Under what circumstances may a judge be liable (in damages) for

a. errors contained in a judgment.

A judge can be liable for acts and omissions carried out in the course of his duty. The ordinary conditions for indemnity have to be met, which are liability in negligence, financial loss for a party, causal link between the act and the loss. These rules are not based in written law, but on case law.

Moreover a judge can be liable when the decision contains manifest errors according to law on courts art 201. The law on civil procedure art 436 sets forth that the right to appeal has to be exhausted before suing the judge and the decision has to be set aside, annulled or reversed by the appellate court.

b. defamatory utterances made in court, or defamatory statements contained in a judgment.

A defamatory statement made by a judge can not be declared null and void, see the criminal code art. 253 no. 3 a). A judge can normally not be punished for such statements either, because of a provision contained in the criminal code art 249 no. 2. On the other hand, a judge can in principle be liable in damages because of such statements if the ordinary conditions for indemnity are met, see above, see also art 3-6 of the law on compensatory damages. We do not know of any such case in Norway.

c. (undue) delays.

A judge can also be liable in damages for undue delays if he has caused the delay by acting negligently and there is a financial loss on the hand of one of the parties to the case. The delay would have to be extensive.

d. Poor functioning of the court administration.

An individual judge can not be liable for poor functioning of the court administration.

e. Other behavior in the performance of his office.

Yes, under the same conditions as described above under 1 a paragraph one.

Does liability in these cases lie with the judge in person or with the State? Could the judge, if held liable, recover the sum for which he is liable from the government (or vice versa)?

The state is liable for errors made purposely or through negligent acts by the judges on the condition that the functioning of the judge has been poorer than one can expect, or if the judge’s behavior has not satisfied the requirement of reasonableness. On the other hand,
the state is not liable if the judge has done something which is not reasonable to expect from a judge. In that case the judge would be liable personally.

The state can recover the sum if it is reasonable, taking into account how poor the judge’s performance has been, the judge’s financial situation and other relevant circumstances, see art 2-3 of the law on compensatory damages.

The judge in person can be liable for damages but for financial reasons the plaintiff will choose to sue the state if possible.

3. If liability lies with the judge in person, is a liability insurance usual, compulsory, or provided by the government?

Liability insurance is not compulsory, not provided for by the government and not usual. Claims against judges are very rare.

4. In your opinion do the rules governing the liability of judges in any way jeopardize their independence? Are these rules otherwise satisfactory?

We are quite sure that the rules governing the liability of judges are not a problem with regard to the independence of the judges. As we point out above such cases almost never happen.

5. Are there any plans for reform?

There is a proposal for amendment of art. 200 of the law on courts in connection with the preparation of a new law on civil procedure in Norway. Two paragraphs are proposed added to this article. The proposed change entails an extension of the possibility of a law suit against a judge even if the legal decision has not been tried by a higher court.

II

6. Which subjects would you like to discuss in detail?

I a – e.

III

7. What changes in the law on this subject do you suggest?

As pointed out above, the rules governing liability of judges are not a problem in Norway. We do not feel that great changes are needed.

IV


- Ethics of judges.
- The relationship between the court President and the other judges. What competence should the President have?
9. What is your opinion on the present experiment of including cases for discussion, with a shorter questionnaire? Would you prefer to return to the former practice of a longer questionnaire without a case, or do you have other suggestions?

We like the way it is done now, with shorter questionnaires and discussion of cases, and would not like to return to the longer questionnaires.