

NORWAY

The relationship between the executive and the judiciary in a democratic society;
the question is - who should be master?

The independence of the judiciary and the balance of power between the three powers of a democratic state: the legislature, the executive and the judiciary, are core elements of the work of the First Study Commission.

The central role of the legislature will not be part of our considerations of this year. In the past the First Study Commission has studied several topics where the relationship between the executive and the judiciary has been an element of the analysis. This year this relationship will be the centre of our investigation.

An examination from this viewpoint may make possible general conclusions on the mutual influence of these two branches of the powers of state and we hope will throw light on the question of the balance of powers in Member States and this specific aspect of independence of the judiciary.

For the purpose of this questionnaire we ask everyone

- (i) to exclude from their consideration the position of the “constitutional court” (if one is part of the judicial system in their country) can be regarded as part of the judiciary system; and
- (ii) to exclude the head of state in their country (as opposed to the head of government) from consideration as a part of the executive, unless the head of the state exercises power or “influence”. If either might be exercised, then it should be noted.
- (iii) “Influence” may be exercised or not; we think that if it might be exercised, then it should be noted.

Question 1: Is the principle of independence of the judiciary enshrined in the constitution or a comparable legal source in your country?

The Norwegian Constitution is based on the principle of separation of powers between the executive (the King, i.e. the Government), the legislature (the Storting) and the judiciary.

The principle of judicial independence is not clearly stated in the Constitution, but is presupposed, e.g. in Article 88, after which the Supreme Court pronounces judgments in the final instance, and Article 90, which states that the judgments of the Supreme Court may in no case be appealed. According to the Constitution Article 22, judges may not, except by court judgment, be dismissed nor, against their will, transferred.

Question 2: Is the principle of balance of powers enshrined in the constitution or a comparable legal source in your country?

See answer to question 1.

Question 3:**Is there any influence of the executive on selection and the first appointment of judges?****If yes: describe it.**

Judges are appointed as senior state officials by the Government, after the Judicial Appointments Board - a separate judicial appointments body - has given its formal recommendations. The Judicial Appointments Board is composed of three judges, two non-lawyers appointed as public representatives, one advocate and one lawyer employed in the public sector.

The members of the Board are appointed by the Government.

The Judicial Appointments Board deals with applications to the District and City Courts, the Courts of Appeal, and the Supreme Court. The Board recommends three applicants. The recommendations of the Board carry a great deal of weight when the Government makes its final choice. The Government may not choose an applicant who has not received the recommendation of the Board, unless it has asked for the Board to make a special assessment of the applicant in question. The Board's recommendation, but not the reasons for the recommendation, is made public.

The National Courts Administration administrates the secretariat for the Judicial Appointments Board.

Question 4:**Is there any influence of the executive on the promotion of judges?****If yes describe it.**

There is no system of promotion as such of judges in Norway. A judge in a lower court may though apply for a position in a higher court. The procedure is the same as described in the answer to question 3.

Question 5:**Is there any influence of the executive on the selection, or appointment or dismissal of presidents of court?****If yes: describe it.**

For appointment of presidents of courts the system is mainly the same as described in the answer to question 3.

Question 6:**Is there any influence of the executive on the distribution of cases /assignment of judges to certain cases?****If yes: describe it:**

No.

Question 7:**Is there any influence of the executive on the transfer of judges to other courts****If yes: describe it.**

No.

Question 8:**Is there any influence of the executive on the termination of office of judges?****If yes: describe it.**

No.

Question 9:**Is there any influence of the executive on the disciplinary procedure against judges?****If yes: describe it.**

No. The National Courts Administration administrates the secretariat for the Supervisory Committee for Judges, a separate independent administrative body, dealing with disciplinary matters.

The National Courts Administration has the right to complaint, both for misconduct of a judge in the performance of his or her office, and for misconduct outside office, but the Courts Administration hasn't as such any power in disciplinary matters.

Nor is there any influence of the executive on disciplinary procedure against Justices of the Supreme Court. Parliament, however, plays quite an influential role: Supreme Court Justices can only be removed from office after judgment by the Court of Impeachment. The Court of Impeachment pronounces judgment in the first and last instance in proceedings against Members of the Cabinet, the Supreme Court, or of Parliament, for criminal or other unlawful conduct which they may have committed in their official capacity. Indictments in such impeachment proceedings are raised by Parliament.

The judges of the Court of Impeachment comprise six Members elected by Parliament and the five longest-serving, permanently appointed Justices of the Supreme Court, including the Chief Justice. Parliament elects the Members and their deputies for a period of six years. A Member of the Cabinet or of Parliament may not be elected as a Member of the Court of Impeachment. In the Court of Impeachment the Chief Justice of the Supreme Court presides.

In total, the Court of Impeachment has convened on 8 occasions. The last time the Court of Impeachment convened was in 1925. A Justice of the Supreme Court, however, has never been impeached. A proposal to do so has only been made once, in 1839, but the proposal to impeach was rejected. In May 2008, Parliament decided not to order investigation into three current Supreme Court Justices' handling of a case before the Appeals Committee of the Supreme Court in 2003, in which a murder convict's application for reopening of a case, was rejected.

Question 10:**Is there any influence of the executive on the initial training of judges?****If yes: describe it.**

No. The National Courts Administration has an overall responsibility for the ongoing competence work within the judiciary, and acts as secretariat for different professional training committees, for example the Council for Professional Training of Judges in Norway.

Question 11:**Is there any influence of the executive on the in-service training of judges?****If yes: describe it.**

No.

Question 12:**Is there any influence of the executive on the salaries of judges?****If yes: describe it.**

Yes. The salaries of judges in first instance courts and in courts of appeal are fixed by the executive power. The salaries of Supreme Court judges are fixed by the Parliament.

Question 13:**Is there any influence of the executive in deciding on (a) the overall budget of the judiciary; and/or (b) how the funds designated for the judiciary are to be spent?****If yes (in either (a) or (b)), describe it.**

The courts receive their financial resources from the Norwegian Courts Administration, which receives its financial resources from the national budget. The Norwegian Courts Act section 33 underlines that it is the responsibility of the Courts Administration to administrate the courts in a proper and sufficient way. The Courts Administration has various tasks. One of the most important duties is the responsibility for the courts budgets and the making of budgetary proposals.

The National Courts Administration is also responsible for finance strategies and cost effective measures within the courts. The National Courts Administration brings forward budget proposals to the Government but may also go directly to the Parliament.

Question 14:

Is there any influence of the executive on the selection and appointment of clerks of the court?

If yes: describe it:

No.

Question 15:

Is there any influence of the executive on the composition of the Council of the judiciary or a similar body (if such a body exists)?

If yes: describe it:

Yes. The board of the National Courts Administration consists of nine members, two of them elected by the Parliament (Storting), and seven appointed by the Government:

- three judges from the ordinary courts,
- one judge from the land consolidation courts,
- one representative from the court executives,
- two advocates

The Government (the King in council) decides which of the board members to be the chairperson of the board.

Question 16:

Is there any other influence of the executive on the work of the Council of the judiciary or a similar body (if such a body exists)?

If yes: describe it:

The King in Council (The Government) may according to the Courts Act section 33 take decisions concerning the activities of the National Courts Administration and for the courts system. The Government must inform the Parliament on the decision. This provision has yet not been used.

The Ministry of Justice itself does not have any authority to impose instructions on the National Courts Administration or the courts in administrative matters.

The Ministry of Justice deal with the budget and all preparatory work on new laws concerning the courts. The National Courts Administration has a very free hand in its administration of the courts. A draft budget is presented to the Ministry and is included in the Government's overall draft budget. Apart from the usual budget reporting, the Parliament (Storting) will also keep a check on the courts and the Courts Administration through the Office of the Auditor General, which, in addition to auditing the accounts, also is able to audit the administration in the area of the courts.

The Parliament (Storting) may give overall instructions for the tasks that are given to the Norwegian Courts Administration, but the Courts Administration decides its own priorities within the framework of its recourses and various tasks.

Question 17:

What influences (if any) does the judiciary have on the executive power of central/local government? In particular, (a) does the judiciary have any power to control the exercise of executive power (by virtue of orders that the court can make on the application of parties to the court) and (b) what power (if any), does the court have to oversee the appointment of members of the executive?

(a)

In Norway, the ordinary courts, headed by the Supreme Court, are empowered to review whether Government decisions and decisions by other official bodies comply with the law. (This, there are no special administrative courts in Norway.) The Courts can also review whether the administrative decisions contain errors in the assessment of the facts and whether the relevant rules of procedure are observed.

(b)

The Courts are empowered to review executive appointments to the same extent as other administrative decisions. This presupposes, of course, that such legal proceedings have been instigated by someone with sufficient legal interest in having the issue resolved, e.g. an unsuccessful applicant for the position.

Question 18:

What power does the judiciary have over other public bodies (e.g. the police, or other quasi – governmental powers) in your country?

Apart from the power to review the legality of its acts and decisions, the judiciary does not exercise any power over the police or other quasi-governmental powers.

Question 19:

Who fulfils the task of prosecution in your country?

The Prosecuting Authority, which is organised on three levels:

- The Director of Public Prosecutions
- The Public Prosecutors
- The Prosecuting Authority in the Police

The public prosecutors and the Director of Public Prosecutions are called The Higher Prosecuting Authority.

The Prosecuting Authority is responsible for the handling of criminal cases, i.e. investigation, deciding whether to prosecute and to prosecute. The Prosecuting Authority in the Police handle most of the cases, but the cases concerning the most serious crimes are decided by the public prosecutor or by the Director of Public Prosecutions.

The Director of Public Prosecutions is directing the handling of criminal cases, which implies deciding the targets and the priorities for the public prosecutors and the police districts. The public prosecutor in a region supervises the police districts in that region.

Question 20:**Is there a common career of public prosecutors and judges?**

No.

Question 21:**Can judges be appointed as public prosecutors and vice versa?**

Yes, but it is very unusual that judges apply for a position as public prosecutor. On the other hand, it is quite usual that public prosecutors, after some years in the prosecution authorities, apply for a position as a judge.

Question 22:**Is there an influence of the executive on the appointment/promotion of public prosecutors?**

Yes, the executive appoints public prosecutors in the Higher Prosecuting Authority and senior prosecutors within the Prosecuting Authority in the Police.

Question 23:**Is there a possible influence of the executive on the cases public prosecutors are in charge of?**

No, not in general, but The King in Council (the Government) decides whether a prosecution should be brought as regards offences committed in the course of their duties by senior state officials and other officials appointed by the King. Nevertheless the Director General of Public Prosecutions may decide that the prosecution in such a case shall be discontinued because of the state of the evidence or because no penalty can be imposed in the matter.

Question 24:**Which problems (if any) do you see in the relationship between the executive and the judiciary in your country?**

Not any particular problems, but there is an ongoing discussion on judges' salaries, which are fixed by the executive, and on issues related to the system for the administration of the courts and the appointment of judges.

Question 25:**Are there concrete projects to change elements in the relations between the executive and the judiciary? What would this change mean?**

Not at the moment.