

THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED BY NORWAY

ARTICLE 11 UNCAC

JUDICIAL AND PROSECUTORIAL INTEGRITY

NORWAY (EIGHTH MEETING)

Courts

The Norwegian Courts Administration is responsible for the central administration of the courts in Norway. The Norwegian Courts Administration was established in 2002 to ensure the independence of the courts.

A basic principle for the Norwegian courts is public access. According to the Courts of Justice Act § 124, the main rule is that all hearings, proceedings and judicial decisions are public.

(art. 7)

The Judicial Appointments Board is appointed by the Government to consider applications and to make recommendations regarding appointment of judges.

All open judicial positions are publically announced and the official application lists are made available online.

Judges should meet high standards as regards to professional qualifications and personal characteristics, cf. the Courts of Justice Act § 55. The Board has developed a publically available policy document (revised in May 2016) that describes the different aspects of the appointment process and the eligibility requirements.

On the basis of the applications, interviews of applicants and the Board's assessment thereof, the Board submits a recommendation to the Ministry of Justice, including a prioritized list of three candidates. The Board's prioritized list is made available to the public, but not the grounds for the recommendation, cf. the Courts of Justice Act § 55 i. The appointment is done by the Government (King in Council). In principle the Government may, after consulting the Board, appoint an applicant that is not amongst the three recommended candidates, but this has never been done. However, there has been a few cases where one of the alternative candidates has been appointed.

The Judicial Appointments Board is an independent body. It was established in 2002 and evaluated in 2006. The members of the Board are appointed by the Government (King in Council).

The Judicial Appointments Board consists of three judges from the Supreme Court, the courts of appeal or the district courts, one lawyer, one jurist employed in public sector and two members who are not jurists, cf. § 55 a.

The Council of Europe's Group of States against Corruption (GRECO) has recently evaluated corruption prevention in respect of Norwegian members of parliament, judges and prosecutors.¹ GRECO has previously made two recommendations regarding corruption prevention in respect of judges. One was about openness on temporary appointments of judges, and the other was on the strengthening of training and awareness including ethics and conflict of interest. GRECO considers now that both recommendations has been implemented satisfactorily.

(art. 8)

The Supervisory Committee is the complaints and disciplinary authority for judges, cf. chapter 12 of the Courts of Justice Act. The members of the Supervisory Committee are appointed by the Government (King in Council). The Committee consists of two general public representatives, one lawyer, two judges from the ordinary courts and one land court judge.

The Courts of Justice Act states that «Judges shall be independent in his or her judicial activity. Judges shall perform their judicial duties impartially and in a manner which engenders general trust and respect», cf. § 55. In addition, ethical principles for judge behaviour have been issued.

Complaints can be submitted by a party, a lawyer or for example a witness in a lawsuit that has been directly affected by the judge's conduct. The same applies to others who are directly affected, such as lay judges or experts. Complaints can be based on allegations of behaviour in breach of appropriate judicial conduct or in contravention of the obligations of the position of the judge. As a rule, a complaint can only be based on alleged misconduct of a judge's performance of his or her position as a judge. The Committee cannot consider circumstances which can be subject to an appeal.

In addition to complaints cases, the Supervisory Committee may consider misconduct of judges ex officio. The Committee may make general statements on the concept of "appropriate judicial conduct".

If the Committee finds that the judge has acted in breach of appropriate judicial conduct, it may adopt disciplinary measures in the form of criticism or warning. A warning is the strictest form of reaction.

Judges may not be laid off or relocated against their will and may only be dismissed in accordance with legal procedures or interlocutory orders, cf. § 55 (5).

(art. 8 and 11)

¹ <http://www.coe.int/en/web/greco/evaluations/norway>

To ensure confidence in judges' independence in handling cases, detailed rules regarding approval and registration of judges' outside activities, including investments, must be reported in a public register to ensure openness.

(actions required and challenges)

Questions have been raised if the system of appointing judges, where the Government (King in Council) in principle can appoint another candidate than those recommended by the Board, or appoint the second or third candidate on the Board's prioritized list, is sufficient to ensure the independence of judges. Further, some has pointed out that also the Board is appointed by the Government (King in Council) and especially amongst judges has expressed that the representation of judges in the Board should be strengthened.

When it comes to registration of judges' outside activities, there have been some challenges ensuring that all judges, including temporary judges, fulfil their duties as to keep the register updated and correct. The National Court Administration has the responsibility for the register and has expressed that necessary steps will be taken to ensure compliance with the regulation.

Public prosecution

(recruitment to public prosecution, art 7)

In general, recruitment to public prosecution follows the same rules as applies to recruitment of public servants in general.

Applicants to positions in public prosecution must have a satisfactory conduct. Information on the requirement of good conduct is announced in the vacancies. Applicants may have to document their conduct by presenting a certificate of good conduct.

Personnel in public prosecution must be lawyers. No exemptions for this requirement are made in the Higher Prosecuting Authorities and with a very few exemptions for public prosecutors serving in the Prosecuting authority in the Police. In addition to criminal law and criminal procedure, ethics has become a more central topic in the curriculum at faculties of law at Norwegian universities in recent years. As a part of this, professional code of ethics for the most common legal positions is given, including public prosecution. This curriculum should provide personnel in public prosecution with good preconditions for acting within the boundaries of conduct as given in law, regulations and codes of conduct.

Once recruited, prosecutors in the Norwegian Police undergoes an extensive basic training. Ethics and rapport of the professional role is included in this training. Completed basic training is a precondition for prosecutors in the police force to be granted extended authorisation. A considerable number of public prosecutors have background from the Police, and thus, have completed this basic training. In addition, the Director of Public Prosecutions regularly arranges seminars for newly recruited prosecutors and training is also provided

through seminars. A public commission has recommended strengthening the training for prosecutors.

Positions in Public Prosecution are not subject to rotations due to time limits to the prosecutors' appointment. Public Prosecutors are senior civil servants who, according to the Norwegian Constitution, cannot be removed without verdict. This legal protection contributes to ensure independence and protects against improper influence or pressure. The Director of Public Prosecutions, however, can be dismissed by decision by the King in Council, with no prior verdict. This arrangement implies that the Public Prosecution, in principle, is not beyond political control. In individual cases, however, the Prosecution Authority is independent from political authorities.

(art 8)

Public Prosecutors are subject to several regulations on ethics. This includes Ethical Guidelines for Public Service, Guidelines on Gifts and Ethical Guidelines for personnel in Public Prosecution.

Provisions on the ability to have extra commissions or side income, including transparency of such, is regulated in Ethical Guidelines for Public Service. Side income may lead to conflicts of interest that subsequently may lead to legal incapacity.

The Public Prosecutions' ethical guidelines includes provisions on requirements on conduct that is independent, fair, unbiased, based on integrity, quality and efficiency, proficiency, respect, discretion etc. Currently, these guidelines are in effect for the Higher Prosecution Authority, but will according to plan be expanded to Public Prosecutors and Public Prosecutors in the Police.

The ethical guidelines for Public Prosecution also provides guidelines on how personnel shall behave if breaches occur. Accusations on breaches shall in general be handled within the Prosecution Authority, but the possibility to address breaches in other pertinent ways are not excluded.

A public commission has recommended that an independent body that can hear cases on possible breaches on the Ethical Guidelines.

The provisions on notifications in the Working Environment Act also applies to Public Prosecutors. Basically, employees are entitled to notify on issues that are criticisable and that there will be no retribution from the employer.

If corruption is suspected in the service of a Public Prosecutor, the pertinent measure will be to notify the case to the Bureau for the Investigation of Police Affairs, that is responsible for pursue criminal acts conducted by personnel in Police or Public Prosecution Authority committed in their capacity as such.

(art. 11)

Preserving the independency of the Public Prosecution Authority is an important measure to protect against undue influence from external parties. The Norwegian Public Prosecution Authority is in reality independent both from political authorities and others. It is a long standing custom that the King in Council (the Cabinet) defers from using the authority to instruct the Public Prosecution Authority albeit the Criminal Procedure Act permits such instructions.

A commission has recommended to further strengthen the Public Prosecution Authority's independence.

The independence of the Public Prosecution Authority refers to the authority as such. There are, however, internal control mechanisms. Higher authorities controls subordinate agencies of the Public Prosecution Authority. The control takes place through normal handling of individual criminal cases, either submitted to a higher authority as complaints or by control or by inspections a higher authority initiates by their own discretion. Decisions to issue an indictment will be subject to control by the courts where the Prosecution Authority's dispositions during the investigation are often under close scrutiny.

According to the Criminal Procedure Act, the Public Prosecution Authority is subject to tight requirements of impartially and objectiveness and is further required to ensure

notoriety for the prosecution. Rules and procedures for registration of criminal cases and of the decisions made by the Public Prosecution Authority, combined by the general requirement of written proceedings, limits the risk of manipulation and maintains further the ability to verify the proceedings.

The rules of legal competence are also important. If a servant or someone close to him/her has a personal interest that a case reaches a certain conclusion, or that such an impression may be made, it may easily be concluded that legal incompetence has occurred. The individual servant are obliged to assess their own legal competence and superior officers can decide that subordinates lacks competence. The courts may try the legal competence of servants in the Public Prosecution Authority, and if legal incompetence is concluded, the servant's dispositions in the case are deemed void.

The servants of the Public Prosecution Authority are also subject to the regulations aiming at preventing corruption in the Criminal Law and the Civil Servants Act.