
SUPREME COURT OF NORWAY

2022





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Sculpture from the Supreme Court given to Princess Ingrid Alexandra for her 18th birthday. The sculpture is named «Hug Yourself» and created by artist Kari-Lena Flåtten-Lindbæk.

THE SUPREME COURT IN 2022



Chief Justice Toril Marie Øie. Photo: Kvaale.

THE RULE OF LAW AT RISK IN EUROPE

In 2022, the value of democracy and the rule of law has become even clearer, and the terms are filled with more seriousness than in a long time. We see the disturbing events in countries near us and realise that we cannot take the rule of law or democracy for granted.

With the war in Ukraine, the rules of international law are being broken. In September, after having been excluded from the Council of Europe six months earlier, Russia ceased to be a member of the European Court of Human Rights. After decades of steady steps towards better human rights protection in Europe, it is deeply saddening that 2022 gave us such a strong setback.

The setback for basic democratic values did not just happen acutely through Russia's invasion of Ukraine. The dismantling of the European rule of law has occurred gradually, unfortunately in several countries. The rule of law rests on the idea of securing citizens' freedom by dividing power in three. In Poland, however, the executive and the legislature have gone to great lengths to secure control over the judicial system through several reforms. They now fully control the appointment of new judges. The disciplinary system is changed, and the Minister of Justice's role in disciplinary proceedings has increased considerably. The Minister may decide to reduce the judges' salaries as deemed fit. Judges tell of harassment and smear campaigns targeted at those who oppose. Similar reports of attacks on the independence of judges come from other European countries, such as Hungary and Turkey. Nor in Ukraine are the courts independent.

When all our attention is directed at the atrocities in Ukraine, there is a danger that the structural challenges to the rule of law in other parts of Europe will fade into the background. This calls for us to take extra responsibility and clearly express our concerns about these developments.

THE NORWEGIAN RULE OF LAW

The need to strengthen the Norwegian rule of law becomes small by comparison. By that, I do not mean that our courts do not make mistakes. That happens. But our rule of law is still generally solid, and the principle of separation of powers is not challenged.

Also in Norway, however, there is a need for changes. In 2022, the Storting adopted a constitutional amendment by which the Supreme Court was tasked with deciding appeals against the Storting's decision on the validity of an election. Provisions on the right of appeal and grounds for appeal are to be laid down by law. Such an appeals system is in accordance with international recommendations. I would also like to stress the importance of other constitutional amendments that the Storting will consider during the current parliamentary term: Constitutional provisions on a maximum number of Supreme Court justices and the justices' retirement age will limit the other state powers' possibility to influence the judicial work of the Supreme Court. Lowering the pension age of judges is a means employed by the executive in Poland. In Norway, the risk, however minimal, of such a future dilution of the Supreme Court's power should be completely removed.

Despite the room for improvement of the rule of law also in Norway, the negative trend in Europe makes me value even more the solid and established interaction between our state powers. This was at an overall and institutional level demonstrated in full by Princess Ingrid Alexandra's visit to the Storting, the Government and the Supreme Court in January 2022, on the day before her 18th birthday.

Also in their day-to-day work, Norwegian courts and ultimately the Supreme Court may exercise control with full independence and a great sense of responsibility, to avoid that that citizens and undertakings are subjected to unlawful interference by the other state powers. Through clarification and development of the law, we ensure predictability and equal treatment.

We also have many examples of this from 2022. In several rulings, the Supreme Court assessed the validity of the authorities' restrictions and impositions during the corona pandemic. These matters may seem a little out of date, now that we have once again resumed our daily lives as we knew them. But subsequent control is vital for the trust in the rule of law. Clarifications of what is needed for such measures to be in line with the law, the Constitution and human rights are also essential for the future if new pandemics or other crises arise.

When society changes, it is the Supreme Court's task to clarify the applicable law. A rather mundane example is what is the right level of punishment for driving electric scooters under the influence of alcohol. This will be considered in early 2023. The drug rulings from the spring of 2022 are also an expression of changes in society triggering the need for new clarifications of the law. The view of the Storting's majority during the discussion of the drug reform in 2021 laid the foundation for the Supreme Court's rulings that drug addicts should no longer be punished for possessing small amounts of narcotic drugs for own use.

TRUST AND TRANSPARENCY

In 2022, the Supreme Court could finally open up in full after two years of various corona restrictions. We have resumed many of the important physical meetings that we had to put on hold during the pandemic or conduct by videolink, and created new venues. We have been able to travel abroad again, such as to the EFTA Court in Luxembourg, and welcome international visitors, like when the President Robert Spano of the European Court of Human Rights and the Court's Norwegian judge Arnfinn Bårdsen visited in May. The dialogue with key domestic players has also been strengthened, as we are once again able to host physical meetings in the Supreme Court Building. Perhaps there has never been as much activity here as in 2022, with numerous large events and almost daily visits and tours of our beautiful building.

Our desire to be a transparent and accessible court is expressed in several ways. Over the past year, we have put a lot of effort into sharing our rulings and the issues raised in a way that is easier for the public and the press to understand. And in January 2023, when the Supreme Court will convene in plenary session to hear a case on the geographical scope of the Svalbard Treaty, it will for the first time be possible to follow the proceedings from our website. We have worked for a long time to have this opportunity, and last summer the Storting created a legal basis for live streaming in the Supreme Court. Permanent and better equipment will be installed later this year. We are looking forward to making the Supreme Court more accessible to an even larger audience. On a continent where the rule of law has been weakened, transparency of our work is more crucial than ever.

Oslo, 16 January 2023

Toril Marie Øie
Toril Marie Øie

Norway has a three-tiered court system with 23 district courts in the first instance, six courts of appeal in the second instance and the Supreme Court at the top. According to Article 88 of the Constitution "[t]he Supreme Court pronounces judgment in the final instance".

In principle, appeals in all types of cases may be brought before the Supreme Court – in civil disputes, including administrative cases, and in criminal cases. The Supreme Court also deals with constitutional issues. This makes the Supreme Court our country's highest constitutional court, administrative court, dispute tribunal and criminal court.

The Supreme Court is a precedent court whose principal goal is clarification and development of the law within the framework provided by the Constitution, domestic legislation and Norway's obligations under international law. The Supreme Court decides with final force and effect the legal relationship between the parties in cases brought before it. The Supreme Court's interpretation of the law is also followed by other courts and by the legal community in general. Thus, the Supreme Court has decisive influence on applicable law in Norway.

THE PRINCESS AND THE STATE POWERS

It was a dusky, but crisp Thursday in January 2022 – the day before Princess Ingrid Alexandra came of age. The country was once more in lockdown due to a new coronavirus outburst. Once again, the courtrooms were empty and the proceedings digital. And everyone entering the Supreme Court Building had to wear a mask. No exception applied to Norway's future queen, as she stepped out of the car and was greeted by Chief Justice Toril Marie Øie and Secretary-General Bente Kraugerud.

TRADITION BEFORE THE 18TH BIRTHDAY

It is a tradition that a future monarch, on the day before coming of age, visits the three state powers. The Princess's father, Crown Prince Haakon, did the same in 1991. The event gives an introduction to how the Eidsvoll Men divided power among the legislature, the executive and the judiciary. In 1814, this assembly of lawmakers drafted a Constitution in line with Montesquieu's principle of separation of powers. The Princess's day started at the Storting – the Norwegian parliament, continued at the Supreme Court and ended at the Office of the Prime Minister.

SPEED LECTURE ON THE SEPARATION OF POWERS

In the Supreme Court's lobby, Princess Ingrid Alexandra was welcomed by the four longest-serving justices. According to the Constitution, these five participate in the Court of Impeachment, in addition to the Chief Justice.

In the Chief Justice's office, the Princess learned how the role of the Supreme Court has evolved since 1814; how the Supreme Court not only decides a case with a final effect, but through the cases provides clarification and development of the law. The courts with the Supreme Court in the final instance ensure that the Storting, the Government and other public administration bodies act within the limits of the Constitution and Norway's international human rights obligations.

Norway is a state based on the rule of law, and the Supreme Court and the lower courts are completely independent in their judicial work. The other state powers cannot interfere with individual cases pending before the court.

WOMEN MAKE WAY

The tour – transmitted live on TV – went through the Supreme Court's two courtrooms in which some hundred cases are subject to oral hearings each year. As opposed to many other countries, Norway has a single highest court that hears cases within all areas of law. The Supreme Court is the country's highest constitutional court, administrative court, dispute tribunal and criminal court.

In one of the robing rooms, the Princess could study the portraits of all Supreme Court justices since the Court was established in 1815. The pictures bear witness of male dominance during the first 150 years. On the third wall the Princess could finally see the picture of Lily Bølviken, the first woman to become a Supreme Court justice, in 1968. Today, eight out of 20 justices are women.

Someday, Princess Ingrid Alexandra will also make way – as Norway's first reigning queen in modern times.

Princess Ingrid Alexandra and Chief Justice Toril Marie Øie in the robing room of the Supreme Court's First Division. The masks had been put aside in connection with the photography.



THE BRANCHES OF GOVERNMENT AND THE SEPARATION OF POWERS

The Constitution is built on the principle of separation of powers, dividing state power among the legislative, the executive and judicial branch:

- The Storting adopts legislation and makes other decisions, including on budgets and participation in international cooperation.
- The Government and the public administration implement the Storting's decisions.
- The courts pronounce judgment in accordance with legislation adopted by the Storting. The Supreme Court pronounces judgment in the final instance.

In cases brought before the courts, the courts – with the Supreme Court in the final instance – have the power and a duty under Article 89 of the Constitution to review whether statutory provisions and administrative decisions are contrary to the Constitution. The courts also review whether administrative decisions are in accordance with general law and whether legislation and administrative decisions comply with our human rights obligations. Through this control, the Supreme Court ultimately establishes the legal framework for the exercise of public authority and safeguards the rule of law.



President of the Storting Masud Gharahkhani and the rest of the Presidium visited the Supreme Court on 17 February 2022.



Minister of Justice and Public Security Emilie Enger Mehl in the office of the Chief Justice Toril Marie Øie during a visit on 5 December 2022.



Three generations in the King's Chair: 1. Princess Ingrid Alexandra (2022). 2. King Harald (2015). Photo: Morten Brakestad. 3. Crown Prince Haakon (1991). Photo: Agnete Brun/NTB.

THE KING'S CHAIR IN THE SUPREME COURT

In the Chief Justice's office stands an old Rococo wooden chair. It is described as the country's oldest and most magnificent Rococo chair, decorated with "carvings, pure gilt and red velvet covering seat, back and armrests, as well as other ornaments". The top of the chair's back has an open-work field with a lion and a three-dimensionally carved royal crown.

The chair was made in the mid-18th century by the leading chair-maker at the time, Jens Wedøe (1718–1787). It is unclear exactly which year it was completed. According to historical sources, the chair was made for King Frederik V's visit to Christiania on 3–7 June 1749 and later moved to *Overhoffretten*, the then highest Norwegian court, at Akershus Castle. However, some information suggests that it was made in 1760 to replace an older chair belonging to the chief judge of *Overhoffretten*.

Regardless of whether the chair was made for King Frederik V's visit or later, it has functioned as a chair for the royals in recent times. King Harald V, Crown Prince Haakon and Princess Ingrid Alexandra have all used it during their visits to the Supreme Court. There is reason to believe that the chair was also used by King Haakon and King Olav. The chair is only used during royal visits to the Supreme Court.

Aage Thor Falkanger, Supreme Court Justice



Photo: Jiri Havran.

LEARNING AMONG THE REINDEER



Photo: Cecilie Østensen Berglund.

During the winter of 2022, Supreme Court Justice Cecilie Østensen Berglund was on a leave to immerse herself in Sami law and issues related to the northern areas.



Supreme Court Justice
Cecilie Østensen Berglund.

– In order to ensure continuing education of its justices, the Supreme Court has a study leave scheme under which the justices have the opportunity to immerse themselves in various fields of law. I wanted to spend my leave on learning more about the Northern areas and about the various Sami groups.

Sami law is a highly topical field of law. A consistent feature of the recent cases addressing Sami rights is that Norway's international obligations for the protection of the rights of indigenous peoples, together with Article 108 of the Constitution, are given greater importance. This generates exciting and demanding sources of law, where the Supreme Court as a precedent court has a special responsibility for interpreting and clarifying the legal implications of the relevant sources.

Large parts of my study leave were spent in Finnmark, with a lot of time on the plateau with various Sami reindeer herders. I participated in gathering and counting the reindeer, and in the necessary feeding due to the grazing crisis. Through my stay, I gained knowledge about the impact of climate change on traditional reindeer husbandry. I also learned more about the Sea Sami culture and the development of coastal fishing in the north.

I learned from both young and older reindeer herders and from Sami fishermen. I spoke with representatives from the Sami Parliament and the County Administrator, with judges, the police, advocates and academia on various topics related to the exercise of indigenous rights.

Article 108 of the Constitution obliges the authorities of the State to create conditions enabling the Sami people to preserve and develop their language, culture and way of life. This obligation encompasses the Norwegian courts. It is important that the Sami dimension of a case be given proper consideration.

In recent years, the Supreme Court has heard several central cases on Sami rights, such as the plenary case on the management of land in Finnmark ([HR-2018-456-P](#)) and the grand chamber case on windfarms on the Fosen peninsula ([HR-2021-1975-S](#)). In the latter case, the Supreme Court found that the decision to allow the windfarms violated the reindeer herders' right to enjoy their own culture and constituted a violation of Article 27 of the International Covenant on Civil and Political Rights.

Vuodđolága § 108:s boahdá ovdan ahte stáhtalaš eiseválddiin lea geatnegasvuohta láhčit dilálašvuođaid dasa, ahte sámi álbmot sáhtá sihkkarastit ja ovddidit iežas giela, kultuvrra ja servodateallima. Dát geatnegasvuohta gusto maiddá duopmostuoluide. Lea dehálaš ahte maiddá sámi dimenšuvdna áššiin gieđahallojuvvo dohkálaččat.

Alimusriekti lea ma imuš jagiid meannudan má ga hui guovddáš ášši mat guoskkahit sámi dilálašvuođaid, nu mo dievasášši mo stuvorra oassi Finnmarkku opmodagas galgá hálddašuvvot ([HR-2018-456-P](#)) ja stuvorakámmirášši 2021:s bieggafápmorusttegiid birra Fovsenis ([HR-2021-1975-S](#)). Ma it áššis oaivvildii Alimusriekti ahte mearrádus addit lobi bieggafápmorusttegiidda loavkašuhit boazodolliid árbevirolaš kulturdoaimma, ON-konvenšuvnna siviila ja politihkalaš vuoigatvuođaid artihkal 27 vuostá.

I would like to thank everyone who welcomed me and shared their knowledge with me. Ollu giitu.

One of the most valuable experiences I gained is the awareness that judges in this field, in contrast to most other areas of law, have little background knowledge of the actual conditions. This implies that the courts must be open to a wide presentation of evidence regarding conditions, culture and tradition. Such presentation of evidence, together with a thorough description of the issues raised will give the judges a better basis for asking the right questions, making the necessary assessment and handing down a correct judgment.

The study leave inspired me to learn more about Sami rights and culture and to share my knowledge with others. In the time that has followed, I have given a number of lectures on the topic.

Cecilie Østensen Berglund, Supreme Court Justice





First row from left: President of the Sami Parliament Silje Karine Muotka, Chief Justice of the Supreme Court Toril Marie Øie and President of the Supreme Court of Sweden Anders Eka. Second row from left: Former Supreme Court Justice Magnus Matningsdal, former President of the Sami Parliament Aili Keskitalo and Court of Appeal Judge and President of the Finnmark Land Tribunal Nils Asbjørn Engstad.

BURES BOAHTIN ALIMUSRIEKTÁI!

Welcome to the Supreme Court!

In 2022, the Supreme Court, together with Pluricourts (UiO) and the Norwegian Court Administration represented by Sami Forum, hosted the seminar “Sami cases in Norwegian courts – national and international perspectives” The purpose was to draw attention to the “Sami dimension” and contribute to strengthening the knowledge and awareness of issues related to Sami law.

INVOLVES COURTS NATIONWIDE

The event saw a strong Sami presence and participants of the courts also attended. Present were advocates, representatives from the prosecution authority and judges from all three instances, including nearly all Supreme Court justices. Delegates from the Swedish and Finnish Supreme Court were also present, in addition to representatives from the public administration.

The seminar filled the Supreme Court’s meeting hall to capacity. In addition, several participated by videolink and the seminar was also streamed in its entirety on the Supreme Court’s website.

Disputes involving the Sami dimension may arise anywhere in the country. With the whole of Norway as its jurisdiction, the Supreme Court regularly hears cases that in various ways encompass Sami aspects, both administrative cases, criminal cases and constitutional cases.

Chief Justice Toril Marie Øie opened the seminar by stressing the importance that courts all over the country – at all levels – hear such cases as thoroughly, impartially and with the same high quality as other cases.

REQUIRES KNOWLEDGE OF SAMI CULTURE

Chief Justice Øie believes that Norwegian judges are well prepared to deal with Sami law issues.

– Norwegian judges emphasise the importance of considering all aspects of a case, both issues of fact and issues of law. We are generalists and used to working with areas of law that we

The Supreme Court works continuously to strengthen its knowledge of Sami relations. In addition to justices participating in seminars and other forums on Sami law topics, the Supreme Court has two law clerks with special responsibility for this area of law.

In courts with jurisdiction that covers, in full or in part, the administrative area for the Sami language, the participants have a right to use this language. This also applies with regard to the Supreme Court since it has the entire country as its jurisdiction.

Summaries of rulings concerning Sami law issues are published in Sami on the Supreme Court’s website. Some rulings are translated in their entirety.

Alimusrieki bargá jottkolaččat nannet máhtu sámi diliid birra. Earret dan ahte duopmárat servet semináraide ja eará foraide gos sámeriekti-gažaldagat leat fáddán, leat Alimusrievttis guokte čielggadeaddji geain lea erenoamáš ovddasvástádus dán riektesuorgái.

Duopmostuoluin main lea riektebiire mii ollásit dahje belohahkii fátmasta sámegiela hálddašanguovllu, lea vuoigatvuhta geavahit sámegiela. Daningo Alimusrievttis lea olles riika riektebiiren, de dat gusto maddái Alimusriektái.

Čoahkkáigeasut sámerievttálaš áššiid mearrádusain maid Alimusrieki lea dahkan almmuhuvvojit sámegillii Alimusrievtti neahttasiidui. Muhtin mearrádusat jorgaluvvojit ollislaččat.



Last year, we received Sami Pathfinders on two occasions. Sami Pathfinders are youth travelling the country sharing information about Sami culture and society.

Ma imuš jagi leat sámi ofelaččat fitnan guossis guktii. Sámi ofelaččat leat nuorat geat mátkkoštit Norggas ja logaldallet sámi kultuvrra ja servodatdiliid birra.

are not too familiar with. The interpretation and application of treaty obligations are also part of everyday life in Norwegian courts, although some treaty provisions are more familiar to us than others. However, Sami culture, customs and perceptions of the law are often part of a case, and the judges’ knowledge thereof may vary.

THE ADVOCATES’ RESPONSIBILITY

Luckily, the judges are not alone. As in other areas that demand particular insight, great responsibility rests on the advocates standing before the court. They are expected to have the required knowledge of Sami culture, history, customs and perceptions of the law, and to convey this knowledge in satisfactory manner. Toril Marie Øie continued:

– All players in the judicial system must possess the necessary knowledge in order to create trust between the system and the Sami population.

CARSTEN SMITH TURNED 90

In the summer of 2022, former Chief Justice Carsten Smith celebrated his 90th birthday. He became Chief Justice in 1991, without leadership experience and without previous service as a justice. Smith was to become an important figure in the development of the Supreme Court as a state power.

When the seat of Chief Justice became vacant in 1991, Carsten Smith, then a law professor at the University of Oslo, received a surprising inquiry: Would he consider applying for the position of head of the Supreme Court?

– I would never myself have come up with the idea of applying! It had been the custom for the Chief Justice to be chosen from among the existing justices in the Supreme Court. I was also happy in my work as a professor at the faculty; it was the best position in the world, says Smith.

Although the invitation – to Smith – came out of the blue, he soon decided to apply. After all, he had always taken a great interest in the Supreme Court's activities.

– I had very much lived with the Supreme Court's rulings. They were the raw material in my work at the university. Once in a while I thought about applying for the position of justice, but never Chief Justice. I had previously had a couple of temporary appointments as a justice, which may have counted in the assessment of my abilities.

Once the Chief Justice job was his, Carsten Smith – who had read, analysed and criticised Supreme Court rulings during his entire career – was now to lead the work producing them.

THE MOST CHALLENGING PART OF THE JOB

The Chief Justice always presides over the hearings in which he or she participates. The role of presiding justice is also what Smith remembers as the most challenging. In addition to being in charge of the hearings, the presiding justice is also the first to present his or her opinion during the deliberations that follow.

– Being the presiding justice was extremely demanding, both intellectually and timewise. Very few outside of the Supreme Court are aware of the role and responsibilities of the presiding justice. Also, in many other countries, fewer tasks are assigned to the Chief Justice and in some places it is the last-appointed justice who opens the deliberations. I found it particularly challenging to consider the precedent aspect of each and every case.

THE DEVELOPMENT INTO A PRECEDENT COURT

There is more to writing precedents than simply deciding the individual case. In their drafting, the justices do their utmost to formulate the principles precisely and to clarify the applicable law in the issue at hand.

Carsten Smith had fostered the idea of a precedent court long before he became Chief Justice. He remembers in particular a judicial seminar in 1974 where he proposed that the Supreme Court should concentrate more on writing judgments involving issues of principle and on contributing to development of the law.

– My speech was not well received; I met strong opposition! The prevailing view was that the Supreme Court should only decide the individual case, but that sometimes it



CARSTEN SMITH

Born 1932 in Oslo
Professor of law, University of Oslo, 1964–1991
Chief Justice of the Supreme Court of Norway, 1991–2002
Recipient of the Nordic Jurists Award (1996) and the Rule of Law Award (2010)
Honorary Doctor at a number of universities
Author of many books and legal articles



Photo: Lise Åserud/NTB.

A precedent is a decision by the Supreme Court that clarifies how a legal provision is to be interpreted or how a certain legal issue is to be resolved. The opinion of the law expressed by the precedent is followed by all courts in subsequent cases and anywhere the law is applied. If an issue arises that may involve departing from a precedent, the case may be heard by a grand chamber or by the plenary.



Chief Justice Carsten Smith presiding over the plenary session during the pronouncement of a judgment on 16 November 2000. The case concerned the significance or errors in the Norwegian implementation of EEA Directives (Rt-2000-1811). Photo: Lise Åserud/NTB.

was inevitable that a judgment became normative for other cases. Then, the scope had to be made as small as possible, since it was not for the Supreme Court to take this too far. We were merely to function as the final and wiser instance that made good rulings in the individual case.

Nonetheless, the Supreme Court gradually assumed the task of developing the law, particularly in areas of law in discord with the actual state of society.

– Tort law is an obvious example. Technology generated new types of loss. The culpa doctrine became increasingly tight until finally, through court-made law, one landed on the doctrine of strict liability.

But is it not commonly perceived today that virtually all Supreme Court rulings are precedents?

– Exactly! What a wonderful thing to hear – that was indeed my goal.

ENTER THE LAW CLERKS

When Carsten Smith took the position of Chief Justice, the foundation for developing the Supreme Court into a precedent court was laid. A commission had been set up to discuss what was later to become the two-instance reform. As Chief Justice, Smith made it clear that in order to have the time to create precedents, the Supreme Court had to take in fewer cases and the justices needed more help.

The formation of a corps of law clerks to assist in filtering the appeals and preparing the hearings became Carsten Smith's

mission. The filtering process was vital to ensure that cases with the best potential to clarify the law proceeded to a hearing.

– On a practical level, it was about obtaining the support of the Government and the Storting, with regard to both legal bases and resources to carry out the work. Not to mention, I had to obtain the support of the Supreme Court itself.

Smith even found that the law clerks should assist the justices to a greater extent than today, including with drafting judgments. He did not succeed with that; the justices still write their own judgments.

– Of course there was resistance, but I accomplished a lot. And there have been others after me who have contributed further to the development of the institution.

THE WAR CHILD AND THE HUMAN RIGHTS

A main concern for Carsten Smith has been to promote foreign law as a central source of law for the courts, particularly human rights. The rights of indigenous peoples and Sami law have a special place in his heart. The commitment to human rights stems from his youth.

– I am a war child. My upbringing revolved around war. The walls at home were full of maps where the front lines were drawn and moved as the troops advanced. I was young enough to be saved by my age, but old enough to register everything that took place. My nearest family were not directly affected, but I had a cousin and an uncle who were sent to Germany. Both came back, one of them from Sachsenhausen, the other from a German prison.

– After the war came the UN Declaration of Human Rights, and it became clear to me and others that it had to be incorporated into Norwegian law. But it took some effort to have it incorporated into the statutory framework, and eventually in the Constitution.

Prior to becoming Chief Justice, Smith headed a commission drafting human rights legislation. This laid the foundation of the Human Rights Act, adopted in 1999, which made a number of international human rights conventions into Norwegian law with precedence before other legislation.

THE POWER SHIFT

Today, human rights are central in the determination of a high number of legal issues, in practically all areas of society. In 2014, human rights got their own chapter in the Constitution.

– I have great respect for the leaders of the Storting in charge of the latest constitutional revision. The inclusion of human rights in the Constitution represented a pronounced power shift in favour of the courts. The Storting cannot mess with human rights in its ordinary legislative work. The Supreme Court task is to prevent that, as guardian of the Constitution and human rights.

As Chief Justice, Smith was engaged with promoting the Supreme Court's position towards the two other state powers. The development of a precedent court was only one step in this process. Another battle was to detach the administration of the courts from the Ministry of Justice.

– This was no joke. I have nothing negative to say about the Ministry of Justice, they were given this task in 1814 when things happened in a hurry. But there really was no reason for the

Ministry of Justice to be occupied with court administration. It is incompatible with general ideas of the courts' independence.

Carsten Smith headed the commission appointed to examine the organisation of the courts, and prevailed in the end with his view that court administration had to be separated from the Government, the second state power. In 2002, the National Courts Administration was established.

A FOUNDATION TO BUILD ON

Carsten Smith has now turned 90 and is still staying up-to-date. But the professor who previously consumed and later produced Supreme Court's rulings has stopped the intense reading of them. That does not mean he is any less eager; last year he recapped his legal career in a digital series of articles on *Juridika*. There, he takes a glance at his long career - and at a Supreme Court that has developed in line with the foundation he once laid.

– I couldn't have hoped for more, the former Chief Justice declares.

*Interview by Ida Dahl Nilssen,
Head of Information*



THE SUPREME COURT JUSTICES

ARNFINN BÅRDSSEN (55) is on leave to serve as a judge at the European Court of Human Rights.

More details on the justices' professional backgrounds can be found on www.supremecourt.no.

Photo: Sturlason.



TORIL MARIE ØIE (62)

Toril Marie Øie grew up in Oslo. She graduated in law in 1986, and took up the position of Supreme Court justice on 1 August 2004. Before that, she served as a Head of the Legislation Department at the Ministry of Justice and Public Security. Toril Marie Øie took up the position of Chief Justice of the Supreme Court on 1 March 2016.



JENS EDVIN A. SKOGHØY (67)

Jens Edvin A. Skoghøy grew up on the island of Ringvassøya in Troms. He graduated in law in 1980. He was a Supreme Court justice from 11 August 1997 until 1 February 2017. After a new appointment, he returned to the Supreme Court on 12 October 2020. He has served as a professor at the University of Tromsø. He has been deputy to the Chief Justice since October 2021.



HILDE INDREBERG (65)

Hilde Indreberg grew up in Oslo. She graduated in law in 1987, and took up the position of Supreme Court justice on 1 April 2007. Before that, she served as Head of the Legislation Department at the Ministry of Justice and Public Security.



BERGLJOT WEBSTER (56)

Bergljot Webster grew up in Oslo. She graduated in law in 1992, and took up the position of Supreme Court justice on 15 August 2009. Before that, she worked as an advocate in private practice.



WILHELM MATHESON (67)

Wilhelm Matheson grew up in Oslo. He graduated in law in 1982, and took up the position of Supreme Court justice on 1 November 2009. Before that, he worked as an advocate in private practice.



AAGE THOR FALKANGER (57)

Aage Thor Falkanger grew up in Bærum. He graduated in law in 1991. He took up the position of Supreme Court justice on 1 May 2010. Before that, he served as a professor at the University of Tromsø.



KRISTIN NORMANN (68)

Kristin Normann grew up in Bærum. She graduated in law in 1982, and took up the position of Supreme Court justice on 9 August 2010. Before that, she worked as an advocate in private practice.



RAGNHILD NOER (63)

Ragnhild Noer grew up in Svartskog and Orkanger. She graduated in law in 1985, and took up the position of Supreme Court justice on 1 October 2010. Before that, she served as a judge at Borgarting Court of Appeal.



HENRIK BULL (65)

Henrik Bull grew up in Bærum. He graduated in law in 1984, and took up the position of Supreme Court justice on 17 January 2011. Before that, he served as a judge at the EFTA Court.



KNUT H. KALLERUD (66)

Knut H. Kallerud grew up in Hvittingfoss and Kongsberg. He graduated in law in 1983, and up took the position of Supreme Court justice on 16 July 2011. Before that, he served as Assistant Director of Public Prosecutions.



PER ERIK BERGSJØ (64)

Per Erik Bergsjø grew up in Steinkjer. He graduated in law in 1985, and took up the position of Supreme Court justice on 1 March 2012. Before that, he worked as an advocate in private practice.



ARNE RINGNES (67)

Arne Ringnes grew up in Oslo. He graduated in law in 1982, and took up the position of Supreme Court justice on 18 August 2014. Before that, he worked as an advocate in private practice.



WENCHE ELIZABETH ARNTZEN (63)

Wenche Elizabeth Arntzen grew up in Bærum. She graduated in law in 1986, and took up the position of Supreme Court justice on 29 September 2014. Before that, she served as a judge at Oslo District Court.



INGVALD FALCH (59)

Ingvald Falch grew up in Vadsø. He graduated in law in 1989, and took up the position of Supreme Court justice on 1 September 2015. Before that, he worked as an advocate in private practice.



ESPEN BERGH (61)

Espen Bergh grew up in Oslo. He graduated in law in 1987, and took up the position of Supreme Court justice on 15 August 2016. Before that, he served as a senior judge at Borgarting Court of Appeal.



CECILIE ØSTENSEN BERGLUND (51)

Cecilie Østensen Berglund grew up in Bærum. She graduated in law in 1998, and took up the position of Supreme Court justice on 1 January 2017. Before that, she served as a senior judge at Borgarting Court of Appeal.



BORGAR HØGETVEIT BERG (52)

Borgar Høgetveit Berg grew up in Ål in Hallingdal. He graduated in law in 1997, and took up the position of Supreme Court justice on 1 May 2017. Before that, he worked as an advocate in private practice.



ERIK THYNESS (61)

Erik Thyness grew up in Oslo. He graduated in law in 1987 and took up the position of Supreme Court justice on 1 May 2019. Before that, he worked as an advocate in private practice.



KINE STEINSVIK (46)

Kine Steinsvik grew up in Sandnessjøen. She graduated in law in 2001 and took up the position of Supreme Court justice on 5 August 2019. Before that, she served as a judge at Borgarting Court of Appeal.



KNUT ERIK SÆTHER (52)

Knut Erik Sæther grew up in Mjøndalen. He graduated in law in 1995 and took up the position of Supreme Court justice on 1 October 2021. Before that, he worked as Assistant Director of Public Prosecutions.



THE SUPREME COURT'S ADMINISTRATION

The Supreme Court's administration consists of a legal and an administrative support team of approximately 50 people. The Chief Justice decides administrative and principled matters of major practical significance to the Court, while the day-to-day administration is managed by the Secretary-General.



SECRETARY-GENERAL BENTE J. KRAUGERUD (48)

Bente J. Kraugerud graduated in law from the University of Oslo. She took up the position of Secretary-General of the Supreme Court on 1 October 2019. She was previously Head of Negotiations at Virke (the Enterprise Federation of Norway), and also has experience from the Ministry of Justice and Public Security, the Ministry of Local Government and Modernisation and from private law practice.

The administration is organised in three units: the Legal Secretariat, the Information Department and the Administrative Unit. The administration also consists of a Deputy Secretary-General, an ICT adviser, an ICT trainee and two secretaries who assist the Chief Justice and the Secretary-General.

THE LEGAL SECRETARIAT

The Legal Secretariat consists of the Head and two Deputy Heads, as well as 21 law clerks, two court clerks and one student law clerk. Trained lawyers from all of Norway's law faculties are represented in the Legal Secretariat.

The law clerks' main task is to assist the justices with cases that are appealed to the Supreme Court. Once an appeal has been received, it is handed to a law clerk who prepares the case before it is dealt with by the Appeals Selection Committee. In the cases that proceed to an oral hearing, the law clerks assist during the preparations and proceedings in either a division, a grand chamber and the plenary. They also perform other tasks for the Chief Justice, the justices and the Secretary-General. The law clerks consider procedural as well as substantive issues from all areas of law. They are appointed for a fixed term of seven years.

The court clerks are present during all stages of the proceedings. In addition, they help the justices with checking sources and proofreading the rulings.

THE INFORMATION DEPARTMENT

The Information Department consists of the Head of Information, an information clerk and a legal translator. It handles the contact with the public and the press, operates the Supreme Court's website and social media channels and is responsible for the production of photos, videos and text. The Information Department also provides English translations of Supreme Court rulings, the Annual Report and other information.

THE ADMINISTRATIVE UNIT

The Administrative Unit is managed by the Head of the Administrative Unit and the Head of the Registry. The Registry also consists of eight registry clerks who handle all incoming cases and inquiries and help the justices and the law clerks with practical matters during the proceedings. The Registry also has other functions such as scheduling of hearings, finalising of bundles etc.

The Administrative Unit has an additional seven employees with various support functions such as accounting, library, archiving, usher services, cleaning and canteen work.

ECONOMY

The Supreme Court's budget limits are determined by the Storting through a separate chapter in the state budget. In 2022, the balanced budget for the Court was NOK 125 332 000.

EQUALITY

Equality and anti-discrimination work is essential to our strategy as an employer. The equality report 2022 is published (in Norwegian) on www.hoyesterett.no.



Kjersti Birkeland Rudsli is one of our most recently employed law clerks. Lisa-Beth Pettersen is responsible for the scheduling of hearings and is one of our most experienced employees. She has worked in the Supreme Court for 20 years.

THE SUPREME COURT'S ADMINISTRATION

Bente J. Kraugerud, Secretary-General

Christopher Haugli Sørensen,
Deputy Secretary-General

Liv Fjerstad, secretary to the Chief Justice
Ajin Rasheed, secretary to the
Secretary-General
Roar Hide Klausen, ICT adviser
Gustav Hole, ICT trainee

THE LEGAL SECRETARIAT

Knut André Aastebøl,
Head of the Legal Secretariat
Christine Skjebstad,
Deputy Head of the Legal Secretariat
Hege Kristine Aakre, law clerk
Julia Kråkenes Bennin, law clerk
Lene Moe Blom, law clerk
Erik Fjermørs, law clerk
Håkon Plener Fredriksen, law clerk
Fredrik Lied Lilleby, law clerk

Severin Stang Lund, law clerk
Merima Buzaljko Malik, law clerk
Elise Gedde Metz, law clerk
Jonatan Sasson Michaeli, law clerk
Jon Alexander Neder, law clerk
Steinar Solheim Nordal, law clerk
Liv Johanne Jørgensen Ro, law clerk
Helene Rolin, law clerk
Kjersti Birkeland Rudsli, law clerk
Jon-Christian Rynning, student law clerk
Lars Kristian Skantze, law clerk
Marie Slyngstadli, law clerk
Victoria Steen Svendsen, law clerk
Andreas Tangstrøm, law clerk
Oskar Vegheim, law clerk
Anders Berg Dønås, court clerk
Håvard Kaasen, court clerk

THE INFORMATION DEPARTMENT

Ida Dahl Nilssen, Head of Information
Reidun Ellen Engh, legal translator
Rizwana Yedicam, information clerk

THE ADMINISTRATIVE UNIT

Akmal Hussain,
Head of the Administrative Unit
Anne B. Lea, Head of the Registry
Morten Almås, court usher
Mariluz Acosta, cleaner
Gunn May Grinden, registration clerk
Helga Mærde Gruer, registration clerk
Torill Melleby Jensen, economy adviser
Bjørn Vidar Kristoffersen, court usher
Mina Kristoffersen, canteen manager
Mette Moe, registration clerk
Julie So-Man Ng, registration clerk
Cecilie Sjøvaag Olafsen, registration clerk
Lisa-Beth Pettersen, scheduling clerk
Kjersti Ruud, registration clerk
Mariann Solbakk, registration clerk
Barbara Tracz, cleaner
Vivi Østby, librarian

LAND CONSOLIDATION IN THE SUPREME COURT

– A man's estate can never be excessive

Henrik Ibsen

Photo: The Land Consolidation Court of Oslo and Østre Viken.

Land and property have given rise to conflict for centuries. Since the 1800s, land consolidation courts have existed as an important dispute resolution service easily accessible to everyone owning a piece of Norway. In 2022, the Supreme Court invited land consolidation judges and chief judges of the courts of appeal to a seminar.

POTENTIAL FOR MORE LAND CONSOLIDATION CASES

In the past five years, the Supreme Court has received nearly 80 appeals against rulings relating to land consolidation, but – like in other areas of law – only a few have proceeded to a hearing.

Chief Justice Øie stressed during the seminar that although there is a potential for referring more land consolidation cases to the Supreme Court, it is a challenge to highlight the issues of principle.

– Often, the heart of the matter lies in the individual facts, which tend to overshadow any issues of principle. The likelihood that the Supreme Court will refuse to hear the appeal thus increases, Øie said.

She made the following call to the land consolidation judges:

– I understand that the Land Consolidation Court cannot always take on complex issues of principle. But if you repeatedly identify matters of law that in your opinion need the Supreme Court's clarification, we urge you to highlight these issues in your rulings. This can be done without you taking a stance on the issues concerned.

GRAZING CATTLE TO THE SUPREME COURT

One of the cases heard by Supreme Court in 2022 concerned compensation for damage caused by grazing cattle to ready-made lawn (HR-2022-2068-A). The Supreme Court found that the injured party's omission to fence in the area constituted contributory negligence, although he was not obliged by law to set up a fence.

Land consolidation cases typically include determination of borders, rights of use and partition of land, appraisalment, dissolution of joint property or co-use, and grazing or fencing issues.



There are 19 land consolidation courts in Norway. The Land Consolidation Act applies to the entire country. Land consolidation courts solve problems concerning rights to or use of real property, and everyone owning property or a permanent right of use is entitled to assistance. Rulings by the land consolidation courts may be appealed to the Court of Appeal and further to the Supreme Court.

ØYSTEIN JAKOB BJERVA

President of the Land Consolidation Court of Oslo and Østre Viken

– The seminar draws attention to land consolidation law – a small and often overlooked area of law. Many land consolidation cases involve practical planning of property or finding solutions for cooperation between the parties. Although land consolidation courts have much leeway, one must not lose sight of the need for clarification, for example of the conditions for land consolidation. In addition, the land consolidation process is subject to many special rules, maybe more than necessary? It was really useful to discuss the need of simplification in such a well-informed forum!



BRITT RUSTEN

President of the Land Consolidation Court of Vestre Innlandet

– I really enjoyed the day! It is quite a distance from the Land Consolidation Court to the Supreme Court in daily life, so events such as this are vital to grow networks across instances. It is also useful to learn more about each other's responsibilities and day-to-day work.





CASES IN 2022

A selection of the cases may be found on pages 27–31.

Detailed statistics are provided on pages 32–35.

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In 2022, the two divisions of the Supreme Court heard 57 civil cases and 55 criminal cases. The Supreme Court received a total of 2,155 appeals, divided among 457 appeals against a judgment in a civil case, 379 appeals against a judgment in a criminal case, 580 appeals against an order or decision in a civil case and 739 appeals against an order or decision in a criminal case.

SAFEGUARDING OF THE RULE OF LAW AND CONSTITUTIONAL REVIEW OF CRISIS LEGISLATION

Through its control of the other state powers in cases brought before the courts, the Supreme Court in the final instance draws up the legal framework for exercise of public authority and safeguards the rule of law.

This also applies in a situation of crisis. In 2022, the Supreme Court heard three cases concerning the lawfulness of anti-infection restrictions adopted during the corona pandemic. The “cabin lawsuit” ([HR-2022-718-A](#)), which concerned the entry quarantine requirement for Norwegian residents returning from stays at their cabins in Sweden, was resolved in April. The right to respect for the individual’s home is protected under Article 102 of the Constitution and Article 8 of the European Convention on Human Rights (ECHR). The Supreme Court found that the interference with this right was lawful under the Constitution and the ECHR, as it met the requirements of a legal basis, a legitimate purpose and proportionality. The quarantine requirement was also not in conflict with the EEA Agreement.

In November, the Supreme Court ruled in two criminal cases concerning the validity of local anti-infection regulations prohibiting private gatherings exceeding a certain size in Oslo ([HR-2022-2171-A](#)) and Bergen ([HR-2022-2172-A](#)), respectively. The Supreme Court found that the local regulations had a sufficiently clear basis in the Anti-Infection Act, that they had a clear medical foundation and that the prohibitions were not disproportionate. Nor did the prohibitions interfere with the right to private life under Article 8 of the ECHR. The regulations were therefore valid.

The Supreme Court also considered legal issues related to the disturbing situation in countries near us. In [HR-2022-863-A](#), the Supreme Court considered whether the flaws in the Polish judicial system should prevent a drug suspect from being surrendered to Poland under the Arrest Warrant Act. The assessment revolved around Polish courts’ loss of independence of the legislative and executive powers – with the general risk this creates that suspects will have their fundamental right to a fair trial violated. The Supreme Court found that, under the current circumstances in Poland, the threshold must be low for refusing to comply with a request for surrender. In that specific case, however, there was insufficient evidence that the person concerned would have his rights violated if he were surrendered.

The Supreme Court considered one case regarding the interpretation of the Sanctions Regulations against Russia after their extension due to the attack on Ukraine. In [HR-2022-2089-U](#), the question was whether the flight ban implemented included the flight of a drone not subject to registration. The question arose in connection with a remand case, and was therefore considered by the Court’s Appeals Selection Committee. The Committee found that such flights were covered by the ban in the Sanctions Regulations.

In 2022, the Supreme Court also heard a number of other cases concerning the limits on the exercise of public authority under the Constitution and international human rights. Many of them revolved around the rights under the ECHR. In [HR-2022-2420-A](#), the Supreme Court found that evidence from a search of the defendant’s home was admissible despite the search being in conflict with Article 8, and in [HR-2022-2421-A](#), the Supreme Court found that a search in conflict with the ECHR was not to give a reduced

sentence. In [HR-2022-981-A](#), the Supreme Court found that fining after an Extinction Rebellion demonstration that had obstructed traffic did not interfere with the freedom of assembly under Article 11 of the ECHR. In [HR-2022-2329-A](#), the Supreme Court ruled that the age requirement in the Immigration Act for family establishment on the grounds of marriage neither interferes with the right to family life in Article 8 of the ECHR nor conflicts with the prohibition against discrimination in Article 14.

THE SUPREME COURT AS A CRIMINAL COURT

The need for clarification and development of criminal law emerges in particular as a result of new legislation and changes in society. In 2022, the divisions of the Supreme Court heard more criminal cases than in the two preceding years, a total of 55.

In April, the Supreme Court heard three cases jointly that concerned the significance and scope of the legislative signals regarding the expediency of punishing heavy drug addicts for possession of small amounts of drugs for own use. Through the rulings, the Supreme Court prescribed more lenient reactions against addicts’ dealings with drugs for own use, while providing indicative levels of what would be considered larger and thus punishable quantities of drugs.

The Supreme Court heard two cases on hate speech under section 185 of the Penal Code. In [HR-2022-1707-A](#), the relevant statement was found to be “sufficiently offensive” and thus punishable because it had been directed at a minor, although it would not have been so if directed at an adult. In [HR-2022-1843-A](#), the Supreme Court found that statements regarding another person’s gender identity were punishable.

In [HR-2022-2468-A](#), the Supreme Court considered the sentence for several incidents of BankID fraud and attempted fraud directed at elders. The case joins a series of cases over the past years concerning the application of general penal provisions on acts committed in the digital sphere.

CONSUMER LAW ISSUES

The divisions of the Supreme Court decide a broad spectrum of cases. As long as the case raises an issue of principle, it does not matter whether it concerns issues of great societal importance or only minor economic values.

The Supreme Court considered a number of cases in 2022 concerning consumer law issues. [HR-2022-1752-A](#) dealt with whether a bank customer who had been subjected to BankID fraud had to carry the loss because she had given up her code and password. The Supreme Court found that the woman had not intentionally breached any contractual obligations as she thought she was talking to a bank employee, and that she therefore only had to pay a deductible. [HR-2022-1322-A](#) concerned whether house sellers under the duty of disclosure should have informed the buyers of a convicted neighbour, while in [HR-2022-418-A](#) the question was whether an undisclosed hiking trail over a leisure property constituted a defect. The buyers did not succeed in any of the cases. In [HR-2022-1316-A](#), the Supreme Court found that a real estate agent was liable towards a bidder for not having communicated the seller’s acceptance of his bid. In [HR-2022-1980-A](#), the Supreme Court clarified the requirements to apply to an invoice for craftsman services for the invoice to be verifiable to the consumer.

EEA LAW

Each year, the Supreme Court hears several cases raising EEA law issues. Norwegian courts may ask the EFTA Court for advisory opinions on the interpretation of EEA law.

In 2022, the Supreme Court heard one case ([HR-2022-728-A](#)) in which an advisory opinion was obtained from the EFTA Court during the preparatory phase in the Supreme Court. The question to the EFTA Court concerned Article 1 (2) of the Commercial Agents Directive (86/653/EEC), incorporated into Norwegian law by section 1 of the Agency Act.

For the Supreme Court to be able to fulfil its function as a precedent court, the legislature has established a selection system under which the Supreme Court is only to hear appeals against judgments that raise issues of principle or that for other reasons are important to have decided in the Supreme Court. It is the Appeals Selection Committee’s task to determine whether these conditions are met. The Committee is composed of three justices in each case, and the proceedings are in writing.

Cases referred to the Supreme Court are normally decided following an oral hearing by a division of five justices. Cases of “particular importance” may be heard by the plenary of the Supreme Court or by a grand chamber with eleven justices.

The Appeals Selection Committee may set aside the Court of Appeal’s judgment if it contains obvious errors. In criminal cases, the Committee may also acquit the defendant or change the conviction to be punishable under a less serious penal provision. These cases do not raise issues of principle, but they would previously have proceeded to the Supreme Court to rectify the Court of Appeal’s error. Appeals against orders or decisions are generally decided by the Appeals Selection Committee, but if the appeal raises issues of principle it may be referred to a division of the Supreme Court.

The Chief Justice and the 19 other justices of the Supreme Court work in turns in the Supreme Court’s two divisions and in the Appeals Selection Committee.



CASES IN 2022

SAFEGUARDING THE INDIVIDUAL'S DUE PROCESS RIGHTS

The cases heard by the Supreme Court sitting as a division primarily concern issues of principle that call for clarification or development of the law. Although some of these cases raise issues of direct significance for the individual's due process rights, many do not.

When an appeal against a judgment does not raise issues of principle, the individual's due process rights are safeguarded primarily through the Appeals Selection Committee's possibility to set aside the Court of Appeal's judgment if it suffers from clear errors. In criminal cases, the Committee may also acquit or make the offence punishable under a less strict penal provision.

In 2022, ten years had passed since the Supreme Court's Appeals Selection Committee was authorised to decide certain appeals against a judgment. The Committee set aside the Court of Appeal's judgment in seven civil cases and 17 criminal cases. This option has never before been chosen this frequently. Since 2012, the Appeals Selection Committee has handed down a total of 150 judgments. Overall, the Supreme Court reviewed 13 percent of the appealed judgments in civil cases and 16 percent in criminal cases, either by granting leave to appeal or by handing down a judgment in the Appeals Selection Committee.

The Supreme Court also ensures that due process is observed in the District Court and the Court of Appeal through its hearing of appeals against orders and decisions. Such appeals may concern issues of procedure, costs, remand in custody and other coercive measures during investigation, and the filtering of appeals by the Court of Appeal. In 2022, appeals against orders or decisions were successful in 24 civil cases and 27 criminal cases.

STEADY FLOW OF APPEALS TO THE SUPREME COURT

Despite the general decrease in court cases over the past years, the number of appeals received by the Supreme Court is stable. The number – 2,155 cases in 2022 – fits the trend seen since 2017, with 2021 as an exception with 2,266 appeals. The steady flow shows that the possibility of appealing to the Supreme Court is used as frequently as before, or even more frequently.

The flow has decreased substantially in two areas: appeals in child welfare cases and appeals against the Court of Appeal's refusal to hear a criminal case. Although one cannot say for certain, the decrease may suggest that clarification of the law has been provided through the Supreme Court's rulings in the wake of the Grand Chamber judgment of the European Court of Human Rights in *Strand Lobben and Others v. Norway* of 10 September 2019 and the rulings on the Court of Appeal's powers to refuse to hear an appeal after the right to appeal was extended on 1 January 2020.

PROCESSING TIME

It is important that the rulings are not only of high quality, but also that they are handed down within a reasonable time. In 2022, the average time from receipt of an appeal until its hearing was 6.3 months in civil cases and 4.4 months in criminal cases.

The average processing time in criminal cases was longer than in previous years. This was primarily due to the Norwegian Bar Association's action taken for increased fees in the district courts and the courts of appeal. The action was carried out by defence counsel refusing to appear before the Supreme Court, which resulted in the suspension of 26 cases. In January and February, only two criminal cases were heard. The action for higher fees ended in early May. Most of the cases affected could thus be heard in May and June, while some had to wait until the second half of the year. Due to the heavy rescheduling, the action also resulted in a certain backlog for the civil cases.

CIVIL CASES IN DIVISIONS

Entry quarantine for travellers from Sweden was legitimate

A number of people living in Norway with cabins in Sweden brought an action against the State due to an entry quarantine requirement during the Covid-19 pandemic. From March 2020 until June 2021, a limited day-trip exemption applied to the cabin owners if the purpose was strictly necessary maintenance and supervision. They claimed that the exemption should have been more extensive as long as they avoided public transport and close contact in Sweden. They also claimed that mandatory quarantining had no basis in the Infection Control Act and was contrary to human rights and the EEA Agreement. The Supreme Court stated that it was justified at the start of the pandemic to grant as few exemptions as possible. The question was whether more exemptions should have been granted later. Supreme Court agreed with the State that the risk of non-compliance with the requirements could be emphasised, and found no violation of the ECHR or the EEA Agreement, because the measures were proportionate. [HR-2022-718-A](#)

Disfellowshipping from Jehovah's Witnesses was valid

A woman was disfellowshipped from Jehovah's Witnesses because she, in the congregation's view, had committed porneia, a biblical term for sexual immorality. Religious communities have a large degree of independence under the Constitution and the ECHR, which includes choosing their own members. The Supreme Court nonetheless reviewed the decision, partly due to the severe personal consequences it had for the woman. However, the freedom of religion entails that a decision made by a religious community on religious grounds cannot be set aside solely because it is strongly unreasonable. The review must be limited to whether the procedure was appropriate and whether the decision was based on correct facts. The Supreme Court found that the requirements were met, and that the congregation's decision was valid. [HR-2022-883-A](#)

House sellers were not obliged to inform the buyers of a convicted neighbour

Shortly before a house was put up for sale, a neighbour was convicted of filming his stepdaughters in the shower and possessing materials depicting sexual abuse of children. Although people in the neighbourhood were familiar with the conviction, the buyers were not informed of it in connection with the sale. When the buyers found out, they cancelled the agreement. The sellers had to sell the house again and claimed damages for the loss incurred in the resale. The Supreme Court found that the sellers had had no obligation to inform the buyers of the conviction, and their claim for damages against the buyers therefore succeeded. [HR-2022-1322-A](#)

Damage by grazing livestock to ready-made lawn

Grazing livestock from a farm in Sande had destroyed ready-made lawn inside the manufacturer's premises. The livestock owner was liable under the Grazing Act for the lawn manufacturer's financial loss, but the question was whether the damages might be lost or reduced because the area with the lawn had not been fenced in. The Supreme Court found that the lack of fencing may constitute "other contribution" under the Grazing Act, although there was no obligation to have a fence. The Court of Appeal had to conduct a new hearing on the issue of damages. [HR-2022-2068-A](#)

Gondola in Voss – landowners were entitled to compensation

In Voss, a newly established year-round gondola runs over a residential area and over fields. This has reduced the value of the properties and created disadvantages for the landowners. The landowners wanted compensation, but whether they could be parties to the expropriation case depended on how far their ownership extended into the air space above the properties. The Supreme Court stated that although the right of ownership covers parts of the air space, the height cannot be specified in metres. The decisive factor is how high up the landowner is interested in utilising his property in the future. The Supreme Court found that the gondola infringed the landowners' right of ownership and that they were entitled to compensation. [HR-2022-993-A](#)

Trekking society could keep a tourist lodge on someone else's ground

In 1967, a trekking society built a tourist lodge in Tromsø municipality in accordance with an agreement with the State, which considered itself the landowner. It later became clear that the lodge is on private land. In 2020, the landowner brought an action against the society demanding the lodge removed. The Supreme Court found, under a provision in the Neighbour Act on buildings partially situated on someone else's land, that the society had both a right of ownership to the lodge and a temporary right of use to the land as long as the lodge is there. The trekking society could therefore keep it in return for a fee to the landowner. The Supreme Court emphasised the utility value of the lodge to the trekking society and that the disadvantages for the private landowner were small. [HR-2022-1119-A](#)

Omission during a bidding round

During a bidding round, a bid was made that the seller accepted within the acceptance period. The estate agent did not notify the bidder of the seller's acceptance, with the result that no binding agreement was reached. After the acceptance period expired, the bidding round continued. The flat was eventually sold to the same bidder for NOK 150,000 more than his initial bid, which the seller had accepted. The Supreme Court found that the estate agent had acted negligently towards the bidder, and that he was liable for an amount corresponding to the balance between the original bid and the final purchase price. [HR-2022-1316-A](#)

A customer did not have to carry the loss after BankID fraud

In a telephone conversation, a bank customer had been tricked into giving her BankID password and code to a person she thought represented the bank. She lost in excess of NOK 150,000. She had been obliged under the BankID agreement not to give her code and password to anyone – including the bank and the police. The Supreme Court found that the customer did not have to bear the loss herself. For her to be liable for the entire loss, she would have to have known that she breached her duties. However, since she had been grossly negligent, she had to pay a deductible. [HR-2022-1752-A](#)

On the following pages, you will find summaries of a selection of the cases in 2022.

The list of scheduled hearings in the Supreme Court is found on www.supremecourt.no. Most of the cases are open to the public, which means that everyone may attend a hearing.

When the case has been decided, the ruling is published on www.hoyesterett.no, both in full text and through a short summary, and shared on the Supreme Court's Twitter account [@hoyesterett_no](https://twitter.com/hoyesterett_no). Some rulings are also translated into Sami.

Many rulings that may be of interest outside of the Nordic countries are translated into English. Translated rulings are published on www.supremecourt.no and shared on the English-language Twitter account [@supremecourt_no](https://twitter.com/supremecourt_no).



CASES IN 2022

Supply teachers' right to appointment

A woman had worked as a supply teacher for more than three years and demanded a permanent job in Nord-Fron municipality. According to the Working Environment Act, employees who have been temporarily employed for more than three years to perform work for others are entitled to permanent appointment. The Supreme Court found that this right did not apply to temporary appointment under the Education Act. [HR-2022-2049-A](#)

Prostate cancer cannot be considered an occupational injury for firefighters

A former firefighter developed prostate cancer and demanded to have the disease approved as an occupational injury. NAV rejected the claim and the decision was upheld by the National Insurance Tribunal and the Court of Appeal. The firefighter appealed. In order for a disease to be approved as an occupational injury, it must be characteristic of the exposure in question. The National Insurance Act does not require a clear and undisputed connection between the disease and the occupation, but there must be a preponderance of probability. The Supreme Court found that the connection in this case was uncertain. With the current medical knowledge, it is not more likely than not that firefighters' exposure is suitable for causing prostate cancer. The condition for having the disease approved as an occupational injury was therefore not met. [HR-2022-2178-A](#)

Compensation after birth injury when the family lives in the USA

A now ten-year-old child sustained serious patient injury during birth at Haukeland Hospital in Bergen, and the family moved to the USA shortly afterwards. The Supreme Court found that the compensation had to be calculated based on the level of expenditure there. The starting point in Norwegian law is that compensation is a supplement to the public welfare benefits. However, since the child did not receive benefits in the USA, the compensation paid would not cover expenses for treatment and care there. The Court also emphasised the family's bonds to the USA and that they moved without bearing in mind the consequences related to tort law. The Court of Appeal's judgment was set aside. [HR-2022-1132-A](#)

Age requirement for family establishment was not a violation of the ECHR

A Norwegian national with family from Kosovo married in 2017 a woman from Kosovo who was barely 18 years old. The Immigration Appeals Board rejected the application for family establishment on the grounds of marriage because the applicant was under 24 years of age. The purpose of the age requirement in the Immigration Act is to prevent forced marriage. In order to make exceptions, the marriage must be clearly voluntary. The Supreme Court found that the age requirement does not interfere with the right to family life under Article 8 of the ECHR or conflict with the prohibition against discrimination in Article 14. The rejection was therefore valid. [HR-2022-2329-A](#)

EEA citizen convicted of theft could not be expelled

An EEA citizen from Romania had accepted two fines for two thefts. After the last theft, he was expelled from Norway with a two-year entry ban. The Supreme Court found that the expulsion decision was invalid. Although the consideration of public order suggested expulsion after the last theft, this was not sufficient to expel him. According to the Immigration Act, he must also be assumed to present an "immediate and sufficiently serious threat" to fundamental societal interests. The Supreme Court found that this requirement was not met. [HR-2022-533-A](#)

Foster parents could not act as parties

Two foster parents wanted to act as parties in a case concerning the possible return of a child to its father, as that would give them the right to inspect the case documents, to be present in court with an advocate and to appeal. The Supreme Court stated that only the biological parents and the municipality may be parties under the Dispute Act, and the right to family life under the ECHR could not change that. Although foster parents perform an important task for vulnerable children, they must be prepared that the child's stay with them is temporary. The Supreme Court also emphasised the risk of conflicts if foster parents act as parties, and that it would therefore not be in the best interests of the child. [HR-2022-729-A](#)

Supreme Court justice was not disqualified due to previous textbook statements

One of the justices in a case before the Supreme Court had in a legal textbook taken a stand on the central issues raised by the case. After a judgment had been handed down, the losing party demanded that the case be reopened due to the justice's possible bias. The Supreme Court stated that the threshold is high for disqualifying a justice due to opinions previously expressed in textbooks or articles, also when they concern issues raised in the case. Exceptions may normally only be made if the statements may be perceived as referring to the relevant case. The Supreme Court found that the justice was not disqualified and that the case should not be reopened. [HR-2022-1959-A](#)

VG was entitled to use someone else's photographs

In 2020, the newspaper VG published critical articles regarding a law firm. The photographs had been taken from the firm's homepage and an open Facebook profile, without consent and without any remuneration being paid. The firm claimed compensation for use of the photographs. When interpreting the Copyright Act, the Supreme Court balanced the freedom of expression against the rights to the pictures, emphasising case law from the EU Court of Justice. The freedom of expression carried much weight, and VG's work was at the core of investigative journalism of public interest. VG therefore had a right to use the photographs, but they were ordered to pay a remuneration. [HR-2022-1113-A](#)

No deduction for Ramme Farm

During the period 2012 to 2020, the property Ramme Farm in Vestby was extended to include hotel services and an art exhibition. The Tax Office decided that no deduction should be granted for construction costs and input VAT for a large part of the construction period. The reason was that it would not be possible for the operation to turn a profit in the foreseeable future. The District Court found that the Tax Office's decision was invalid, while the Court of Appeal came to the opposite result. The Supreme Court agreed with the Tax Office and the Court of Appeal. [HR-2022-2404-A](#)

CRIMINAL CASES IN DIVISIONS

Comment directed at sixteen-year-old was punishable

A 57-year-old man had shouted at a girl of nearly 17 that she should "go back to Somalia where you will be better off because you won't get any NAV [social security benefits] there". A majority of the Supreme Court found that the statement was punishable because it was directed at a child. In the light of the freedom of expression, there must be ample room for tasteless statements, and the comment would not have been "sufficiently offensive" if it had been directed at an adult. The judgment clarifies the interpretation of section 185 of the Penal Code on hate speech when the aggrieved person is a minor. [HR-2022-1707-A](#)

Conviction of hate speech regarding another person's gender identity

A man had on Facebook made several derogatory comments regarding the aggrieved person, who had changed legal gender from male to female. He called her a perverted male pig with sick fantasies and wrote that it was incomprehensible that the authorities allowed her to care for children. The Court found that the statements were punishable under section 185 of the Penal Code on hate speech. Although there must be ample room for tasteless statements, the statements in question were "sufficiently offensive", and therefore punishable. This was the first ruling dealing with hate speech based on a person's gender identity or gender expression. [HR-2022-1843-A](#)

Witnesses without a duty to testify should have attended

In a criminal case on abuse in close relations, the District Court had exempted three witnesses from attending the main hearing. The reason was that they had announced in advance that they would exercise their right not to testify. The witnesses (the defendant's wife and two adult children) were aggrieved parties in the case and had previously given statements to the police. The Supreme Court stated that witnesses exercising their right not to testify cannot automatically be exempted from attending. In this case, the witnesses should have attended due to the need for clarification of the case. [HR-2022-1703-A](#)

Milder reactions for drug addicts' possession of drugs for personal use

The Supreme Court heard three cases jointly, all concerning drug addicts' possession of drugs for own use. The Supreme Court stated that drug addicts' acquisition, possession and storage of up to five grams of heroin, amphetamine or cocaine for own use should no longer be punished, despite being illegal acts. This was prompted by the legislative signals given during the Storting's discussion of the Solberg II Government's proposal for a drug reform. Although the reform was not adopted, there was cross-party agreement as to the inexpediency of punishing heavy addicts for such offences. [HR-2022-731-A](#), [HR-2022-732-A](#), [HR-2022-733-A](#)

Drug suspect could be surrendered to Poland

Polish authorities had issued an arrest warrant for a Norwegian citizen suspected of exporting a large quantity of drugs from Poland. The Supreme Court found that the man could be surrendered to Poland despite deep flaws in the Polish judicial system. Although in Poland there is a general risk of not receiving a fair trial, in this particular case there was not sufficient evidence or a genuine danger that the suspect would have his rights violated. The Supreme Court stated nonetheless that in the light of the current situation in Poland, the threshold is low for refusing to comply with a request for surrender. [HR-2022-863-A](#)

Data materials obtained by French police admissible as evidence

French police had managed to read encrypted materials from users of the EncroChat service in Norway. The question was whether the materials were admissible as evidence in a Norwegian criminal case. The Supreme Court stated that if the acquisition could not have been legally carried out in Norway, three conditions must be met: They must have been acquired in accordance with applicable rules in the relevant country, the defendant must have a right to access them, and they must not have been acquired in a manner that makes their admissibility as evidence contrary to fundamental Norwegian values. The Supreme Court found that all conditions were met. [HR-2022-1314-A](#)



CASES IN 2022

Number restrictions during the pandemic were valid

The Supreme Court handed down judgment in two criminal cases dealing with violations of infection control regulations applicable in Oslo and Bergen during the Covid-19 pandemic. In both cases, a fine had been given for exceeding the permitted number of participants at private gatherings. The defendants claimed that the restrictions were invalid, but did not succeed. The Supreme Court found that the regulations had a sufficiently clear basis in the Infection Control Act, that they rested on a sound medical foundation and that the restrictions were not disproportionate. The right to privacy under Article 8 of the ECHR was also not violated.

[HR-2022-2171-A](#), [HR-2022-2172-A](#)

Acquittal of aggravated corruption set aside

An architect had, free of charge, provided architectural services worth NOK 28,000 to the municipal building surveyor. The Court of Appeal acquitted both of aggravated corruption, since it could not be ruled out that the services had been provided to the building surveyor as a private individual. The Court found that the Court of Appeal had interpreted the law incorrectly. Although the Penal Code sets out that "in connection with the conduct of a position" there must be a clear link between the advantage and the recipient's position, a direct causal link is not required. The Court of Appeal's judgment was set aside. [HR-2022-1278-A](#)

Enterprise penalty after accident at an operating railway station

A young person was killed and two severely injured in an accident at a railway station in Oslo. The accident occurred when the youths entered the area and climbed onto a train and came into contact with a high-voltage cable. There was no evidence of guilt linked to any specific individual, but the Supreme Court found that persons in the operating company either individually or collectively had acted negligently. The company had both opportunity and reason to take measures that could have prevented the incident, and there was a causal link between company's omissions and the accident. [HR-2022-1271-A](#)

Film company could not use secret audio recordings from a criminal case

A film company had produced a TV documentary on a well-known criminal case. In the case, a man was convicted of bodily harm against a foreign woman who was visiting his home with her husband. The man declared his innocence and declared in his statement before the Court of Appeal that the couple had threatened to kill him. Someone in the courtroom made a secret audio recording of the statement and the defence counsel's pleading. The film company, which had received the recording, wanted to use it in its documentary to add more "validity" and "closeness". The Supreme Court found that the use was subject to the court's consent. The freedom of expression had to be balanced against the privacy of the accused married couple, and the Supreme Court found that permission should not be granted. [HR-2022-2106-A](#)

Shooting of Arctic fox was grossly negligent

A man in Rogaland had shot and killed a protected Arctic fox. The fox was caught in a box trap that the man had set up on his property. It was white, but the man was convinced he had shot an albino red fox. He did not investigate further despite knowing that the Arctic fox is a protected and endangered species. Although Arctic foxes are unusual in Rogaland, the Supreme Court held that the man was strongly to blame and that he had been grossly negligent. [HR-2022-666-A](#)

Grouse hunter acquitted after hunting accident

Two friends were grouse hunting together in Selbu when one became aware of a grouse lying by a tree. He told his friend to move to a safe place. The latter confirmed that he had moved, but within the next minute he moved on without giving notice. This was against the established routine between them. When the hunter fired, his friend was hit in the leg by some shotgun pellets. The Supreme Court found that in this specific situation, it was too strict to require that the shooter should have made sure once more that his friend had not moved during the decisive minute. [HR-2022-2179-A](#)

Two fist blows were not aggravated physical assault

A 16-year-old boy, together with another, had assaulted a mutual acquaintance of the same age. The boy hit the aggrieved person hard in the back of the head with his fist and then once in the upper body so he fell. The aggrieved person sustained neither injuries nor severe pain. The Supreme Court found that the act of violence should be considered physical assault, and not aggravated physical assault. [HR-2022-549-A](#)

Aggravated physical assault against 14-year-old

A family man had run after some boys after doorbell pranks. He caught up with one of them, made a leap and forced him to the ground. The boy sustained a concussion and chronic pain as a result. The Supreme Court found that the physical assault was aggravated and emphasised the seriousness of the injury. Although the boys' behaviour had been annoying and reprehensible, it could not justify such a reaction from an adult. The Supreme Court also placed some emphasis on the relative strength between the parties, an adult man trained in martial arts and a 14-year-old boy. [HR-2022-1321-A](#)

Fining after a demonstration that obstructed traffic

Two protesters from Extinction Rebellion were fined after a political demonstration on Ring 1 in Oslo. Without having notified the police, they blocked traffic for around 90 minutes on a Monday morning. The Supreme Court concluded that the police's intervention and fining did not violate the freedom of assembly under Article 11 of the ECHR. Society must endure a certain amount of disruption to daily life, and the authorities must show tolerance. However, when there is danger to life and health, the authorities may intervene immediately. It also takes a lot for an intervention against an unannounced demonstration, which causes serious disruption to traffic, to interfere with the freedom of assembly. [HR-2022-981-A](#)

Purchase of sexual services after contact on sugar dating websites

A man had initiated, and was convicted of, sexual relations with several underage girls he had met through websites for so-called sugar dating. Before the Supreme Court, the man claimed that since he had engaged in sugar dating, he could not be punished for sexual relations with girls over the age of 16. The Supreme Court stated that it does not matter how the relationship is labelled or how the parties came into contact; what is decisive is whether the link between them is essentially the exchange of sexual services for consideration. In this case, little else was involved than sexual activities for consideration in a hotel room. The acts were thus covered by the Penal Code's provisions on the purchase of sexual services. [HR-2022-2104-A](#)

Housewife married to an ISIS foreign fighter could be punished for participation in a terror organisation

The Supreme Court found that a housewife married to an ISIS foreign fighter could be punished for participating in a terrorist organisation. She had performed housework and cared for children. Although caring for children did not qualify for punishment for participation, the Supreme Court found that by doing housework and taking care of her husband at home, she actively contributed to the maintenance of the terrorist organisation. It was considered mitigating that the consequences had been harsh for the woman, and that she had clearly distanced herself from her actions and contributed to her children's safe upbringing. The sentence was set to one year and four months of imprisonment. [HR-2022-2418-A](#)



Advocates Anne-Gry Rønning-Aaby (front) and Kaija Marie Folkestad Bjelland in the Second Division of the Supreme Court during the hearing of [HR-2022-2178-A](#), which questioned whether a firefighter's prostate cancer could be considered an occupational injury.

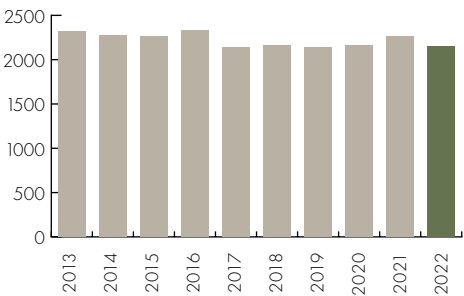
STATISTICS 2022

INCOMING CASES

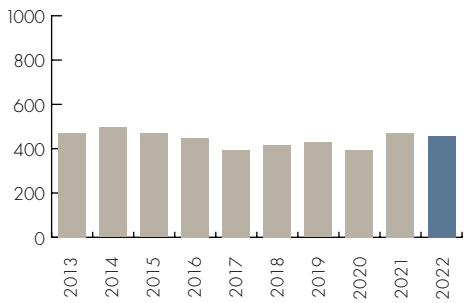
In 2022, the Supreme Court received at total of 2,155 appeals.

	2013	2013	2015	2016	2017	2018	2019	2020	2021	2022
Civil cases, appeals against judgments	472	496	469	447	393	416	428	394	471	457
Civil cases, appeals against orders or decisions	654	619	606	663	558	593	596	603	615	580
Criminal cases, appeals against judgments	450	400	381	382	407	403	428	347	373	379
Criminal cases, appeals against orders or decisions	744	761	804	839	783	752	692	820	807	739
Total	2320	2276	2260	2331	2141	2164	2144	2164	2266	2155

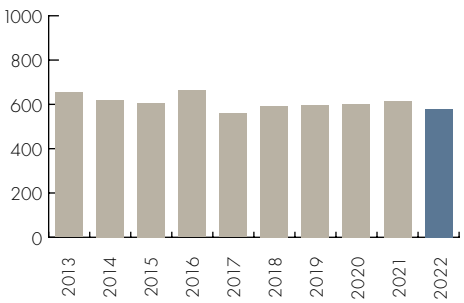
TOTAL NUMBER OF APPEALS



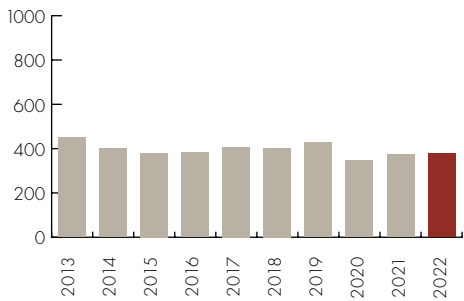
CIVIL CASES
APPEALS AGAINST JUDGMENTS



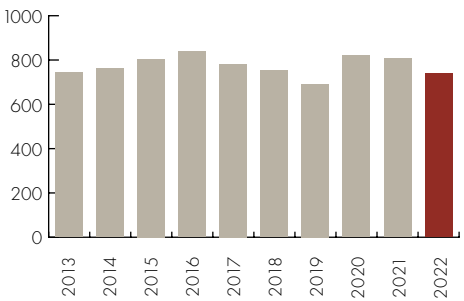
CIVIL CASES
APPEALS AGAINST ORDERS OR DECISIONS



CRIMINAL CASES
APPEALS AGAINST JUDGMENTS

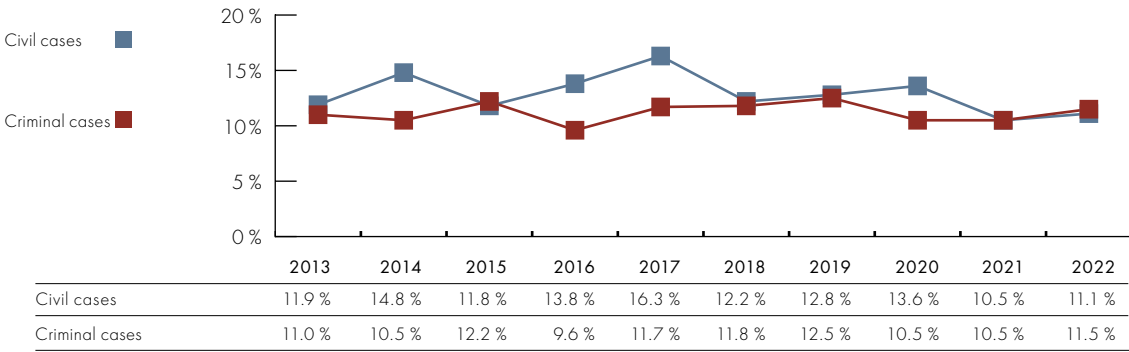


CRIMINAL CASES
APPEALS AGAINST ORDERS OR DECISIONS



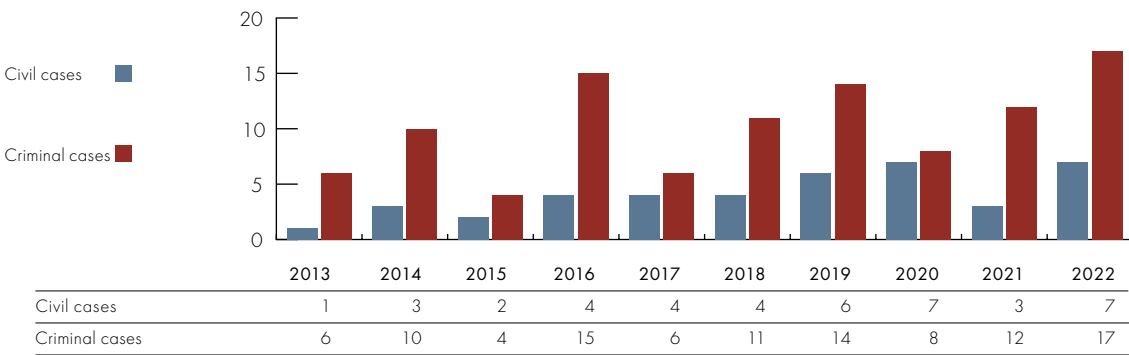
APPEALS AGAINST JUDGMENTS REFERRED TO THE SUPREME COURT

In appeals against judgments, the Appeals Selection Committee decides whether to grant leave to appeal. The appeal may only proceed if it deals with issues extending beyond the current case, or if it is otherwise important to have the case decided by the Supreme Court. In 2022, leave to appeal was granted for 10.5 % of the appeals against judgments in both civil and criminal cases.



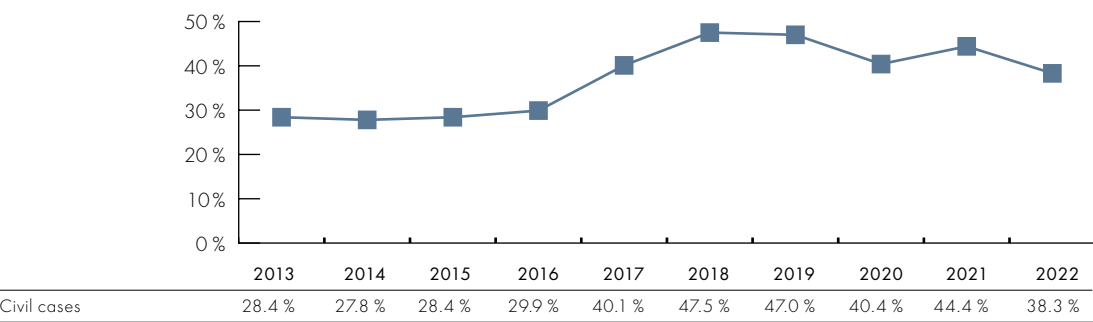
JUDGMENTS IN THE APPEALS SELECTION COMMITTEE

Instead of referring an appeal against a judgment to the Supreme Court, the Appeals Selection Committee may set it aside if it contains obvious errors. In criminal cases, the Committee may also acquit the defendant or change the conviction to concern a less serious penal provision. In 2022, the Appeals Selection Committee gave judgment in seven civil cases and 17 criminal cases.



REFUSALS TO HEAR APPEALS AGAINST ORDERS OR DECISIONS IN CIVIL CASES

In appeals against orders or decisions in civil cases, the Appeals Selection Committee may refuse leave to appeal. In 2022, 38.3 % of the appeals against orders or decisions in civil cases did not proceed to a hearing.

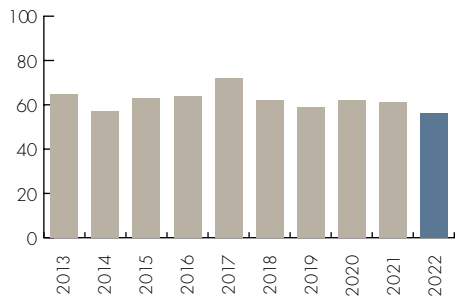


CASES HEARD IN DIVISIONS OR A STRENGTHENED COURT

In 2022, the two divisions of the Supreme Court heard 57 civil cases and 55 criminal cases.

	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Civil cases	65	57	63	64	72	62	59	62	61	56
Criminal cases	70	47	54	49	50	43	61	43	30	55
Total	135	104	117	113	122	105	120	105	91	111

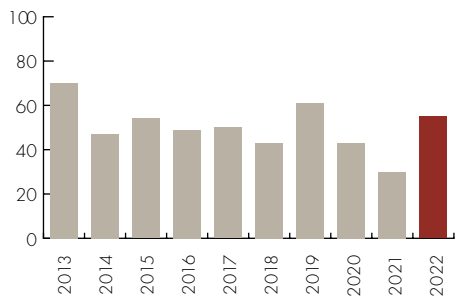
CIVIL CASES



TYPES OF CASES

Tort law	7
Civil procedure	7
Contract law	6
Child welfare	6
Real property	5
Employment law	4
Social security law	4
Immigration law	4
Intellectual property law	3
Planning and building law	3
Tax	3
Advocate law	2
Inheritance law	1
Public administration law (other)	1

CRIMINAL CASES

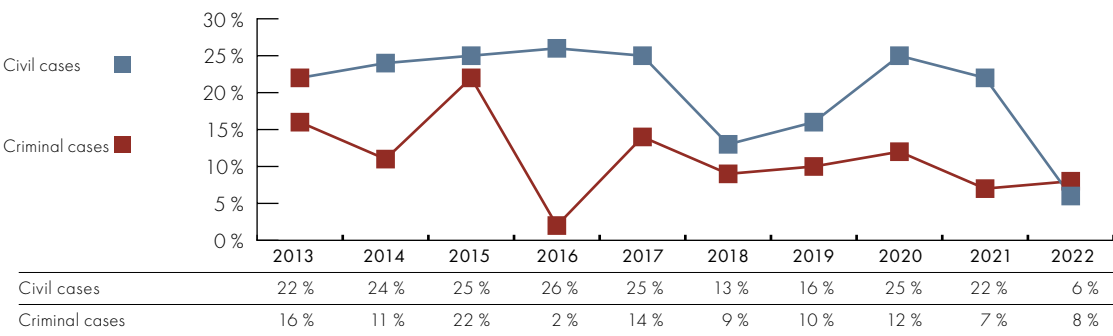
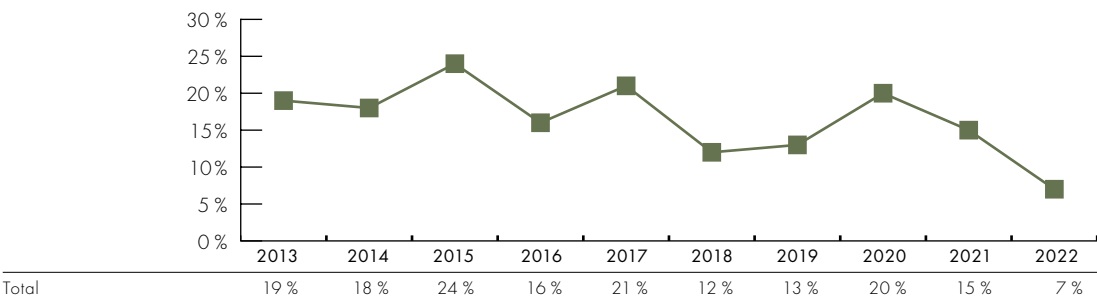


TYPES OF CASES

Criminal procedure	12
Violence offences	6
Drug offences	5
Sexual offences	3
Customs and excise	3
Financial crime	3
Retraining orders	2
Enterprise penalties	2
Hate speech	2
Violation of anti-infection measures	2
Terrorist acts	2
Traffic offences	2
Compulsory mental health care	2
Acquisition crime	2
Violation of immigration law	1
Animal mistreatment	1
Confiscation	1
Environmental crime	1
Removal from care	1
Disturbance of the peace	1
Careless handling of firearms	1

DISSENTING OPINIONS

In 2022, there were dissenting opinions in seven of the 106 rulings in divisions (in 111 cases), which gives a dissent frequency of 7 %. Dissenting opinions were given in three civil cases (6 %) and four criminal cases (8 %). Among the dissents, six concerned the result and one concerned the reasoning. There was a 3–2 dissent in four of these cases.

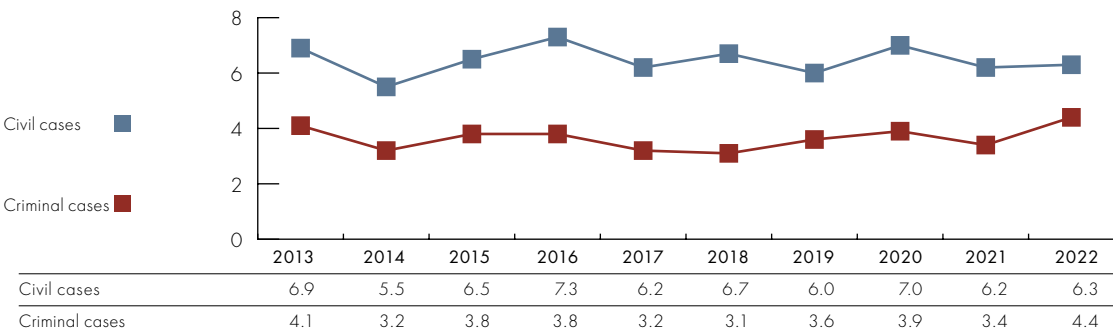


NEWLY ADMITTED ADVOCATES

In 2022, twelve new advocates were admitted to the Supreme Court.

PROCESSING TIME

In 2022, the average processing time from the appeal was received by the Supreme Court until the hearing was 6.3 months in civil cases and 4.4 months in criminal cases.



For cases decided in the Appeals Selection Committee, the average processing time was less than one month in both civil and criminal cases.



INTERACTION ACROSS BORDERS

Cases decided by Norwegian courts, and ultimately by the Supreme Court, may be brought before international bodies whose task is to enforce international human rights conventions and other treaties by which Norway is bound.

The European Convention on Human Rights (ECHR) is of great significance to Norwegian law. Private parties who believe that a Norwegian ruling is contrary to the ECHR may launch an application against Norway to the European Court of Human Rights (ECtHR). However, the main responsibility of ensuring that the rights under the ECHR are safeguarded and that any violations are remedied lies with each individual country. The ECHR is central to many cases heard by the Supreme Court, and through its reasoning the Supreme Court places great emphasis on showing how the ECHR is interpreted and how relevant interests are balanced. Also, the Supreme Court translates many of its rulings into English, to make the Norwegian application of the ECHR easily accessible to both the ECtHR and the international legal community at large.

In 2022, the ECtHR decided five Norwegian cases. Two of these cases concerned child welfare, and a violation of Article 8 of the ECHR was found in one of them. The ECtHR did not find violations in any of the other cases, which concerned contact with surrogate children, immigration law and ground lease.

Finally. After two years of digital conferences and nearly no travel, in 2022 we could resume physical meetings with colleagues from other countries.

1. Human rights were on the agenda when the President of the ECtHR, Robert Spano, visited the Supreme Court in May.

2. The High Judicial and Prosecutorial Council of Bosnia and Herzegovina is one of many delegations who found their way to our meeting hall to learn about the Norwegian court system and the work in the Supreme Court.

3. Justices Henrik Bull, Kine Steinvik, Kristin Normann and Arne Ringnes in front of Harpa Concert Hall in Reykjavik, where the Nordic Jurists Summit took place in August. The Summit is a 150-year-old tradition where jurists from all Nordic countries participate. The courts' independence was the main topic during the meeting in Reykjavik.

4. Supreme Court Justice Park Jung Hwa and her delegation from South Korea were interested in digital procedure and video conferences during their visit to Norway.

5. Law clerks from the Latvian Supreme Court met with Norwegian law clerks in the Supreme Court.

6. Nordic Conference for Supreme Court Presidents in Greenland: Chief Justice Toril Marie Øie together with Thomas Rørdam in Illulissat. Mr. Rørdam was President of the Danish Supreme Court until he retired in the autumn of 2022.

7. The leaders of many European supreme courts came together in Stockholm. Among the topics were: How should the courts use new technology in their work? And how to make the rulings as accessible as possible, while ensuring the privacy of the persons concerned?

8. President Prof. Dr. H.M. Syarifuddin of the Supreme Court of Indonesia is guided to the meeting hall.

9. Justices Bergljot Webster and Kristin Normann at a meeting in the EFTA Court in Luxembourg.



Photos: 6. The Supreme Court of Denmark. 7. Network of the presidents of the Supreme Judicial Courts of the European Union. 9. The EFTA Court.

THE SUPREME COURT AND THE ADVOCATES



Advokatforum 2022 – a crowded meeting hall in front of the Director of Public Prosecutions Jørn Sigurd Maurud, Advocate Mette Yvonne Larsen, Chief Justice Toril Marie Øie and Chief Judge of Hålogaland Court of Appeal Monica Hansen Nylund.

“Honourable Court, highest justices of the realm.” Those are the opening words of all advocates’ pleas before the Supreme Court. In addition to the court hearings, there are other and less formal venues for the exchange of ideas and discussions regarding the Supreme Court’s work.

It was nearly packed when the Supreme Court hosted *Advokatforum* for the third time in 2022. With over a hundred participants, there was a record attendance in our large meeting hall.

LEGAL ISSUES IN NEED OF CLARIFICATION

The objective of the forum is to facilitate a good and constructive dialogue between the Supreme Court and the advocates as a group. “Advocates” must be read in its widest sense, and includes prosecutors and defence counsel in criminal cases. In 2022, chief judges of the courts of appeal also attended.

The topic for the 2022 event was the filtering of appeals in criminal cases. Having an appeal heard and decided in the Supreme Court requires leave from the Supreme Court’s Appeals Selection Committee. This Committee is composed of three justices serving on a rotation basis among all the 20 justices.

The attendees had been asked in advance to specify which legal issues ought to be clarified by the Supreme Court. – We have received more input than I had dared to hope for, commented Chief Justice Toril Marie Øie at the end of the meeting.

ISSUES OF PRINCIPLE

Appeals to the Supreme Court are filtered under the principle that leave may only be granted “if the appeal concerns issues that are of significance beyond the scope of the current case or if for other reasons it is important that the case be decided by the Supreme Court.”

First and foremost, one must determine the legal significance of allowing the appeal to proceed to the Supreme Court. In criminal cases, this can be reduced to three questions:

- 1) Does the appeal involve a legal issue that may often occur, or are the issue and the facts of the case of a peculiar nature?
- 2) Is there a need of clarification of the law? This is often the case if relevant sources of law are meager, inconsistent or otherwise unclear.

- 3) Is there a realistic possibility of unconstitutionality or violation of human rights or international law?

If for other reasons it is particularly important to have the case decided in the Supreme Court, leave to appeal may be granted even if the case does not involve issues of principle. This could for instance be true in a criminal case where it is obvious that the Court of Appeal’s ruling is incorrect or there are significant flaws in the procedure. In practice, however, leave to appeal is only exceptionally justified by a need to exercise quality control. A judgment handed down in the Appeals Selection Committee is often a good alternative. In 2022, ten years had passed since the Supreme Court’s Appeals Selection Committee was empowered in certain cases to decide appeals against a judgment.



Chief Justice Toril Marie Øie and newly admitted advocate Tina Storsletten Nordstrøm.

NEW ADVOCATES ADMITTED TO THE SUPREME COURT

It was ceremonious, but most of all agreeable when advocates who in 2020 and 2021 had been admitted to argue before the Supreme Court attended a reception in the Supreme Court.

Most of those who were admitted during this period had argued one or both of their “test cases” digitally. Due to the corona pandemic, there was no physical attendance in the courtrooms, and the proceedings took place through a screen.

To be admitted before the Supreme Court – to become what was earlier known as a Supreme Court advocate – the candidate must demonstrate his or her qualifications by arguing two cases before the Court. The performance is then assessed by the justices hearing the case, who decide whether or not the candidate has passed.

The system of earning admission has a long tradition. Already in 1771, a special test was introduced for those who wanted to apply for royal permission to practice as a procurator at the Dano-Norwegian Supreme Court. When Norway became independent in 1814 and established its own Supreme Court in 1815, a test system was implemented modelled on the Danish one.

During the initial decades of the Supreme Court of Norway, the chance to earn admission was reserved for only a few. Permission to try was given merely to the extent the Supreme Court and the Government considered it necessary. In 1815, only five advocates were considered qualified. Around 40 years later, the number had increased to ten.

Only in 1857, any person who met the statutory requirements of grades and relevant practice, and who produced a certificate of “honorable conduct” became eligible to try arguing a case before the Supreme Court.

During the first hundred years of the Norwegian Supreme Court, all advocates admitted were men. A milestone was reached in 1912, when Elise Sem became Norway’s first female Supreme Court advocate – the year before women in Norway acquired the right to vote on equal terms as men.

Last year, twelve advocates passed their second “test case” and earned admission to the Supreme Court – four women and eight men.

COUNTY TOUR 2022

SO LONG, AGDER!

Each year, the Supreme Court justices visit one of Norway’s counties. In 2022, the trip went to Agder.

Over three eventful days, we visited the towns of Tvedestrand, Lyngør, Arendal, Grimstad, Vennesla, Lindesnes and Kristiansand. We met with mayors, youth, journalists, industrial leaders, local government employees and many others.

The Supreme Court receives cases from all over the country, within all areas of law. The county tours therefore provide useful and vital background knowledge.

Thanks for all the nice encounters in Southern Norway!



OPEN DAY 2022

OPEN DAY AT THE SUPREME COURT

Saturday 22 October 2022: Campus orchestra *Corpus Juris* of the University of Oslo set the tone outside the main entrance as we opened our doors to anyone who came to visit. On the inside were stands, chocolate and coffee, a good atmosphere, guided tours and lectures by Justices Wilhelm Matheson and Arne Ringnes. They talked about life as a Supreme Court justice, their work and the Supreme Court's function as the country's highest court.

Open Day is an annual event held in connection with The European Day of Justice – around 25 October. We are already looking forward to next time!



