



**3rd Congress of the World Conference on Constitutional Justice
'Constitutional Justice and Social Integration'
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Seoul, Republic of Korea**

Questionnaire

Reply by the Supreme Court of Norway

A. Court description

The Supreme Court of Norway has already submitted a short presentation to the CODICES database.

B. Social integration

1. Challenges of social integration in a globalized world

1.1. What challenges has your court encountered in the past, for example in the field of asylum, taxation law or social security law?

The Supreme Court of Norway has faced challenges concerning changes of social integration in the field of for instance asylum law and employment law. Examples of specific challenges are social dumping of workers (HR-2013-496-A, Case no. 2012/1447 (Official Gazette Rt-2013-258), and denial of residence permit to applicants of asylum where these are under age and have resided in Norway for several years (HR-2012-2399-P, case no. 2012/1042 (Official Gazette Rt-2012-2039) and HR-2012-2398-P, case no. 2012/688 (Official Gazette Rt-2012-1985), both plenary sessions of 21 December 2012. Link to summary of all the cases: <http://www.domstol.no/en/Enkelt-domstol/-Norges-Hoyesterett/Summary-of-Recent-Supreme-Court-Decisions>).

1.2. How were issues of social integration or conflict transformed into legal issues?

Unlike in some other countries, only legal disputes may arise for the Supreme Court of Norway. The issues of social integration are accordingly already transformed into legal issues when the Court handles the case. In case Rt-2013-258 (mentioned above) the legal question at issue was for instance the validity of rules set out in a regulation concerning general application of a collective agreement.

1.3. Is there a trend towards an increase in cases on legal issues relating to social integration? If so, what were the dominant questions before your Court in the past and what are they at present?

It may be argued that there is an increase in cases on legal issues relation to social integration in the Norwegian court system generally, for instance when it comes to

social dumping. However, many of these cases do not reach the Supreme Court. The increase in cases we experience in the Norwegian Supreme Court does not seem particularly linked to issues relating to social integration.

2. International standards for social integration

2.1. What are the international influences on the Constitution regarding issues of social integration/social issues?

It may be argued that interpretation of the Norwegian Constitution can be influenced by international standards, for example regarding human rights which are mentioned in article 110C in the Constitution.

2.2. Does your Court apply specific provisions on social integration that have an international source of background?

See question 2.5.

2.3. Does your Court directly apply international instruments or expressly refer to them in the application of constitutional law?

See question 2.5.

2.4. Does your Court implicitly take account of international instruments or expressly refer to them in the application of constitutional law?

See question 2.5.

2.5. Has your Court ever encountered conflicts between the standards applicable on the national and on the international level? If so, how were these conflicts solved?

According to an unwritten principle, The Norwegian Supreme Court is obliged to interpret Norwegian domestic law in a way that does not conflict with the Norwegian obligations under international law. This entails that Norwegian courts must take into consideration both treaty provisions and international case law when Norwegian law is being applied in specific cases. The Supreme Court accordingly often makes reference to international sources of law such as the European Convention on Human Rights, the UN International Covenant on Civil and Political Rights, the UN International Covenant on Economic, Social and Cultural Rights, the UN Convention on the Rights of the Child and the UN Convention on the Elimination of All Forms of Discrimination against Women. The Supreme Court also applies provisions that have an international source of background and which are somehow incorporated or transformed into the national legislation. An example of the latter is the EU Posted Workers Directive (96/71/EC) which is to be found in a regulation under the provisions of the Working Environment Act. The directive aims at preventing social dumping and in this way supposedly also improve the social integration.

Although Norwegian law is interpreted in a way that does not conflict with our obligations under international law, Norwegian constitutional law establishes that the Norwegian Supreme Court is completely independent and that the Constitution prevails in case of conflict. Although great weight will be placed on international sources of law, the Constitution is accordingly to be given decisive weight. As to specific cases where conflict has arisen between the standards applicable on the national and on the international level, there are examples of such cases (Rt-2000-1811 "Finanger" (see case Inr. 49B/2000, Bulletin 55/1999, [NOR-2000-3-003] in the CODICES) and HR-2010-2082-A, case no. 2010/821 (Official Gazette Rt-2010-1500). In these cases, national legislation has prevailed. The cases are, however, not really within the field of social integration.

3. Constitutional instruments enhancing/dealing with/for social integration

- 3.1. What kind of constitutional law does your Court apply in cases of social integration – e.g. fundamental rights, principles of the Constitution ("social state"), "objective law", "Staatszielbestimmungen, ...?"

In cases of social integration – like in all cases – national legislation, regulations and case law may apply. Regarding constitutional law in particular, this may consist of principles of the Constitution in addition to the provisions of the Constitution itself.

- 3.2. In cases where there is access of individuals to the Constitutional Court: to what extent can the various types of constitutional law provisions be invoked by individuals?

All the various types of constitutional law provision may be invoked by individuals.

- 3.3. Does your Court have direct competence to deal with social groups in conflict (possible mediated by individuals as claimants/applicants)?

Yes.

- 3.4. How does your Court settle social conflicts, when such cases are brought before it (e.g. by annulling legal provisions or by not applying them when they contradict the principle of equality and non-discrimination)?

Depending on the wording/framing of the legal question in the specific case as it arises for the Court, a provision which is deemed to contradict the constitution may be annulled or not applied in a specific case.

- 3.5. Can your Court act preventively to avoid social conflict, e.g. by providing a specific interpretation, which has to be applied by all state bodies?

No.

- 3.6. Has your Court ever encountered difficulties in applying these tools?

N/A

- 3.7. Are there limitations in the access to your court (for example only by State powers), which prevent it from settling social conflicts?

Any matter brought before the Supreme Court must initially be considered by the Appeals Selection Committee. An appeal may not be brought before the Supreme Court without the leave of the committee. The Supreme Court is – in addition to ensuring uniformity of legal process and to contribute to the resolution of matters on which the law is unclear – responsible for developing law within the framework of existing legislation as and when new societal problems arise. Accordingly, leave to appeal to the Supreme Court is mainly granted in cases that raise matters of principle importance, beyond the specific subject matter of the issue in dispute. A case which mainly concerns evidence will often not be granted a leave, and the Supreme Court may in such a case be prevented from settling a social conflict.

4. The role of constitutional justice in social integration

4.1. Does your Constitution enable your Court to act effectively in settling or avoiding social conflict?

In our opinion, the Constitution enables the Court to effectively settle a social conflict with matter of principle importance. By pronouncing a judgment in a matter of principle importance, future cases regarding social conflicts may be avoided. The court may not, however, give interpretation of national legislation before a case arises for it.

4.2. Does your Court de facto act as "social mediator", or/and has such a role been attributed to it?

No, the Supreme Court role is not to be a social mediator.

4.3. Have there been cases, when social actors, political parties could not find any agreement, they would "send" the issue to your Court which had to find a "legal" solution, which normally should have been found in the political arena?

Not to our knowledge.