



Bundesverwaltungsgericht



**Seminar organized by the Federal Administrative Court of  
Germany and ACA-Europe**

**Functions of and Access to Supreme Administrative  
Courts**

Berlin, 13 May 2019

**Answers to questionnaire: Norway**



Seminar co-funded by the «Justice » program of the European Union

## ACA-Europe Seminar on Functions of and Access to Supreme Administrative Courts

12 - 14 May 2019

Oberverwaltungsgericht Berlin-Brandenburg  
(Higher Administrative Court Berlin-Brandenburg)

### *Questionnaire*

#### I. Functions of the Supreme Administrative Court (SAC)

1. a) How many **instances** are known in your (administrative) jurisdiction?

Three. Section 88 of the Norwegian Constitution provides that the Supreme Court adjudicate in the final instance. Accordingly, the Supreme Court is Norway's highest court, at the top of a pyramid consisting of courts on three levels: the local district courts, the regional courts of appeal and the national Supreme Court. Norway has only one Supreme Court, and the Supreme Court has jurisdiction on all areas of law. Thus, Norway does not have a separate supreme administrative court. The Supreme Court has ultimate appellate jurisdiction over the lower courts, and deals only with cases that are brought before it by way of appeal from the regional courts of appeal.

b) Does your SAC also serve as a first instance court?

No.

c) If so, under what circumstances does your court serve as a first instance court?

- depending on the subject-matter?
- depending on the importance of the case?
- depending on a choice by the plaintiff (alone) or the parties (by agreement)?
- depending on other criteria?

Please explain.

Not relevant.

d) What is the percentage of first instance cases compared to the overall case load? Please give statistical data about the quantity of cases (not about the quality or the relative working load resp.)!

Not relevant.

## Answers from Norway

2.

a) Looking at the **case load** of a single judge of your SAC, can you identify larger groups of cases which make up the overall case load (quantitative approach)? I.e. Provisional proceedings, proceedings of admitting an appeal, first instance proceedings, other. What is the percentage of these groups of cases in the overall case load?

The Supreme Court does not have specialized chambers/divisions. However, in order to ease the workload, the Supreme Court consists of two parallel and equal divisions, each with five justices. These two divisions decide – with five justices in each case – appeals against judgments that have been granted leave to appeal by the Supreme Court's Appeals Selection Committee. As well as adjudicating on appeals against interlocutory orders and decisions, the Appeals Selection Committee also functions as a filter for appeals against judgments. An appeal against a judgment cannot be brought before the Supreme Court without leave from the Appeals Selection Committee. The Appeals Selection Committee consists of five justices, but each appeal is decided by three justices.

All of the Supreme Court's 20 justices rotate between the two divisions and the Appeals Selection Committee based on the principle that each justice shall serve an equal amount of time in the divisions and the Appeals Selection Committee throughout the year. The number of cases dealt with in the Appeals Selection Committee is far larger than the cases that are brought before the Supreme Court, due to the filtering function of the Appeals Selection Committee. Proceedings in the Appeals Selection Committee are written – oral hearings only apply for appeals that are granted leave.

The Supreme Court annually receives approximately 2 200 appeals in total, of which approximately 1 000 are civil cases and 1 200 are criminal cases. Approximately 40 % of the appeals are appeals against judgments, and 60 % are appeals against interlocutory orders and decisions. Out of all the 2 200 appeals, approximately 5 % (120 appeals) are granted leave of appeal and brought before the Supreme Court, of which 90 % are appeals against judgments and 10 % are appeals against interlocutory orders. Out of all the appeals against judgments, approximately 10-14 % are granted leave. Hence, the Supreme Court issues approximately 110-120 judgments each year.

Approximately 85-90 % of the cases a justice deals with during a year represents cases in the Appeals Selection Committee, and 10-15 % represents cases brought in for trial before the Supreme Court. Out of cases in the Appeals Selection Committee, approximately 40 % are proceedings of granting/denying leave of appeal against judgments. The remaining 60 % are appeals against interlocutory orders (i.e. procedural and interim decision).

## Answers from Norway

b) If you can identify larger groups of cases (question a), is it possible to weigh these cases as to their complexity and thus to the amount of time required in treating them (qualitative approach)?

All appeals that are granted leave by the Appeals Selection Committee, and thereby are brought before the Supreme Court for judgment, will be subject to oral hearings. In civil cases, an average oral hearing lasts two days. The process of deliberation and writing the judgment normally takes two weeks.

The process in the Appeals Selection Committee related to deciding if an appeal shall be granted leave is swift. The decision of granting/denying leave to an appeal is based on simplified and standardised wording included on one page. Each appeal is assigned to a law clerk who will prepare the case for the Appeals Selection Committee, consequently increasing the effectivity of the justices in the Appeals Selection Committee.

With regard to appeals against interlocutory orders and decisions, the Appeals Selection Committees process is normally swift. However, the Appeals Selection Committee quite often issues reasoned decisions in such appeals. Such decisions naturally requires more time.

It is difficult to weigh the complexity of the cases, as this varies. However, it is safe to say that civil cases are normally more complex than criminal cases.

3. a) In appeals cases, does your SAC:

- review decisions of the lower courts with a view to the facts and to the law?
- review decisions of the lower courts with a view to the law only?
- solely answer a(n abstract) legal question?

The Supreme Court's review of a case is closely connected to the statutory criteria for an appeal to be granted leave: Leave to appeal shall be granted only if the appeal concerns questions with a bearing beyond the present case, or if it is especially important for other reasons that the case is decided by the Supreme Court. The provisions further provide for the Supreme Court's consent to be limited to "a part of the case" in criminal cases and "particular claims" and/or "particular grounds for appeal" in civil cases. Within these limits, it is up to the Supreme Court to decide which – and accordingly how many – appeals against judgments to admit for trial. The filtering of appeals enables the Supreme Court to fulfil its goal of clarifying and developing the law.

Thus, the Supreme Court will always review the law in question, but also the facts if this is necessary and if the ground of appeal regarding the facts is granted leave.

## Answers from Norway

4. What are the **purposes** of the jurisdictional work of the SAC as a court of appeals?

- the standardisation/unification of the law?
- the deliverance of single case justice?
- (further) development of the law?
- care for adherence to procedural rules of lower courts?

The main role of the Supreme Court is to ensure clarification and development of the law through its decisions and within the scope provided by the Constitution and by law. The Supreme Court's view of the law constitutes judicial precedent, and thereby ensures unification of the law.

An interlocutory order can be appealed to the Supreme Court on the grounds that the lower court has not adhered to procedural rules. Such appeals are usually decided in the Appeals Selection Committee, but sometimes transferred to oral hearings in the Supreme Court if the legal question at hand requires more thorough proceedings. The Appeals Selection Committee reviews a large number of appeals related to the adherence of procedural rules in the lower court.

5. a) What are the purposes of the jurisdictional work of the SAC as a court of first instance?

The Supreme Court is not a court of first instance.

b) What is the rationale of assigning certain proceedings to the SAC as a court of first instance?

Not relevant.

6. a) Is there a separate constitutional court in your country?

No.

b) Does the SAC in your country serve as a constitutional court?

The Supreme Court adjudicate in the final instance in all areas of law, and consequently serves as a constitutional court. Most likely, the Supreme Court of Norway was first in Europe to take on the function as a constitutional court with the judgment in 1866 stating that the Supreme Court is competent to declare statutory law unconstitutional.

c) In how far does your SAC consider constitutional law, especially fundamental rights?

The Supreme Court considers questions of conflict between statutory law, other decisions by the Parliament and administrative decision at the one hand, and the Constitution or provisions in conventions to which Norway is bound (e.g. the ECHR) at the other hand.

## Answers from Norway

With the Human Rights Act of 1999 (with subsequent revisions) Norway has implemented the ECHR, the UN Covenant on Civil and Political Rights (1966) and the UN Covenant on Economic, Social and Cultural Rights (1966), the UN Convention on the elimination of discrimination against women (1979) and the UN Convention on the Rights of the Child (1989). Section 3 of the Act establishes that the incorporated treaty provisions will prevail in case of a conflict with a domestic statutory provision. This "semi-constitutional"-status carries the implication that the Supreme Court will apply the incorporated conventions if they are in conflict with a statutory provision or administrative decision.

d) If there is a separate constitutional court, is there a special/extraordinary remedy against (final) decisions of the SAC to the constitutional court claiming violations of constitutional law?

Not relevant.

e) If there is a separate constitutional court and your court considers constitutional law, too, how would your court handle a case, if your court deems a relevant law as unconstitutional?

Not relevant.

f) If there is a separate constitutional court in your country, can plaintiffs challenge administrative acts also before the constitutional court (i.e. without bringing the case before the SAC first)? If so, how are actions before the constitutional court related to the proceedings before the SAC?

Not relevant.

## II. Access to the SAC

1. a) Does a party have to be **represented by a legal professional** before the SAC?

Parties are entitled to represent themselves before the Appeals Selection Committee.

If an appeal is granted leave, a lawyer must represent the party before the Supreme Court. If an appeal is granted leave, statutory law provides the Supreme Court with power to grant a party legal aid at the government's expense. Such free legal aid is normally granted to natural persons, but normally not other legal entities.

b) If so, does the representative have to be an attorney at law/solicitor/barrister?

Yes.

c) Are there attorneys/solicitors/barristers specially authorized to act before the SAC?

In order to obtain permission to appear as a lawyer before the Supreme Court, the applicant must verify that they have proven themselves to be capable of conducting cases in the Supreme Court through a test taken for the Supreme Court. The test consists of conducting two cases orally before the Supreme Court.

## Answers from Norway

d) Are other legal professionals admitted as representatives? I.e. legal scholars, representatives of NGOs...?

NGOs may be a party in cases brought before the Supreme Court, but they must be represented by a lawyer.

e) Are there specific (different) rules for representatives of administrative authorities?

Not in any material aspect.

2. a) What are the **formal requirements** for an appeal to the SAC (e.g. precise application, reasoning,...)?

In criminal cases, an appeal to the Supreme Court must contain:

- the ruling that is appealed and whether the appeal applies to the whole judgment or only some counts
- whether the appeal relates to procedure (if so, what error is alleged), the application of law with regard to the issue of guilt or the decision concerning the penalty/sanction

In civil cases, an appeal to the Supreme Court must contain:

- the ruling that is appealed and whether the appeal applies to the whole ruling, or only certain parts of it
- the claim to which the appeal relates, and a prayer for relief that states the outcome the appellant is claiming
- the errors in the appealed ruling that are alleged
- the factual and legal grounds for the alleged errors
- the evidence that will be presented
- the basis upon which the court may hear the appeal
- the appellant's views on the further hearing of the appeal

b) Is your SAC bound by (and limited to) review the case according to specific objections (on procedural law and/or on substantive law) of the appellant?

Yes, with some not significant exceptions.

c) If this is the case, how does your SAC deal with its duty to refer to the ECJ for a preliminary ruling under art. 267 TFEU?

Not relevant, as Norway is not an EU-member. However, as Norway is a party to the EEA agreement and thus a member of EFTA, the Supreme Court places emphasis on the rulings from the EFTA-court, although such rulings are not binding.

3. Concerning the function of the SAC in your country as a **court of appeals** (i.e. not as a court of first instance):

a) Does every party of the proceedings at the lower instance have the right to seize the decision of the SAC against all kinds of decisions of the court of lower instance?

Yes.

## Answers from Norway

b) Can certain types of decisions of lower courts (e.g. provisional decisions, certain fields of law,...) not be brought before the SAC?

Error in the assessment of evidence related to the issue of guilt in criminal cases cannot be a ground of appeal to the Supreme Court.

In general, the Appeals Selection Committee has, by statutory law, limited powers to review interlocutory orders (i.e. procedural and interim decisions) in the lower courts. In short, such decisions may only be reviewed with respect to the interpretation of statutory law and the rules of procedure.

4. As far as in general the parties of the proceedings of the lower instance can seize the decision of the SAC (as a court of appeals):

a) Is this right restricted by a legally established **filter** (quantitative, e.g. depending on a certain value in litigation, or qualitative, e.g. in certain fields of law, depending on a preliminary assessment)?

In line with a fundamental idea, developed over time, of the Supreme Court as a precedential court – the main function of which is to clarify and develop the law – it is established in statutory law that judgments, i.e. decisions on the substance of the case, are subject to leave of appeal by the Supreme Court's Appeals Selection Committee. The relevant provisions prescribe that leave to appeal shall be granted only if the appeal concerns questions with a bearing beyond the present case, or if it is especially important for other reasons that the case is decided by the Supreme Court. The provisions further provide for the Court's consent to be limited to "a part of the case" in criminal cases and "particular claims" and/or "particular grounds for appeal" in civil cases. Within these limits, it is up to the Appeals Selection Committee to decide which – and accordingly how many – appeals against judgments to admit for trial.

As regards interlocutory appeals – i.e. appeals against procedural and interim decisions – there is no equivalent system of consent. Such decisions may, as a rule, be appealed to the Appeals Selection Committee for a final decision, although the power of the Committee to review the decision of the lower court is in many cases limited, see also answer to question I.4.

Please refer to the answer to question I.2.a for numbers/statistics.

b) If there is a preliminary assessment, please give details:

- Which court decides (lower court or SAC)?

The Supreme Court decides, see answer to question II.4.a.

## Answers from Norway

- If the lower court admits a case to the SAC, does this decision have binding effect on the SAC?
- If the SAC decides, is there a specific procedure of admittance before the SAC?  
Please give details!

Please refer to the answer to question II.4.a.

- If the lower court decides (in a negative way), can the SAC still admit a case?
- If the lower court decides, does it decide on the admission of an appeal ex officio or only on application?
- c) Are there special rules for filters for certain fields of law (e.g. asylum law,...)?

A special filtering rule applies for appeals in criminal cases, where the person charged with an offence is acquitted in the district court but found guilty in the appeals court. In such cases, the appeal can only be denied leave if the Appeals Selection Committee finds it clear that the appeal cannot succeed. The decision to deny leave must also include reasons/opinion. This filtering rule follows from the Supreme Court's interpretation of the International Covenant on Civil and Political rights article 14 no. 5.

- d) If your jurisdiction knows a procedure of admittance, what are the general requirements under which a case can be admitted to the SAC?

Please refer to the answer to question II.4.a.

- e) If there are more than two instances in your country, is it possible to appeal against decisions of the court of first instance to the SAC directly? Under what requirements?

In civil cases an appeal against a judgment that would otherwise fall within the jurisdiction of the court of appeal may, with leave, be appealed directly to the Supreme Court. Leave may only be granted if the case gives rise to particularly important issues of principle upon which it is important to promptly ascertain the view of the Supreme Court, and if regard for the need for a sound hearing does not weigh against direct appeal. It is highly unusual that such direct appeal is granted leave.

- f) Are there specific requirements in certain fields of law?

No.

- g) If your jurisdiction knows a procedure of admittance, what is the percentage of cases admitted?

Approximately 10-14 % of appeals against judgments are granted leave and brought before the Supreme Court for oral hearing and final judgment.

## Answers from Norway

5. If there is no legally established filter (Q. II.4.), has your SAC established a jurisprudence on the (in-)admissibility of appeals or of specific objections (see also Q. II.2.b)) which has the effect of a factual filter, e.g. by rejecting them as abusive, or by dismissing petty cases?

Not relevant.

6. Considering the functions of your SAC as a court of appeals (Q. I. 3.), how are these functions related to restrictions of the access to the SAC as discussed in Q. II.4.), as far as applicable?

Please refer to the answer to question II.4.a.

7. a) Are there any constitutional provisions in your country with respect to having an appeal's instance?

Section 88 of the Norwegian Constitution provides that the Supreme Court adjudicate in the final instance.

b) If so, does the constitution in your country provide for a full review of a first instance decision or for access to a procedure of admittance to the next instance?

The Constitution does not include provisions that deal with such questions directly, but section 88 states that limitations on the right to bring a case before the Supreme Court may be prescribed by law. For instance, the Criminal Procedure Act states that error in the assessment of evidence related to the issue of guilt in criminal cases cannot be a ground of appeal for the Supreme Court.

8. Is there a political or academic discussion concerning any kind of reform with regard to the access to the SAC (e.g. introducing filters, restricting the filter, loosening the filter)?

No.

## III. Implementation / Procedural Aspects

1. As far as your SAC serves as a court of first instance: What is the **possible content of decisions** of your SAC:

- cassation of the administrative act?
- obligation of the administrative authority to issue an administrative act?
- obligation of the administrative authority to issue a new discretionary decision?
- obligation of the administrative authority to act in a certain way (other than by administrative act: payment, omission...)?
- issue an administrative act itself?
- issue a discretionary decision out of its own authority?
- remit to the constitutional court?
- other?

Not relevant.

## Answers from Norway

2. As far as your SAC serves as a court of appeal:

a) What is the possible **content of decisions** of your SAC:

- cassation of the decision of the lower court and remitting the case back to the lower court?

Possible outcome.

- cassation of the administrative act?

Possible outcome.

- obligation of the administrative authority to issue an administrative act?

Not a possible outcome.

- obligation of the administrative authority to issue a new discretionary decision?

Not a possible outcome.

- obligation of the administrative authority to act in a certain way (other than by administrative act: payment, omission...)?

Not a possible outcome.

- issue an administrative act itself?

Not a possible outcome.

- issue a discretionary decision out of its own authority?

Not a possible outcome.

- remit to the constitutional court?

Not relevant.

- issue a legal opinion/authoritative interpretation of the law without connection to a single case?

Not a possible outcome.

- other?

## Answers from Norway

b) To what extent can or must your SAC rely on the facts as they were investigated and determined by the lower court?

In civil cases, the Supreme Court relies on the fact of the lower court if the parties agree that the lower court determined the facts correct, or if the Appeals Selection Committee has denied leave for the appeal as regards to the alleged errors in the lower court's assessment of the facts.

In criminal cases, the Supreme Court must rely on the facts as they are determined by the lower court in relation to the issue of guilt.

3. a) When your SAC serves as a first instance court, does it apply the same rules of court procedure as the common first instance courts?

Not relevant.

b) If not, what are the differences?

Not relevant.

4. As far as there is a specific procedure of admittance of appeals before the SAC, are there different rules of procedure for these procedures of admittance than for admitted appeals' procedures?

All appeals against judgments are subject to the same filtering procedure, in all material aspects.

5. Are there (compulsory, facultative) public hearings in procedures of admittance and or the admitted appeals' procedure?

The filtering process in the Appeals Selection Committee is subject to written hearings. All appeals against judgments that are granted leave are subject to oral hearings before the Supreme Court.

6. Do the decisions of the SAC have an effect on other cases than the one decided?

Yes, please see answer to question I.3.a.

a) Are lower instance courts bound by law to follow decisions of the SAC in other (similar) cases?

Norway's jurisprudence and legal culture requires that the Supreme Court's view on the law is binding for the lower courts. This principle also follows indirectly from article 88 of the Constitution, and more directly from the Criminal Procedure Act section 350 and the Dispute Act section 29-24.

## Answers from Norway

b) If so, under which conditions can they deviate from a decision of the SAC?

If the relevant sources of law has changed since the Supreme Court decision – e.g. new or altered relevant statutory law – the lower court is not bound by the Supreme Court's "outdated" interpretation of the law.

c) Is the SAC bound by law to follow its own previous decisions?

As a main rule, yes.

d) If so, under which conditions can it deviate from its previous decision?

If the Supreme Court considers to deviate from its previous interpretation of the law, the case at hand shall normally be brought before the Grand Chamber or plenary session.

7. Are the judges of your SAC bound by the decisions of other sections within your SAC?

Not relevant.