



**Seminar organized by the Supreme Court of Ireland and  
ACA-Europe**

**How our courts decide: The decision-making processes  
of Supreme Administrative Courts**

**Dublin, 25 – 26 March 2019**

**Answers to questionnaire: Norway**



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

**ACA Seminar**  
**How our Courts Decide: the Decision-making Processes**  
**of Supreme Administrative Courts**  
**Dublin, 25-26 March 2019**  
**Supreme Court of Ireland**  
**Questionnaire**

**Questions**

**A. Background questions in relation to your Supreme Administrative Court/  
Council of State**

1. What is the formal title of your Supreme Administrative Court/Council of State ('institution')? Please provide the name of your institution in your national language and the English translation if possible.

Norges Høyesterett/The Supreme Court of Norway. Norway does not have a separate supreme administrative court. The Supreme Court of Norway is the one and only supreme court.

2. What country/jurisdiction does your institution serve?

Norway.

3. Where is your institution based (i.e. its seat)?

Oslo (the capital city of Norway).

4. Please provide a link to your institution's website (if available), including a link to the English or French version or pages of the website if available.

<https://www.domstol.no/hoyesterett/>

<https://www.domstol.no/en/Enkelt-domstol/-norges-hoyesterett/>

## Answers from Norway

### B. The Structure of your Supreme Administrative Court/Council of State

5. Please provide an outline of:

(a) The main functions of your institution (e.g. a first and last instance court, court of cassation or court of appeal);

The Supreme Court deals only with cases that are brought before it by way of appeal from one of the regional courts of appeal. The main function of the Supreme Court is to contribute to the resolution of matters on which the law is unclear. The Supreme Court also has a responsibility for the evolution of the law - within the framework of existing legislation - as and when required by new societal problems. Accordingly, leave to appeal to the Supreme Court is mainly granted in cases that raise matters of principle beyond the specific subject matter of the issue in dispute.

(b) The nature of your institution (e.g. a Supreme Administrative Court or a Supreme Court with jurisdiction in other areas of law); and

Supreme Court with jurisdiction on all areas of law.

(c) Its place within the overall court structure in your country/jurisdiction.

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.

### C. Caseload

6. How many judges<sup>1</sup> serve on your institution?

20 justices, of which one is the Chief Justice.

---

<sup>1</sup> Please include figures concerning judges only and not the number of Advocates General (which will be dealt with under question 11) or judicial assistants/clerks/researchers (which will be dealt with under question 13).

## Answers from Norway

7. How many cases<sup>2</sup> are brought to your institution per year on average?

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).

8. How many cases does your institution dispose of<sup>3</sup> per year on average?

Approximately 2100. This is because the outcome of approximately 5 % of the appeals is that the Appeals Selection Committee or the Supreme Court sets aside the decision from the regional court of appeal, consequently sending the case back to regional court of appeal for a new proceeding and decision. Hence, 5 % of the appeals are not “disposed of” in the meaning “brought to an end”, but are sent back to regional court of appeal.

### **D. Internal organisation of the Supreme Administrative Court**

9. Does your institution have chambers/divisions?

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 Appeals Selection Committee.

---

<sup>2</sup> In this question ‘cases’ means the average number of incoming cases per year, whether litigious (in which the judge(s) decides a dispute) or non-litigious (where a case in which there is no dispute is brought before the Supreme Administrative Court) and in all categories of cases if your Supreme Administrative Court does not deal solely with administrative law cases (for example, civil and commercial law, criminal law etc). It refers to both cases decided in writing and by oral hearing. It includes applications submitted to a Supreme Administrative Court before any filtering process is undertaken if such a mechanism exists.

<sup>3</sup> Please indicate the average number of cases that come to an end in your Supreme Administrative Court each year either through a judgment or any other decision that ends the procedure, whether it has been considered in writing or by oral hearing.

## Answers from Norway

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 the leave from the Appeals Selection Committee. The Appeals Selection Committee consists of five justices, but each case 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.

10. If yes, provide the following details:

a. How many chambers/divisions?

Please refer to answer to question D.9

b. How many judges serve in each chamber/division?

Please refer to answer to question D.9

c. The nature of particular areas of specialisation in your Supreme Administrative Court by chamber or otherwise (if any) (e.g. commercial division, environmental division etc.).

Please refer to answer to question D.9

d. Do judges move between chambers/divisions? If yes, how is such movement determined?

Please refer to answer to question D.9

e. Is it possible for a judge to be assigned to more than one Chamber at a time?

No.

## Answers from Norway

f. Are there different levels of chambers, for example, an ‘ordinary chamber’ and Constitutional Review Chamber?

No.

g. How many judges are usually assigned to consider and decide an average case?

Please refer to answer to question D.9

h. Does the number of judges assigned to decide cases vary? If yes:

(i) Based on what rules or factors?

When the Appeals Selection Committee has granted leave to an appeal, the Chief Justice may decide that the appeal shall be brought before the Grand Chamber with 11 justices or before all 20 justices in a plenary session. Grand Chamber or plenary session is applicable in

- cases giving rise to questions concerning the setting aside of a legal interpretation that the Supreme Court has used as a basis in another case,
- cases giving rise to questions of conflict between statutory laws or other decisions by the Norwegian Parliament, and the Constitution or provisions in conventions to which Norway is bound.

After an oral hearing before the Supreme Court in an ordinary session with five justices, transfer to Grand Chamber or plenary session is still an option. The statutory requirement is that two out of the five justices demands the case shall be brought before Grand Chamber or plenary session, and the Chief Justice then decides which of the two alternatives shall apply for the case.

The above mentioned rules and procedures follows from statutory law, namely The Courts of Justice Act.

(ii) Who decides how many judges are assigned to consider and decide a particular case?

Please refer to answer to question D.10.h.(i).

i. Is there a procedure for certain cases to be elevated to a grand chamber or plenary session? If yes, how is this decided and how many judges decide?

Please refer to answer to question D.10.h.(i).

## Answers from Norway

j. Are judges assigned certain additional roles (e.g., rapporteur, case manager, other specific responsibilities etc.) relating to a particular case?

Yes.

If yes, specify the additional roles and explain how these roles are assigned.

The Courts of Justice Act states that the longest sitting justice in the division shall lead the proceedings (the chair justice). According to internal rules of procedure, the justice who has gone the longest time without writing an opinion is assigned to write the opinion representing the majority or an unanimous vote. The dissenting justices (if any) decides among themselves who is to write the dissenting opinion.

k. How significant is the role of the Chief Judge or President of the court in determining:

(i) The assignment of cases to chambers or panels of judges;

Not relevant.

(ii) The number of judges assigned to consider and decide a particular case;

Please refer to answer to question D.10.h.(i).

(iii) The assignment of certain additional roles to judges (see (f) above);

Not relevant.

(iv) Any other matters you consider relevant in this context. For example, are there any other special panels, General Assemblies or bodies of judges to which cases are assigned.

Not relevant.

11. Does the position of Advocate General exist in your legal system?

No.

## Answers from Norway

If yes, please indicate:

- (i) The number of Advocates General or equivalent members of your institution;
- (ii) The function of the Advocate General in the context of your institution; and
- (ii) The extent to which the Advocate General participates in proceedings before your institution.

Not applicable.

### E. Research and Administrative Assistance

12. What level of research and/or administrative assistance is available to your institution?

The Legal Secretariat comprises 25 law clerks, including the head and two deputy heads. Although the primary function of the Legal Secretariat is to assist the Appeals Selection Committee, it also performs duties for the justices serving in the Supreme Court's two divisions that deal with admitted appeals (see also answer to question E.15).

The administration consists of approximately 20 employees.

13. How many officials provide legal research support to your institution?

Please refer to answer to question E.12.

14. Do officials which provide legal research assistance to your institution also provide administrative assistance?

Yes, to a limited extent.

15. Are research and administrative supports pooled (i.e. shared between judges) or assigned individually to judges or is there both a pool and some researchers assigned to individual judges? Please explain.

Each appeal to the Supreme Court is assigned to a designated law clerk. The law clerk will provide legal support in the assigned case until the case comes to an end. The workload in a particular case depends on the complexity of the case, whether the appeal is granted or denied leave, and to what extent the justices assign tasks to the law clerk. The justices do not have personal law clerks.

## Answers from Norway

16. If research and administrative support is assigned individually to judges, is there also a research and documentation or equivalent department which provides additional pooled research support?

Not relevant.

17. To what extent, if at all, do assistants/*réferendaires* [Here: law clerks] provide support to judges in your institution as regards specifically:

(a) Preparation of pre-hearing documents, such as a memorandum to assist the judge prior to the hearing of a case;

To a large extent.

(b) Undertaking legal research to assist a judge to make a decision in a case;

To some/a large extent, depending on the justice's wants and needs.

(c) Discussing aspects of a case with a judge orally or in writing;

To some/a large extent, depending on the justice's wants and needs.

(d) Consideration and evaluation of the relevant law;

To a large extent.

(e) Undertaking comparative law analysis;

To some extent, if relevant to the case, and depending on the justice's wants and needs.

(f) Drafting sections of judgments;

To some extent, depending on the justice's wants and needs. The main rule is that the justices draft the judgment's reasons/opinions.

## Answers from Norway

(g) Putting forward a suggested or preliminary decision for judge(s) to consider;

The law clerk puts forward a suggested decision for the Appeals Selection Committee, as to whether the appeal shall be granted or denied leave. These decisions do usually not include reasons, and are based on simplified and standardized wording.

(h) Any other element that you consider is relevant in this context.

No.

### F. Oral hearings

18. Is there an oral hearing in all cases?

No.

19. If there is not an oral hearing in all cases:

(a) What percentage of cases typically involves an oral hearing?

Approximately 10-14 % of appeals against judgments are granted leave, and all of them are subject to oral hearings before the Supreme Court.

(b) On what basis (formal rules or informal determinations) is it determined which cases will have an oral hearing?

The general rule is that the appeals against interlocutory orders (as opposed to judgments) are based on written proceedings, and decided by the Appeals Selection Committee.

(c) Can parties to a case request an oral hearing? If yes, what is the significance or consequence of such a request?

The Appeals Selection Committee decides, based on its own discretion, if the case shall be brought before the Supreme Court with five justices, and thereby subject to an oral hearing.

20. Does deliberation take place between the judges before the oral hearing? If so, is this the practice in all cases or in some cases?

No. Deliberation takes place after the oral hearing. Please also refer to answer to question H.22.

## Answers from Norway

21. Are time limits imposed on parties making oral submissions before your institution?

Yes. Based on a predetermined time schedule.

22. Are parties permitted to address the Court for an uninterrupted period of time? If so, for how long?

The justices may ask questions at any time during the oral submission, but this is the only permitted interruptions.

23. Is discussion in the oral hearing confined to matters set out in the statements or written submissions of the parties or may it involve broader legal discussion between the lawyers/a party and the Court?

Mainly the first, but the justices may initiate a broader legal discussion during the oral hearings if this is relevant to the matter of the case.

24. Are parties permitted to file further written submissions following an oral hearing?

No.

25. Is it possible for a judge to be excluded from proceedings based on a legal opinion expressed during an oral hearing giving rise to the perception of bias?

The justices will refrain from explicitly expressing legal opinions during an oral hearing. If such expressions are put forward, it will be regarded as preliminary legal opinions subject to the lawyers' comments.

## Answers from Norway

### G. Written submissions of parties

26. What is the usual length and level of detail of written submissions of parties provided to your institution? Please indicate the approximate number of pages (1.5 line spacing) of a 'typical' written submission

- |             |                                     |
|-------------|-------------------------------------|
| 0 – 5 pages | <input type="checkbox"/>            |
| 5-10 pages  | <input checked="" type="checkbox"/> |
| 10-20 pages | <input type="checkbox"/>            |
| 20-30 pages | <input type="checkbox"/>            |
| 30-40 pages | <input type="checkbox"/>            |
| 40-50 pages | <input type="checkbox"/>            |
| 50+ pages   | <input type="checkbox"/>            |

20. Is there a maximum length for written submissions filed by parties in a case? If yes, please provide details.

No.

### H. Consideration of the case

21. Can your institution raise points of law of its own motion (i.e. ex officio) or is it limited to the points raised by the parties to the case?

The Supreme Court may raise points of law ex officio and will, in such case, normally do so in the preparatory proceedings so the lawyers are able to be well prepared to oral hearings.

22. How is discussion, deliberation and decision-making structured in your institution?

The day after conclusion of the oral hearings, the justices meet for deliberation where each justice presents his or her views on the case. The chair justice begins with the deliberation by giving a thorough presentation of his or her view. The justice who has gone the longest time without writing an opinion is assigned to write the opinion representing the majority or unanimous vote. If this justice does not belong to the majority vote, the writing is assigned to next in line. The dissenting justices (if any) decides among themselves who is to write the dissenting opinion.

## Answers from Norway

When the first draft is finalized, it is circulated to the other justices within the same voting fraction for feedback and mark-up. Following the finalized opinions, the justices meet to vote the case. The judgment is published as soon as it is proofread.

The structure is different in the Appeals Selection Committee, where discussion, deliberation and decision-making mainly is conducted in writing.

23. Does your institution deliberate in a number of different languages? If so, please provide some detail. For example, does your institution have more than one official language?

Norwegian only.

24. Are there rules, processes, or conventions about how discussions and votes take place?  
If yes, specify the relevant rules etc.

Among the most important statutes is the Act relating to the Courts of Justice (Courts of Justice Act) section 3 to 9. For civil cases, the Act relating to mediation and procedure in civil disputes (The Dispute Act) chapter 30 is relevant. For criminal cases, the Act relating to legal procedure in criminal cases (The Criminal Procedure Act), inter alia section 323.

The statutory law includes some voting rules, but how discussions take place is largely left to the discretion of the Supreme Court, and enshrined in internal rules of procedure.

The relevant provisions prescribe that leave to appeal against judgments 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 Supreme Court to decide which – and accordingly how many – appeals against judgments to admit for trial.

The decision to grant or deny leave to appeal is made by the Supreme Court's Appeals Selection Committee. These decisions are made by three justices in each case, and a denial or limitation of consent must be unanimous.

## Answers from Norway

As regards to appeals against interlocutory orders – 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. However, the Disputes Act contains a provision allowing the Appeals Selection Committee to deny interlocutory appeals in cases where the appeal does not concern questions with a bearing beyond the present case, and there are no other reasons for the appeal to be tried. It also provides for denial where the appeal mainly raises comprehensive questions of fact.

For interlocutory appeals in criminal cases, the Criminal Procedure Act contains provisions similar to the one mentioned above for civil cases, but with a more restricted area of application. So far, the opportunity to deny appeals pursuant to these provisions, has been used only on rare occasions.

25. How are preferences for particular outcomes communicated between the judges?

Please refer to answer to question H.22.

26. Where there is an oral hearing, to what extent does the oral hearing (as opposed to written submissions) influence the court's discussion, deliberation and decision-making?

Oral hearings is a fundamental principle for the legal proceedings in admitted cases at the Supreme Court, and consequently constitutes an important foundation for the justices opinion and decision in each case.

27. Are there any other procedural rules or conventions that you believe impact significantly on the way in which cases are considered?

No. However, the Supreme Court must always comply with the relevant procedural rules set out in the ECHR, including the fair trial standard in article 6.

### **I. The decision of the institution**

28. Is the decision delivered on behalf of the institution or is it open to each individual judge assigned to the particular case to deliver a separate judgment?

Each justice may dissent and write a separate opinion and judgment in the particular case. The written ruling will include and disclose all opinions and how the justices voted. However, the judgment/ruling as such is delivered on behalf of the Supreme Court.

## Answers from Norway

29. If the decision is delivered on behalf of the institution, does one judge write for the institution? If not, please explain how the judgment of the court is written for your institution. Are there formal rules or informal practice governing this?

According to internal rules of procedure, the justice who has gone the longest time without writing an opinion is assigned to write the opinion representing the majority or unanimous vote. The dissenting justices (if any) decides among themselves who is to write the dissenting opinion.

Judgments are written by way of the justice's personal opinion. However, a justice that concurs with the writing justice, will not write a separate opinion. Instead, the concurring justice will provide the writing justice feedback in order for the opinion to be representative for their fraction, and then vote in favour of the writing justice. Consequently, a judgment will seldom include more than two written opinions and, thus, two voting fractions. Most judgments are unanimous.

30. How is the court's ruling/reasoning recorded?

The structure of a Supreme Court judgment is normally as follows:

1. The parties and justices in the case
2. The majority opinion presented by the first voting justice
  - a. The facts/background of the case
  - b. The reasoning and legal opinion
  - c. The judgment suggested by the first voting justice
3. The dissenting opinion (if any) presented by the second voting justice
  - a. The reasoning and legal opinion
  - b. The judgment suggested by the second voting justice
4. Voting from the remaining three (or four if unanimous vote) justices
5. The Supreme Court's judgment (based on the majority vote)

The judicial decisions of the Supreme Court and of the Appeals Selection Committee of the Supreme Court are published in the Lovdata Foundation digital legal information system. Decisions from the Supreme Court are also published on the Supreme Court's website. See for example: <https://www.domstol.no/globalassets/upload/hret/decisions-in-english-translation/hr-2018-1720-a.pdf>

Judgments that have interest beyond Norway – e.g. rulings related to ECHR – are translated to English.

## Answers from Norway

31. Is there a distinction in your Supreme institution between the Judgment (i.e. reasons) and the Order (i.e. the operative ruling of the court)?

Yes. Decisions from the Appeals Selection Committee will often be without reasons – e.g. refusal of leave to appeal against judgments and interlocutory orders. Such decisions are based on simplified and standardised wording included on one page.

32. Are there any other distinctions of this nature in the decisions delivered by your institution?

None significant.

### **J. Timeframes for the decision-making process**

33. How long, on average, between consideration of a case by your institution and the making of a decision? Please indicate the approximate length of time between the introduction of the case into the system of the Supreme Administrative Court (rather than the time when the case first comes before a judge for consideration) and the final resolution of the case through, for example, the pronouncement of the final decision.

For appeals against judgments that are granted leave, the average time period between registration of the appeal and the final judgment is seven months for civil cases and 3.6 months for criminal cases.

34. Is there a specific mandatory timeframe for deciding all cases? If yes, please provide details.

No, except for the ECHR fair trial standard in article 6.

35. Are there specific mandatory timeframes for particular categories of cases? If yes, please provide details of the categories of cases and the relevant timeframes.

The Criminal Procedure Act requires that appeals against decisions regarding custody/detention shall be decided immediately.

## Answers from Norway

36. If there are no mandatory timeframes for deciding cases, is there a certain amount of time that it is considered appropriate for the decision-making process to take? If yes, please provide details.

Decisions from the Appeals Selection Committee granting or denying leave to appeal: 4-6 weeks.

For appeals against judgments that are granted leave, the average time period between the first registration of the appeal and the final judgment is seven months for civil cases and 3.6 months for criminal cases. These time frames are deemed appropriate.

37. If there are mandatory timeframes applicable to the decision-making process in your institution, is it ever difficult for the court to abide by these timeframes? If yes, what are the main reasons for this?

No.

38. If there are no mandatory timeframes for deciding cases, but by convention or practice, there is a certain amount of time that is considered appropriate for the decision-making process to take, is it ever difficult for the court to abide by this timeframe? If yes, what are the main reasons for this?

No.

## **K. Developments over time**

39. Have the processes you have outlined in the preceding answers been subject to any significant changes in the last five years?

Not in any material aspects.

40. If yes, have these changes had an effect on the way cases are considered and decided?

Not applicable.

41. Do these changes constitute an improvement in your view? If yes, please provide details.

Not applicable.

## Answers from Norway

### I. Further comments or observations

42. Is there anything about your institution and/or its particular decision-making processes that you believe is not captured in the questions above, or any contextual information that you believe would aid our understanding of the decision-making processes in your court?

Nothing significant.