



Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union i.n.p.a.

Association des Conseils d'Etat et des Juridictions administratives suprêmes de l'Union européenne a.i.s.b.l.



Council of State of Belgium

**Association of the Councils of State and the Supreme Administrative Jurisdictions of the European Union
With the collaboration of the Council of State of Belgium**

**Increasing the efficiency of the
Supreme Administrative
Courts' powers**

NORWAY

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Increasing the efficiency of the Supreme Administrative Court's powers

Introductory remarks

The Norwegian court system consists of three court instances: District Courts, the Courts of Appeal and the Supreme Court. The courts have full jurisdiction and handle cases within all areas of law. Specific administrative or constitutional courts have not been established. Cases concerning administrative matters are thus heard by the ordinary courts in accordance with the general rules of civil procedure.

A number of administrative bodies are set up in certain areas, to make the final administrative decision in disputes between the state and private individuals. A party may be required to file a complaint and obtain a decision from such a body before a dispute may be brought before the courts. One example is the rules relating to The National Insurance Court, an independent appeals body that handles appeals against decisions concerning the National Insurance Scheme, child benefit and certain other public pension schemes.

In Norway, the possibility to file a complaint to the superior administrative body is in practice the most important dispute procedure in administrative cases. The superior body may review all aspects of the case. If the superior administrative body finds a flaw in the disputed decision, the outcome may be that the superior body quash the decision and returns the case to the administrative body for a new decision, or that the superior body itself makes a new decision.

The courts, headed by the Supreme Court, are empowered to review whether decisions by the Government and other official bodies comply with the law and whether legislation adopted by the Parliament is constitutional. In addition, the Supreme Court can review whether there are procedural errors and also whether the decisions contain errors in the assessment of the facts. However, where the jurisdiction of the administrative authorities is defined using vague or very discretionary criteria, the Supreme Court's right to review is limited 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 justifiable.

ISSUE 1: The “administrative loop”, or the power to rectify the legality of an administrative decision

Question 1

Under Norwegian law, there is no mechanism that is comparable with the described power to rectify a flaw in a disputed decision. If the court finds there is an infringement in an administrative decision, the consequence will normally be that the decision is

quashed and proceedings reopened. However, occasionally the court may have the competence to make a new decision on the merits after finding an administrative decision void. It is a condition that the parties have requested the court to do so. Furthermore, a new decision on the merits can only be given if the decision is not dependent on the exercise of discretion, but bound by law. If the decision depends on the exercise of discretion, the administrative body is considered to be more competent to make the decision as the first instance than the court. In practice most cases will depend on the exercise of discretion in some degree so it is more of a theoretical possibility that the court makes a new decision on the merits, than a practical solution.

Question 2

See question 1 above.

Question 3

In cases where the court makes a new decision on the merits, this is a result of the court's assessment of the appeal. The court's decision may be appealed to a higher court.

If the administrative decision is quashed and proceedings reopened, the new administrative decision can be appealed in the same ways as the first decision.

Question 4 and 5

Not applicable.

ISSUE 2: Power to award compensation and action for annulment

Question 1

Under Norwegian law, infringements made by an administrative body may form the basis of a claim for compensation. The court's assessment of an administrative decision will differ based on what statements the parties have made. The plaintiff's claim will often be a claim for both annulment and compensation, but may also be limited to either annulment or compensation. If a case is limited to a claim for compensation, the court will try the legality of the decision as a preliminary question, when considering if there is a basis for the claim for compensation.

In most cases, compensation will be awarded in *addition to* annulment or as a result of having grounds for annulment, and not as *an alternative to* annulment. Compensation can however, occasionally, be seen as an alternative to annulment. The situation may be that several parties are affected by an administrative decision, and that other parties' strong interests weigh heavily against annulment or reversal. This may lead to the maintenance of a void decision. In these cases compensation can be awarded as an alternative to annulment. For the courts however, the question will normally be restricted to annulment and/or compensation. As mentioned previously the courts have limited possibility to give a new decision on the merits. A decision to maintain a void decision will normally be made by an administrative body after new proceedings.

Question 2

If the conditions for compensation are fulfilled, the compensation is measured to cover the financial loss caused by the unlawful action.

The conditions for awarding compensation are that the error has resulted in an economic loss and that there is a causal connection between the error and the loss. Furthermore, there has to be a liability for damages. This will normally be negligence (or intent), but exceptionally the administration may be held responsible on basis of a strict liability.

Question 3

See question 1 above.

Question 4

A plaintiff will normally apply for compensation at the same time as requesting annulment. If the claim has been limited to requesting annulment, a claim for compensation can be filed in a later case, starting in the District Court.

Question 5

See question 2 above.

ISSUE 3: The effectiveness of enforcement of the rulings of administrative courts

Question 1 - 5

The doctrine of res judicata means that a final, conclusive and enforceable judgment is binding upon the parties involved, and that the parties are prevented from relitigating a case in which there is a final and enforceable judgment. A judgment cannot be enforced until it has become res judicata, unless otherwise provided for in the judgment itself, in a supplementary judgment or in an interim court order.

The courts are not in general provided with specific powers to ensure the enforcement of their decisions. It is for the parties to obey to the court's order and for the winning party to seek an execution and enforcement of the claim by seizure, attachment, sale, fines etc. in cases where the defendant does not fulfill the judgment.

Any ruling against the government, for instance a ruling imposing a duty upon the state, the quash of a statutory administrative order or a ruling holding the state liable for damages will be followed by the state. It is neither necessary nor possible for a private party to take steps in order to have such a ruling enforced.

In cases where the court rules in favor of the state, the opposite party may be reluctant to abide by the decision of the court. In such cases, the state may ask for an execution and enforcement of the claim when the time limit set by the court for the other party to fulfill the judgment, has elapsed. In order to enact the execution and enforcement procedure, the state must submit a petition to the execution and enforcement authority. Depending upon the case, such petition may be filed with the execution and enforcement commissioner, or

with the general court acting as court of execution and enforcement. The decision by the commissioner may be brought before the court. The decisions of the District Court may be appealed to the Court of Appeals, and to the Appeals Selection Committee of the Supreme Court.