INTERNATIONAL COMPARATIVE STUDY ON ALLOCATION OF CASES TO AND WITHIN COURTS -

The case of Norway

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Table of Contents

1. **Profile of the judicial system** ................................................................. 209
   1.1 The Court Structure ......................................................................... 209
   1.2 The actual size of the Courts of first instance .......................... 210
   1.3 The reform of the courts of first instance ................................. 211
   1.4 The National Courts Administration ........................................... 214
   1.5 The Prosecution and the Police ....................................................... 214
   1.6 Human resources ........................................................................... 215
   1.7 Caseload of the judiciary ................................................................. 215
      1.7.1 Courts of first instance ...................................................... 215
      1.7.2 Courts of Appeal ............................................................. 216
      1.7.3 The Supreme Court .......................................................... 217

2. **Legal rules and actual functioning of case allocation between courts and within courts** ................................................................. 218
   2.1 Allocation between courts .............................................................. 218
      2.1.1 Civil cases ............................................................................ 218
      2.1.2 Criminal cases ...................................................................... 221
      2.1.3 A few comments .................................................................... 222
   2.2 Allocation of cases within a court ................................................... 222
      2.2.1 A few words on deputy judges ............................................ 223
      2.2.2 The discretion of the chief judge ......................................... 223
      2.2.3 A more practical approach .................................................. 224

3. **Un(expected) changes in caseload and backlogs** .................................. 226
   3.1 Caseload in different courts ............................................................. 226
   3.3 Processing time in different courts ............................................... 227
   3.5 General remarks on the use of non permanent judges ................... 229
   3.6 “Task force” of judges ................................................................. 231
   3.7 The use of non-permanent judges in the courts of appeal ............. 231

4. **Emerging problems and creative solutions** ........................................ 232

5. **Literature** ............................................................................................ 232
1. Profile of the judicial system

1.1 The Court Structure

The Norwegian judicial system is rather simple. There are 88 Courts of first instance, 6 Courts of Appeal and one Supreme Court. All cases starts before the Courts of first instance, with the possibility of an appeal to the Court of Appeal, and a further appeal to the Supreme Court.

![Diagram of the Norwegian judicial system]

Until the end of 2002 there were 92 Courts of first instance, after a political deliberation, the Parliament decided that the number of Courts of first instance should be reduced to 66. With the present progress this goal will be achieved in 2007. This involves a number of courts merged with other courts, but at the same time a new Court of first instance for parts of Lapland has been set up.

Judges are appointed by the King (i.e. Cabinet) after proposal from a separate body for appointment of judges. The judges may not be removed from their positions. The positions as head of court are handled the same way, a head of court is appointed by Royal Decree and the Head of Court may not have his or her function as head of court removed.

Norway does not have Administrative courts, nor administrative procedures within the ordinary courts. The general rule regarding administrative cases is that they might be appealed to another administrative body. Normally the lines of appeal follows the adminis-

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1 In addition to literature this report is based on interviews with Kristin Bølgen Brønebakk, former Director General of the Department of Courts Administration, Ministry of Justice, Thomas Bettum, former Deputy Director General of the same department and Gjermund Rønning Director of the National Courts Administration. Mr Rønning has previously been an Assistant Director General with the Department of Courts Administration, and a Deputy Director General of the Budgetary Section of the Ministry of Justice. As the views expressed by these three to a large extent were similar, and also in compliance with my own experience from working with the Department of Courts Administration, I have not made explicit references to the views expressed by one of them, but rather referred to the information provided in more general terms. Regarding one point, discussed in part 0 I have based this on discussions with Director Sissel Endresen, National Courts Administration. I am grateful for the time and assistance the mentioned colleagues and former colleagues have given in the process of collecting information for this report. All errors, however, remain my own responsibility.

2 Cfr 0.

3 In accordance with Courts Act s. 55b.

4 Norwegian Constitution s 22.
trative hierarchical lines, i.e. if a local administrative state body makes a decision, the appeal is handled by a regional or a central state body. Any decision made by a Ministry, might be appealed to the cabinet, though this seldom happens. Under the administrative procedure, the appellate body makes a full review of the case. If an administrative decision is brought before a court, the court makes only a limited assessment of the case. It might declare the administrative decision void, if the administrative body has made an error in assessing the facts, if the case handling is in contrary to the administrative procedural legislation or has made a general error in interpretation of the law. However, the court cannot try the actual application of the general legal rule on the case.

There are some minor exceptions to these general principles.

Cases concerning national insurance start before the courts of appeal\(^5\). The reason for this is that there is an administrative procedure at an administrative board based on principles of the judicial procedure. This is an anomaly; as there are a number of such administrative boards, but these cases nevertheless start before the Courts of first instance.

The Land reallocation Courts have both administrative and judicial power. These courts handle the re-planning of the proprietary land units within a given area and redistribution of them into economic size and rational shape. The proceedings may involve such elements as the changing of borders of, or rights over, real property, the dissolution of co-tenancies, the clarification of rights that are in dispute, the partition and/or amalgamation of property.

There is one Industrial Dispute Court, mainly handling cases on collective agreements. This court is located in Oslo and its competence covers the whole country.

There is one special court handling the question of rights to uncultivated land in Troms and Nordland (two of the three nethermost counties in Norway), where the Norwegian government is claiming title, and rights related to such property. This court was set up by an act in 1985\(^6\), in order to have a more efficient handling of these cases as there were large areas where the title was undefined. This court is about to finish its work.\(^7\) According to section. 15 the court has exclusive competence for these cases.

### 1.2 The actual size of the Courts of first instance

Norway has a population of approximately 4, 5 millions, covering 324 220 km\(^2\). There are courts scattered around the country. However, a majority of the populations is located around some major cities, and parts of the country have a rather low population density. Since there is a political goal that the travel distance to the courts shall be reasonable for the general public,\(^8\) some courts have to be rather small.

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\(^5\) The Civil Procedure Act, s. 3 no 3.

\(^6\) Lov om utmarkskommisjon for Nordland og Troms, of 7th June 1985, no 51.

\(^7\) St.meld. nr. 23 (2000-2001) p 50.

\(^8\) Cfr 211.
For 1999 the Courts of first instance were composed as follows: 

<table>
<thead>
<tr>
<th>Number of courts</th>
<th>Permanent judges</th>
<th>Deputy judges</th>
<th>Administrative staff</th>
</tr>
</thead>
<tbody>
<tr>
<td>39</td>
<td>1</td>
<td>1-2</td>
<td>3-6,5</td>
</tr>
<tr>
<td>25</td>
<td>2</td>
<td>1-2,5</td>
<td>4-16,5</td>
</tr>
<tr>
<td>7</td>
<td>3</td>
<td>1-2</td>
<td>6,5-25,5</td>
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<td>6</td>
<td>4</td>
<td>1-3</td>
<td>8,5-35,5</td>
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<td>3</td>
<td>5</td>
<td>2-5</td>
<td>12-46</td>
</tr>
<tr>
<td>2</td>
<td>6</td>
<td>2</td>
<td>13-14,8</td>
</tr>
<tr>
<td>8</td>
<td>7-12</td>
<td>0-3</td>
<td>10,5-73</td>
</tr>
<tr>
<td>1</td>
<td>17</td>
<td>3</td>
<td>18,5</td>
</tr>
<tr>
<td>1</td>
<td>66</td>
<td>19</td>
<td>75,5</td>
</tr>
</tbody>
</table>

The reason for the large differences in administrative staff seems partly to be related to the courts in the larger four cities. In addition to difference in caseload, these courts also hold a high number of administrative staff for non-judicial tasks – such as land registry and bailiff functions.

1.3 The reform of the courts of first instance

As indicated, a process is going on to reduce the number of courts of first instance, from 92 to 65. The process started with the Court of first instance Committee that was appointed by Royal Decree 10th October 1997 and presented its report on 25th May 1999. 

The mandate of the Committee was twofold, partly to assess the tasks to be undertaken by the judiciary, and partly to assess the structure of the courts of first instance.

At the time the Committee was appointed, there were 93 City Courts and Courts of first instance. With the exception of the four larger cities all courts had full jurisdiction within their geographical jurisdiction. In Bergen, Trondheim and Stavanger there was a division of labour between the Court of first instance and the Court of probate and enforcement, the former being responsible for criminal cases and ordinary civil cases, the latter being responsible for all other cases. In Oslo there were four courts, the Court of Enforcement being responsible for civil enforcements and also acting as notary public, the Probate Courts being responsible for probate and liquidations, and finally the court being responsible for – mainly – land registry. The latter two merged January 1st 2000, seemingly independent of deliberation of the report of the committee, but based on the general principles of full subject matter competence.

The Committee proposes that the number of courts shall be reduced from 93 to 54, and that all courts should have full jurisdiction. The majority of the Committee is of the opinion that

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9 St.meld. nr. 27 (2000-2001) p 55.
10 This report is published as NOU 1999:22.
11 However, the reason for this merger of courts is found in a vacancy as chief judge on one of the courts. The ministry preferred to merge these two courts, without waiting for the final deliberation in Parliament. There were, however, informal discussions with the members of the opposition on the subject.
each court should have at least 5 judges. At the same time the Committee proposes a new court for the Sami area, that should have two judges. The Committee does not present any proposals for Oslo; instead it proposes a separate assessment of the courts and court structure in Oslo. The only reason given is the size of Oslo City Court. Regarding land registry the Committee was stalled, as four members argued that the judiciary should be relieved of this task, whereas the other four members argued that the land registry should remain within the judiciary.

In our context the interesting part is – primarily – related to the argumentation concerning the size of the courts.

“When the majority of the Committee has concluded that courts with at least five judges should be established, the majority has foremost given concern to the following aspects:

First and foremost: The majority is of the opinion that in order to develop and maintain a large and sound working environment five judges are necessary. This is discussed in more detail, infra, 3.3.

Secondly: The majority has taken into consideration the need to reduce vulnerability in cases of sickness, staff vacations, vacancies, leave for studies, et cetera, both for judges and administrative staff.

At the same time a higher number of staff opts for a higher flexibility in their tasks.

Thirdly: The majority has taken into consideration the necessary size of a court in order to develop good and efficient internal procedures.

Fourthly: The majority has taken into consideration the need, in special situations, to have a panel of judges, as opposite to one judge in session.”

As there was a minority in the Commission, arguing for two permanent judges in each court, it might easily be said that the arguments of the majority of the Commission could have been better.

Based on the report from the Courts of first instance Committee the Royal Ministry presented a Green Paper to the Parliament.

The Ministry argued that all courts of first instance should have full subject matter competence and that the judiciary should be relieved of the tasks related to land registry.

There is a discussion – following the Committee – on the minimum size of Courts of first instance. In this discussion the Ministry states:

13 There is no study, there is a minority in the committee, as mentioned later on, and one would expect an explanation. However, I cannot find one – and neither could a number of the smaller courts when we had the White Paper subject to a general hearing.
14 At this point there is a tension between the general views on the size of each court and the obligations towards the indigenous Sami population, cfr NOU 1999:22 pp 71-73, especially p 73.
16 This report is printed as St.meld. nr. 23 (2000-2001).
17 St.meld. nr. 23 (2000-2001) p 59 (my translation).
“Another argument that has been put forward, is that the courts with one permanent judge and one deputy judge are more vulnerable in cases of absence, regardless whether this is because of sickness, vacations, absence due to travelling or other reasons. It may also be argued that they are less flexible when it comes to variations in the caseload, and when there is a situation of under- or overstaffing in relation to their case-load. In their views the smaller courts seem to accept that these are weaknesses of the minor courts. Where the case, one would accept longer processing time and/or higher overstaffing in these smaller courts. The statistics by the ministry on caseload and processing time however, do not indicate a pattern in this respect.”

The actual proposal for new jurisdictions is based on four considerations:

- The future minimum size
- The travelling time for the general public
- That the jurisdictions should be coherent with current settlement- and commuting structures
- That the court structure should make it possible to release resources and better support future investments.

The ministry, on a general basis argued that the courts should have four judges, but opens possibilities – to a larger extent than the Committee – for courts with two judges. In the argumentation of the Ministry a number of factors are assessed. However, there does not seem to have been any in dept analysis based on empirical data, but more of a free assessment.

The government proposed that there should be 65 Courts of first instance in the future. Regarding Oslo, the Ministry indicated that this will be evaluated separately; hence three of these courts would be covering the City of Oslo. After the deliberations in Parliament there will be 66 Courts of first instance.

As indicated in St.meld nr. 23 (2000-2001) the Ministry of Justice started the work on the Court Structure in Oslo. An external consultant was hired, who is responsible for the report presented on October 6th 2003. The “problem” with the court structure in Oslo is, as indicated supra, that the Court of first instance of Oslo is by far the largest in Norway, meaning that the courts in Oslo have about 25% of the judges in the Courts of first instance. Whilst the problem – in other parts of the country – was to what extent courts should be merged, the problem in Oslo is how to organise large courts. The evaluation would have to include both the external organisation of the courts (i.e. how many courts) and the internal organisation of the courts (i.e. how one or more courts should be organised). At the time of writing the report has been presented, and the Ministry asked for comments in a general hearing. The deadline for submissions to be presented to the Ministry of Justice was 10th March 2004.

At a more general level, this report reflects some of the questions that are part of this study.

19 St.meld. nr. 23 (2000-2001), p 54.
20 Knoff (2003).
21 At the same time, this approach is not straightforward. After the establishment of the National Courts Administration, the responsibility for the external organisation vests with the Cabinet, but the responsibility for the internal administration has been transferred to the National Courts Administration, in accordance with the Courts Act s. 19, sub-section four.
22 It is unclear how the follow up of this report will be divided between the Ministry and the National Courts Administration. The Ministry indicates a co-operation in its invitations for submissions in the general hearing, of 10th December 2003 (ref 01/00490 U-C SWi/ew).
1.4 The National Courts Administration

The Ministry of Justice was responsible for the administration of courts from its establishment until 1st November 2002. Effective from 1 November 2002 a new semi-independent Courts Administration has been set up. There is a board, consisting of three judges, two attorneys and two representatives from the general public. The latter representatives are elected by the Parliament; whereas the two former groups are appointed by the King (i.e. the Cabinet). As the National Courts Administration was set up in 2002, members of the board so far have only been appointed once. Normally, Parliament would in similar cases appoint someone with a connection to political parties, e.g. former members of Parliament. In this case Parliament choose to appoint a professor as one of the representatives. (This professor is also a member of the Sami parliament, chosen by the Sami indigenous community).

The Cabinet and the Parliament shall set annual guidelines for the National Courts Administration. Due to practical reasons this is done in conjunction with the annual budget. These guidelines shall indicate the goals, but not the means, for the National Courts Administration and the judiciary. However due to a somehow blurred presentation in the budget proposal, it is not 100% clear what are supposed to be guidelines, and what is not. The reason for this is that the bill states that there shall not be developed an operational instruction for the National Courts Administration. However, this is exactly what the Ministry did. The underlying problem arising from this is the status of all other information given in the budget bill. In Norway the budgetary bill includes vast amounts of information on what the governments intends to do in the following fiscal year. This information is not a part of this operational instruction.

In exceptional cases the King (i.e. Cabinet) has the power to instruct the National Courts Administration by Royal Decree. This is meant as a last fallback if the National Courts Administration does not comply with criticism from the National Auditor, or in similar cases of mismanagement. The procedure is that first there should be a discussion between the Ministry and the National Courts Administration, and if this leads not to an agreement on measures to be taken, the Royal Decree shall be issued. In such a case Parliament must be notified immediately.

1.5 The Prosecution and the Police

The Attorney General is the head of the Norwegian Prosecution Service. At a regional level there are 10 Regional Prosecutors. Unlike most jurisdictions the lower tier of the prosecution authority is integrated with the police.

After a reform effective of January 1st 2002, there are 27 Police Districts.

The Police Directorate has the administrative responsibility for the police districts, whilst the Attorney General has the administrative responsibility for the Regional Prosecutors.

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23 The Courts Act s 33a.
24 The Courts Act s. 33, second sub-section, cfr Ot.prp. nr. 44 (2000-2001), p 75.
25 At the moment there is a discussion between the National Courts Administration and the Ministry of Justice on the future use of guidelines. Hopefully this will clarify the relation between the administrative branch and the National Courts Administration.
26 In accordance with The Courts Act s. 33 third sub-section.
27 This responsibility was 1st January transferred from the Ministry of Justice to the Attorney General.
1.6 Human resources

<table>
<thead>
<tr>
<th>Number²⁸/year</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
</tr>
</thead>
<tbody>
<tr>
<td>Professional Judges</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Supreme Court</td>
<td>19</td>
<td>19</td>
<td>19</td>
<td>19</td>
</tr>
<tr>
<td>- Courts of Appeal</td>
<td>138</td>
<td>137</td>
<td>146</td>
<td>146</td>
</tr>
<tr>
<td>- Courts of first instance</td>
<td>314</td>
<td>318</td>
<td>320</td>
<td>323</td>
</tr>
<tr>
<td>- Deputy judges</td>
<td>156</td>
<td>154</td>
<td>157</td>
<td>164</td>
</tr>
<tr>
<td>Administrative staff in the Supreme court²⁹</td>
<td>38</td>
<td>38</td>
<td>38</td>
<td>38</td>
</tr>
<tr>
<td>Administrative staff in the courts of appeal</td>
<td>88</td>
<td>90</td>
<td>90</td>
<td>90</td>
</tr>
<tr>
<td>Administrative staff in the Courts of first instance</td>
<td>878</td>
<td>885</td>
<td>891</td>
<td>895</td>
</tr>
</tbody>
</table>

Numbers for the prosecution are not included, as the numbers are not available.

1.7 Caseload of the judiciary

1.7.1 Courts of first instance

Ordinary Civil Cases

<table>
<thead>
<tr>
<th>Number/year</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>Incoming cases</td>
<td>12372</td>
<td>12161</td>
<td>12915</td>
</tr>
<tr>
<td>Pending cases</td>
<td>7272</td>
<td>6960</td>
<td>7110</td>
</tr>
<tr>
<td>Decided cases</td>
<td>12696</td>
<td>11998</td>
<td>12337</td>
</tr>
</tbody>
</table>

Ordinary Criminal Cases

<table>
<thead>
<tr>
<th>Number/year</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>Incoming cases</td>
<td>15694</td>
<td>18191</td>
<td>15984</td>
</tr>
<tr>
<td>Pending cases</td>
<td>4243</td>
<td>5617</td>
<td>4730</td>
</tr>
<tr>
<td>Decided cases</td>
<td>14934</td>
<td>16795</td>
<td>16854</td>
</tr>
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</table>

Summary Criminal Cases

<table>
<thead>
<tr>
<th>Number/year</th>
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<th>2001</th>
<th>2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>Incoming cases</td>
<td>32954</td>
<td>36478</td>
<td>36663</td>
</tr>
<tr>
<td>Pending cases</td>
<td>1732</td>
<td>1926</td>
<td>1678</td>
</tr>
<tr>
<td>Decided cases</td>
<td>32643</td>
<td>36218</td>
<td>36853</td>
</tr>
</tbody>
</table>

²⁸ All numbers are full time equivalents.
²⁹ The number includes one director and 16 law clerks.
1.7.2 Courts of Appeal

**Civil Appeals**

<table>
<thead>
<tr>
<th>Number/year</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>Incoming cases</td>
<td>1971</td>
<td>1841</td>
<td>1835</td>
</tr>
<tr>
<td>Pending cases</td>
<td>1427</td>
<td>1448</td>
<td>1482</td>
</tr>
<tr>
<td>Decided cases</td>
<td>1741</td>
<td>1819</td>
<td>1809</td>
</tr>
</tbody>
</table>

*Interlocutory appeals – civil cases*

<table>
<thead>
<tr>
<th>Number/year</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>Incoming cases</td>
<td>1426</td>
<td>1370</td>
<td>1431</td>
</tr>
<tr>
<td>Pending cases</td>
<td>197</td>
<td>218</td>
<td>237</td>
</tr>
<tr>
<td>Decided cases</td>
<td>1451</td>
<td>1349</td>
<td>1409</td>
</tr>
</tbody>
</table>

**Criminal Appeals**

When a decision of the Court of first instance is appealed, the Court of Appeal must consider whether the appeal shall be heard or not. If the case is heard there will be a re-trial, with a new hearing, and all evidence will be presented again. According to the Criminal Procedure Act s. 321 the court of appeal may refuse to hear an appeal if the court finds it obvious that the appeal will not succeed. In the statistics, below, the difference between the incoming cases and the cases actually heard are the cases where permission for appeal is denied.

If such permission is granted the case may be heard by a jury (appeal on the question of guilt if the maximum sentence exceeds six years), by three judges and four lay judges (concerning the question of guilt in other cases, and appeals on sentencing if the maximum sentence exceeds six years), or three judges (appeal on sentencing in other cases).

<table>
<thead>
<tr>
<th>Number/year</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>Incoming cases</td>
<td>3100</td>
<td>3607</td>
<td>3474</td>
</tr>
<tr>
<td>Pending cases</td>
<td>111</td>
<td>154</td>
<td>124</td>
</tr>
<tr>
<td>Decided cases</td>
<td>3099</td>
<td>3564</td>
<td>3504</td>
</tr>
</tbody>
</table>

**Criminal Cases – heard by jury**

<table>
<thead>
<tr>
<th>Number/year</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>Incoming cases</td>
<td>243</td>
<td>303</td>
<td>292</td>
</tr>
<tr>
<td>Pending cases</td>
<td>134</td>
<td>156</td>
<td>158</td>
</tr>
<tr>
<td>Decided cases</td>
<td>239</td>
<td>279</td>
<td>287</td>
</tr>
</tbody>
</table>

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30. The distinction between the two kinds of appeal is related to the Norwegian Civil Procure Act. To a certain degree an “interlocutory appeal” is used also when the case is decided. In relation to case load, the relevant distinction is that a “full appeal” normally goes to a hearing, whilst an “interlocutory appeal” normally is handled in writing by the court of appeal.

31. In some cases when the appeal is limited to the sentence a limited presentation of evidence is chosen.
### Criminal Cases – heard by judges and lay judges

<table>
<thead>
<tr>
<th>Number/year</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>Incoming cases</td>
<td>422</td>
<td>485</td>
<td>448</td>
</tr>
<tr>
<td>Pending cases</td>
<td>176</td>
<td>215</td>
<td>183</td>
</tr>
<tr>
<td>Decided cases</td>
<td>426</td>
<td>446</td>
<td>482</td>
</tr>
</tbody>
</table>

### Criminal Cases – heard by judges

<table>
<thead>
<tr>
<th>Number/year</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
</tr>
</thead>
<tbody>
<tr>
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<td>427</td>
<td>483</td>
<td>493</td>
</tr>
<tr>
<td>Pending cases</td>
<td>121</td>
<td>166</td>
<td>193</td>
</tr>
<tr>
<td>Decided cases</td>
<td>424</td>
<td>439</td>
<td>465</td>
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</tbody>
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### Interlocutory appeals – criminal cases

<table>
<thead>
<tr>
<th>Number/year</th>
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<th>2001</th>
<th>2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>Incoming cases</td>
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<td>3575</td>
<td>3794</td>
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<tr>
<td>Pending cases</td>
<td>44</td>
<td>46</td>
<td>60</td>
</tr>
<tr>
<td>Decided cases</td>
<td>3420</td>
<td>3574</td>
<td>3777</td>
</tr>
</tbody>
</table>

#### 1.7.3 The Supreme Court

The Interlocutory Appeals Committee of the Supreme Court must give permission for a criminal appeal to be heard by the Supreme Court, in accordance with Criminal Procedure Act s. 323, and such permission shall only be granted if the case according to the Norwegian stare decisis doctrine will be relevant for other cases, or if there are strong reasons for hearing the case. In civil cases the Interlocutory Appeals Committee can refuse an appeal in a number of cases, in accordance with Civil Procedure Act s. 373.

The statistics of the Supreme Court only give numbers for appeals, not interlocutory appeals. There are also numbers on the total number of cases decided; this number includes both appeals and interlocutory appeals.

### Civil Appeals

<table>
<thead>
<tr>
<th>Number/year</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>Incoming cases</td>
<td>403</td>
<td>374</td>
<td>422</td>
</tr>
<tr>
<td>Appeal denied</td>
<td>318</td>
<td>284</td>
<td>305</td>
</tr>
<tr>
<td>Pending cases</td>
<td>92</td>
<td>73</td>
<td>NA</td>
</tr>
<tr>
<td>Decided cases</td>
<td>75</td>
<td>70</td>
<td>61</td>
</tr>
</tbody>
</table>

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32 In accordance with footnote 30. The same applies for criminal cases.

33 On the difference between these, cfr footnote 30.

34 The Interlocutory Appeals Committee has the power to deny an appeal, in certain circumstances.
Legal rules and actual functioning of case allocation between courts and within courts

2.1 Allocation between courts

The question of what cases are to be heard by what court can – logically – be raised as three separate questions.

First, there is the question on jurisdiction (subject-matter competence). As the general rule in Norway is that the courts have general competence within their geographical jurisdiction, this question is of limited interest. As pointed out, supra, paragraph 1.1, there are some minor exceptions. For the larger cities the judicial tasks are clearly divided between the courts, and there does not seem to be any reported cases on difficulties in practice. There may be some tension regarding the cases that can be brought before the land reallocation courts as well as before the ordinary courts, but in practice these cases seem to be limited. As mentioned, above, in paragraph 1.1, the court responsible for land disputes in Nordland and Troms has sole competence.

Second, there is the question of functional competence. The general rule is that most cases are to be heard by the Courts of first instance in the first instance36, supra in paragraph 1.1.37 The question arises – mainly – as to the exception from this general rule. The main limitation is that only some Courts of first instance handle some labour law conflicts.38 The question of what cases fall within the domain of this provision is not straightforward.

Third, there are the rules on territorial competence. Under Norwegian law this is the most practical question, and this is what I will discuss in the following.

2.1.1 Civil cases

The legislation on venue in civil cases is somewhat scattered.(over what exactly?) The basic regulation is found in the Civil Procedure Act (1915). Norway is not a member of the European Union. There is a treaty on the rules of venue in the European Economic Area – the Lugano Convention.39 The Lugano convention is supposed to regulate the rules on venue be-

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35 The number only show cases where an appeal has been granted.
36 The Civil Procedure Act, s. 2 no 1, the Criminal Procedure Act, s. 5.
37 Prior to August 1, 1995, criminal cases where the maximum punishment was more that six years imprisonment started before the courts of appeal. The weakness with this system was that the question of guilt could only be tried once. The reason for the reform was to strengthen the rights of the accused, so the question of guilt may be tried twice in some cases.
38 The Labour Act, s. 61 B. The District Court Committee proposed that this provision should be repealed, as this is an anomaly. However, the major Trade Union and the main employers society argued in favour of the provision, and their argumentation was accepted by the government, in accordance with St.meld. nr. 23 (2000-2001), p. 67, and accepted by the Parliament.
39 The Lugano Convention is based on the Brussels convention, and the rules are similar.
between the participating states (or Member States), but the Supreme Court has ruled that the convention also has implications for the internal rules on venue. As there has not been any rewriting of the relevant part of the Civil Procedure Act, the interpretation of some of the provision differs from the wording, due to the Lugano convention.

The venue of a case can be decided depending on a number of factors, which will be described. At the same time if more than one venue is possible for a case, the plaintiff may choose between the possible venues.

The forum domicilii
Any case can be raised in the judicial district where the defendant has his or her habitual residence, unless prohibited by other provisions. The question of habitual residence has two different aspects: first, the defendant has habitual residence in Norway, second, the place of the habitual residence of the defendant in Norway. The civil Procedure Act s. 21 states that the forum domicilii for organisational entities is the district of the court in which the board of directors has its seat.

Section 21 also implies that all cases against the Kingdom of Norway can be raised before the Oslo Court of first instance. The Court of first instance Committee proposed that cases against the government could be raised at the forum domicilii of the plaintiff; the reason for this being twofold, partly that it would ensure the plaintiff an effective access to justice, and partly that these cases would be spread over more than one court. The Government upheld the proposal, but found it reasonable to wait for a new civil procedure act, instead of amending the existing act. The Civil Procedure Act Commission has put forward a proposal in line with this.

Special rules on venue
In addition to the general rule on forum domicilii the Civil Procedure Act has a number of other – mandatory or alternative – venues. I will mention these briefly.

Land disputes can be brought before the court of the district in which the land in question lies; if there is a question about the border between two or more pieces of land, it has to be brought before this venue, in other cases it may be brought before this venue.

Disputes arising from a contract can be raised before the court of the district where the performance should have taken place, or did take place. However, if the plaintiff has forum domicilii in Norway, this is not applicable if the contract obligations concern payment of money.

40 The Civil Procedure Act, s. 17, in accordance with s. 18.
41 There are some provisions making modifications. The main exception follows from the Tax Collection Act s. 48 no 3; these cases are to be brought before the venue where the administrative decision was taken. As the tax authority has local branches making these decisions the cases are heard all over the country.
45 Civil Procedure Act, s. 22, s. 23 and s. 23a.
46 Civil Procedure Act, s. 25.
47 Civil Procedure Act, s. 25, sub-section 2.
The Business venue is indicative of the competent court in cases where the defending enterprise is concluding agreements on a permanent location, and the dispute has risen from such an agreement. The Business venue rule does also apply in some labour cases.

Cases based on tort, can be raised before the venue where the tortuous conduct has taken place. The question of where a tortuous conduct has taken place is not straightforward.

Disputes on heritance may be brought before the court of the (residence? place of death?) of the deceased.

Some cases on maritime law can be raised either at the court of the home harbour of the ship or at the court of the harbour where the ship happens to be.

If the case falls within Norwegian jurisdiction, but the defendant does not have a forum domicilii in Norway; there are some provisions that make it possible to file a case concerning immovable property at the court in which district this immovable property is situated.

If there is more than one defendant, one case might be raised against all defendants at the forum domicilii of one of the defendants, if the claimed obligation is identical or to a large extent identical.

Custody cases shall be heard at the court of the forum domicilii of the child in dispute. The hearing location of other family cases follows the general principle of forum domicilii of the defendant.

Freedom of contract
The parties are free to agree upon which court is competent in conflicts about their contract. For all practical purposes this is done when entering into a contract, where a clause of the contract stipulates that any dispute arising from the contract should be brought before a special Court of first instance. This option is used to a certain extent. A number of contracts actually stipulates a Court of first instance, and most standard agreements developed by one part would often stipulate the court of the forum domicilii of the party that has written the contract.

With one possible exception there do not seem to be many examples of forum shopping, based on special knowledge in one court. It has, however, been argued that Stavanger Court of first instance handles a number of cases regarding contracts in the petroleum sector, including cases that previously have been handled by arbitration. The actual extent of agreements stipulating this court as mandatory is unclear.

Lis pendens
As there is more than one possible venue for each individual case, it is possible that cases concerning the same subject matter are brought before two or more Courts of first instance.

48 Civil Procedure Act, s. 27.
49 Civil Procedure Act, s. 28.
50 Civil Procedure Act, s. 29.
51 Civil Procedure Act, s. 30.
52 Civil Procedure Act, s. 31.
53 Civil Procedure Act, s. 32.
54 Civil Procedure Act, s. 33.
55 The Children Act s. 57.
56 Civil Procedure Act s. 36.
Typically A might sue B and B sue A regarding the same subject matter in two different Courts of first instance.
In these cases the regulation on *lis pendens*, in accordance with Civil Procedure Act s. 64, stipulates that the last case filed should be dismissed by the court, *ex officio*. However, at the moment the court has no way of assessing the question of pending cases in other courts, so the court actually has to rely on the parties to bring the question of *lis pendens* before the court. This will – to a certain extent – be overcome with the new Case Management System for the judiciary (LOVISA).

**Transfer of cases to another court**
In some cases it is convenient that a case that correctly has been raised before one court is transferred to another court. There are two set of rules, that may be relevant.

In cases where one of the parties has claimed that all, or most of, the judges in the court are prejudiced and hence incompetent, the head of court (chief judge) has a possibility of putting the question of transfer to the relevant Court of Appeal. The Court of Appeal has to power to transfer the case to another court.

There is a more general provision opening possibilities for the transfer of cases between courts if there is just cause. A number of factors may be taken in consideration in which the parties and the receiving courts must be heard. If the receiving court does not object to file the case, the decision of transfer lies with the court where the case is brought before. If the receiving court objects to filing the case, the decision vests with the Court of Appeal, to which normally appeals against decisions of the first instance court can be lodged. This provision is flexible, and the legislation does leave discretion to the courts. There is some jurisprudence in this field.

**Proposed amendments**
There is a White Paper on a new Civil Procedure Act, and the plan of the Ministry of Justice is to present a Bill to parliament in the beginning of 2005. According to the White Paper the main principles discussed here will be upheld, though some of the special rules will be modernised. At the same time, the obligations arising from the Lugano Convention will be made more easily accessible in the new Civil Procedure Act.

**International Aspects**
From a practical perspective there are very few cases with international dimensions to the question of court competence. It seems that Norwegian courts find that they have competence in cases to a large extent, and that a question arising more often relates to the applicable law.

### 2.1.2 Criminal cases

**Main hearing – judgements**
The general rule is that the case shall be brought before the court, of the district where the criminal offence has taken place.

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57 Respectively, the Supreme Court.
58 Cfr The Courts Act, s. 118.
59 Respectively, the Supreme Court.
60 The Courts Act, s. 38.
61 NOU 2001:32 Rett på sak
62 The Criminal Procedure Act, s. 10.
It is not uncommon for one person to have committed several crimes in more than one judicial district. If such a situation occurs, the prosecution authority has the power to cluster the criminal cases when this may be done without undue delay or inconvenience. However, the last few years there has been a strife to bring cases more quickly before the courts. So the element of undue delay has been stressed. As the question of prosecution vests with different bodies within the prosecution authority, these bodies have to agree with the clustering of these cases at one court. In such case the prosecution authority may choose between the different venues.

**Transfer of cases**
The general rules, supra, paragraph 2.1.1, apply also in criminal cases. However, there is a possibility to transfer the case with the permission of a competent court, to another competent court, and permission from the receiving court is not necessary.

**Permission of the accused**
With the permission of the accused the prosecution authority can bring the case before a court, which does not have territorial competence. As a consequence, when the accused appears in court, the court will not judge its competence ex officio.

**Other cases than main hearings**
In all other cases than main hearings, the case shall be brought before the court in the judicial district where the witness resides, or happens to be. The provisions, supra, paragraph 2.1.1 relating to the transfer of cases or to the permission of the accused, apply also in these cases. It is an established practice that the prosecution authority has an option to choose the venue in these cases. There are, however, limitations.

**2.1.3 A few comments**
As the discussion indicates, there is no interference from the National Courts Administration or other administrative bodies. If there is a choice as to which courts will be addressed, the decision vests with the plaintiff.

The application of the rules is rather straightforward, and there is almost no tension between different courts in practical life. The question appearing most often in practice seems to be related to possible incompetence of all or a majority of the judges.

The number of Courts of first instance is to be reduced to 66, supra paragraph 1.3. In the deliberations leading up to the decision there was little focus on the relation between court competence and efficiency. As will be discussed more in detail, infra, in chapter 3, the reason might relate to other mechanisms, e.g. staffing of the courts.

**2.2 Allocation of cases within a court**

As mentioned, supra in paragraph 1.2, a large number of courts are rather small, with very few judges, and a small number is rather large. Only two of the Courts of Appeal are divided

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63 Cfr paragraph 1.5 on the structure of the prosecution authority.
64 The Criminal Procedure Act, s. 13.
65 The Criminal Procedure Act, s. 14.
66 The Criminal Procedure Act, s. 15.
67 The Criminal Procedure Act, s. 16.
68 The Criminal Procedure Act, s. 12.
69 Regulated by the Courts Act s. 119.
in divisions, and only three of the Courts of first instance are so divided. The decision to estab-
lish divisions in the courts vests with the National Courts Administration. \(^{70}\)

2.2.1 A few words on deputy judges

As mentioned, supra, paragraph 1.6, a high number of judges in the Courts of first instance are deputy judges. These are not permanently appointed judges, and the position may be held for two or three years. They are – to a certain extent – meant for training of the persons holding these positions. Normally a deputy judge is rather young, with few years of practice after leaving law school. As the table in paragraph 1.2 indicates, about 40 Courts of first instance have only one permanently appointed judge with one or two deputy judges. For these courts there has to be a stronger control on what cases are actually handed to the deputy judges. This also applies in the larger courts, in relation to the deputy judges.

2.2.2 The discretion of the chief judge

The simple regulation found in the Courts Act is that the allocation of cases to individual judges falls within the discretion of the head of court (chief judge). \(^{71}\) There is a provision enabling the issuing of a Royal Decree on the allocation of cases. \(^{72}\) Such Decree does not exist, though there was a Royal Decree at an earlier stage.

The question arising from this is what – if any – limitations are set for the discretion of the head of court in case allocation. This question has only to a limited extent been discussed in Norway, and the area is not altogether clear. It is therefore not possible to clearly indicate the present legal status regarding Norway.

At the annual judges meeting in 2000 head of court John Karlsrud argued that the head of court has the power to: \(^{73}\)

1. “Divide the judges into groups, provided that to all groups is allocated a full portfolio of cases, and that each judge is equal within the group.
2. Let specified cases be put on a cause list (rota), e.g. simplified criminal cases (including custody hearings), enforcement cases, bankruptcy and liquidations.
3. Allocate cases individually, in groups or any other way he or she might decide, insofar each judge is treated equally.
4. Give regulations to the administrative staff on the allocation of cases, and let the staff undertake the practical tasks.
5. Select judges with a special responsibility for certain areas, to operate on behalf of the chief judge, or to take care of other judicial tasks or to deal with a case before the case is allocated to one judge.
6. Allocate cases on a non-equal basis, or allocate one case to one specific judge based on criteria, such as working capacity, experience, backlog, rules on scheduling.
7. When needed reallocate cases on a voluntary basis. There should be a high tolerance for reallocation among the judges. In general, non-equal allocation, reallocation and changing of cases, may prevent damage in the processing of cases. It is

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\(^{70}\) Cfr the Courts Act, s. 19, sub-section four (for the Courts of first instance), s. 11, sub-section three (for the Courts of Appeal) and s. 4 (for the Supreme Court).

\(^{71}\) The Courts Act s. 19, sub-section three (for the Courts of first instance), s. 11, sub-section one (for the Courts of Appeal) and s. 7, sub-section one (for the Supreme Court).

\(^{72}\) The Courts Act s. 19 sub-section five (for the Courts of first instance) and s 11, sub-section five (for the Courts of Appeal).

\(^{73}\) Karlsrud (2000:6), the discussion is related to ordinary judges, not deputy judges. As indicated in 0 special considerations apply for deputy judges. The discussion is for the district court, but might be relevant also for the courts of appeal (Karlsrud 2000:1).
important to establish a climate for flexibility and acceptance that judges ask for help with their caseload, when needed.

8. Decide the size of his or her case load. According to practice in a number of courts, the chief judge may, not only decide at a general level the type of cases, but also which cases he or she should hear.

9. In a period, allocate to newly appointed judges, chosen cases, and also steer them away from types of cases that have a connection to previous employment, even though the judges is not incompetent.”

At the same time he argued that the head of court is not entitled to:

1. “Allocate the judges to departments, based on different types of cases, or let one or more judges handle specific types of cases
2. Repeatedly allocate special kinds of cases to one judge, because he or she has a special competence for these cases
3. Against the will of a judge, allocate fewer cases or types of cases to one judge, unless there is due cause for doing so. The chief judge should be careful with such actions, and it is not permissible to use them as sanctions.”

As mentioned, the legal situation is somehow unclear. The argumentation of Karlsrud is not necessarily accepted in detail. The main reason for referring them – in detail – is to give an indication as to the legal situation in Norway. There were some plans by the Ministry of Justice to assess this. However, this was given a low priority in the last two years before the establishment of the National Courts Administration.

According to the report *Sound and efficient judiciary* the competences of the head of court should be assessed (no 36)74:

“An assessment of the powers of the chief judge should be initiated, with a view of clarification between what are regarded judicial and what are regarded administrative activities. The clarification should have as its objective to ensure an efficient use of resources in the judiciary, through an active and efficient leadership. It should also be assessed whether the main elements of the tasks of the head of court should be clarified by amendments of the Court Act. The assessment should also encounter the relation between the National Courts Administration and the courts.”

To the extent of my knowledge, no such work has been initiated by the National Courts Administration. However, parts of this seem to fall within the scope of a new project on management in the courts that will be initiated in the near future.

2.2.3 A more practical approach

In most courts with more than one judge there is some version of an equal allocation of cases, based on some mathematical allocation. In most cases this implies that the cases are allocated by turn.

In the courts that are divided in divisions, the same principle appears to apply at two levels; the cases are allocated to divisions by turn, and allocated to judges in the division by turn.

74 Domstoladministrasjonen (2003b:30)
There are a number of cases, especially regarding civil enforcement, probate, insolvency, and so forth that in some courts are allocated to a limited number of judges. Typically these tasks are divided among the judges. At the same time, these cases are, in some courts, to a large extent handled by deputy judges.

Based on my own observations, it seems that some heads of court take a more keen approach to the allocation of cases, whilst other simply rely on predefined rules within the court. My impression is that if rules are used, there is little tension among the judges, whereas any strong activity from the chief judge might create some larger tensions between the judges. At the other hand, some heads of court – or heads of a court division – apparently have managed to build a stronger feeling of cooperation and in these cases as more active role is accepted by the judges.

In the courts with only one permanent judge and one or two deputy judges, the involvement of the head of court has to be stronger than in courts with hardly any deputy judges.

**Cause lists (rotas)**
Some of the larger Courts of first instance have developed cause lists (rotas) – for certain types of cases. Typically each judge is summoned to be responsible for summary criminal cases (including custody hearing) for a period of time. It seems that most of the larger courts have developed some kind of cause list for these cases. The underlying reason often is the custody hearings that have to be held the day the case is filed. In order to facilitate this there has to be an available judge.

Some of the specialist courts in the larger cities have developed similar cause lists for liquidation, bankruptcy, temporary injunctions, and so forth.

At least two Courts of first instance have developed a system with cause lists for criminal cases. There is no allocation of hearing judges to each case before the day of the hearing, and the judge is supposed to take whatever case is allocated to him or her. In Oslo, one of the reasons for developing such a system is that approximately 25% of the scheduled cases is never heard. They have, therefore, developed a system where more cases than might be heard are scheduled, in order to keep an efficient use of the judges.

**The courts of appeal**
In the Courts of first instance, one judge normally is responsible for the case from the moment it was filed, up to the moment of final decision. In the courts of appeal this is not so. Each court has developed some system for allocation of cases to judges. This judge is normally responsible for the case until the main hearing (or x weeks before the main hearing), at which time the case is allocated to new judges. In the court of appeal three judges sit in session. The courts of appeal schedule their cases based on pre-defined rules, and main hearing judges are allocated rather a short time before the date of the main hearings. The courts of appeal also have systems of schedules (rotas) for this allocation of main hearing judges to cases.

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75 At the moment a judge who does not agree with the allocation of cases has almost no practical options, if not coming to an agreement with the head of court. There is no procedure for complaint, so the only alternative would be to file a civil case against the Kingdom of Norway, represented by the National Court Administration. However, if one judge where to raise such a problem with the National Courts Administration, one would presume that the Administration would try to mediate between the judge and the head of court.

76 There are a number of reasons for this; in some cases the indictment has not been served on the accused; some witness has not been summoned; the accused does not appear in court, though his or her presence is necessary.
3. Un(expected) changes in caseload and backlogs

With the introduction of unified case management systems in the Norwegian judiciary in the late 1980s and early 1990s, the Royal Ministry of Justice also developed a standard for statistics, and a model for staffing of courts. The latter is based on empirical studies in 1993 and 1995. The model gives x minutes of judges and x minutes of administrative staff for each type of case of the Courts of first instance. These minutes are compiled and the ideal staffing for each court is presented. This model for staffing has been paramount for the administration of courts, undertaken by the Ministry of Justice. The model is upheld by the National Courts Administration that also has indicated plans for further development. The National Courts Administration is in the process of developing a similar model for staffing of the Courts of Appeal.

The statistics also include an annual presentation of caseloads, processing time for different types of cases, for each individual court, and compiled for the judiciary.

At an aggregated level the output of the model, for 2002, indicates that most courts are staffed according to this model. As the figure below shows, there is one court that is severely over-staffed. This is the Oslo Court of first instance, and there has been an ongoing discussion between this court and the Ministry of Justice for years on the applicability of the model for this court. At the same time the Oslo Court of first instance has been granted extra positions to reduce the backlogs, cfr infra paragraph. 3.2

![Over and under staffing in the Courts of first instance](image)

3.1 Caseload in different courts

The relevant view on the question of caseload is the caseload per judge (or administrative staff). The question will then be; are there differences in caseload between courts with the same – or similar – staffing?. As the table above indicates, there are some courts with a higher case load than others, but the vast majority of courts have similar caseloads.

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77 For a description of the introduction of IT in the Norwegian judiciary, see Hagedal (2001a) and Hagedal (2001b)
The practical use of the model for staffing has been – and still is – that if the model indicates that the court is understaffed, there is a good chance of getting funds for another judge or administrative staff member. This, of course, provided that the general funds for the courts allows this to happen. So far the general funding has – to a large extent – permitted additional staff. However, during the last years we have witnessed an increased caseload, and the funding seems insecure. One of the reasons for the increased caseload seems to be related to the additional staffing with the police and with the prosecution authority. The Ministry of Justice is aware of the relations between increased employment in the police and the caseload in the courts, but no model has been developed. At the same time, in the political sphere, there has been a strong drive for increased staffing in the police. If this attitude prevails, the caseload in the judiciary will increase, and unless funding for more staff is obtained, the judiciary will not be able to meet its obligations.

Viewed over time, there are few instances where one court has a strong increase in caseload during one particular year. For each court caseloads seem to remain rather stable, or rather that change develops over time and not unexpectedly.

Especially the courts in the larger cities argued that the model for staffing did not meet their requirements. The main argument was that they had cases that were more complex and took longer time to process. As a result of this, the model was modified for these courts.

3.2 Backlogs

There seems to be a correlation between processing time and backlogs. The normal view is that the backlogs create longer processing times.

To the extent of my knowledge there is no hypothesis as to why some courts have backlogs. However, three courts have been viewed as having problematic backlogs, and these courts have – with funds from the Ministry of Justice – established projects to reduce the backlogs. In establishing such a project the courts have taken on additional staff, normally temporary staff. Such projects have been going for some years, and progress is viewed to some extent. The backlogs are not reduced as much as hoped for. A problem is that the caseloads have increased at the same time. However, e.g. Gulating Court of Appeal has realised a reduced average case -processing time, and reduced backlogs. The court did this at the same time as the court was reorganised, which indicates that the new organisation was an improvement.

3.3 Processing time in different courts

From the early 1990s time standards have been set for the courts. For the Courts of first instance the time standards are:

- Ordinary civil cases: 6 months
- Ordinary criminal cases: 3 months

78 There is no formal definition of backlogs in the Norwegian judiciary, as this seems to based on the discussion relating to processing time. The argument seems to be that Court X has a backlog because it is unable to schedule its cases within reasonable time. In assessing the reduction of the backlog, one normally assesses the amount of cases that are not decided by the individual court.

79 Oslo District Court, Eidsivating Court of Appeal and Gulating Court of Appeal.
The Ministry of Justice has presented time standards to Parliament together with the annual budget proposals. After the establishment of the National Courts Administration, the status of these time standards is somewhat unclear, due to an unlucky editorial presentation of the budget proposal.\footnote{Cfr \textit{supra}, paragraph 1.4}

At the moment there has not been made any attempt of defining time standards for different types of cases, with the exception of two categories of criminal cases. Where the defendant is in custody or was under the age of 18 at the time of the alleged crime, the hearing shall start within six weeks after the case was brought to court, in the court of first instance, and within eight weeks after permission to appeal has been granted in the court of appeal. 2004 is the first year where statistic on these cases will be produced.

At the same time, some cases are generally accepted as priority cases, and should be handled more quickly than other cases. This includes child custody cases and labour disputes. There are no statutory time standards, no accepted time standards and no available statistics on the processing times for such cases. It is obvious to me that something should be done in this respect, and there is some acceptance within the National Courts Administration for such a view.

Since the introduction of time standards any court that does not meet the time standards, is obliged to explain its time usage. However, few further measures have been taken towards these courts. At the same time, as long as the courts meet the time standards, the Royal Ministry of Justice has not made any efforts to reduce the processing time in these courts.

The next table indicates the processing time for ordinary civil cases in each Court of first instance in 2002.
So far there has not been any study as to why some courts have longer processing time than others. Presumably, some courts have longer processing times due to backlogs. For the rest, there may be a number of reasons. What is known, is that some heads of court have a strong focus on processing time, whilst others do not. With the present statistical material, there is no information about the average processing time, depending on the actual processing of the case. Hence, if you are able to obtain a settlement at an early stage, your average processing time will be reduced.\footnote{It is unclear why the Royal Ministry of Justice never has produced any statistics as to the average processing time in cases where a judgement is passed on. Likewise, it is unclear why the National Courts Administration has not asked for such statistics.}

In the evaluation of the court structure in Oslo some attempts were made to evaluate the processing time of each individual judge. As indicated in the table, the average time for civil cases was 293 days for Oslo Court of first instance. Nine judges had an average processing time of more than 350 days, whilst six judges had an average processing time between 200 and 230 days. No statistical data were obtained for other years, but the impression of the leaders in that court is that this was not different from their impression of the production of the individual judges over previous years.\footnote{Knoff (2003:53)}

### 3.4 Organisational problems in some courts?

The question of organisational problems in individual courts may be straightforward. However, the Royal Ministry of Justice was rather reluctant in addressing such problems. The impression is that the Ministry was of the opinion that there were some problems in one court; hence it would take this up with the head of court. If, however, the head of court would not be interested in addressing the question, little would happen. In a few cases there were problems that became so apparent that they had to be addressed. The reason for this reluctance is found in the constitutional division of powers, as the Ministry was part of the administrative branch. Interference from the administrative branch in the judiciary was not taken lightly.

With the establishment of the National Courts Administration, this “problem” does no longer exist. It is presumed that the National Courts Administration will take a more active role in these questions. At the moment no initiatives have been taken in this respect. A more general project on management in the judiciary is about to start, and one may hope that the findings of this project will be used as input for the tasks that are to be fulfilled by the National Courts Administration in the future.

### 3.5 General remarks on the use of non permanent judges

The Courts Commission was appointed by Royal Decree 8\textsuperscript{th} March 1996 and presented its report on 20\textsuperscript{th} April 1999. This report is published as NOU 1999:19. One of the tasks of the Commission was to assess\footnote{NOU 1999:19 p. 396.}: \footnote{NOU 1999:19 p. 396.}

Temporary judges. Judges, including assistant judges, may be appointed for a limited period of time. As temporarily appointed judges, they do not enjoy the same security of ten-
ure as permanently appointed judges. The Commission will «examine and evaluate and assess the existing arrangements and current practices and, if appropriate, propose changes».

The Commission stressed that there were a number of different types of non-permanent judges in Norway:

- “Judges who are temporarily appointed for a limited period by decision of the Council of State, the Ministry of Justice, or a County Governor;
- Deputy judges who are appointed by the president of a court for a period of up to two years, with limited opportunity for renewal of the appointment;
- Extraordinarily appointed Court of Appeal Judges who are appointed from amongst retired judges by the Ministry of Justice for one year at a time, to be called by the senior judge president of the Court of Appeal in individual cases;
- Judges from the District and City Courts who are called to serve in the Court of Appeal;
- Already appointed judges who are appointed by the Ministry of Justice or the County Governor to sit as substitute judges in individual cases before other courts.

The two categories that apply to the courts of appeal are discussed in 0. The Commission argues on the principal aspects of temporary judges and argue that the use of temporary judges should be reduced in some respects. The details will not be discussed here.

Based on the report from the Courts Commission, the Government presented a bill to the parliament. Some of the proposals were upheld, and some were amended by the Government. Briefly, following the general hearing, the principal aspects and practical aspects had to be balanced. A number of courts had aired their view, and the balancing of interest differed between the courts.

Relevant parts of this bill are:

- Appointment of judges allocated to more than one court should be tried and evaluated.
- Appointment of extra judges in larger courts – that has to lend judges to other courts – should be tried and evaluated.
- The possibility of appointment of judges for one case should not be continued; instead cases will be transferred to another court.
- Judges may be appointed to act in another court for a period of time, normally not more than two years, in addition to his or her ordinary tasks as a judge.
- The use of deputy judges should be reduced.

The proposals have been accepted by the Parliament. However, so far no judges have been appointed to act in another court. Likewise no extra judges have been appointed. Due to the current reduction of heads of court there is a possibility that they will act in other courts. The details are – at the moment – somehow unclear, as the agreements between these former head of courts and the National Courts Administration just recently has been finalised.

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84 NOU 1999:19 p. 406
85 See NOU 1999:19 p 207 – 244.
86 In accordance with the Courts Act s 38 and s 119. The reason for this is that with the former system the County Governor could, in these cases, decide which judge should handle each case. The practical use of this provision – and the new one ordering to transfer such a case to another court – is that it implies with incompetence for all or a majority of judges.
3.6 “Task force” of judges

In the Courts of first instance there was a system in the 1980s with deputy judges employed by the Ministry of Justice that worked in different courts with severe backlogs. This system was abolished. The reason for this partly was that recruitment was difficult, and partly that this was not cost efficient. At the same time, the severe backlogs that some courts had in the 1980s have been worked down, and the Ministry focused more on a pro-active approach to backlogs. There have been some cases where courts have been granted temporarily judges, in order to prevent backlogs. However, with the model for staffing, and statistical information, the Ministry has the necessary tools in order to identify potential backlogs.

With the present reduction of the number of Courts of first instance a number of former heads of court will loose their positions. Due to constitutional and other provisions, these heads of court are not transferred to ordinary positions as judges. They will be affiliated with one court, but with a high degree of flexibility. Under the agreements entered into with these heads of court, some will work as flexible judges, and work on the peak loads in other courts.

3.7 The use of non-permanent judges in the courts of appeal

The Courts of appeal have flexibility in the use of judges as there are two kinds of non-permanent judges they may use:87

- “Extraordinarily appointed Court of Appeal Judges who are appointed from amongst retired judges by the Ministry of Justice for one year at a time, to be called by the senior judge president of the Court of Appeal in individual cases;
- Judges from the District and City Courts who are called to serve in the Court of Appeal” 88

The head of court decides for each individual case which judge should be called and which extraordinary judges should participate. In practice the heads of court have made guidelines for this. It is also worth mentioning that it is possible to call a judge from the first instance from anywhere in the country, but if the court of appeal wants a judge from outside its own geographical area the judge must agree.

Until 2002 the courts of appeal could have the decision making panel composed of one appointed judge as the president of the panel, and two non-permanent judges. Actually the president of the panel might be a temporarily appointed judge. In 2002 this was amended, and now two ordinary judges must be part of the decision making panel.

In 2002 all Courts of appeal had 67 – 77 % of the man hours in session with permanent judges and the rest with non-permanent judges. The use of non-permanent judges differs, as some courts of appeal have a high percentage of judges of the courts of first instance, and others have a high percentage of extraordinary judges.

Prior to 2002 some courts of appeal had a rather low percentage of permanent judges. E.g. Agder Court of Appeal in 1999 used 49,2% permanent judges, i.e. more than 50% of the man

87 In addition to the general possibility of temporarily appointed judges, i.e. judges who are appointed as ordinary judges, but for a limited period of time.
hours in session were by non-permanent judges. During the last 5 years the statistics show that there has been a gradual increase in the use of permanent judges. To a certain extent this is because the courts filled more positions as permanent judges. E.g. Gulating Court of appeal has a number of open positions, as recruitment was difficult.

4. Emerging problems and creative solutions

As indicated in this report, the Norwegian judiciary is undergoing changes. A new National Courts Administration has been set up, the number of courts of first instance is being reduced, in addition the task of maintaining the land registry is removed from the courts, reducing the number of administrative staff. At the same time a new line of ICT solutions is being developed and introduced in the judiciary.

The question of allocation of cases to courts has only to a limited extent been addressed as a problem. The rationale behind the reduction of the number of courts of first instance has to a larger extent been based on other parameters than efficiency.

As mentioned before, a model for staffing has been developed for the Courts of first instance, and up till now new judges and administrative staff have been made available to the courts that where understaffed. At the moment the National Courts Administration has set up a project group to develop a similar model for the Courts of Appeal. In doing so it seems apparent that some of the weaknesses in the model for the Courts of first instance should be solved.

In order to uphold the services of the judiciary it is necessary to deliver justice in due time. It is necessary to develop a better understanding of court administration. The National Courts Administration is in the process of launching such a project. In compliance with the Norwegian tradition it is necessary to have adequate staffing for each court. In doing so it seems to be necessary to develop better models for staffing, and keep a pressure on the Government and the Parliament for a sound founding of the courts also in the future.

5. Literature

NOU (Norges offentlige utredninger) – (White Papers, normally written by a committee appointed by Royal Decree).
NOU 1999:22 Domstolene i første instans (Førsteinstansdomstolenes arbeidsoppgaver og struktur).

Ot.prp. (Odelstingsproposisjon) (Bill, a proposal from the Cabinet to the Parliament on enacting legislation).
Ot.prp. nr. 44 (2000-2001) Om lov om endringer i domstoloven m.m. (den sentrale domstoladministrasjon og dommernes arbeidsrettslige stilling).

Inst.O. (Innstilling til Odelstinget) (A proposal from a parliamentary committee on enacting legislation).
Innst. O. nr. 103 (2000-2001) Innstilling frå justiskomiteen om lov om endringar i domstolloven m.m. (den sentrale domstoladministrasjon og dommarane si arbeidsrettslege stilling).
St.meld. (Stortingsmelding) (Green Paper, a communication from the Government to the Parliament).
St.meld. nr. 23 (2000-2001) Førsteinstansdomstolene i fremtiden.
St.meld. nr. 13 (2001-2002) Fremtidig organisering av tinglysing i fast eiendom.

Innst.S. (Innstilling til Stortinget) (A proposal from a parliamentary committee that is not related to enacting legislation).

Budsjett-innst. S. (Budsjettinnstilling) (A proposal from a parliamentary committee to the parliament on the annual budget).

Domstoladministrasjonen (2003a) God og effektiv rettspleie, Trondheim.
Hagedal (2001a), Morten S, Norway: practical perspective; in Lodder, Oskamp and Schmidt (eds) IT support of the Judiciary in Europe, Den Haag.