



Conférence des Cours constitutionnelles européennes  
Conference of European Constitutional Courts  
Konferenz der europäischen Verfassungsgerichte  
Конференция Европейских Конституционных Судов

**CONSTITUTIONAL JUSTICE:  
FUNCTIONS AND RELATIONSHIP WITH  
THE OTHER PUBLIC AUTHORITIES**

*National report prepared for the XVth Congress  
of the Conference of European Constitutional Courts by  
The Supreme Court of Norway*

## **I. THE CONSTITUTIONAL COURT'S RELATIONSHIP TO PARLIAMENT AND GOVERNMENT**

- 1. The role of Parliament (as the case may be, of the Government) in the procedure for appointing judges to the Constitutional Court. Once appointed, can judges of the Constitutional Court be revoked by that same authority? What could be the grounds/ reasons for such revocation?**

Norway does not have a special Constitutional Court. The ordinary courts of law, with the Supreme Court pronouncing judgments in the final instance, have power to review the constitutionality of legislation adopted by the Norwegian parliament, and also the right to review administrative decisions. The Norwegian parliament does not participate in the procedure of appointing judges.

Judges are appointed by the King-in-council. In 2002 it was established an independent advisory appointment board. The board is composed of three judges, one lawyer, one legal professional employed by the Civil Service and two public representatives. The King-in-Council appoints the members for four years. The National Court Administration announces vacant judgeships. The appointment board assesses the applicants' qualifications. The appointment board will gather all relevant information on the applicants' qualifications, hereunder to obtain references and conduct interviews. There is no public hearing during the procedure of appointing judges. The board's ranking shall be reasoned, and as a general rule, list three qualified applicants. The ranking does not have to be unanimous. The Chief Justice of the relevant court in the first and second instance then gives a written opinion to the appointment board. The Chief Justice of the Supreme Court gives his recommendation to the Minister of Justice. The board's recommendation carries a great deal of weight when the King-in-council makes the final choice. The Government may, as a general rule not choose an applicant who is not one of the three best-ranked candidates. Usually the Government pick the number one on the board's ranking list. The appointment board's ranking is public, but the reasoning is not. The recommendation of the Chief Justice of the Supreme Court is public, both in ranking and reasoning.

If a judge has done something that makes him or her unfit to be a judge then the King-in-council may bring a case of dismissal before the courts. It is then up to the courts to decide the question of whether there are sufficient grounds for dismissal or not. A Supreme Court Justice can only be removed from office by judgment of the Court of Impeachment.

**2. To what extent is the Constitutional Court financially autonomous – in the setting up and administration of its own expenditure budget?**

The Supreme Court of Norway does not set up its own budget. However the court presents a budget proposal to the National Courts Administration, which is an independent administrative body. The NCA then presents a draft budget for the courts to the Ministry of Justice. The Ministry then presents its framework budget for the Parliament for approval as part of the Government's overall draft annual State Budget. The budget of the Supreme Court is independent of the budget of the lower courts and will thus be dealt with separately.

**3. Is it customary or possible that Parliament amends the Law on the Organization and Functioning of the Constitutional Court, yet without any consultation with the Court itself?**

The Parliament may amend or change the law on the organization and functioning of the Supreme Court. The amendment will be based on a law proposal from the Ministry of Justice. As part of the ordinary legislative procedure, the proposal will be submitted for public hearing. Institutions that will be affected by the law proposal will always be specially invited to comment on the proposal before it is sent to the Parliament. Changes in the law on organization and functioning of the Supreme Court are often initiated by the Supreme Court itself. However some fundamental principles are vested in the Constitution or in constitutional customary law, and can thus only be set aside or amended by the Parliament according to the procedures for amending the Constitution.

**4. Is the Constitutional Court vested with review powers as to the constitutionality of Regulations/ Standing Orders of Parliament and, respectively, Government?**

The ordinary courts of law, with the Supreme Court pronouncing judgments in the final instance, have power to review the constitutionality of legislation adopted by the Norwegian parliament, and also the right to review administrative decisions.

**5. Constitutionality review: specify types / categories of legal acts in regard of which such review is conducted.**

The Courts have the right to review the constitutionality of legislation and to review administrative decisions. Review is always limited to and part of the ordinary hearing of the dispute or criminal case handled by the court, if relevant in that case. Thus the courts will not review constitutionality *in abstracto*, for instance a member or fraction

of Parliament cannot submit a question of constitutionality in abstracto for the courts. The right to review also includes the legality of regulations prescribed by the ministries or other bodies pursuant to the provisions of statute. As a result of the comprehensive enabling legislation and the widening range of activities performed by the executive power, the right to review administrative decisions is of greater practical importance than the right to review the constitutionality of statutory laws. However, where the jurisdiction of the administrative authorities is defined using vague or very discretionary criteria, the Supreme Court has limited the right to review 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 defensible. The right to review administrative decisions also includes trying the facts of the case.

A further development of the right to review is that the Supreme Court has now also assumed the right to consider the question of whether legislation or administrative decisions conform to human right conventions to which Norway is a party, in particular the European Convention on Human Rights of 1950. The Human Rights Convention is incorporated in the Norwegian legislation as part of the Human Rights Act of 1999 and has precedence over other provisions of law.

- 6. a) Parliament and Government, as the case may be, will proceed without delay to amending the law (or another act declared unconstitutional) in order to bring such into accord with the Constitution, following the constitutional court's decision. If so, what is the term established in that sense? Is there also any special procedure? If not, specify alternatives. Give examples.**

Based on law proposals from the Government, the Parliament will repeal, amend or change the law to bring it in accordance with the Constitution as set out in the Supreme Court's decision. The Supreme Court does not in its decision dictate necessary changes, and it is not always obvious from the premises what changes must be done. This is often also an object of great political discussion. The decision is only binding inter partes and will only stipulate the solution on the concrete dispute between the parties. However, without exceptions lower courts and public authorities will follow the Supreme Court's decision regarding constitutional questions and other questions of law. Thus, after the Supreme Court has given its decision, the provision reviewed unconstitutional by the Supreme Court will not be applied.

- 6. b) Parliament can invalidate the constitutional court's decision: specify conditions.**

No.

**7. Are there any institutionalized cooperation mechanisms between the Constitutional Court and other bodies? If so, what is the nature of these contacts / what functions and powers shall be exerted on both sides?**

According to the Constitution the Parliament may obtain the opinion of the Supreme Court on points of law, but this opportunity has only been used in a very limited number of cases. The last time this was done was in 1946.

The Government always submits new law proposals for general hearing and to institutions affected by the proposal and relevant legal institutions, including the Supreme Court. The Supreme Court may express its opinion in all matters, but normally only does so in matters directly affecting the work of the Supreme Court.

## **II. RESOLUTION OF ORGANIC LITIGATIONS BY THE CONSTITUTIONAL COURT**

Under Norwegian law there is no procedure for solving legal disputes of a constitutional nature between public authorities. The courts deal with constitutional questions under ordinary court proceedings if relevant in the individual case. At least one of the parties, and some times both, will be private. However, the Ministry of Justice has the right to intervene in cases where the constitutionality of an act is challenged.

### III. ENFORCEMENT OF CONSTITUTIONAL COURT'S DECISIONS

1. The Constitutional Court's decisions are:
  - a) final;
  - b) subject to appeal; if so, please specify which legal entities/subjects are entitled to lodge appeal, the deadlines and procedure;
  - c) binding *erga omnes*;
  - d) binding *inter partes litigantes*.

The Supreme Court's decisions are final and binding *inter partes litigantes*. However, all lower courts and public authorities will follow the Supreme Court's decision regarding constitutional questions and other questions of law. Thus, after the Supreme Court has given its decision, the provision reviewed unconstitutional by the Supreme Court will not be applied.

2. As from publication of the decision in the Official Gazette/Journal, the legal text declared unconstitutional shall be:
  - a) repealed;
  - b) suspended until when the act/text declared unconstitutional has been accorded with the provisions of the Constitution;
  - c) suspended until when the legislature has invalidated the decision rendered by the Constitutional Court;
  - d) other instances.

The Supreme Court will not declare the legal text or law invalid as such, but state in the premises that the provision is unconstitutional. As from the Supreme Court has delivered its decision the provision will not be applied anymore. The Government will then take steps to repeal the provision in question or make necessary changes to make it comply with the Constitution.

3. Once the Constitutional Court has passed a judgment of unconstitutionality, in what way is it binding for the referring court of law and for other courts?

Others courts will always follow the Supreme Court's decision in cases concerning the provision in question. Even if it is not directly stated in the Civil Procedure Act or the Criminal Procedure Act, the whole procedural system is based on an obligation for the lower courts to follow the Supreme Court's view on legal questions in future cases. The provision will thus not be applied after the Supreme Court's decision.

- 4. Is it customary that the legislature fulfills, within specified deadlines, the constitutional obligation to eliminate any unconstitutional aspects as may have been found- as a result of *a posteriori* and/or *a priori* review?**

The legislature will always take steps to repeal or change the legal text declared unconstitutional. The Constitution does not set a specific deadline for doing so, nor does the Supreme Court do so in its decision.

- 5. What happens if the legislature has failed to eliminate unconstitutional flaws within the deadline set by the Constitution and/or legislation? Give examples.**

As mentioned there is no exact deadline for changing the unconstitutional provision. As the provision no longer will be applied, this is not a problem. It is not always obvious from the Supreme Court's decision which changes must be made in order to make the provision comply with the constitution, so it often takes quite some time and consideration to decide upon a new formulation or new political solution.

- 6. Is legislature allowed to pass again, through another normative act, the same legislative solution which has been declared unconstitutional? Also state the arguments.**

The Constitution does not forbid the legislature from doing so, but the legislature will customary not pass the exact same solution again.

- 7. Does the Constitutional Court have a possibility to commission other state agencies with the enforcement of its decisions and/or to stipulate the manner in which they are enforced in a specific case?**

The Supreme Court does not in its decision stipulate the exact changes that must be made to bring the provision in compliance with the constitution. Cases concerning the constitutionality of legal provisions do not differ from other cases when it comes to enforcement of the Supreme Court's decisions. The judgment is only binding inter partes and will be enforced inter partes as set out in the decision. If one of the parties does not fulfill his obligation, the other party may seek assistance from the enforcement authorities. In addition to this lower courts and public authorities will also apply the Supreme Court's view on points of law expressed in the premises of the decision.