

The Norwegian Bar Association

1 Introduction

The origin of the Norwegian Bar Association dates back to 1860, while today's organisation was established 1908. Even though membership in the Association is voluntary, more than nine out of ten lawyers holding license have chosen to be members, and so have their associates.¹ Hence, the Association is indeed representative for the bar in Norway.

The General Assembly, which appoints the Board of Directors, is the highest ranked body in the Association. The chairman of the Norwegian Bar Association, currently Mr. Helge Aarseth, leads the Board of Directors. The secretariat, counting 18 persons, serves both the members and the different bodies of the Association. The Secretary General, currently Ms. Merete Smith, heads the secretariat.

The purpose of the Norwegian Bar Association is stated in clause 1 in the bylaws:

“The purpose of the Association is:

- *To promote justice and the rule of law.*
- *To secure an independent legal profession with high standards of professional conduct.*
- *To promote a high level of professional ethics.*
- *To safeguard the members' interests and develop good cooperation among the members.”*

The Norwegian Bar Association makes efforts to keep up a high profile in order to have an impact on the state of justice and to promote the member's interests. Every year The Norwegian Bar Association gives approximately 130 opinions on proposed legislation. Law committees, 31 of them, work continuously on numerous relevant legal issues.

¹ Figures from The Norwegian Bar Association, 2002.

In accordance with the purpose, Disciplinary panels are part of the Bar Association. The Disciplinary panels issue rulings on complaints made against the members of the Bar Association. Their decisions may be appealed to the Disciplinary Committee, appointed by the Government.

The Norwegian Bar Association has 19 regional boards.

In accordance to the purpose stated in clause 1 in the bylaws, issues given priority at present cover several areas, such as:

- An intensive work on ethics.
- International cooperation.
- A following up of the Governmental document “Rett til rett” (Access to court),² which concerns central topics like competition law, monopoly and free legal aid.

In the following, this article will provide historical facts regarding the development of the attorney profession in Norway, a brief account of today’s state of the profession and current issues, and finally a glance at the future.

In the following, the American term “attorney” is used to characterise a lawyer holding licence providing him or her the right to give legal advices as a profession, and the exclusive right to represent a client in court. The Norwegian term is “advokat”, and no distinction is made between a lawyer with the right to appear in court and to represent clients outside courts, like the British terms “solicitor” and “barrister”.

2 History

In ancient times, there were no rules concerning the legal profession in Norway. In general, laws were formed by custom, and passed on by oral tradition. In practice, the need for trained legal assistance was minimal. However, stories dating back as far as to the Saga era reveal the existence of spokesmen in the courts.³

Under Danish authority the tradition changed into written laws passed by the Danish king. Christian IV’s Norwegian law appeared already in 1604, followed by several decrees. Many crucial legal questions remained unsolved, until Christian V’s Norwegian law of 1687 was given. This law was the first adequate law designed for Norwegian conditions, and to be enforced in Norway.

With the written laws, the need for skilled legal assistance increased. The watershed to the legal professionals came with the Royal Decree of 9 September 1638.⁴ In this decree “procurator” appeared as a legal term. The procurators were officially recognised, by which the profession was legalised. Men of the King appointed the procurators. The Royal Decree of 9 September 1638

² Norges Offentlige Utredninger, NOU, 18:2002 Rett til rett.

³ For example in the end of “Njáls saga”.

⁴ Christian IV’s decree of September 9th 1638. The principles were adopted into later legislation, like Christian IV’s recess of 1643 and Christian V’s Norwegian Law of April 15th 1687, 1st section 9th chapter, which contains more detailed rules.

contained two fundamental principles, still valued: Freedom of the bar and the exclusive right for procurators to provide legal aid. Furthermore, the first guidelines to a high standard of ethics are also found in the decree. Poor people were given free legal aid, while most had to pay. No formal education existed, and all the procurators were autodidact. Almost hundred years later the university in Copenhagen introduced a University degree in law. To hold the degree became a requirement for procurators.

In 1815 the University of Oslo was instituted, and until 1890 the law students constituted 40 percent of the student population. The rest studied theology and medicine. As a result the lawyers dominated the Norwegian administration, politics and the leadership of the nation. After 1890 the law students still increased in numbers, although not in the share of the student population, as other university professions evolved.

The next milestone was a free and independent legal profession. From the middle of the 19th century the King no longer appointed the counsels. The profession was open to everyone with a law degree, and the Department of Justice authorized the attorneys.⁵

The industrial revolution and the evolvement of the society from the beginning of the 20th century lead to an escalating need for legal advice. The creation of new industry, the exploitation of waterpower, the need for foreign capital in Norway and different regulations together transformed Norway into a more complex society.

The number of attorneys increased, and by 1908 there was one attorney per 3700 inhabitants.⁶ After World War II the construction of the welfare state started, taxation evolved, national insurance and labour rights became legal disciplines and late in the 60s, oil was explored in the North Sea. The modern, regulated welfare society demanded extensive professional legal assistance. In less than hundred years the number of attorneys per inhabitants increased almost five times.⁷

Along with the independence of the profession the desire for an association for attorneys occurred. In 1860 the first attorney organisation was established. However, the first organisation was no success, and in 1888 the secretary recorded that no one attended the General Assembly. The authorities, and later the attorneys themselves, discussed the need for an organisation regulated by law with mandatory membership and a disciplinary system. A proposal was made,⁸ but found too controversial. The attorneys showed no enthusiasm to the idea of having the quality of their work judged by colleagues. In 1894 a new organisation was established,⁹ with voluntary membership. The majority of the members were situated in Norway's capital. A number of independent, regional organisations were established in the districts. This kind of fragmented

⁵ "Sakførerloven" of August 12th 1848 states the reform.

⁶ Figures from Harald Halvorsen, (ed.) *Advokaten – rettens og samfunnets tjener*, Norwegian Bar Association, Oslo, 1983.

⁷ About one attorney pr 800 inhabitants in 2003.

⁸ Proposal made by the Minister of Justice, Mr. O.A. Bachke, based on a similar Danish proposal.

⁹ "Den norske Advokat- og Sagførerforening".

organisation, without any disciplinary authority, was considered unsatisfactory. Committees were appointed both in 1896 and in 1898 to find a solution, but with no success.

Later, one of the local organisations¹⁰ raised an initiative to unite all the regional organisations with the 1894-organisation, based upon voluntary membership. A meeting was held 17 and 18 September 1908, where the new association was established: The Norwegian Bar Association.¹¹

3 The Attorney

Who is he or she?

The Norwegian Bar Association has more than 6000 members; whereas 5600 are actively working as attorneys and about 400 are passive members (retired etc.).¹² Figures show that about 94 percent of the attorneys in Norway are members of the Association.¹³ During the last years the number of associates, also called “authorised assistant attorneys”, has increased. 1300 of the current members are associates.

The male part of the population still dominates the bar. Three out of four members are men. The female share however, is increasing. Among the law students, the women have for some years constituted about one half of the student population. Figures show that among the younger members of the Norwegian Bar Association (aged 20–39 years,) the women’s share is about 40 percent, successively decreasing with higher age.¹⁴ Men dominate the law firms, and on partnership level, even less women are found.¹⁵ One of the priorities of the Norwegian Bar Association is to improve the numbers of female attorneys and partners.

Small law firms and one-man businesses are the most common in Norway. 60 percent of the attorneys are engaged in firms with ten attorneys or less.¹⁶ In the cities some larger firms are to be found, still altogether only 31 law firms in Norway employ more than 20 attorneys. Five of these firms count more than 100 attorneys. According to the Courts of Law Act,¹⁷ only people working in the law firm are allowed to hold ownership in the firm. Hence, the legal practice may be organised as a one-man firm, or as a company where only persons who exercise a significant part of their activities in the service of the company may own parts or shares, or hold office as directors.

¹⁰ “Smaalenenes Sagførerforening”.

¹¹ First named “Den Norske Sakførerforening”, from 1965 named ”Den Norske Advokatforening”.

¹² Figures from The Norwegian Bar Association, December 31st 2003.

¹³ Figures from The Norwegian Bar Association, 2002.

¹⁴ Figures from the Norwegian Bar Association, 2003.

¹⁵ Klungland Bahus, Marianne, *Advokatstanden i Norge*, Universitetet i Oslo, 2001.

¹⁶ Figures from the Norwegian Bar Association, February 2004.

¹⁷ The Courts of Law Act “Lov om domstolene” of August 13th 1915 no. 5, § 231.

Almost 1000 members of the Norwegian Bar Association do not work in traditional law firms.¹⁸ Many of them practice as in-house lawyers, both in public and private sector. The history reveals a long tradition of attorneys working under an employer, still being independent and with integrity in their work. In-house lawyers are found in enterprises ranging from huge oil companies to the Governmental attorney and municipality attorneys. The independence of these attorneys has never been questioned in Norway. A membership in the Norwegian Bar Association for the in-house lawyers along with traditional attorneys is possible.

Requirements for practice

The attorneys' exclusive right to give legal assistance, passed in 1638 is still valued. The Courts of Law Act, § 218 states that:

“A person who wishes to practice law must be licensed as an attorney pursuant to § 220. To practice law means to give legal assistance to others as a profession or in a regular manner.”

From the provision a few exceptions are made. The monopoly is preserved through history to protect the public from the risk of unskilled legal services and in order to ensure a proper administration of justice. On the other hand legal counsel is not mandatory. Any citizen is free to plead his own case before the courts, even before the Supreme Court.

Conditions for exercising the legal profession as an attorney are stated in the Courts of Law Act, chapter 11. The most central clause is § 220. The basic condition is to hold a Norwegian University degree in law. Secondly, a licence is required. An independent public authority, the Supervisory Counsel for Legal Practice (“Tilsynsrådet”), issues the licence. To acquire a licence the candidate must have a clean record of conduct. The candidate must practice as an associate lawyer or as an assistant judge for two years after obtaining the law degree. The candidate must also try three cases before the courts, of which at least one must be a civil case. Finally, participation in a special course concerning relevant issues to an attorney is required.

To appear before the Supreme Court, additional conditions are required.¹⁹ The attorney must have practised as an attorney for at least one year, and prove suitability for Supreme Court litigation in an evaluation by the Supreme Court. The evaluation consists of presenting two cases, of which at least one must be a civil case.

To practice as an attorney it is necessary to provide security.²⁰ The security shall cover the liability to pay compensation that may incur in the practice. The Norwegian Bar Association has made an agreement with an insurance company.

¹⁸ Figures from the Norwegian Bar Association, 2003.

¹⁹ The Courts of Law Act § 221.

²⁰ The Courts of Law Act § 222.

The members of the Association may obtain insurance collectively through the Association, or take out individual insurance with an insurance company.

Education from other EEA countries may serve as basis for being licensed as an attorney in Norway. A licence may also be issued if the applicant holds a corresponding licence in another EEA country, and demonstrates sufficient knowledge of Norwegian law. Then EEA attorneys are entitled to practice law when notice is given to the Supervisory Council, and security is provided. If the attorney's command of the Norwegian language is not satisfactory, the attorney must appear jointly with a Norwegian attorney during litigation. To be counsel before the Supreme Court, the attorney must appear jointly with a Norwegian attorney entitled to appear before the Supreme Court.

Foreign attorneys from outside the EEA who do not hold a licence to practice as attorneys in Norway, may be given permission by the Supervisory Council to practice foreign law or private international law, and to litigate under certain conditions.

The Supervisory Council for Legal Practice is authorised to control that the affairs of attorneys are undertaken in accordance with legislation. All attorneys are obliged to give information necessary for this control.

The Norwegian Bar Association's Disciplinary panels consider complaints made against member attorneys of the Association. They pass decisions on complaints claiming that attorneys have behaved in violation of the ethical code of conduct, including whether an attorney's demand for fees is too high. The Disciplinary panels also pass decisions on whether attorneys have violated other applicable laws. Their decisions may be appealed to a governmental appointed Disciplinary Committee, where practising lawyers are in minority. The Norwegian Bar Association serves as a secretariat to the committee. A third body, the Lawyer Licence Committee («Advokatbevillingsnemnden») may withdraw licences, on advice from the Supervisory Council or the Disciplinary Committee. The disciplinary bodies are financed through annual contributions from the practicing lawyers.

Tasks

The majority of the work of most Norwegian attorneys takes place outside the courtrooms. Long working hours are spent in advising and negotiating. Private persons need assistance to handle the many legal questions of daily life. Frequent civil issues are for example to draw up a testament, legal questions concerning divorce and the care of children, taxation issues, labour rights and social rights, property rights and neighbour quarrels. All of these questions may of course end up in court. Another important share of the legal practice is the defence in criminal cases.

To obtain necessary legal assistance is regarded as a fundamental right, irrespective of financial ability. In criminal cases the defence counsel is free, and in civil cases both out-of-court counselling and litigation may be given free. The regulations are stated in the Free Legal Aid Act.²¹ However, relative strict

²¹ "Lov om fri rettshjelp" of June 13th 1980 no. 35.

limitations are given regarding both to the applicant's income and property, and to the type of cases. Other kinds of free legal aid are offered as part of insurances, by trade unions and by organisations.

In spite of the free legal aid system, many persons cannot afford to seek legal assistance. There is no tradition of formalising pro bono work in the Norwegian bar. However, most legal firms provide some legal assistance with little or no payment, in one way or another to low-income clients. In addition, the Norwegian Bar Association organizes free legal aid service in 35 locations in Norway, where local attorneys offer a free first consultation.

A different kind of clients represents trade and business. Industry and companies have always requested legal assistance. However, modern times' globalisation and expanding industries have increased the needs of legal expertise. The clients are professionals, but frequently in need of attorneys' advice, for example to reorganise a company, to sort out labour rights, to make expansions and to meet regulations.

Alternative dispute resolution is increasingly exercised in Norway. Norway holds a long tradition for arbitration, particularly in business relations. Several dispute resolution bodies exist to solve conflicts concerning various matters ranging from labour rights to minor criminal offences. Court mediation has been in use since 1997. There are also several attorneys that offer mediation. To act as mediators, attorneys must attend a mandatory course and obtain an approval by the Norwegian Bar Association.

Even though there is no formal system for attorneys' specialisation, many attorneys do specialise in certain fields. Particularly larger law firms are divided into departments dedicated to specific fields of law. In smaller law firms, the attorneys normally cover a broad legal area.

How to find an attorney

When the need for legal assistance appears contact with an attorney may be obtained in different manners. The yellow pages of the telephone catalogue provide useful information. The same yellow pages can be found on the Internet. Many law firms provide websites containing detailed information on the firm, its attorneys and the competence offered. Through a portal on the Norwegian Bar Association's website potential clients may search for a particular attorney or search for an attorney by region or topic. In addition, an attorney's reputation may decide a client's choice. What a friend, neighbour or family member tells you about an attorney may be decisive, as well as references through media. There are many local newspapers in Norway, and to advertise for your law firm in these papers is quite common. However, the advertisements are to be kept in a neutral and informative way.

4 Education

The Universities of Oslo, Bergen and Tromsø all offer studies resulting in the Norwegian law degree. The three faculties operate with dissimilar syllabuses. The system of the study has recently been reformed, to be more easily comparative to other studies both in Norway and abroad. The length of the study is normally five and a half years. The Norwegian Bar Association has advocated that the attorney profession as such should be a mandatory discipline on the syllabuses. This has so far been without success. There is no requirement for practical training during the law studies. However, a fair part of the students obtain work experience either as trainees in law firms, or in one of the student driven legal aid projects.

Continued legal education on initiative of the Norwegian Bar Association appeared as early as in 1927, when lectures were given to judges and practicing attorneys. Regular courses followed, and in 1993 the Bar Association decided to make continued legal education mandatory for the members. During a period of five years, each member must attend at least 80 hours of legal updating and in-depth studies. Thorough registrations are made, and violations are sanctioned with fees. Courses offered by “Juristenes Utdanningscenter”²² are popular; in 2003 the courses attracted 8500 participators. Various courses are offered, and lessons covering central legal issues like taxation, labour rights, expropriation and stock market regulations are offered regularly.

5 Ethic Issues

The Courts of law Act § 224 states that an attorney shall conduct his law practice in accordance with the rules of professional conduct. The law itself provides only a brief, general definition of professional conduct. More detailed rules are given in the Norwegian Bar Association’s Code of Conduct. These rules are confirmed by the Government and are enforceable as regulations.²³ The rules are based on the CCBE Code of Conduct, and focus on principles like the attorney’s duty to promote justice and to prevent injustice, independence, trust and confidentiality. The regulations are divided into three sections: The attorney’s relations to the clients, his relations to the courts and the public authorities, and the relationship between attorneys. A permanent committee within the Norwegian Bar Association continuously evaluates the rules, and will propose reforms when considered necessary.

The Norwegian Bar Association has ethical issues high on its agenda. The aim is to raise the consciousness on ethical matters even higher. Ethic issues will be given priority in the course mandatory to obtain the licence as an attorney. Further an ethic course is made a mandatory part of the continued legal education. Decisions made by the Norwegian Bar Association’s Disciplinary panels will be made public. Numerous discussions and meetings concerning

²² Center for education, owned by the Norwegian Bar Association and Norway’s Lawyers’ Association.

²³ Chapter 12 of the “Advokatforskriften”.

ethics are held both on central and regional levels. Guidelines have been and will be made on specific topics. The Norwegian Bar Association also advocates that professional ethics should be given more attention during the studies for the Norwegian law degree.

Recently the Norwegian media has focused on violations of the Code of Conduct. This has triggered a public debate. A positive consequence is a higher consciousness among attorneys. On the other hand, the Bar Association emphasises the importance of not judging the bar as a whole, based on a few mistakes.

6 International Work

On the international arena, the Norwegian Bar Association gives priority to Nordic cooperation and participation in the Council of the Bars and Law Societies of the European Union (CCBE) and the International Bar Association (IBA). The Nordic cooperation includes all five Nordic countries (Norway, Sweden, Denmark, Finland and Iceland), and takes several forms. Once a year the Presidents' meeting takes place. Here the chairmen, deputy chairmen and secretary-generals in the entire Nordic bar associations gather. In addition the secretary-generals are continuously in touch, and meet on a regular basis. The Nordic cooperation is particularly fruitful because the associations often are occupied with similar problems and tasks. Current issues are for example questions concerning ethics, multidisciplinary practices and the disciplinary system.

The Norwegian Bar Association regards CCBE as a significant and influential organisation. Involvement in the CCBE's activities is high on the agenda. One of the Association's members, Mr. Helge Jakob Kolrud, was president of the CCBE during 2003. Norway is not a member of the EU. As Norway however participates in the European Economic Area directives from the EU have direct effects on Norwegian laws and regulations. CCBE thus is an essential arena for The Norwegian Bar Association to put forward its opinions. EU-decrees of concern are for example establishment, money laundering and competition. Furthermore, the Bar Association has an eye on the continuous work on the Code of Conduct.

The Norwegian Bar Association is a member of the International Bar Association (IBA). Currently IBA is being restructured. The Norwegian Bar association looks forward to the results.

For the last fifteen years humanitarian aid has been on the agenda of the Norwegian Bar Association. In cooperation with national bar associations, the Norwegian Bar Association has successfully run legal aid projects in Nepal and in Uganda. The aim is to offer free legal aid to poor people, particularly regarding fundamental needs and human rights to women and children. In Nepal the activity has led to numerous legal aid offices. The goal is to establish one in each of Nepal's 76 regions. The authorities passed a Legal Act in 1998, granting free legal aid to poor people, and obliging the authorities to run the offices in the future. In Uganda four legal aid offices are established, and one attorney works

in a refugee camp. In rural areas seminars are held to spread knowledge about basic human rights. An Amendment Act has been passed in Uganda, which obliges all attorneys to do some pro bono work every year.

7 Publications

The Norwegian Bar Association's publishing activity is significant. The Bar Association publishes the authoritative compilations of court decisions in Norway. The compilation "Norsk Rettstidende" contains judgements made by the Supreme Court. The compilation "Rettens Gang" contains judgements made by the lower courts.

A useful channel for information and news regarding the trade is the magazine "Advokatbladet". The magazine is distributed to all members eleven times a year. Furthermore the Bar Association issues electronic newsletters twice a month, and several pamphlets concerning various topics. Finally the Association occasionally issues literature.

8 The Future

The Norwegian Bar Association aims to remain a significant association to attorneys practising in Norway and to remain central in the judicial life. The quality of the services provided by attorneys in Norway must be kept on a high level, hence the focus on ethics and continuing legal education will remain a priority for the Association. Access to legal aid is a fundamental principle, and there is room for improvement in this field. To preserve the independence of the bar is another fundamental principle. Structural changes like commercialisation of the law firms and regulations or deregulations of the legal services system will continue to challenge the independence.

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