



## SUPREME COURT OF NORWAY

Conseil d'Etat  
Assosiation internationale des hautes  
juridictions administratives  
A l'attention de Mme Laurent-Atthalin  
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France

### **Questionnaire on «Alternative dispute resolution in administrative matters»**

Reference is made to the questionnaire on «Alternative dispute resolution in administrative matters» from the AIHJA/IASAJ, received by the Norwegian Supreme Court on 16 October 2015. In your submitting letter, the recipients are asked to reply to the questions exclusively based on the law applicable to the following areas: Public Contracts and Public Procurement; Public Service; and Taxation and Economic Regulation. Please find attached the report from the Norwegian Supreme Court.

I mention that the report includes a more general description of the Norwegian system in relation to administrative matters/disputes, rather than strict answers to the submitted questions. The reason for this is that the questionnaire is modelled for judicial systems with separate administrative courts, and alternative dispute procedures established in such systems. In Norway, all judicial review is conducted by the ordinary courts of law, such that Norway does not have any special administrative courts, nor do we have any "alternative procedures" as described in the questionnaire. Consequently, several of the questions are not relevant or accurate for the Norwegian system.

We do however find that AIHJA/IASAJ could value a description of the Norwegian system for addressing administrative disputes, and have included a description of the issues we believe can be of interest. The examples used are mainly from the relevant areas of administrative law there were the focus of the questionnaire.

Oslo, 1. December 2015

Yours sincerely,  
Magnus Matningsdal  
Supreme Court Justice

# **Dispute resolutions in administrative matters – report from the Norwegian Supreme Court**

## **1 Introduction – a brief description of the Norwegian judicial system**

The Norwegian judicial system is based on the fundamental principle of separation of the legislative, the executive and the judicial power. Norway does not have any special courts (administrative courts or constitutional courts), and all judicial review is conducted by ordinary courts of law, with the Supreme Court pronouncing judgments in the final instance. As a consequence, the ordinary courts have power to review and resolve administrative matters.

In order to keep the separation between the executive and judicial power, there are however certain limitations in the courts' competence in administrative matters. The judicial control in administrative matters is often referred to as a "control of legality" or a "control of validity" of administrative decisions. A party who wants to challenge an administrative decision before the courts may therefore only challenge the validity of the decision, i.e. whether the relevant administrative body had legal basis for the decision, whether there are any errors in the factual basis for the decision or whether the decision is invalid due to procedural errors. If the legislation provides certain consequences if relevant statutory or legally binding conditions are met (e.g. tax exemptions or rights to social benefits) the courts can also undertake a full review of *the content* of the decision and determine whether it is in accordance with the law. The same applies if the law stipulate that the court shall review all aspects of the case (e.g. in case of judicial review of administrative decisions on coercive measures against individuals).

If the law has exclusively entrusted the administration with the discretion to decide whether a decision is to be made and what it will involve (e.g. whether a person should be allowed to serve alcohol in his restaurant or be given a building permit), such discretion will normally not be subject to judicial review. In such instances, *the content* of the decision may only be challenged before the courts if the administration has based the decision on considerations that lie outside the legal framework, there can be proven unfair discrimination, or the decision appears to be arbitrary or highly unreasonable.

## **2 Dispute resolutions for administrative matters**

When an administrative matter has been brought before a Norwegian court of law, the matter will be decided upon by the relevant court. There are no alternative procedures that the courts may invite or oblige the parties to pursue. If the parties change their mind and do not want the court to deliver a judgment, e.g. because the parties have entered into a settlement, one or both parties must give notice to the court and withdraw the lawsuit.

Even though Norwegian law does not prescribe any alternative procedures once an administrative matter have been brought before the courts, the Norwegian system also see the value of administrative matters being resolved outside the judicial system. Hence, the Norwegian system is arranged so that administrative matters may often be brought before a court for judicial review only after all rights for administrative appeals are exhausted.

This rule must be seen in conjunction with Norwegian legislation that provides a general rule that all administrative decisions relating to the rights or duties of one or more specified person (natural or legal) can be appealed to a superior administrative agency. Further, Norway has quite an advanced and well-equipped administrative appeal system, which will often provide the parties with the necessary and adequate means to have their case re-

examined. As mentioned under Item 1, the competence of the courts in the judicial review may also be limited, as the courts cannot overturn administrative discretion. It is therefore often seen more preferable that administrative matters are resolved and settled on an administrative level, without having to initiate a costly and time consuming court case.

### **3 Specialized administrative appeals boards within certain areas**

In more specialized administrative areas, there are often established own administrative appeals boards/bodies, often comprising of experts within the relevant area, to handle appeals or dispute resolutions.

Within certain areas of Public Services, an administrative decision may for example first be appealed to the superior administrative agency (*NAV Klageinstans/NAV Appeals*), and secondly to the National Insurance Court (*Trygderetten*). Despite the name of the latter, the National Insurance Court is not a "court of law", but a specialized appeals body. The National Insurance Court consists of a chairman/-woman, his/her deputy and about 25 other regular members, having professional expertise either in law, medicine or vocational rehabilitation. An administrative decision within the jurisdiction of the National Insurance Court cannot be challenged before the ordinary courts before the appeal has been decided upon by the former. Any verdict from the National Insurance Court can be challenged by submitting a further appeal to the Court of Appeals. However, according to the National Insurance Court's own numbers, only 2 % of the cases are subject to such further appeal.

Within the area of Public Contracts and Public Procurement, a complaints board for public procurement (The Norwegian Complaints Board for Public Procurement ("KOFA")) has been established to review complaints regarding infringements of the law on public procurement and associated regulations. KOFA is composed of ten members, including a chair, and is supported by a secretariat consisting of legal officers. KOFA gives advisory opinions, i.e. decisions not enforceable by law, and a complaint to KOFA does not have the effect of suspending the procedure for the award of a public contract. The objective of KOFA is however to provide an expedient and inexpensive way to handle infringement complaints, as an alternative to legal litigation.

The Immigration Appeals Board (UNE) is another example of a specialized quasi-judicial administrative body. UNE considers appeals against rejection decisions by the Directorate of Immigration (UDI) in asylum cases, other immigration cases and cases concerning citizenship. An administrative decision within the areas of asylum, immigration or citizenship cannot be challenged before the ordinary courts until an appeal has been considered by UNE.

In the area of child protection, the County Governor is the appeals body for individual decisions made by the child protection services under the Child Protection Act.

### **4 Alternative of making a complaint to the Ombudsman**

Instead of bringing an administrative matter before the courts, citizens also have the opportunity to make a complaint to the Ombudsman, who supervises public administration agencies. The Ombudsman processes complaints that apply to government, municipal or county administrations, and may also address issues on his own initiative. Before a complaint can be made to the Ombudsman, all local and administrative appeal procedures must be exhausted. The public administration agencies will normally comply with the Ombudsman's recommendations in a case, but his opinions are not legally binding.