Translation of extract from festschrift to Pekka Vihervuroi,
former President of the Supreme Administrative Court of Finland.

Juhlajulkaisu
Pekka Vihervuori
1950 – 25/8 – 2020

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ISSN-L 0356-7222
ISSN 0356-7222
ISBN 978-951-855-383-3

Oy Nord Print Ab, Helsinki 2020

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Judicial review of administrative decisions in Norway

1 Introduction

The Supreme Court of Norway's visit to the Supreme Administrative Court of Finland in 2009 gave us valuable insight into the Finnish court system, where administrative cases – like in Sweden – are heard in separate administrative courts. Through many enjoyable gatherings with Pekka Vihervuori at the meetings of the Nordic supreme court presidents and at seminars arranged by ACA Europe, we have acquired a deeper knowledge of the Finnish judiciary.

Denmark, Island and Norway have a different system, as the ordinary courts also hear administrative cases. For Norway's part, this is reflected in Article 88 subsection 1 first sentence of our Constitution, providing that "[t]he Supreme Court pronounces judgment in the final instance", which implies that Norway has only one court at the top. Nonetheless, the second sentence states that "limitations on the right to bring a case before the Supreme Court may be prescribed by law". This provision sets certain constraints on the Supreme Court, but it would be unconstitutional to leave out administrative cases altogether[1].

On the other hand, the establishment of administrative courts in the lower instances would not have been precluded by Article 88, as long as the Supreme Court remains the ultimate arbiter. But that has not been done.

2 The creation of judicial review

With the Treaty of Kiel of 14 January 1814, the more than four-century long union between Denmark and Norway ended as King Fredrik VI surrendered Norway to the Swedish King. The Norwegian people opposed. During the spring of 1814, popularly elected representatives convened in Eidsvoll north of Oslo to draft the Norwegian Constitution, which was adopted on 17 May 1814. Sweden did not accept this solution, and after a brief war late in the summer of 1814, Norway capitulated[2]. From the autumn of 1814, Norway entered a personal union with Sweden, which lasted until 1905. On 4 November 1814, to fit the forthcoming union, some smaller amendments were made to the Constitution, but Article 1 still stressed that Norway was a "free, independent and inalienable realm".

Before the dissolution of the union with Denmark, the Dano-Norwegian Supreme Court in Copenhagen was the highest court in Norway. As a natural consequence of the dissolution, Norway needed its own top court, which was stipulated in Article 88 of the Constitution. The establishment of the Supreme Court started almost immediately after the Constitution was adopted, and already on 27

[1] In Rt-1980-52, the Supreme Court stated that "[t]here are good reasons to suggest that it would contravene Article 88 of the Constitution to preclude all appeals to the Supreme Court in large groups of cases, including cases on the authorities' liability in connection with expropriation or other regulatory measures, on purchase and insurance or on retention of ownership and security".

[2] The war ended with the Moss Convention of 15 August 1814.

September 1814, the first justices were appointed by the King in Council. The hearing of the first case took place on 30 June 1815, which we count as the Supreme Court's foundation day.

The Constitution was formed based on several drafts, among which the *Adler-Falsen* draft stood out. One of the authors of this draft, Christian Magnus Falsen, served as a judge near Oslo, and was later to become the Supreme Court's second Chief Justice (1827–1830). In 1818, he published "The Constitution of Norway: presented in Questions and Answers", in which he discussed the courts' influence in the future Norway:

> "If this concerns the national representation, the nation's legislative assembly, how could one then call the civil servants whose only task is to apply the provisions of the law to each individual case, a state power? While the national representation possesses one of the components of power, namely will, the courts have none. The laws are their will, the government their force. They are nothing in themselves, without the body or tool, through which the will of the law in each case is proclaimed to the people."

Albeit a pessimistic statement, it is interesting to note that during the same year, in 1818, the Supreme Court proclaimed the courts' authority to review administrative decisions:

After the introduction of autocracy in 1660, it had been considered contradictory and inconsistent with the purpose of the government system that the courts, presided by the King, could examine the validity of administrative decisions. This doctrine was abandoned with the case dealing with the assessment complaint by Storting representative and chief commissary of war, Sebbelow. The case arose from a distraint for unpaid tax, and the issue before the courts was the validity of the underlying tax assessment. With a 4–3 ruling, the Supreme Court found that the courts could review the tax assessment and lifted the distraint. At that time, the Supreme Court's reasoning was not available to the public, but the voting protocol shows that the majority emphasised the people's need for legal protection against the authorities. Considering the major impact that administrative decisions have for the individual, the Supreme Court's reasoning was indeed called for.

Some decades later, the Supreme Court also established the principle that the courts may examine the constitutionality of statutory provisions – constitutional review. The exact date is uncertain, but Chief Justice Peder Carl Lasson's opinion of 1 November 1866 removed all doubt. By a constitutional amendment of 1 June 2015, the courts' "power and duty to review whether statutory provisions and other administrative decisions are contrary to the Constitution" were specified in Article 89. With that, the provision did not only regulate constitutional review, but also the power to review the constitutionality of individual administrative decisions and regulations.

Article 89 was amended on 14 May 2020. It now states that the courts' power and duty comprise reviewing "whether applying a statutory provision is contrary to the Constitution, and whether applying other decisions under the exercise of public authority is contrary to the Constitution or the law of the land". It is set out in Recommendation to the Storting 258 S (2019-2020) that the object of this amendment was to clarify that constitutional review should be aimed at "the *application* of a statutory provision in an individual case", and not at the constitutionality of the provision itself. And for judicial review, the object was to clarify that the provision also covered the public administration's conformity to the law and that it is not limited to decisions by the "state authorities".

During the last two centuries, judicial review has developed both on a superior level and on a detail level, and the courts, and ultimately the Supreme Court, have gradually extended the review. This article will not elaborate on this development, but we will return with examples from more recent times[3]. And the Supreme Court ruling Rt-2001-995 sets out that "[j]udicial review has developed

[3] In *Jussens Venner* 2009, advocates Nisja and Reusch of the Office of the Attorney General discussed the development in Supreme Court case law in the article *Judicial review – new clarifications*, stating that "[t]he development reveals an increasingly broad review. Recent case law confirms, however, that the main characteristics are relatively firm".

through long-standing case law, and is today generally accepted as customary law, partially of a constitutional nature".

Below, we will provide an outline of judicial review in Norway. As the handling of appeals in the public administration is a central part of the Norwegian system, that is where we will start.

3 Handling of appeals in the public administration

Section 28 subsection 1 of the Public Administration Act sets out that "[i]ndividual decisions may be appealed, by a party or another person having a legal interest in appealing the case, to the administrative agency (the appellate instance) which is the immediate superior of the administrative agency that made the administrative decision (the subordinate instance)". In section 2 subsection 1 (b), an individual decision is defined as "an administrative decision relating to the rights or duties of one or more specified persons".

With regard to competence, section 34 subsection 2 sets out: "The appellate body may try all aspects of the case and thereunder take new circumstances into account. It shall consider the views presented by the appellant, and may also take into consideration matters not addressed by him". The appellate body may thus consider all aspects of the case, including the mere discretionary assessment of what an administrative decision should contain[4]. Section 34 subsection 3 third sentence, however, sets a principally important limitation in cases where a state body reviews a decision made by a local or county authority. The state body must then "attach great importance to the interests of local self-government when trying discretionary issues[5]".

Section 36 subsection 1 of the Public Administration Act also contains a principally important rule that "[i]f an administrative decision is altered in favour of a party, he shall be awarded such substantial costs as have been necessarily incurred to get the said decision altered unless the alteration is due to the party's own circumstances or to circumstances beyond the party's and the administrative body's control, or if other special circumstances indicate otherwise".

The general rule, as provided in section 28, is that the administrative decision may be appealed to the immediate superior appellate body. However, special appellate bodies are established in practically important areas.

From a practical point of view, the most important appellate body is the *Immigration Appeals Board*. Section 75 subsection two first sentence of the Immigration Act provides that "[t]his Act shall be implemented by the King, the Ministry, the Immigration Appeals Board, the Directorate of Immigration, the police and other public authorities". Vital among these are the Directorate of Immigration and the Immigration Appeals Board. The Directorate of Immigration issues practically important decisions on asylum, residence on humanitarian grounds or family immigration, see chapters 4–6 of the Immigration Act. Initial decisions by the Directorate of Immigration may be appealed to the Immigration Appeals Board, see section 76 subsection 1 second sentence of the Immigration Act.

The Immigration Appeals Board is headed by a director who must satisfy the requirements applicable to judges. The director is appointed by the King in Council for a term of six years, and may be re-appointed for one period. In addition, the Appeals Board has board chairs who must satisfy the same requirements, see section 77 subsections 2 and 3 of the Immigration Act. In addition, section 77

[4]The provision regulating the substantive condition for the decision may, however, imply that the appellate body cannot emphasise information not previously presented to the decision-making body, see Rt-2013-1187.

[5] This limitation is based on Article 2 of the Council of Europe's charter 15 October 1985 on local self-government, stating that the principle of local self-government "shall be recognized in domestic legislation, and where practicable in the constitution".

subsection 4 states that the Immigration Appeals Board shall have appointed board members. Normal procedure is that one board chair and two board members participate in each case. Important cases may be decided by three board chairs and four board members. Cases that do not raise any doubt may be decided by a single board chair, see section 78 of the Act. The majority of the cases are decided in writing. The Immigration Appeals Board decides the cases "as an independent body", see section 77 subsection 1.

With the steady arrival of asylum seekers, these administrative bodies are vital. In 2017, the Immigration Appeals Board decided 14 414 cases, while the number in 2018 was 9690 due to fewer arrivals. A total of approximately 475 and 300 board meetings, respectively, were held with personal attendants during the same period. And in certain cases, an oral interview with the asylum seeker is carried out during the preparatory phase without subsequent board discussions. The effect of this appeal system is demonstrated by Oslo District Court only hearing 120–150 of these cases per year. The judgment is appealed in 50–60 of them. As for appeals proceeding to the Supreme Court, please refer to section 10.

Another practically important area is that concerning *tax and VAT*. The right to appeal against these decisions is currently regulated in the Tax Administration Act. Section 2-1 sets out that "[t]he Tax Office, the Tax Directorate, the Tax Appeals Board and secretariat for the Tax Appeals Board are authorities for wealth tax and income tax, Jan Mayen tax, artist tax, payroll tax, financial activity tax on salary and VAT". For petroleum tax, the administrative bodies are the Petroleum Tax Office and the Appeals Board for Petroleum Tax, see section 2-2.

Cases covered by section 2-1 may be appealed to the Tax Appeals Board, while the Appeals Board for Petroleum Tax is the appellate body for petroleum tax. The board members are appointed by the Ministry, see section 2-8 subsection 1. To safeguard the independence of these appellate bodies, section 2-9 subsection 1 sets out that neither the Ministry of Finance, the Tax Directorate, the Tax Office nor the Petroleum Tax Office may, either generally or in individual cases, instruct these appeal boards. The same applies to the relationship with the secretariat of the Tax Appeals Board, see section 2-9 subsection 3. In 2017 and 2018, the Tax Appeals Board decided 3077 and 2614 cases, respectively. As for the Appeals Board for Petroleum Tax, the corresponding numbers are eight and six. For obvious reasons, the latter cases normally involve large amounts.

In 2017 and 2018, 35 and 31 actions, respectively, were brought against the Tax Appeals Board. It is also possible to bring an action on a tax assessment without a prior appeal, but that is very unusual. After a search in Lovdata[6], we have found only one case on petroleum tax brought during the same period.

In addition to these appellate bodies, several other appeals boards have been established for review of administrative decisions. According to Norwegian Official Report 2019: 5 *New Public Administration Act*, 50 different appeal boards had been established in 2014 to decide appeals against administrative decisions[7]. The following is stated regarding the reason for establishing such appeals boards:

> "The arguments vary; there may be a wish to acquire a professional insight that a superior administrative body lacks, or more independence for the appellate body, distanced from the ordinary administrative bodies. Both may be held to give a more reassuring appeals system and increase the trust in the process. In some cases, the wish for a certain representation of interests in the handling of appeals has played a part.

[6] TN: Norwegian database of legislation and court rulings.

[7] Examples are the Appeals Board for Industrial Rights, which handles appeals against decisions by the Patent Office in accordance with the Patent Act; the Competition Appeals Board, which handles appeals against decisions by the Norwegian Competition Authority in accordance with the Competition Act; and the Privacy Appeals Board, which handles appeals against decisions by the Data Inspectorate in accordance with the Privacy Act.

An important objective for some appeals boards is to relieve superior bodies (or the courts) from work, either due to the amount of cases or because the appeals may raise issues that the ordinary administrative machinery – for instance a ministry – is not particularly qualified to assess."

4 Administrative bodies whose function is similar to ordinary judicial review

Although Norway does not have separate administrative courts, we do have important institutions that formally are administrative bodies, but yet very similar to a court.

The County Social Welfare Board was established with legal basis in chapter 7 of the Child Welfare Act. Its primary task is to make administrative decisions at the request of the child welfare services of the individual municipality, and to decide matters closely related thereto. In other words, the County Board issues administrative decisions in the first instance, and is thus not an appellate body. We nonetheless find we should mention it here.

All discussions in the County Board are chaired by a person meeting the requirements applicable to judges. In other words, the chair must have a law degree. In addition to the chair, the County Board consists of one expert, often a psychologist, and one person of a committee elected by the municipal council, see section 7-5 of the Child Welfare Act. The County Board's proceedings are very similar to those of the District Court, see section 7-3, and thorough arguments form the basis for its decisions. The County Board is an independent body and may not be instructed in individual cases.

The decisions of the County Social Welfare Board may be appealed to the District Court in accordance with chapter 36 of the Dispute Act. The proportionate number of cases brought before the District Court is relatively high. In 2018, the County Board made 2001 decisions, not counting the emergency orders. During the same year, 1035 decisions were reviewed by the District Court. The County Board cannot be instructed by any other body. Thus, the possibility to have a case heard in the Court of Appeal – and, consequently, also in the Supreme Court – is limited, see section 36-10 subsection 3 of the Dispute Act. In recent years, 300–350 District Court judgments have been appealed to the Court of Appeal, but the appeals are mostly refused. A considerable share of the refusals are appealed to the Supreme Court. During the period 2016–2018, the Supreme Court heard a total of four child welfare cases.

The European Court of Human Rights concluded in *Strand Lobben and Others v. Norway* (application no. 37283/13), a Grand Chamber judgment of 10 September 2019 regarding a care order and forced adoption, that Norway had violated Article 8 of the European Convention on Human Rights on the right to respect for private life (a 13–4 ruling). Since then, the Court of Human Rights has found violations in several Chamber judgments. As a consequence of the *Strand Lobben* judgment, the Supreme Court has heard four[8] child welfare cases as a grand chamber with eleven justices. The rulings were handed down in March 2020. In the wake of these rulings, many more child welfare cases have been heard by the Supreme Court as a division of five justices.

The National Insurance Appeals Council is another practically important dispute resolution body, which is also formally an administrative body. The functions of this body are regulated in the National Insurance Act. Section 1 subsection 1 sets out that the National Insurance Appeals Council is an "independent and impartial" body whose task is to decide insurance and pension disputes instituted by a citizen. It is not possible to bring these cases to court before they are heard by the National Insurance Appeals Council, see section 26 subsection 2 of the Act.

[8] In practice three, as two cases concerned the same child for whom the mother wanted the care and the father wanted extended access.

The procedure in the National Insurance Appeals Council is very similar to a court hearing, but as opposed to in the County Social Welfare Board, most cases are decided in writing. In 2018, the National Insurance Appeals Council issued six decisions. Such decisions may be brought directly before the Court of Appeal, see section 26 subsection 1 of the National Insurance Act, and possibly appealed to the Supreme Court. On the National Insurance Appeals Council's website, it is stated that approximately two percent of its decisions are brought before the courts for review – which corresponds well with the statistics from the National Courts Administration showing that the Court of Appeal receives some 100 such cases each year. Hence, most cases concerning social security and pension are finally decided by an independent administrative body.

5 The hearing of administrative cases in the courts

To have an appeal decided by an administrative body is far cheaper than bringing the case to court. And, as mentioned, an appellate body is normally fully competent to examine all aspects of the case, and to exercise discretion in deciding whether to grant a licence or issue an order. Thus, the appellate body's competence is generally wider than that of the courts – to which we will return in section 6 et seq. Thirdly, the National Insurance Appeals Council, the Tax Appeals Board and the Appeals Board for Petroleum Tax are ensured full independence. The same applies in practice also to the Immigration Appeals Board. Furthermore, these appellate bodies have members with special insight into the facts and legal issues presented before them. For instance, in disputes regarding the right to disability pension, the case will be decided by a board consisting of a chair who is a trained lawyer and of medical experts, see section 3 subsection 2 of the National Insurance Act.

These factors imply that the procedures are generally solid, which means that most appellants accept the appellate body's decision. And even though it follows from section 27 b of the Public Administration Act that a prior round in the appellate body is not a condition for bringing an action on the validity of the administrative decision, this trust is likely also the reason why a majority of administrative decisions are appealed before they, possibly, are brought to court. Due to this attitude in the Norwegian population, it is our impression that an administrative body rarely needs to use the legal basis in section 27 b of the PAA to decide that the case must be brought before the appellate body before taking legal steps.

The general rule is, hence, that actions on the validity of administrative decisions may be brought to any Norwegian District Court. A practically important exception follows, as mentioned, from section 79 subsection 3 of the Immigration Act, which sets out that actions on validity of administrative decisions by the immigration authorities must be brought to Oslo District Court. Also, according to section 63 of the Patent Act, most patent disputes must be brought to Oslo District Court. As these cases also require special knowledge of patent law, only a small number of judges in Oslo District Court hear them. Apart from these cases for which Oslo District Court is mandatory venue, only a modest level of specialisation is practiced among the judges. At the same time, it should be stressed that the District Court normally conducts oral proceedings, allowing the parties to give statements and present evidence while counsel give an oral presentation of the factual and legal issues, see section 9-9 subsection 1 of the Dispute Act.

Bringing a case to Norwegian courts is normally subject to a court fee. As of 1 January 2020, this fee is NOK 1172, and for proceedings in the District Court, the fee is five times the court fee – NOK 5860, roughly EUR 575. Proceedings in the Court of Appeal and the Supreme Court cost 24 times the court fee – NOK 28 128, roughly EUR 2800. If the main hearing lasts for more than a day, which it often does, the fee increases. For instance, the extra fee in all instances is 12 times the court fee if the main hearing lasts for five days.

According to section 10 of the Court Fees Act, several types of cases are exempt from the fee. Of particular interest with regard to administrative case are those concerning social security and pension and administrative decisions on coercive measures in the health and social sector – including child welfare cases. However, immigration cases – typically in asylum or residence matters – are not exempt. Only a limited exception is made in some immigration cases involving fundamental national interests. The tax cases are also not exempt.

The Legal Aid Act of 1980 regulates a private party's right to free legal aid, more specifically the State's liability for costs. Noteworthy here is that according section 16 subsection 1, free legal aid is granted without a prior means test to the person at whom the enforcement measure is aimed. This is particularly relevant in connection with reviews of administrative decisions on coercive measures in the health and social sector, especially in child welfare cases. In other cases, legal aid may be granted under section 16 subsection 3 if the party's income and capital are below certain limits set by the Ministry, and if the case "objectively affects the applicant in a particularly strong degree". For single applicants, the limit in 2020 is a gross income of NOK 246 000 and a maximum net wealth of NOK 100 000, while for married couples and other people living together, the limit is a total gross income of NOK 369 000 and a maximum net wealth of NOK 100 000. Considering the current income situation in Norway, most parties to an administrative case that is not comprised by section 16 subsection 1, earn too much to be entitled to free legal aid. According to section 16 subsection 4, the possibility of exemption from these limits is scant. It should be mentioned nonetheless that the Supreme Court has jurisdiction under section 18 of the Legal Aid Act to grant free legal aid irrespective of income and net wealth limits for the applicant.

Our presentation thus far shows that a party bringing an administrative case to court in Norway may incur substantial costs if the case does not succeed and free legal aid is not granted under section 16. It should also be noted that although review cases in the National Insurance Appeals Council are exempt from the court fee, they are not covered by the rules on free legal aid without a prior means test under section 16 subsection 1. Parties to these cases thus risk incurring large costs in complex cases that often require considerable medical expertise, which of course increases the total costs.

In addition, the losing party is normally liable for the winning party's costs, see section 20-2 subsection 1 of the Dispute Act. However, section 20-2 subsection 3 contains exceptions. Of particular interest is subsection 3 (c), under which a party may be exempt from liability if "the case is important to the welfare of the party and the relative strength of the parties justifies an exemption". As an example, this rule was applied in the ruling by the Supreme Court's Appeals Selection Committee in Rt-2009-619, stating that "[t]he relevant case concerns a certain field – national insurance law – which according to preparatory works belongs to the core area of the provision", see paragraph 16. As the Court of Appeal had not sufficiently considered this issue, the order finding the private party liable for costs of NOK 75 000 to State, was set aside.

6 The courts' competence to review administrative decisions

As we have already stressed, the appellate body is generally competent to try all aspects of the case – including the administrative discretion. However, the courts' competence is not as extensive, as some administrative decisions raise political and specialised issues that may not be appropriate for the courts to consider. For instance, it would be unnatural for the courts to decide whether an alcohol licence should be granted in a municipality. In Norway, we therefore practice a basic distinction between cases subject to *free administrative discretion* and cases involving *mandatory administrative decisions*. We will return to this in sections 7 and 8, respectively.

7 The courts' competence in discretionary administrative cases

For many administrative decisions, it follows from the relevant statutory provision that the administrative body may exercise discretion in deciding whether a licence should be granted, or whether a specific duty should be imposed on one or several persons. An example is the Sale of Alcohol Act, stating in section 1-4 a that "[s]ale, serving and production of drinks containing alcohol may only take place upon a licence granted under this Act". As for the sale and serving of alcohol, section 1-7 sets out that such a licence shall normally be granted by the local authorities, and the individual discretion cannot be reviewed by the courts.

However, this does not imply that the administrative decision is completely spared from judicial review. Several invalidity grounds may be invoked against such decisions. We are not referring to cases concerning alcohol licences in particular, but to all cases that are normally subject to administrative discretion.

First, it may be submitted that the administrative decision contains *procedural errors*. This invalidity ground may cover many different circumstances – such as possible impartiality, that the case is not adequately examined[9] or that the administrative body has breached the adversarial principle. In some cases, it is asserted that the administrative decision is not adequately reasoned. The most striking judgment in this regard is Rt-1981-745 – *Isene* – where the Supreme Court invalidated an administrative decision on the State's pre-emption right. The Supreme Court set standards for reasoning that went far beyond the requirements in section 25 of the Public Administration Act. Justice Schweigaard Selmer[10]stated:

> "I find it clear that the Land Act must be interpreted to mean that the State cannot exercise its pre-emption right unless it is considered fairly clear that it, through the measure, gets a result that has been assessed more thoroughly under purpose provision of the Act than the result of the sale with which one is considering interfering. When it comes to an administrative decision as intrusive as that at hand, the reasoning requirements are stricter. It must be clear that the decision has been made with objective and proper discretion. This is particularly important when the result of the decision seems as unreasonable as it does here. In this case, the Ministry's decision leaves doubt as to whether all relevant factors have been examined, although they have been known."

This ruling is further described in Rt-2000-1056, another case on the State's pre-emption right, where Justice Matningsdal emphasised that the requirement depends on the intrusiveness of the decision, and that "[t]he level of detail in the requirement, must […] rely on the nature of the administrative decision".

As for procedural errors, section 41 of the Public Administration Act sets out that the decision nonetheless is valid "when there is reason to assume that the error cannot have had a decisive effect on the contents of the administrative decision". In Rt-2009-661 concerning the lack of a regulatory impact assessment, Justice Bårdsen stated that "preponderance of the evidence is not required to determine the effect of the error. The possibility that it is not completely unlikely suffices" (paragraph 71). The issue in dispute is then specified in paragraph 72:

> "The assessment is based on the individual facts in the case, including which errors have been made and the nature of the administrative decision. Where the procedural error has given an inadequate or incorrect basis for deciding on a point that is significant for the administrative decision, or the error otherwise implies invalidation of basic due process requirements, the threshold is generally low."

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[9] A large debate arose when the USA wanted to build a new embassy outside of the centre of Oslo, and the new building would affect parts of a popular hiking area. Prior to this re-regulation, Oslo municipality had not carried out a regulatory impact assessment. The Supreme Court found nonetheless that this error did not carry such significance that it had to lead to invalidity, see Rt-2009-661.

[10] In the Supreme Court of Norway, the justices deliver personal opinions. After the case has been heard, the presiding justice elects the justice to draft the judgment. If the four other justices agree with this opinion, the first one states "I agree with Justice NN in all material respects and with his/her conclusion", while the other three states "Likewise".

The Supreme Court reiterated this in HR-2017-2247-A paragraph 95, which also concerned the lack of an impact assessment.

Closely related to procedural errors is that the administrative decision is based on *falsities*. This may be due to inadequate assessment – including violations of the adversarial principle, but of course also to the fact that the administrative body has received incorrect information that has impacted its decision or has misunderstood the information provided.

A third relevant error is the *lack of a legal basis*. Closely related to this error is that the administrative decision has been made by the *wrong administrative body*.

In addition to these errors, it may also be relevant to assert *abuse of power* as a collective term for a party being subjected to *unreasonable differentiation*, that *irrelevant or extraneous considerations* have been taken into account, that the administrative decision is *arbitrary* or that it is *clearly unreasonable*.

As for cases where *unreasonable differentiation* is asserted, it should be stressed that the administrative body is free to change its practice without this constituting a basis for invalidation. Apart from this, one must distinguish between two types of cases: If the administrative decision favours an individual, but is not of detriment to other parties to the case, the threshold is high for invalidating it. In other words, this issue is only relevant when invalidity will be favourable to the party because it has been treated more poorly than others. A good example is found in Rt-1956-29:

> This case concerned a claim for compensation from a woman whose application for a taxi licence had been rejected with the argument that she had applied too late. However, others who had applied after the time limit, had been granted the licence. The District Court found that she had been subjected to unreasonable differentiation as she had not been given the chance to explain why her application was late, and ruled the decision invalid. The Supreme Court considered only the issue whether she was entitled to compensation for the differentiation to which she had been subjected. The claim was accepted.

The court cannot conclude that unreasonable differentiation has taken place, unless it has been given "necessary information on other rulings in comparable cases", see Rt-2009-1374 paragraph 50. In that regard, unreasonable differentiation may clearly not be asserted because the services are better in the neighbouring municipality.

The invalidity reason *irrelevant or extraneous considerations* aims at cases where the administrative decision is based on considerations which cannot lawfully be taken into account. A well-known judgment from before World War II is Rt-1933-548 – the *Raadhushospits* judgment:

> In this case, the Oslo City Council in a 11–10 decision had refused to renew a hotel owner's alcohol licence. As the court found that at least one among the majority had justified his view by a wish to support the trade union with which the hotel had a dispute, the Supreme Court found that the administrative decision was "unlawful", and that the hotel owner was entitled to damages for the loss he had suffered.

We also have examples of administrative decisions being invalidated because they were strongly unreasonable. The most famous case is Rt-1951-19 – the *Mortvedt* judgment:

> In this case, four taxi owners who had a taxi licence at the time of the German invasion of Norway on 9 April 1940, had lost their licences after the War because they had been passive members of the Norwegian Nazi party. The Supreme Court found that it was possible in principle to emphasise the applicants' anti-national views during the War, but found that such a limited aid to the enemy should not deprive them of their right to carry out their profession. Justice Nygaard summarised as follows: "In the light of the individual circumstances, there

> was not a basis for rejecting the applications for new licences. To me, it would clearly be unjust that the four elderly taxi owners should be excluded from their old profession because of their passive membership in NS, when they had paid their fines and, moreover, retrieved their rights. Despite the courts' possibility under Norwegian law to control administrative bodies' exercise of 'free discretion' being limited … I find it so unfair and so contrary to general public opinion that the Ministry of Transport and Communication's decision of 21 October 1950 must be considered unlawful and thus invalid."

Frihagen: *Administrative Law* from 1992, states that subsequent case law "suggests that the Supreme Court will be more reluctant to set aside administrative decisions merely by arguing that the decision is unfair". This is illustrated by two later rulings: In Rt-1997-374, Justice Tjomsland stated that the "threshold is high for setting aside an administrative decision with the argument that it is *qualifiedly unreasonable*" (italics added). And in Rt-1997-1784, Justice Rieber-Mohn reiterates that the "the threshold is high" for ruling an administrative invalid on this ground[11].

The abovementioned rulings on the exercise of public authority are relatively old, but their reasons for invalidity may still be relevant in certain cases. In our view, however, there is currently a higher level of awareness in Norwegian public administration when it comes to which considerations may lawfully be taken into account. This is illustrated by the absence during the last 15 years of any case where the Supreme Court has ruled an administrative decision invalid on these grounds[12]. The fairness review is primarily expressed through the requirement of reasoning, as this requirement depends on how intrusive the decision is, see Rt-1981-745 and Rt-2000-1056, referred to above.

To illustrate this, we note that in Norwegian Official Report 2019: 5 New Public Administration Act, it is proposed, with regard to a new section 40 on administrative discretion, that the "[a]dministrative body shall not emphasise external interests. The administrative discretion shall not be arbitrary or entail unreasonable differentiation". The following is set out on the special motives behind the provision:

> "The legalisation is not meant to imply substantive changes. It has been years since the last part of the traditional doctrine on the exercise of power – that an administrative decision is invalid if it is grossly unreasonable – was used by the courts to set aside administrative decisions, even though the possibility has been mentioned in the judgment. It is therefore different from the other factors addressed in section 40 of the bill, and is therefore not part of the provision."

8 Review of mandatory administrative decisions

Mandatory administrative decisions are decisions by which a licence, a benefit or similar must be granted as long as statutory requirements are met – alternatively that a duty may be imposed on the person in question. With regard to such administrative decisions, the courts have full jurisdiction and may try all aspects of the case.

This means that the courts are not only competent to review the general interpretation of a statutory provision, but also the application thereof to the relevant facts. In a case concerning disability pension under Chapter 10 of the National Security Act, the courts may, when reviewing a ruling by the

[11] In Rt-2008-560 paragraph 48, the criterion "qualifiedly unfair" is used, in Rt-2009-1374 paragraph 54 and Rt-2013-449 paragraph 68, "grossly unfair" is used, and in Rt-2011-111 paragraph 72, "strongly unfair" is used. These wordings are not substantively different, but they show that the threshold for invalidity on this basis is high.

[12] In Rt-2015-795, the Supreme Court's majority found that a municipality did not have a legal basis for ordering Hurtigruta, sailing between Bergen and Kirkenes, to pay a passenger charge for use of the port authority's wharf. The majority argued that such a charge could not be demanded when the ships anchored off the wharf, but the presiding justice stated that "theory on the abuse of power does not only apply in connection with exercise of power, but also when public bodies carry out their business activities or otherwise act in accordance with private autonomy" (paragraph 73). Thus, in his view, the order could also be declared invalid due to unreasonable differentiation, as cruise ships that also did not use a wharf facility were treated differently (paragraph 84).

National Insurance Appeals Council, not only examine the legal requirement that "the capacity to carry out income-generating work (the income capacity)" must be "permanently reduced by at least 50 percent", see section 12-7, but also whether the person in question in fact is in such a situation.

It is particularly when the statutory provision calls for discretion that questions may arise as to the extent of the courts' competence in reviewing the individual discretion exercised. This is because Norwegian courts do not practice the same specialisation among judges, which may be the case in an administrative court. Moreover, the decision may be made by an administrative body with broad expertise on the relevant area. While the District Court and the Court of Appeal may sit with expert lay judges, see sections 9-12 and 29-17 of the Dispute Act, the Supreme Court's only option is to appoint expert witnesses. All the same, the courts' power to review the discretion exercised by an administrative body is somewhat limited.

The ruling in Rt-1995-1427 illustrates how the Supreme Court deals with this issue. The case concerned the preservation of two lakes with surroundings as a natural reserve. The condition in section 8 of the former Nature Conservation Act was that it had to concern "untouched, or virtually untouched, nature or a special type of nature with particular scientific or pedagogical significance or that distinguishes itself by its character". The key issue was whether it concerned a "special type of nature". The State held that the courts' competence was limited to reviewing the interpretation, and not the application, of a statutory provision. Justice Backer stated:

> "It is currently an ordinary principle in administrative law that the courts may not only review the interpretation of provisions interfering with the individual's rights, but also the application of the provisions to the relevant facts. This is considered an important due process principle. Although exemptions may be granted from this main rule, they must be individually justified. In the case at hand, the reasoning would have had to be based on the general formulations in section 8 of the Nature Conservation Act. However, I cannot see that these wordings suggest that the courts may not review the individual application of the law."

However, Justice Tjomsland found that the Supreme Court could not review the application of the law in relation to the relevant term. This made Justice Aarbakke state the following:

> "When assessing the issue of the extent to which the administrative decision may be reviewed under section 8 of the Nature Conservation Act, I find that the starting point should be the wording of the Act. As section 8 first sentence is worded, I cannot see how the provision may be interpreted only as guidance for the administrative discretion. As I see it, it must be read as requirements for when an area *may* be subject to a conservation order. Whether or not the statutory requirements for an administrative decision are met must be assessed by courts, unless weighty arguments suggest otherwise."

This statement was supported by the two remaining justices. The Supreme Court's majority thus laid down a requirement that there must be "clear" arguments why the courts should not have jurisdiction to review the application of the law.

In Rt-2004-1092, the Supreme Court returned to this ruling. An issue was to which extent the courts could review the public administration's assessments in a nature conservation case. With reference to section 11 of the former Reindeer Husbandry Act of 9 June 1978 no. 49, the State had conserved an area within a reindeer grazing district. The argument was that the reindeer tended to enter cultivated land – giving rise to conflicts between reindeer herders and farmers. Crucial under section 11 subsection 2 of the Act was whether "special considerations" justified the measure. Justice Stabel stated the following in this regard:

> "The further assessment of whether 'special considerations' are present, generally relies on a discretion which the courts should be reluctant to review, see for instance Rt-1995-1427. The administrative decision must build on a balancing of reindeer husbandry interests and agricultural interests, based on local knowledge and individual observations. A key issue is which means are most suited to reach the

> target - to reduce the conflict – balanced against the disadvantages for the affected parties. The courts will normally be ill-suited to strike such a balance."

Although in Rt-1995-427, "certain" indications were required for the individual application of the law not to be reviewed, the Supreme Court here found – not surprisingly – that in a case where a balancing of interests was required between to professional groups, the administrative body was by far best qualified to strike a fair balance.

In addition to the two types we have mentioned here, typical situations may occur in case law where the intensity of the review will have to vary. We confine ourselves to giving one more example:

In Rt-1975-603, the Supreme Court concluded that the courts have full jurisdiction in cases concerning rejections from the Patent Office, and may thus also try the discretionary assessment in that regard. At the same time, Justice Schweigaard Selmer stressed that "the courts should be reluctant to set aside the Patent Office's decisions considering the expertise and broad experience possessed by the Office".[13]

One area must be stressed: Practically important administrative decisions affect Norway's obligations under international law – particularly international human rights conventions. An important area is that of the expulsion cases. Here, the issue has been to which extent the courts may review the public administration's discretion. The former Immigration Act of 1988 provided in sections 29 subsection 1 (b) and 30 subsection 2 (b) a legal basis for expelling foreign nationals who had been convicted of criminal acts of a certain gravity. According to both provisions, such a decision could not be made "if the measure, based on the gravity of the act and the foreign national's connection to the realm, [would] be disproportionate towards the foreign national himself or any of his closest family members". In Rt-1995-72, issues were raised as to which extent the courts could overrule this assessment. After having discussed the preparatory works, which had not addressed the courts' judicial review in this regard, the Supreme Court concluded:

> "Against this background, the only possible interpretation of section 30 subsection 3 of the Immigration Act is that the individual discretion when applying the provision is attributed to the Ministry, and must be respected by the courts."

The courts' jurisdiction was thus limited in accordance with the principles applicable to discretionary administrative decisions, see above under section 7.

This position was abandoned three years later in Rt-1998-1795. In this ruling, Justice Skoghøy stressed that the Supreme Court, after the ruling in 1995, had handed down judgments requiring a review of the relevant application of the law. He then summarises:

> "In my opinion, it seems most appropriate to consider the proportionality assessment on which section 29 subsection 2 and section 30 subsection 3 the Immigration Act give guidance, as a discretionary application of the law that may be reviewed by the courts. The proportionality assessment to be made under these provisions are of a typical legal character, …The arguments against a review of administrative discretion, are therefore not applicable here."

In 2000, the State brought this issue once more before the Supreme Court, but in Rt-2000-591 the Supreme Court maintained its position. In this case, the State also held that the courts in any case had to exercise care in their review of the individual discretion of the administrative body corresponding to the margin of appreciation that the European Court of Human Rights entrusts to its Convention States. This did also not succeed, as Justice Lund stated the following:

> "Neither the wording of the law nor the preparatory works support such a limitation on judicial review, nor can this be justified by other factors. It concerns legal assessments in connection with administrative decisions which implies very burdensome measures towards the foreign national and his family. In my

[13] This view is repeated in Rt-2008-1555.

> opinion, it cannot be considered sufficient for limiting the right to have a case heard in court that the immigration authorities' practice is rooted in criminal and foreign policy considerations. Another aspect is that case law may be a relevant factor in a proportionality assessment, also because considerations of equality may influence the decision. However, I cannot see any basis for exercising more restraint when reviewing the proportionality of measures."

The Supreme Court has followed up this position in a number of subsequent cases on expulsion on a similar basis[14].

9 Additional questions

9.1 May facts be asserted that have not been tried by the administrative body?

When processing the complaint, the appellate body may with few exceptions also try facts and circumstances that have not been heard by the lower body. This is also the main rule for reviews in the courts. For tax matters, however, the Supreme Court has laid down certain limitations:

The case in Rt-1988-539 questioned whether a Norwegian sailor was still tax liable to Norway after having migrated to the USA. The tax assessment office had contacted him at his reported new address, but received no answer. A tax assessment decision was then issued, based on the assumption that he was still tax liable to Norway. The decision was sent to him with a copy of the previous letter enclosed. In addition, he was given an overview of the tax rules and told which information he had to procure to avoid tax in Norway. The tax assessment office still did not hear from him. The question was whether he, in such a situation, could present new information before the courts to demonstrate that the administrative decision was invalid. Justice Schei summarised:

> "Also when deciding whether statutory requirements for tax liability, deduction etc. are met, the general rule must be that the taxpayer, during the judicial review, is precluded from asserting new facts. I will not consider whether exceptions must be made, for instance when it was not practically possible for the tax payer to present the information during the tax assessment or if he for other reasons was not to blame for not having presented the information earlier."

The same issues were raised in Rt-1995-1768 in a case concerning VAT, and with the same justice as in the preceding case – later Chief Justice Schei. Here, he states:

> "In my opinion, the main rule must be: In tax administration, the authorities must be able to base their decisions on information presented in the taxpayers' statements and other available information. The taxpayer must carry the risk of errors if he does not provide the information he is required or has a reason to provide, or if he gives false information. The taxpayer's duty of disclosure is generally extensive, see section 46. In special circumstances, exceptions may be made from the abovementioned rules on the taxpayer's risk when providing false or incomplete information when the tax authorities have a special reason to question the correctness and completeness of the facts at hand.
>
> As for the risk of providing false or incomplete information, it should be noted that the rules of procedure give the taxpayer a right to be notified of what the tax authorities will base their decision on, and to state his or her opinion. A tax decision may be appealed, and the taxpayer may during the appeal proceedings make objections to the facts relied on and present new facts and supplement the presentation of evidence.

[14] See Rt-2005-229, Rt-2005-238, Rt-2007-667, Rt-2009-534, Rt-2009-546, Rt-2009-705, Rt-2009-1432, Rt-2011-948 and Rt-2015-93. However, in connection with expulsion based on section 126 of the Immigration Act to protect national interests etc., the courts had to exercise certain restraint in their review, see Rt-2007-1573 paragraph 50 et seq.

> The consequence of the taxpayer carrying the risk for facts forming the basis for the tax decision, implies that he may not have the administrative decision set aside during the judicial review to procure new facts, see Rt-1988-539."

This practice has been continued in the Supreme Court's subsequent case law[15]. A further account of this duty is provided in Rt-2001-1265, but there is no reason to elaborate on that. We mention nonetheless that Skoghøy states the following in *Tidsskrift for Rettsvitenskap* 2002-109–137 based on the rulings present at the time and after having presented the starting point:

> "Provided that we are not dealing with information or evidence that the assessment authorities with a legal basis in section 4-8 of the Tax Assessment *Act has specifically requested taxpayer to present*, or which the taxpayer had *other incentives to assert during the assessment proceedings*, it must be a condition for precluding the taxpayer from invoking new information in court that the new information is considered a *new factual basis* for the taxpayer's claim. If the taxpayer has not been asked or does not have a particular incentive to present a certain piece of information or evidence, nothing seems to prevent the taxpayer, during the court hearing, from invoking information or evidence that *specifies, supplements or supports previous submissions*."

It should also be mentioned that in Rt-2014-760, the Supreme Court concluded that the taxpayer can make new submissions to the courts regarding information that has been provided to the tax authorities, as long as the underlying legal transaction is the same as that assessed there.

9.2 Can the courts emphasise facts occurred after an administrative decision was issued?

A principally important question is whether the courts in their judicial review may also emphasise facts occurred after the administrative decision was issued. If so, it implies that the courts examine the facts in the first instance without a prior assessment by the administrative body.

In one practically important area, it is generally accepted law that the courts have a right as well as a duty to examine any new factual circumstances. This applies to cases covered by chapter 36 of the Dispute Act on "administrative decisions on coercive measures in the health and social services" – i.e. mostly child welfare cases and cases on compulsory mental health care. Section 36-5 subsection 3 of the Dispute Act sets out that the court shall "review all aspects of the case". According to the Ministry in Proposition to the Odelsting No. 51 (2004–2005), this implies that "[t]he ordinary limits for the court's review of administrative decisions does not apply here". This means, among other things, that the ruling must build on the factual circumstances at the time the case is submitted for judgment[16]. The same applies to the National Insurance Appeals Council, which hears disputes on national insurance and pension benefits and is formally an administrative body[17].

In the plenary judgment in Rt-2012-1985, it was held that the same had to apply to cases under the Immigration Act. The issue was the application of the UN Convention on the Rights of the Child to a review of the Immigration Appeals Board's rejections of applications for asylum and residence in Norway when the family at the time of the administrative decision had lived in Norway for a long time. Shortly before this hearing, the majority of the Supreme Court had concluded in Rt-2012-667 that the courts could also emphasise facts presented after the administrative decision. Two of these justices limited this competence to the area of immigration law.

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[15] See Rt-1999-1087, Rt-2000-2014, Rt-2001-1265 and Rt-2002-509 – plenary. See also Rt-2015-652 where the person liable for VAT during the appeal had received a 40-centimeter bundle of invoices without further examination. Acting justice Sæbø states that "[i]n my view, it is clear that the assessment authority did not have a duty to examine such extensive materials that Telenor had not even attempted to adjust for the tax authority".

[16] Rt-2004-999 paragraph 45, Rt-2005-624 paragraph 29 and HR-2016-2262-A paragraph 53

[17] Rt-2008-688.

This position was abandoned with the plenary judgment later the same year. Following an extensive discussion, Justice Webster stated in paragraph 81:

> "In summary, the sources show that the starting point up until Rt-2012-667 has been that judicial review of an administrative decision has been based on the facts at the time of the decision, but that, as a general principle, new evidence shedding light on the situation at the time of the decision may be submitted. I do not agree with Justice Skoghøy's view in Rt-2012-667 paragraph 56, that case law relating to this issue is unfounded and reflects "uncertainty and a lack of clarification". In my view, the picture provided by sources of law in this regard is clear, and I cannot see that reasons have been put forth to suggest that this solution – even in a plenary hearing – should be abandoned."

Justice Webster then discussed whether Norway's human rights obligations implied that the courts in certain areas nonetheless must base their rulings on the circumstances at the time of the judgment. In paragraph 98, she concludes as follows:

> "In my opinion, the general rule is more justified, also when a breach of Norway's human rights obligations has been asserted. In the light of this, I find no reason to abandon the basic principle set out in case law up until the ruling in Rt-2012-667. The conclusion is thus that the review of the validity of an administrative decision, also in cases involving human rights, including immigration cases, must be based on the facts at the time of the decision."

This position was supported by 13 justices, while five voted in favour of a broader judicial review – two of whom stated that this had to apply to review of administrative decisions in general.

The majority's view in Rt-2012-1985 was also assumed in the second plenary judgment dealing with these issues, handed down on the same day, see Rt-2012-2039 paragraph 39. Moreover, it was continued in the next plenary judgment in a similar immigration case, see Rt-2015-1388 paragraph 68-70.

The Supreme Court's view in these cases might seem problematic with regard to the fact that the Court of Human Rights bases its rulings on *the present situation*. On this issue, Justice Webster stated the following in Rt-2012-1985 paragraph 96:

> "Moreover, it is unclear how much time may be gained by the courts' basing their review on a present-time assessment. The main rule is that the court does not hand down a judgment on the merits, but merely rules the administrative decision invalid, see Rt-2001-995. Thus, the case must in any event be returned to the administrative body for a new hearing. I also stress that a possible judgment of invalidity based on new asserted facts, only implies that the administrative body is obliged to consider the case anew. However, as already pointed out, the Immigration Appeals Board has a duty to consider reversal when new facts are presented. It is therefore difficult to see the additional legal security is obtained if the courts first establish that the new facts may be relevant and then rule the administrative decision invalid."

9.3 Must the courts confine themselves with ruling the administrative decision invalid, or can they issue a new administrative decision?

In Rt-1951-19, as we have mentioned to in section 7, the Supreme Court ruled as follows:

> "1. The Ministry of Transport and Communication's decision of 21 October 1950 in the appeal regarding A, B, C and D is invalid.
> 2. The Ministry of Transport and Communication is to issue taxi owners licences to A, B, C and D."

Two of the justices, who also voted in favour of invalidating the administrative decision, concluded that such a judgment could not be handed down. This judgment brought to light the question of the courts' competence to issue a new administrative decision in the case.

In the decades that followed, there was some debate and uncertainty as to whether the courts could give a judgment extending beyond ruling an administrative decision invalid. An example is found in Frihagen: *Forvaltningsrett III* [administrative law] of 1992, stating that "[t]he view is that the courts must *generally* confine themselves with validating a rejection of an application, such that the courts themselves do not grant the application" (italics added). Hence, the possibility of the courts' handing down such a judgment is not precluded.

The issue was addressed in Rt-2001-995, where a person who had been awarded disability pension based on 50 % occupational disability, requesting a judgment ordering his disability increased to 100%. The award of disability pension is a mandatory administrative decision, which the courts have full jurisdiction to review. In this case, the Supreme Court found no basis for laying down a general rule, and that such a right may also not be derived from Article 6 (1) of the European Convention on Human Rights. However, Justice Oftedal Broch had a minor reservation, as he would not "preclude the courts' possibility in certain cases to give judgment on the merits, for example where any other approach would constitute unnecessary bureaucracy or an administrative body does not loyally comply with a court ruling".

This judgment was followed up in subsequent case law, and confirmed in the plenary judgment in Rt-2012-1985 paragraph 96, quoted at the end of section 9.2. When the Supreme Court has taken this position with regard to mandatory decisions, the nature of the matter suggests that the same applies to discretionary administrative decisions.

This rule has a practically important exception for cases heard under chapter 36 of the Dispute Act on administrative decisions on coercive measures in the health and social services – primarily child welfare cases and cases on compulsory mental health care. These cases are in a special position for due process reasons – expressed for instance through the courts' obligation to build on the facts at the time of the judgment, see section 9.2. As stressed in Proposition to the Odelsting No. 40 (1967–68), this is due to the courts' change of roles vis-a-vis the administrative body in these cases. The courts no longer confine themselves with ruling the administrative decision invalid; they also issue a ruling on the merits of the case.

10 Statistics

In recent years, Norwegian district courts have received approximately 15 000 appeals in civil cases, which includes administrative cases. The numbers we have provided above for practically important areas must be supplemented by other cases dealing with administrative matters. Unfortunately, we have not been able to retrieve the number of cases from our registration system, but we would be surprised if they count more than a fourth of the total of the civil cases.

As for administrative cases in the Supreme Court, those concerning tax are dominant. During the period 2016–2019, a division of the Supreme Court heard 35 cases – in average just below ten per year. These are followed by eleven immigration cases, six child welfare cases, six national insurance cases, three expropriation cases, two guardianship cases, two environmental cases, two cases on compulsory mental health care and two cases on dog destruction. For cases on health care, pension, planning and regulation as well as public procurement, we have had one of each during this period. In addition, three cases have been registered to concern administrative law in general. It should also be mentioned that the Supreme Court during this period heard seven cases on Sami and reindeer husbandry law. Some of them contained issues of an administrative law nature. The average total number of civil cases during the period is 64. Administrative cases have constituted approximately 30 percent of the civil cases.

Since the turn of the millennium, a relatively large number of administrative cases have been heard by the plenary or a grand chamber with eleven justices. During this period, the Supreme Court has heard five tax cases in plenary session. Three of them concerned various issues relating to imposition of surtax[18], while two concerned the retroactivity prohibition in Article 97 of the Constitution[19]. Yet another case on surtax has been heard in a grand chamber[20]. Furthermore, three immigration cases have been heard in plenary session, in which the key issue has been which emphasis, in cases on residence on humanitarian grounds, should be placed on the foreign national having children who have lived in Norway for several years[21]. The plenary has heard another two cases that are too comprehensive to address[22]. It should also be mentioned that the Supreme Court has heard two cases concerning state liability for non-compliance with Norway's obligations under the European Convention on Human Rights[23].

[18] Rt-2000-996, Rt-2002-497 and Rt-2002-509.
[19] Rt-2006-293 and Rt-2010-143.
[20] Rt-2008-1409.
[21] Rt-2012-1985, Rt-2012-2039 and Rt-2015-1388.
[22] Rt-2010-535 and Rt-2013-1345
[23] Rt-2005-1365 (plenary) and HR-2016-2195-S (grand chamber).