

IAJ 2022 - Study Commission IV – “Judicial Workplace and Judicial Independence”

The Norwegian Judges’ Association

What is the impact on judicial independence of the judicial workplace (including nominations and appointments, independence in decision-making, governance, assignments, fund and other resources)?

Please provide examples in the judicial workplace that foster judicial independence and identify barriers and practices that impede or negatively impact judicial independence.

The principle of judicial independence has a broad meaning.

In order to attempt to limit the topic of this paper, we assume that judicial independence means that the courts can conduct their legal activities and make decisions without influence or control from the legislature and executive branches.

Judicial workplace is that enabling environment, the courthouse and those amenities attending thereto, where the judges and courts perform their duties without such influence.

1) Appointments

Nomination to vacant positions is made by a council (the Nomination Council for Judges) consisting of, among others, judges. The council proposes names of normally three qualified candidates for each office. The government then makes the appointment. In principle, the government can deviate from the recommendation, but this happens very rarely.

The government appoints members to the Nomination Council for Judges. This may have implications for the Council's independence. The same applies to the possibility of deviating from the nomination.

2) Decision making

Norway's courts consist of the Supreme Court, the courts of appeal, the district courts and the land courts. According to our constitution, the judges are independent in the decision of the individual case. Judges cannot be instructed in how to adjudicate, and the Supreme Court decides cases with final effect.

In Norway, the Constitution sets several limits for what the parliament and the government can decide, even if these are based on the will of a majority of the population. The courts can set aside a law passed by the parliament if they believe it is contrary to the Constitution. This may be the case, for example, if the law violates one or more of the citizens' constitutional rights.

Judges who are appointed in accordance with the rules in the Constitution, as civil servants, have a special job protection in accordance with section 22 of the Constitution. They are independent. This means that they cannot be dismissed or transferred against their will. They can only be dismissed after trial and judgment. Permanently appointed judges can be suspended, but a decision on this must be made by the government.

Like other government employees, permanent judges can be punished for offenses outside the service.

The question of whether to prosecute a judge for criminal acts in the service, however, must be decided by the government. Supreme Court judges have stronger protection (can only be removed from his position by judgment in the Supreme Court that judges in cases against members of the parliament and the government, the parliament or the Supreme Court for criminal offenses).

Cases are assigned to the individual judge based on chance - as a rule. But the head of the court has broad powers to control the settlement of cases. This can indirectly affect decisions, for example if only a few judges handle cases against the state.

3) *Governance*

The Court Administration (DA) is responsible for the central administration of the courts, and shall contribute to them being in the best possible position to meet their challenges.

DA has both a management and support function, a legal policy role and a development role. DA also has a superior employer function. DA is an independent administrative body with its own board, and shall safeguard and support the independence of the courts and judges.

The government appoint seven of the nine members of the board of the Court Administration and decide who will be the chair of the board. The government provide further regulations on the activities of the Court Administration, and instruct the Court Administration in individual administrative cases through government resolution.

The courts are completely independent in their judicial activity. DA therefore has no authority in a single trial.

4) *Fund and other resources*

The government prepares the draft budget (the Court Administration's budget proposal) for the courts that are adopted by the parliament.

The government also determine the salaries of judges. The Norwegian Judges' Association has no bargaining power when it comes to salaries.

The courts' budgets are under pressure. This especially applies to the construction of new courthouses and computer equipment. We are also in the middle of a major judicial reform, where the number of district courts is to be halved.