The Supreme Court of Norway

"Separation of Powers and independence of Constitutional Courts and Equivalent Bodies",
the 2nd Congress of the World Conference on constitutional justice.

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The independence of the court as an institution

The principle of separation of powers is fundamental in the Norwegian Constitution of 1814, splitting the legislative, the executive and the judicial power. Norway does not have a special Constitutional Court. The ordinary courts of law, with the Supreme Court pronouncing judgments in the final instance, have power to review the constitutionality of legislation adopted by the Norwegian parliament, and also the right to review administrative decisions. Thus ordinary courts under ordinary court proceedings deal with constitutional matters that may arise from the case in question.

It is not expressly laid down in the Constitution that the judiciary exercises its power independently of the other organs of state. However this is fully accepted as constitutional customary law. It is essential in a state governed by law that the courts will not be placed under any political steering control in the performance of their judicial functions. In 2002 the administrative control of the courts was moved out of the Ministry of Justice, where it had been since the creation of the Norwegian state in 1814. The National Courts Administration (NCA) was established in order to safeguard the independence of the courts in relation to the other branches of government.

The NCA is an independent administrative body with its own board consisting of nine members, of whom two are elected by the Parliament and the others appointed by the King-in-Council. The NCA is the central administration for the Supreme Court, the Courts of Appeal, the District Courts and the Land Conciliation Courts. The NCA initiates legislative amendments and is a consultation instance for new acts and regulations. Among other things the NCA has the responsibility for the courts' premises, finances and ICT equipment and development. It assists the courts in most administrative questions, such as for example expertise development, personnel questions, media contact and service development. The NCA cannot influence the courts' judgments and rulings.

The King-in-Council may overrule decisions made by the board of the National Courts Administration in administrative matters, and must inform the Parliament on the decision. The Ministry of Justice itself does not have any authority to impose instructions on the NCA or the courts in administrative matters, but has the principal responsibility for drafting legislation concerning the courts. The NCA and the Ministry of Justice are in dialogue about the courts' development, resource needs and regulations. Although the National Courts Administration will present a draft budget to the Ministry, it is the Ministry who is dealing with the budget of the courts. The framework budget is presented for the Parliament for approval as part of the Government's overall draft annual State Budget. The budget of the Supreme Court is independent of the budget of the lower courts.

The courts do not set their own rules of procedure. Laws regulating the operating procedure of courts are given by the Parliament as all other legislation. However some fundamental principles are vested in the Constitution or in constitutional customary law, and can only be set a side or amended in accordance with the procedure for changing the Constitution.

The constitutional independence of judges

Judges are independent in their adjudication of the individual case and cannot be instructed by the Ministry of Justice, the Parliament or the NCA. Furthermore, a judge cannot be instructed by another judge from the same or a higher court. There is one exception, as the Chief judge has an obligation to ensure that the preparation of the individual case is ongoing and has satisfactory progress. Thus the Chief judge may instruct a judge to take necessary steps in order to gain or keep satisfactory progress. The Chief judge may also transfer the case to another judge if this is deemed necessary to get proper progress.

Judges are appointed by the King-in-council. They are appointed for lifetime, that is until the compulsory age of retirement at 70, but with an opportunity to leave with full pension at the age of 67.

Together with the NCA it was established two independent bodies – an advisory appointment board and a disciplinary board. The advisory appointment board gives advice to the government on the question of who shall be appointed to a vacancy as a judge.

The NCA announces vacant judgeships. The appointment board assesses the applicants' qualifications. The board is composed of three judges, one lawyer, one legal professional employed by the Civil Service and two public representatives. The King-in-Council appoints the members for four years.

The appointment board will gather all relevant information on the applicants' qualifications, hereunder obtain references and conduct interviews. There is no public hearing during the procedure of appointing judges. The board's ranking shall be reasoned, and as a general rule, list three qualified applicants. The ranking does not have to be unanimous. The Chief Judge of the relevant court in the first and second instance then gives an opinion to the appointment board. The Chief Justice of the Supreme Court gives his recommendation to the Minister of Justice. The board's recommendation carries a great deal of weight when the King-in-council makes the final choice. The Government may, as a general rule not choose an applicant who is not one of the three best-ranked candidates. Usually the Government pick the number one on the board's ranking list. The whole procedure is public.

The Supervisory Judicial Committee is an independent disciplinary board hearing complaints against judges, for example for unprofessional conduct. The disciplinary board has the power to give warning to and to criticise a judge for misbehaviour. The decision of the board will be made public. The members of the committee are appointed by the King-in-council.

If a judge has done something that makes him or her unfit to be a judge then the King-in-council may bring a case of dismissal before the courts. It is then up to the courts to decide the question of whether there is sufficient grounds for dismissal or not. A Supreme Court Justice can only be removed from office by judgement of the Court of Impeachment.

According to the Constitution the Supreme Court Justices cannot be elected to the Parliament.

The Supreme Court justices' salary is determined by the Parliament after recommendation from the Parliament's Presidum.

The right to review a statute's constitutionality

In the exercise of its judicial authority, the Supreme Court acts wholly independently of the other organs of state.

The courts' right to review whether a statute is in conflict with the constitution is not expressly vested in the Constitution. The right of the courts to review a statute's constitutionality emerged through Supreme Court practice already early in the 19th century. Today this right to review is deemed to have the status of constitutional customary law, and, as such, may only be revoked or limited by an amendment to the Constitution.

Although the right to review is, in itself, established law, opinions differ - also within the Supreme Court - as to what is required before a statute ought to be set aside on the grounds that it is in breach with the Constitution. There may be reason to maintain that the threshold is lower when it comes to protecting the freedom of individuals in the widest sense, such as freedom of speech and freedom of religion, than when considering setting aside economic reform legislation.

The Court's right to review also includes the legality of regulations prescribed by the ministries or other bodies pursuant to the provisions of statute. As a result of the comprehensive enabling legislation and the widening range of activities performed by the executive power, the right to review administrative decisions is of greater practical importance than the right to review the constitutionality of statutory laws. However, where the jurisdiction of the administrative authorities is defined using vague or very discretionary criteria, the Supreme Court has limited the right to review 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 defendable. A further development of the right to review is that the Supreme Court has now also assumed the right to consider the question of whether legislation or administrative decisions conform to human right conventions to which Norway is a party, in particular the European Convention on Human Rights of 1950.

It should be pointed out that the Norwegian courts do not take up cases of their own accord, but resolve legal disputes by considering the cases brought before them by the parties or by the prosecution authority. Thus the courts do not have the power to try the constitutionality of a statute on its own initiative.