

# **Presentation of the National Courts Administration and the Norwegian Court Reforms of 2002**

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## 1 Introduction

As in many other countries, there has been a debate on the administrative position of the courts also in Norway. The Norwegian Commission of the Courts submitted its report in 1999 (NOU 1999:19, *The Courts in Society*). The Commission proposed:

- The establishment of National Courts Administration,
- A new procedure of appointing judges,
- A new complaint and disciplinary procedure of judges,
- Reducing the use of temporary judges, and
- Legislative regulation of the judges' extra-judicial activities.
- To move the Official registration out of the courts.

All the recommendations were realized as part of the Norwegian court reforms of 2002. At a later stage the land consolidation courts have become part of the National Courts Administration.

The independence of the courts is an undisputed part of our form of government. In that aspect it is not sufficient that the courts are independent in real terms and work at a high professional level. This must also be evident to the public. A majority of the Law Courts Commission therefore found a need to mark this more strongly by proposing the establishment of a new independent administrative body.

The Norwegian Commission of the Courts also proposed changes to both the functional responsibilities of the courts and the division of the judicial districts. The old court structure consisted of 87 judicial districts with 92 courts of first instance. It has been decided to reduce the number of judicial districts to 65 and the number of courts of first instance to 66.

## 2 Reasons for Reorganisation

In Parliamentary bill no. 44 (2000-2001): Legislative amendments to the statute of courts etc. the Ministry of Justice proposed the establishment of a new National Courts Administration outside the Ministry of Justice. It is the very essence of a state governed by law that the courts will not be placed under any political steering or control in the performance of their judicial functions. One of the principles adopted by the constituent assembly (Riksforsamlingen) at Eidsvoll in 1814 determined that the judiciary should be separated from the legislative and executive powers. The key element of this principle is the independence of the courts in their judicial activities. The reason of wishing to see greater independence also in administrative respects is above all that it will support the independence of the work carried out by judges, and it will make it more evident to the public.

Prior to the changes of 2002 the Department of Court Administration (Domstolsavdelingen) within the Ministry of Justice (Justisdepartementet) carried out the central administration of the ordinary courts.

The main arguments of the proposed changes were as follows:

- *Its correlation to the organisation of other parts of the administration of justice.* The Ministry of Justice had been undergoing considerable changes during the 90's in the form of a delegation of major administrative tasks and work related to individual cases. Since the new Police Directorate was established and the Administration of the Care and Confinement of Prisoners was regionalised, the courts until 2002 remained as one of the last major, nation-wide public services still under direct ministerial administration. The objectives of the reorganisation of the Ministry of Justice, general views on administration policy and the role of the ministries made it unlikely that the National Courts Administration, responsible of a series of specialised tasks, would continue to be a part of the Ministry of Justice.

- *The wish to establish a clear division between the courts and the ministries.* One objection put forward against the prior regime of court administration has been that the State, represented by the Government administration, will be part in a large number of court cases, while at the same time being administratively superior to the courts.

- *The views of institutions and organisations consulted.* A majority of the institutions that received the matter for general review and consultation supported the proposal of the Courts Commission.

- *Greater legitimacy in relation to the courts.* It had been argued that a new and independent National Courts Administration would have greater legitimacy and weight than the Ministry of Justice should it be necessary to intervene against ill-judged administrative practices at a specific court. In particular, the Ministry of Justice had shown reserve in relation to complaints against judges, having taken into consideration the independent position of the courts.

- *The organisation of the National Courts Administration in Denmark, Iceland and Sweden.* In Denmark and Iceland reforms had been implemented in the work of the court administration, resulting in a greater degree of independence. Sweden has had for many years its own court administration (Domstolsverket) with considerable freedom of action in relation to the Swedish Ministry of Justice.

### **3 The National Courts Administration**

In assessing different organisation models for the National Courts Administration, it was considered important that responsibility would still lie with a body that is responsible to Parliament. All Norwegian State activities are subject to a ministry or a minister in such a way that the minister and the Government have parliamentary and constitutional responsibility of the activities in question (or part of it).

On such grounds it was proposed the development of a system of National Courts Administration that would give the Government and the Parliament

influence, through the framing of centrally established guidelines in the annual draft budget, and through a right of instruction of Government by Royal Decree.

It was proposed that the interaction between the Parliament, the Government and the new Central Administration of the Courts would be regulated by the following principles:

- The Ministry of Justice will no longer have a general right of instruction in administrative matters vis-à-vis the Central Administration of the Courts or the individual court.
- Through the Parliament's handling of the budget proposition, centrally established general guidelines will be given for the areas of responsibility that fall under the Central Administration of the Courts.
- Control of the National Courts Administration will be by law, regulation or plenary resolution of the Parliament in the usual manner.
- By Royal Decree, the Government will be in a position to instruct the National Courts Administration with respect to specific administrative matters (does not apply to judicial activities). The minister's constitutional responsibility will be secured through this right of instruction. A prerequisite is that such right of instruction is only used in cases of emergency. Before the Government uses its right of instruction, the National Courts Administration will be given an opportunity to state its opinion. The Parliament will be informed of the use of the right of instruction through the annual budget propositions. It will not be possible to delegate this right of instruction to an individual ministry.

The Ministry did not propose any obligation to disclose documents, or duty on the part of the National Courts Administration to consult the Ministry of Justice in advance about specific matters. However, it was assumed that regular contact meetings would be held between the Ministry of Justice and the Central Courts Administration.

The National Courts Administration and the courts is still under the Office of the Auditor General (Riksrevisjonen), in line with all other public activities. The work of the Auditor General takes the form of both a traditional auditing of accounts and a systematic administrative audit. The latter will subsequently allow the Parliament to control the courts' activities regarding the exploitation of resources, and to what extent targets of good service and swift case handling are being met. Therefore, it was an important condition for establishing a separate National Courts Administration, where the executive power had such limited rights of instruction as that was being proposed.

The Freedom of Information Act applies to substantial parts of the National Courts Administration's activities. By establishing a separate National Courts Administration and by creating a separate governing Board, the Parliament wished to secure the legitimacy of the National Courts Administration and to ensure that it would enjoy public confidence. A higher degree of independence will be combined with a greater degree of openness and right of access than that

which has been practised. It was proposed that the Board's resolution vis-à-vis the courts would be made public. The same applies to dissent among the members of the National Courts Administration's Board.

The appointment of a Board of Governors of the National Courts Administration forms an important element of the model of division of responsibilities. The Parliament proposed that this Board of Governors is the supreme authority of the NCA. The Board consists of nine members; five from the courts and two advocates appointed by the Government and two representatives of the general public, elected by the Parliament. The Board appoints the director of the NCA for a fixed 6 years term. Thus, the Board represents both professional court competences, user competence in the form of actively practising lawyers, and representatives of the public who may offer valuable expertise and experience from completely different areas of life and society than the administration of justice.

Allowing the National Courts Administration to be led by a Board with independent responsibilities will ensure that important decisions in the administration of the courts will be taken by a broadly composed body also protecting interests outside the judicial domain. This will again ensure that professional and social considerations will be balanced when decisions are taken. Such a Board will also help give the National Courts Administration greater legitimacy, in the eyes of both the courts and the public, and thereby increase their confidence in it.

The Board is the supreme authority of the National Courts Administration and is responsible of appointing the director of the National Courts Administration for a fixed term. The Board determines the mandate of the National Courts Administration in its day-to-day activities. The Board handles cases of great importance or matters of principle.

The King in Council has the right to remove the Board if it fails to follow up criticism from the Auditor General, or fails to comply with the guidelines and resolutions given by the King in Council or with the regulatory framework applicable to the activities of the National Courts Administration. It will also be possible to remove the Board if it passes resolutions in conflict with general legislation. The Government will inform the Parliament immediately if the Board is removed.

The creation of a new National Courts Administration did not entail any changes to the Parliament's right to establish overriding principles of the organisation of the courts.

The budgets of the National Courts Administration and the courts form part of the Government's general draft budget presented to the Parliament. The National Courts Administration is responsible of drawing up a draft budget of its own and the courts' activities. The Government will be responsible of overall co-ordination and of setting priorities between different public sectors in connection with the draft budget. It is thus possible to incorporate the National Courts Administration's draft budget into the Government's draft budget, so that it forms part of the Government's general budget bill. The National Courts Administration is also able to submit its draft budget to the Parliament, which in this way will be kept informed of its contents.

Through the Parliament's handling of the budget proposition, centrally established guidelines are given for the work of the National Courts Administration. The annual guidelines of the National Courts Administration are drawn up textually in the budget bill, which is debated in the usual way by the Parliament as part of the budget deliberations. Centrally established guidelines are submitted to the Parliament before it is binding for the National Courts Administration.

By using the budget proposition in this way, the Government determines the economic framework conditions of the courts and the National Courts Administration, and at the same time sets objectives and draw up general guidelines and expectations of the courts' work. This global presentation of the framework conditions of the work of the National Courts Administration, dealt with every year by the Parliament, serves to define the National Courts Administration's room of action. The National Courts Administration has been afforded considerable freedom of action as regards setting part objectives and choosing modes of operation within this space and economic framework.

It has not been considered necessary to draw up new or amended centrally established guidelines in the period between the presentations of budgets. If, exceptionally, it should be necessary to intervene during this intermediate period, the Government will have to use its right of instruction or present a separate proposal.

The various ministries are responsible of legislation within their own specific areas. However, the courts and the National Courts Administration are normally drawn closely into the work of drafting new procedural legislation as well as legislation within administrative areas of which the courts will be responsible in the future.

The central administration of the ordinary courts falls under the National Court Administration (NCA). NCA acts as a support and service agency for the courts and plays an important part in developing strategic plans that enable the courts to meet the challenges presented before them. NCA seeks to make conditions favorable for the courts in order to ensure reasonable and efficient operation. This in turn will establish increased public confidence in the courts.

The present departments of the NCA are:

#### *Department of Human Resources*

NCA is responsible for personnel management, including occupational safety, health management, work environment and personnel counseling. In conjunction with the courts, the NCA has responsibility for the competence work related to professional training/additional education for judges and court executives. As new demands and challenges face the courts, the NCA will focus on organizational skills and management.

The running work involved in personnel management in the courts is an important part of the central administrative work. Apart from Supreme Court justices and the director of the Supreme Court, who are appointed by the King in Council, and assistant judges, who are appointed by the court president, all appointments have been delegated to the court itself and are made by regional appointment councils.

#### *Department of Economy*

NCA draws up a draft budget for the courts and acts as a supplier of terms in relation to the government's annual budgetary process. Following the Parliament's budget bill, the NCA allocates the annual budget to the courts. NCA also acts as the courts' central accounting unit and manages the estates. In addition the NCA is responsible for finance strategies and cost effective measures.

#### *Department of Law*

NCA cannot review courts' judicial decisions but will upon request answer general questions related to the courts' work. The NCA also handles claims for compensation from persons alleging that the court has made errors. The NCA initiates judicial work and legislation within the courts' domain.

#### *Department of Service*

NCA is responsible for various committees' and boards' meetings as well as the annual chief judges' meeting and the general judicial meeting. The NCA is also the secretariat to the council for professional training of judges and the council for professional training of court executives. Procurement policy and practice is another area of responsibility that the NCA will develop along with services provided to the courts and court users.

#### *Department of Information and Public Relations*

NCA is responsible for developing the information work within the courts, between the courts as well as to the public and the media. The Internet site "www.domstol.no" together with intranet, various publications and media relations are important tools in this respect. The NCA promotes the courts' interests by meeting political authorities and the civil service. The NCA has the overall responsibility for the courts' archives.

#### *Department of Information, Communication and Technology (ICT)*

NCA ensures continuous improvement of the courts' ICT services, the policy of risk and security, and it has operational responsibility for ICT procurements, ICT installation and ICT system developments. Operational staff provides ICT support to judges and court executives.

#### *Department for Land Consolidation*

NCA is responsible not only for the general courts but also for the land consolidation courts. It is a special court for solving problems related to property and property rights. The purpose of land consolidation is to lay the groundwork for a more efficient exploitation of properties. The issues that are special for these courts are organized in this department.

There are 34 land consolidation courts and 5 land consolidation courts of appeal.

#### *Secretariat to the Judicial Appointments Board*

On the basis of the submitted applications and the Board's assessment thereof, the Board submits a recommendation to the Ministry of Justice. The Minister of

Justice submits the nomination to the King in Council which is the authority for the appointment. The NCA operates as the Board's secretariat. See Chapter 5 below.

#### *Secretariat to the Supervisory Committee for Judges*

The work concerning complaints and disciplinary matters in relation to judges has been transferred to the proposed Supervisory Judicial Committee (Tilsynsutvalg for dommere). Anyone who has been subjected to the alleged misconduct of a judge in the performance of his or her office, such as parties, witnesses and advocates, may bring a complaint against the judge to the Supervisory Committee for Judges. NCA operates as the Committee's secretariat. See Chapter 8 below.

#### *Extra-judicial activities – register*

The NCA keeps the register on judges' extra-judicial activities such as membership of boards and committees. Investments and previous post before becoming a judge are also required to be registered. Some extra-judicial activities must be approved before the judge can undertake the activities. The register is open to the public.

#### *Summary*

To sum up, the Parliament decided that the National Courts Administration has been given the following principal responsibilities in relation to the courts:

- Control functions through budgetary work
- Supervising whether special agreed objectives and objectives set by the Government and the Parliament are being met
- Exercising administrative authority not assigned to the individual court President
- Taking initiatives, playing a pro-active role and being a partner in relation to various measures of development in the ordinary courts and the land consolidation courts
- Conveying views and needs in relation to Government and Parliament
- Providing services, and being a centre of competence building regarding information technology, accounting, personnel affairs, archive maintenance etc.

## **4 Review of the Organisation of the Ordinary Courts**

The greater part of judicial activity in Norway is exercised by the ordinary courts of law, i.e. The Supreme Court (Høyesterett), The Appeals Committee of the Supreme Court (Høyesteretts Kjæremålsutvalg), the Courts of Appeal (lagmannsrettene) and the District and City Courts (tingrettene). The Conciliation Boards (Forliksrådene) are also ordinary courts of law. Norway has (in 2006) six Courts of Appeal, 73 District and City Courts and approximately 440 Conciliation Boards.

On a national basis, the District and City Courts has, as of 1 January 2006, a staff of 347 judges, 160 deputy judges and approx 900 positions without judiciary responsibilities. On the same date, the Courts of Appeal were staffed with 170 judges. As of 1 January 2006, the Supreme Court employed 20 judges including the Chief Justice, and in addition a Director, a secretariat with 15 jurists and 22 office and clerical posts.

#### *Administrative responsibility*

Administrative responsibility of the courts of special jurisdiction does not follow any uniform model. The central administration of the ordinary courts lies with the National Courts Administration, including policy development and performance monitoring of the courts, but it cannot review courts' judicial decisions. During the years there has been an extensive delegation of administrative responsibility and authority to the court presidents. The court reforms of 2002 have changed this trend.

#### *Conciliation Boards*

A large number of civil cases commence before the Conciliation Boards with mandatory mediation. If mediation fails to lead to a settlement, the Conciliation Board may deliver a judgement in a relatively large number of cases. Cases that are adjudicated by a Conciliation Board may be appealed to a District or City Court. All criminal cases commence in the District and City Courts. Sentences passed in the District and City Courts may with certain restrictions, be appealed to the Courts of Appeal. The Supreme Court passes sentence in the last instance, but the Appeals Committee of the Supreme Court has wide authority when it comes to refusing to allow a case to be appealed to the Supreme Court.

#### *Other bodies*

Some administrative bodies have been defined as being similar to a court of law because their main objective is to resolve disputes. The Social Security Court (Trygderetten), the Immigration Board (Utlendingsnemda) and the County Committees of social welfare cases (fylkesnemdene for sosiale saker) are examples of such bodies. Decisions made by these bodies may be reviewed by the ordinary courts of law, normally with the District and City Courts of the first instance.

#### *Lay judges*

A distinction is usually drawn between professional and lay judges. Professional judges in the ordinary courts of law are always members of the legal profession, while there are professional judges in the courts of special jurisdiction who are not necessarily jurists, such as those in the land consolidation courts. The ordinary courts chose their lay judges from a register of about 66.000, usually elected by local councils. The courts of special jurisdiction have a considerable element of lay judges, and the Conciliation Boards are composed exclusively of lay judges. In civil cases tried in the District and City Courts and the Courts of Appeal, lay judges participate as lay assessors if required by the parties or if the court finds it desirable. When handling ordinary criminal cases, lay judges take

part in both the District and City Courts and the Courts of Appeal, and they are always in the majority. In the Supreme Court no cases are tried with lay judges.

#### *Special courts*

Courts with limited functions are called special courts. They form part of the ordinary courts of first instance. When specific fields of responsibility are placed under a special court, it merely represents a distribution of tasks within a particular court district. Principally, the need of a uniform organisation model may justify the abolishment of special courts, and from 2007, there will be only one special court left, Office of the City Judge of Oslo.

#### *The size of the courts of first instance*

Today we have many small courts of first instance. 16 of 73 courts of first instance have only one judge (not including deputy judges). It could be said that small courts would be less able to meet the future demands and challenges that the courts are likely to face. Moreover, a broader judicial milieu might help to strengthen the professional competence. Small courts are also vulnerable in terms of staff absences due to holiday, illness, vacancies or other reasons. Having taken into account the need to meet professional requirements and challenges facing the courts, the need of effective use of resources and the possibility of improving the internal administrative routines, the Ministry of Justice finds it desirable to establish larger collegiate court units.

#### *Places of jurisdiction*

Cases concerning protection against dismissal under the Working Environment Act are today being handled in each county at specially designated courts of first instance. It has been considered whether this arrangement should be abolished, so that these cases would also be tried at the plaintiff's local court, but it has not found sufficient grounds to propose changes in this area.

#### *Court names*

It is important that the courts of first instance should have common and uniform denominations. For this reason, it was proposed that such terms as Court of Examination and Summary Jurisdiction (Forhørsrett), Probate Court (Skifterett) and Court of Execution and Enforcement (Namsrett) should no longer be used. Today the courts of first instance are called "Tingrett", the president of the court is called "Sorenskriver", and a regular judge is called "tingrettsdommer".

#### *The access of the Sami ethnic group to the legal system*

The question may be raised as to whether real equality exists between members of the Sami community and the rest of the Norwegian population with regard to their possibility of bringing legal issues up before the country's courts. This question is related to specific aspects of the Sami language, culture and society. There may be grounds for arguing that Sami usage and conceptions of law are not sufficiently reflected in today's courts. This is why the Ministry of Justice examined whether a court of first instance should be established for Central Finnmark. This question required that other considerations should be examined than those applying to the rest of the country.

It is generally believed that Norway has a particular responsibility to protect the interests and culture of the Sami ethnic group, and that this should be reflected in the Sami people's access to the court system. A court of Central Finnmark, which today serves the five municipalities of Karasjok, Kautokeino, Nesseby, Porsanger, and Tana, has therefore been established. These municipalities constitute the administrative area of the Sami language. This ordinary Norwegian court serves all the inhabitants in these municipalities.

#### *Number of cases handled*

The Supreme Court handles about 450 crime cases and 500 civil cases per year. The six Courts of Appeal handles about 4.000 crime cases and 1.800 civil cases per year. The District and City Courts handle about 50.000 crime cases and 13.000 civil cases per year.

## **5 Judicial Appointments Board**

The quality of judges is crucial for a well-functioning judiciary, and the appointment of judges is therefore an important task. The selection procedure must ensure a sound evaluation of the applicants' professional and personal qualities, and the evaluation must not be influenced by concealed considerations. To ensure public confidence in the courts, it is important for people to be able to see that the procedure is secure, reliable and proper without unlawful or irregular influence in the selection process.

#### *Old system*

Under the Constitution, the King in Council is authorised to appoint judges. Prior to the reforms, vacant judgeships were announced publicly by the Ministry of Justice, which also received applications and was responsible of the technical part of the administrative handling of the applications. With the exception of vacancies in Supreme Court justices and interim appointments of less than one year, the Advisory Council of Appointment of Judges (Det rådgivende organ for dommerutnevnelser) used to receive all applications for assessment. The Advisory Council of Appointment of Judges consisted of three members who were appointed by the Ministry. The Council submitted a recommended nomination to the Ministry of Justice. The department in charge in the Ministry drew up a recommendation that was assessed by the Minister. A draft Royal Decree was then prepared, which was dealt with by the King in Council.

As regards the appointment of Supreme Court justices, the Supreme Court Chief Justice submits an oral opinion to the Minister of Justice after having consulted the other Supreme Court justices. These practices were not changed by the reforms of 2002.

#### *New system*

In Norway, it traditionally has been considered desirable for the body of judges to reflect the broadest possible professional legal background. It has been considered positive to maintain a broadly based recruitment of judges, so that they may combine knowledge from various areas of society and legal work.

There has been a wish to continue the current system with a broadly based recruitment of judges, but proposes a new procedure of their appointment.

As part of the reforms a new external Judicial Appointments Board was established, which has considerable influence on the appointment of judges. This Judicial Appointments Board is composed of three judges, two jurists from outside the courts and two public representatives, and all will be appointed by the Government. The Appointments Board will provide the broadest possible range of professional contacts with potential recruitment environments. The National Courts Administration is in charge of the functions of the secretariat.

Based on a thorough assessment of the applicants to vacant judgeships, the Appointments Board submits a recommendation to the Ministry of Justice, stating their reasons and proposing the order of candidates of the appointment. The president of the court in question will be drawn actively into the appointment process. The Ministry of Justice will then make a very limited assessment of the proposal. The King in Council freely selects a candidate from among those nominated. If there are a sufficient number of qualified applicants, the Appointments Board always nominates three candidates. If the Government wishes to appoint applicants that have not been nominated, the Appointments Board must reconsider the matter. The Minister of Justice then submits the matter to the King in Council, which is the competent authority of the appointment.

The area of responsibility of the Appointments Board also includes judgeships at the Supreme Court. The present system, under which the Chief Justice of the Supreme Court delivers an opinion, will be retained. However, this opinion is submitted after the Supreme Court has been informed of the recommendation of the Appointments Board. The post of Chief Justice of the Supreme Court will not be handled by the Appointments Board, as the Government will be in a somewhat freer position here than with respect to other judicial appointments.

It is an important objective that the new procedure of appointment does not lead to an unnecessarily long handling time on each application. The Ministry of Justice's handling of applications will therefore be limited and carried out as swiftly as possible, at the same time as the Appointments Board makes an effort to develop rational and timesaving procedures of dealing with applications.

The names of the applicants nominated and their place on the nomination lists are available to the public, although the Appointments Board's reasons of nomination are not made public. As regards the list of applicants, information about an applicant may be withheld from the public if the applicant so requests.

In addition to drawing up recommendations of appointments, the Appointments Board makes recommendations on most applications of interim appointments exceeding one year. The Appointments Board has also been granted authority to take final decisions on interim appointments for up to one year, as well as all interim appointments made in addition to permanent judgeships. The decision-making authority for very short-term interim appointments, of up to three months, has been transferred from the County Governor to the individual court president.

## **6 Temporary Judges**

Temporary judges are judges who have been granted a post, or commission, and authority for a limited period or for specific court cases. Prior to the reforms, temporary judges, with the exception of those that have been appointed temporarily by the King in Council, lack the security of tenure afforded to judges under Article 22 of the Constitution. This security of tenure means that judges cannot be dismissed or transferred against their will, and that they can only be discharged after trial and judgement.

A series of schemes allow for the employment of temporary judges. The most important are acting judges and deputy judges, retired judges who serve as extraordinary judges in the Courts of Appeal and judges from the District and City Courts who are called to serve in the Courts of Appeal. Deputy judges are appointed by the president of a court for a period of up to two years with limited opportunity for the renewal of the appointment.

The use of temporary judges has been criticised on several occasions. Therefore there have been some changes in the use of temporary judges, after having balanced practical needs against considerations of principle.

As part of the reforms, it was proposed a trial arrangement with the setting up of permanent judgeships that serve several courts of the same instance, with the judge in question being posted permanently to one court. It was also proposed a trial arrangement of earmarking a number of new permanent judgeships at some of the large courts, which will be in addition to the number of judges that the court's workload justify. Such earmarking will be done on the express condition that the court will be bound to transfer judges to handle cases at other courts in the region corresponding to a certain number of man weeks per year.

It was proposed to uphold the right to appoint judges temporarily, when extra assistance is needed, and as substitutes, but then only as an alternative solution if the need of help can not be filled by employing judges appointed jointly to several courts, or by assistance from another court. The right to appoint judges for a temporary period due to a planned reorganisation has been upheld.

Court staffing follows the principle of the number of deputy judges not exceeding the number of professional judges at any court. In the long term, a number of judgeships will be established at the approximately 20 courts that do not currently meet this requirement, as compensation for an equivalent number of deputy judgeships.

There has been introduced more measures of systematic training and a more systematic filtering of cases assigned to deputy judges. The appointment of deputy judges will still lie with the court's president.

The possibility of employing retired judges as extraordinary judges in the Courts of Appeal, and to call in judges from the first instance to serve in the Courts of Appeal has been upheld. However, new statutory provisions were introduced to limit the use of these arrangements, in as much as only one summoned or extraordinary judge may participate in dealing with a specific case in the Courts of Appeal. Thus, permanent (or temporarily appointed) judges in the Courts of Appeal will always be in the majority in an individual case. A sufficient number of new judgeships must be established at the Courts of Appeal

to compensate for the reduced use of summoned judges and extraordinary court of appeal judges.

All temporary judges are guaranteed the same extended security of tenure afforded to judges under Article 22, subsection 2, of the Constitution. By this follows that, during the period when employed, or temporarily appointed, they cannot be dismissed, and can only be discharged after trial and judgement.

## 7 Extra-Judicial Activities

Norwegian judges have been relatively free to take on extra-judicial activities, i.e. commitments, tasks etc, in addition to their judicial functions. Only to a certain extent have statutory restrictions been established in the form of a prohibition (for example against practising as a lawyer), or in the form of a requirement to obtain consent. There has been no requirement for the official registration of extra-judicial activities.

There are weighty considerations to support of allowing judges to engage in extra-judicial activities. Society needs to make use of their special experience and position, at the same time as judges will acquire a broader insight into the workings of society, which will be of benefit to them in their judicial functions. Judges also have the same civil rights as everyone else, including the right to organise and to be elected to municipal councils. Furthermore, it is assumed that limiting their possibilities of engaging in extra-judicial activities may affect recruitment to the judiciary.

Among the arguments against such activities, there are above all the facts that a judge will be impartial and independent in his judicial functions, and that the public must be confident that this is so. A judge may through extra-judicial activities, establish connections that will make him or her prejudiced. Furthermore, these activities may become so extensive and/or so demanding that the judge may have difficulties in performing his judicial functions.

Having balanced these considerations, there was established a system of official registration to be introduced that includes an essential part of judges' extra-judicial activities. The register is kept by the National Courts Administration and is open to the public. Thus, it will give both parties and their lawyers in any court case simple access to important information that may affect the question of whether they should move to disqualify a judge. The system of registration will constitute the essential element in the overall regulation of judges' extra-judicial activities. Only to a limited extent prohibition is proposed, and to a somewhat greater degree is regulation in the form of an approval procedure of the various types of extra-judicial activities proposed. The National Courts Administration grants approval, but such authority may be delegated to the president of the court.

### *Registration*

The point of departure is that all extra-judicial activities of judges at the Supreme Court, the Courts of Appeal and the District and City Courts are registered. Some exemptions from this duty of registration will however be made.

An exemption is membership of political parties, while there is a registration duty for political office. This includes participation in popularly elected State bodies, county municipal bodies or municipal bodies, as well as offices to which one is elected on a political basis or appointed by popularly elected bodies. Such extra-judicial activities are exempted from approval even if they may delay judicial work or lead to impartiality, because all citizens are obliged to accept such election Nor is there a registration of ordinary membership of interest or professional organisations, such as tenants' associations or industrial bodies. However, posts and other work in more formal positions in the service of such organisations are made subject to registration.

Judges are free to join non-profit-making organisations, such as the Red Cross, as members, while there have to be a registration posts and similar engagements in the service of non-profit-making organisations with more than 100 members.

Both membership of and posts in non-profit making associations in which the members have special mutual obligations (fraternities or sororities such as the Norwegian Order of Freemasons (Den Norske Frimurerordningen)) are subject to registration. This creates transparency and openness and makes it simpler for both parties and their lawyers to a court case to evaluate possible objections relating to impartiality early in the litigation process.

Registration is proposed for judicial activities in the form of teaching and examination censorship etc. Exemption is made for single lectures, educational talk etc.

Investments representing ownership in companies are included in the duty of registration, provided that the amount invested exceeds a certain limit, to be established by regulations.

### *Approval*

Judges will not be permitted without approval to undertake activities that are not directly connected with their judgeship, and which will make it difficult to perform their judicial functions. In other words, a statutory procedure of approval will be introduced for extra-judicial activities that may delay or hamper existing judicial duties. Such a procedure of demanding, extra-judicial activities represents nothing more or less than what follows from the general, non-statutory duty of loyalty in any employment contract. The new element will be making this mandatory. The same procedure of approval is proposed for activities that may render a judge biased more than occasionally.

With respect to collegiate administrative bodies (committees etc.), the approval requirement applies when experience shows that the decisions of the bodies concerned are likely to be subjected to judicial review by the courts. For the rest, the registration requirement applies, particularly in order to safeguard both parties and their lawyers to a court case simple access to relevant information in assessing whether to present a motion to disqualify a judge.

Furthermore, the reforms have introduced some restrictions on judges participating in private commercial undertakings, as it would be unfortunate if judges were to be identified with such activity in the eyes of the public. An approval procedure helps reduce the risk of unfortunate situations arising, a judge of exposing himself or the court to the danger of a weakening in public

confidence. Hesitations are in particular connected with directorships of business firms, and approval will only be granted in exceptional cases. The same applies to public commercial undertakings.

Participation in private tribunals set up to resolve disputes, such as complaints boards and boards set up to deal with notices of objection so as to keep intact legal rights, will also be included in an approval procedure.

### *Prohibitions*

The reforms extended the previous prohibition against practising as a lawyer to include legal aid activities as well.

Moreover, the reforms introduced a general prohibition against allowing persons permanently appointed as judges to obtain leave of absence from previous posts. The reason for this is to safeguard the independence of the courts and judges, including independence from the place of work from which the person concerned has leave of absence. There is no corresponding ban as regards temporary positions, as it might cause recruitment problems if it were not possible to obtain leave from a permanent post to take up a temporary judgeship.

It is assumed that entering into an agreement under which a former or future employer, or place of work, pays wages or other types or remuneration to a judge, may result in an economic dependence that will be incompatible with his or her role. Therefore, a general prohibition exists against judges receiving such remuneration.

## **8 The Supervisory Committee - a New Procedure of Complaints and Disciplinary Measures**

Prior to the reforms of 2002, the Ministry of Justice on behalf of the Government had supervisory authority over the judges. Such supervisory and disciplinary authority meant that the Ministry might criticise judges with respect to matters relating to the performance of their duties, for example dilatory case handling. This authority was not restricted to matters relating to the performance of judges' duties, but would also be applied to private matters that might affect a judge's reputation and the civic respect afforded him or her.

As part of the reforms new complaints and disciplinary procedures were established for judges in the District and City Courts, the Courts of Appeal and the Supreme Court. The overriding objective of such complaints and disciplinary procedure is to help prevent judges from acting in ways that might impair general public confidence in the courts and judges. The intention is to be able to take action against professional misconduct with a milder form of reaction, in cases where the conditions for more severe reactions, such as dismissal and punishment, are not present.

### *The complaints procedure*

The Supervisory Committee is a disciplinary body, which hears and decides complaints against judges. The Committee is appointed by the King in Council.

The Supervisory Committee is made up of two representatives of the general public, one lawyer, two judges from the ordinary courts of law and one land court judge. When the Supervisory Committee hears complaints concerning a judge of the land appeal court or the land court, a judge from the land courts will replace one of the judges from the ordinary courts of law. The land court judge does not participate at the examination of other complaints. The Committee's Secretariat is placed with the National Courts Administration in Trondheim.

In addition to hearing complaints submitted, the Supervisory Committee may take up misconduct at their own initiative. The Committee may make general statements on what is comprised by the concept "appropriate judicial conduct". It has thereby also the character of an ethics council.

The time limit is as a rule three months from the alleged misconduct took place, or from the complainant became aware or should have become aware of it. There is an absolute one-year time limit calculated from the alleged misconduct occurred.

#### *Who may and what may you complain about?*

You are entitled to submit a complaint if you, as party, lawyer or for example witness in a lawsuit has been directly affected by the judge's conduct. The same applies to others who are directly affected, such as lay judges or experts. Your complaint may also be allowed if you can establish that you have a particular interest in obtaining an assessment of the judge's conduct.

The Ministry of Justice, the National Courts Administration, the senior judge of the court and the Norwegian Bar Association always have a right of complaint. If your complaint concerns conduct outside of office, only the Ministry of Justice, the National Courts Administration or the senior judge of the court in question are entitled to file a complaint. The Committee may nevertheless decide to allow a complaint at the request of others, if it should consider this to be justifiable.

You may complain if you consider that a judge has acted in breach of appropriate judicial conduct or has otherwise acted in contravention of the obligations of his or her position. As a rule, you may only complain against misconduct in the judge's performance of his or her office.

You may not file a complaint because you are dissatisfied or disagree with a judicial decision. Such decisions may be brought before a superior court by interlocutory appeal or appeal, and the Committee is not entitled to hear such complaints. Complaints concerning dissatisfaction with judicial decisions will therefore be dismissed.

The complaints procedure includes professional judges in the district courts, the courts of appeal and the Supreme Courts, as well as judges in the land courts and the land appeal courts.

Assistant judges are also comprised by the system. It does not apply to lay judges or members of the courts of arbitration, for example.

#### *The outcome of the hearing*

The proceedings are in writing. All parties involved are informed and are given an opportunity to make a statement. When the case is ready for hearing – after

all parties have made their statements – this takes place at a meeting that all the Committee members attend.

Complaints are generally dealt with on the basis of written statements. However, the parties are entitled to make verbal statements to the Supervisory Committee, unless the Committee should consider this as obviously unnecessary to the elucidation of the case. In special cases, it may be relevant to obtain statements from others, examine witnesses, etc.

If the Committee should find that the judge has acted in breach of appropriate judicial conduct, it may adopt disciplinary measures in the form of *criticism* or a *warning*. A warning is the strictest form of reaction. If the complaint is not allowed, the Committee's conclusion will be that there are no grounds for disciplinary measures.

In certain cases, the Committee may make a statement in connection with the complaint on what it deems to be appropriate judicial conduct.

The Committee's decisions may not be appealed. If you should wish it to be reviewed, you must bring an ordinary action before the district court. The time limit for this is two months.

Complaints that are dismissed because they concern dissatisfaction with judicial decisions, or because the time limit has been exceeded, will only in exceptional cases be published. They will be as a rule made available on request. Decisions made in complaints that are heard and decided by the Supervisory Committee are published successively. You will find these decisions in anonymous form at "[www.domstoladministrasjonen.no](http://www.domstoladministrasjonen.no)".

#### *The statutory framework*

The provisions applying to the Supervisory Committee are found in the Courts of Law Act, Chapter 12, "On the complaints and disciplinary authority for judges". The Public Administration Act applies to the actual complaints procedure, but with certain exceptions. The Freedom of Information Act also applies. No regulations have yet been laid down.

## **9 Developments Ensuring Quality of Work in the Courts**

The following changes in the Norwegian society have recognised that it has become even more necessary to focus on a series of court developments

- high pace of change
- more serious crime scene
- increasing multicultural society
- faster development in information and communication technology
- more extensive use of courts in solving conflicts
- general higher level of education
- increasing demands of participation and media exposure
- more explicit expectations to the running of courts

In the same period that the above mentioned changes have been taking place, there also have been taking place a series of changes in the working conditions of the judges

- increasing number of law proposals
- higher case load
- judicial Registration has been removed from the courts
- the work of the Enforcement Officer has been removed from the courts
- changing system of economy
- changing the Probate and Bankruptcy Court
- increasing media exposure and user demands
- increasing focus on the independence of court
- higher expectations to active court management and leadership

The changes mentioned above have been taking place in the same period as a series of structural changes of the district and city courts

- reducing the number of courts in first instance from 92 to 66
- making the district and city courts substantially larger
- changing the work situation, the working methods and the concrete work tasks of the court employees, including the judges.

To meet the demands of these developments there have been carried out a series of reports on court organisational development, and some greater law reforms have been decided upon. The common proposals of the Ministry of Justice and the National Courts Administration on modernisation and higher quality regarding the courts will be realised in the short term through two major developments

1. A new Civil Dispute Act of 01.01.2008, with these ingredients:
  - Active case management in all courts.
  - Focus on extensive use of court mediation.
  - Judges to be part of case management.
2. The reports of the LOK-project focusing on Leadership, organisation and competence building in the courts, containing many proposals of further developments.

The changing working conditions of judges have been contributing to changes in their ways of working. Today there is a much higher demand on the judges' production than some years ago. The new Civil Dispute Act therefore focus a lot on the judges' role as active case managers and the court presidents role to make room for this. Alternative civil dispute procedures, e.g. court mediation and new procedures in the Child Welfare Act, will put these institutes into active use. This happens in the same period of time as there is an ongoing discussion about specializing in courts, and the case management system Lovisa's move towards more standardizing the courts' working and decision procedures.

There is a need that the courts' focus on quality and work pace and the development of these aspects go hand in hand. Some judges have brought forward acquisitions of what they have called "over-focusing on tempo and effectiveness". However, many reports have been submitted on quality improvements and quality assurance, and the great focus on such aspects increases the legitimacy of the development work. This underlines the need of

positive and balanced development work in the courts with constant consideration to the need for high quality.

The changing work situation, the working methods and the concrete work tasks of the court employees, including the judges, emphasize three main areas of changes (a, b and c)

- a. Development of the role of active court leadership and management
- b. Expectations of active courts and judges, including the development of the courts as service organisations
- c. Obtaining higher work quality by active competence development

Each of these areas of changes can be described somewhat further:

*a. Development of the role of active court leadership and management:*

- Development of criteria of good court president ship
- Development of the court president role
- Defining the limits to the authority of the court president
- Procedures of employment and deployment of judges in leadership functions

The consequences for court presidents of the developments mentioned will mainly be

- increased focus and consciousness on the working tasks as court president,
- contribution to more structured work as court president
- legitimising personal development work
- the development of three new focus areas for the role of the court president (personal leadership, organising of the work processes, responsibility for development of the employees).

*b. The expectations to more active courts and judges, including the development of the courts as service organisations, will be realised through:*

- even more active case management in civil cases
- even more active case management in criminal cases
- a flexible principle of coincidence
- trying out specialising of judges
- a plan of extensive delegation to executive administrative personnel
- systematic exchange of experiences by use of the courts' intranet

*c. The need of obtaining higher work quality by active competence development:*

- extended basic education of judges and deputy judges
- compulsory senior education for judges
- development of the arrangement of sabbatical leave for judges
- planned competence development of executive administrative personnel
- focus on local and regional competence development of staff
- focus on the work arena as a arena of education
- strengthened organising of the area of competence development

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