules for cases against the public administration in terms of ways of introducing the appeal and procedural time-limits.



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3. The special rites are established:

- According to subject (for example, tenders, procedures of expropriation, independent administration authorities)
- According to actions
- Both of the above

Please elaborate

Norwegian reply

Not applicable, see above replies.

4. Does your system provide for appeals against the silence of the Administration at the request for an administrative provision presented by a private individual?

- Yes
- No

If the reply is yes, please elaborate

Norwegian reply

Pursuant to the Public Administration Act, the public administration is required to prepare and decide a case without undue delay. If this is not complied with, the Norwegian legal system does not, as a main rule, provide for appeals directly to the Norwegian courts. The regular approach would be to file a complaint within the public administration. However, a non-justified delay in the processing time may be a procedural error which can be contested in subsequent legal proceedings for compensatory damages (but it will normally not lead to invalidity of the decision, since there is a requirement that procedural errors must have had a decisive effect on the content of the decision).

5. Do the Administrations comply spontaneously with the decisions of the administrative courts?

- Yes, always
- No, never
- In the majority of cases, in any case more than in 50% of cases
- Hardly ever, in any case less than in 50% of cases

Norwegian reply

Not applicable. The Norwegian legal system does not consist of administrative courts.

6. In your legal system, is there a special procedure for ensuring the integral execution of the sentence?



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- Yes
- No

If the reply is yes, please elaborate

Norwegian reply

Judgements passed by Norwegian courts are, as a main rule, immediately enforceable. As set out in the reply to question 7 (session I), the court may only in certain special circumstances pass a judgement on the reality of the underlying claim. The sentence will normally be limited to whether an administrative decision is legally valid. Such sentence, including the judge's interpretation of the law as set out in the judgement, will be binding on the administration both when handling the case at hand and when handling future cases. However, there are no particular procedures limited to execution of judgements against the public administration.

7. Are the judge's decisions which are not of the last resort immediately enforceable?

- Yes
- No

If the reply is yes, please elaborate

Norwegian reply

Yes, judgements passed by Norwegian courts are, as a main rule, immediately enforceable.

8. Following the annulment of a decision characterized by discretionary power, the interested party is forced to challenge each of the ulterior negative decisions which have been deemed illegitimate by dint of defects which are different to those identified by the judge or, in alternative, are there certain mechanisms of "reduction" of the aforesaid discretionary power which ensure the definition of the litigation once and for all?

- Yes – elaborate
- No

Norwegian reply

Norwegian courts will not re-examine the discretionary power of the public administration, unless the discretionary power is used in a matter that has led to a manifestly unreasonable result. However, if a decision or act is annulled as a result of, for example, the public administration's



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wrongful application of the law, the judgement will be binding for the public administration and provide precedence for the future interpretation of the law.

SESSION III – PRECAUTIONARY MEASURES

1. Does the proposition of an appeal automatically suspend the effectiveness of the administrative act?

- Yes
- No

Norwegian reply

In the Norwegian legal system, the proposition of appeal does not automatically entail suspensive effects.

2. In your legal system, are precautionary measures provided for?

- Yes
- No

Norwegian reply

In the Norwegian legal system, a petitioner can request interim measures (Nw. *midlertidig forføyning*) pursuant to the rules set out in Chapter 34 of the Dispute Act. The court may in certain cases, such as administrative decisions concerning coercive measures within the social services, decide on its own initiative not to give immediate effect to the coercive measure by way of an interlocutory order. In addition, the public administration may on its own initiative decide that the effect of an administrative act or decision is suspended if the decision or act is appealed or brought before the Norwegian courts, until a final ruling has been made.

3. What kinds of decisions can the judge apply as a precautionary measure?

- The suspension of the challenged act;
- (if the subject of the challenge is the refusal of an application) a positive measure which provisionally anticipates the effects of the administrative act being contested;
- The order to the administration to re-examine the application on the strength of indications contextually provided by the judge;
- Whatever measure necessary to satisfy, in each case, the precautionary requests presented by both parties

Norwegian reply



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The judge may decide to suspend the challenged act, decision etc. by way of an order of an interim measure, see reply to question 2.

4. What are the conditions for the acceptance of a precautionary request?

- The probable validity of the action
- The probable validity of the action together with a serious prejudice
- The prevalence of public or private interest, based on the results of the equilibrium/assessment
- The required prerequisites of trial law to accord precautionary measures vary according to the different types of litigation
- Other prerequisites (please specify)

Norwegian reply

An interim measure can only be granted if the claim in respect of which the request for an interim measure is made and the basis for security are proven. A basis for security could be that the action or execution of the claim would be considerably impeded or that is considered necessary in order to avert considerable loss or inconvenience, etc.

5. Can the judge force the petitioner to pay bail?

- Yes
- No
- If yes, in which cases?

Norwegian reply

The general provisions in the Norwegian Dispute Act regarding obligation to provide security for possible liability for legal costs does in principle also apply to disputes involving the public administration. However, the provision requires a request from the public administration as defendant, and applies only against claimants who are not habitually resident in Norway or has his or her residence in an EEA state.

In addition, the court may in a ruling on an interim measure decide that the claimant shall provide security for any compensation for which the claimant may be found liable to the defendant.

6. Are precautionary measures generic?

- Yes



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- No – are there some subjects in which precautionary measures are not admitted? Which?

Norwegian reply

Interim measures have general application insofar as the relevant provisions are set out in the Dispute Act and applies to all types of civil proceedings going before the Norwegian courts

7. Can a precautionary request be introduced autonomously before the presentation of the main trial proceedings (*ante causam*)?

- Yes
- No

Norwegian reply

Yes.

8. In the event of cautionary request *ante causam*, does the precautionary decision of the judge lose effectiveness?

- Yes, in the event that the interested party does not initiate main trial proceedings within the mandatory time-limit
- No, its effectiveness remains intact even if the main trial proceedings have not been initiated within the mandatory time-limit or even if the time-limit has expired

Norwegian reply

In a ruling on an interim measure, the courts can decide when the measure shall enter into force and its duration. The court *may* fix a time limit for the claimant to bring action on the claim both in the original ruling and/or in a subsequent ruling, if requested by the defendant. The duration will have independent consequence if action on the claim is brought in time.

9. When dealing with the precautionary request, does your legal system provide for specific procedure?

- Yes (give details of the main characteristics with regard to : trial deadlines, type of decision, motivational burden, ways for establishing debate)
- No

Norwegian reply

Rulings on interim measures are meant to be a fast track-procedure, but there are no particular time-limits. The ruling is made by way of an interlocutory order (as opposed to decisions and judgements). A request for an interim measure may be handled in the following ways: (i) the



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application may be rejected immediately if the court finds it obvious or other formal conditions are not satisfied, (ii) the court may reach its interlocutory order without an oral hearing or (iii) an oral hearing is held. If an interim measure is granted without oral hearing, the parties may demand a subsequent oral hearing.

10. Is the precautionary decision taken unilaterally or collegiately?

- Unilaterally;
- Collegiately;
- Collegiately, but in the event of extreme urgency, the precautionary decision can be taken temporarily by means of a simple unilateral decree;

Norwegian reply

The Norwegian court system consists of three levels; the local district courts (first level), the regional courts of appeal (second level) and the Supreme Court. Decisions on interim measures are taken unilaterally with the local district court (which are set with only one judge in civil matters). Other than that, a decisions on interim measure is taken collegiately.

11. During the discussion of the precautionary request, can the judge directly define the judgement on the merit?

- Yes (explain in which conditions)
- No

Norwegian reply

No.

12. Can precautionary measures be challenged before the Supreme Court /Council of State?

- Yes
- Yes, but only if they pass a test of eligibility
- No

Norwegian reply

Yes, lower courts decisions on interim measures may be appealed to the Norwegian Supreme Court.

13. Can the Supreme Administrative Court / Council of State, as a precautionary measure, suspend the judgements on the merit of a judge of a lower level?

- Yes
- No



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Norwegian reply

Not applicable.

14. On average, how many precautionary decisions are taken every year by the Supreme Court/ Council of State in comparison to the overall number of decisions taken?

Norwegian reply

Of 2164 appeals to the Supreme Court in 2020, only 16 appeals concerned interlocutory orders of interim measures. Most of these appeals concerned decisions between private parties, not involving the public administration. The number was substantially similar for the year 2019.



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