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# The International Comparative Legal Guide to: Litigation & Dispute Resolution 2011

## A practical cross-border insight into litigation & dispute resolution

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**CDR**  
Commercial Dispute Resolution

# Norway



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## I. LITIGATION

### 1 Preliminaries

#### 1.1 What type of legal system has Norway got? Are there any rules that govern civil procedure in Norway?

The Norwegian legal system is based on continental traditions and civil law, rather than the English common law system.

The new Dispute Act is the main statute that governs civil proceedings. The previous act on Civil Procedure was from 1915 and the new legislation was a result of a thorough review of the court system. Several changes were introduced, and the new Dispute Act became effective on 1 January 2008.

#### 1.2 How is the civil court system in Norway structured? What are the various levels of appeal and are there any specialist courts?

Norway has a unitary court system with three tiers. It consists of local Courts of first instance, regional Appeal's Courts, and the Supreme Court located in Oslo. With the new Dispute Act, the local Boards of Conciliation is the first instance for some claims.

The civil court system handles all civil disputes including public administration and tax, as well as criminal proceedings.

With few exceptions, Norway does not have specialised courts.

In respect of the various levels of appeal, see the response to question 9.4.

#### 1.3 What are the main stages in civil proceedings in Norway? What is their underlying timeframe?

Civil proceedings commence with a preparatory discovery stage that leads to oral hearings and a written ruling from the court. First the claimant files his claim and then the defendant files a statement of defence. In the preparatory stage the parties may file further written submissions.

Immediately after the response has been filed by the defendant, the court will call for a meeting to plan the process and fix dates for the hearing and the last date of submission of evidence and legal arguments.

At the hearing, the parties present their evidence and arguments. In addition, all witnesses and experts are heard. Judgment is delivered thereafter.

The length of the different stages varies due to for example the complexity of a case. It was a clear ambition with the new Dispute Act that court proceedings should be managed efficiently.

The time limit for the judge to issue the written ruling under the Dispute Act is, as a general rule, 2 weeks after the oral hearings. In practice, this is rarely complied with, and judgments will usually be rendered within 3 – 6 weeks after the hearing. The preparatory stage may last 6-12 months, or more.

In Norway expeditiousness is measured in relation to a set of time targets. The current average time target for handling civil cases in the district courts is 6 months, while the actual average handling time in recent years has varied between 6.5 and 7 months, with considerable differences between different types of cases and different courts. The corresponding figures for an appeal on the merits to the court of appeal are a target of 6 months and an average performance varying in recent years between 9 and 10 months. In the Supreme Court, the average handling time was less than 6 months from approval being granted by the Appeals Committee until the judgment was rendered.

#### 1.4 What is Norway's local judiciary's approach to exclusive jurisdiction clauses?

Exclusive jurisdiction clauses regarding choice of law and legal venue agreed between the parties are, in general, accepted. Such agreements are subject to the *ordre public* concept.

The starting point pursuant to Norwegian private international law is that the parties are free to agree to governing law. The Dispute Act allows for the parties to make an agreement on legal venue-clauses. An agreement with a consumer or an agreement to extend or restrict Norwegian courts' international jurisdiction must be in writing.

#### 1.5 What are the costs of civil court proceedings in Norway? Who bears these costs?

The general rule in Norway is that a winning party is entitled to full compensation for his costs from his opponent. The losing party may be exempted from liability for costs if there was justifiable cause for having the case tried, if the successful party can be reproached for bringing the action or rejecting a reasonable offer to settlement, or if the case was important to the welfare of the losing party and he was in an inferior position.

If neither party can be said to have won the case, the main rule is that each party shall bear their own costs. A party, who has been successful to a significant degree without winning the case, may be

awarded costs if there are reasonable grounds for it. In certain situations, a party may be awarded costs irrespective of the outcome of the case, particularly if the opposite party can be fully reproached.

The Dispute Act aims to reduce the parties' legal fees. Active case management and proportionality reviews should be the central instrument for achieving this.

### 1.6 Are there any particular rules about funding litigation in Norway? Are contingency fee/conditional fee arrangements permissible? What are the rules pertaining to security for costs?

A person or a company without means may initiate cumbersome proceedings against a counterparty that in consequence hereof carries the risk of not being able to recover awarded legal costs.

There are no restrictions in obtaining third party financing of litigation, but this is not common.

A defendant may require a claimant not domiciled in Norway to grant security for legal costs potentially awarded to the defendant, provided however that such security may not be ordered by the court in violation of Norwegian international non-discrimination obligations on domicile or if such grant is deemed unwarranted under the circumstances by the court.

Norwegian lawyers usually charge fees by the hour; the hourly rate may vary. The Dispute Act does not include substantive rules on lawyers' fees.

The Norwegian Bar Association has issued guidelines on legal fees. Contingency fees are prohibited in the Code of Conduct adopted by the Norwegian Bar Association. Conditional fees are likely to be accepted as long as they do not violate unfair terms of contract of the Code of Conduct.

## 2 Before Commencing Proceedings

### 2.1 Is there any particular formality with which you must comply before you initiate proceedings?

The Dispute Act introduced an obligation to notify a counterparty of a claim which could be referred to the courts, and the legal and factual basis for the claim. The other party shall consider the claim and the legal basis, and respond.

Both parties are required to disclose to the other party important documents and other important evidence that such party does not expect the other party to be aware of, whether or not such evidence supports the other party or not.

### 2.2 What limitation periods apply to different classes of claim for the bringing of proceedings before your civil courts? How are they calculated? Are time limits treated as a substantive or procedural law issue?

Time limits as to the statute of limitation are treated as a matter of substantive law. This implies that a judge cannot dismiss the case without hearing the case bases on the statute of limitation. Statute of limitation issues need to be taken under hearing and if the claim is prescribed the court will give judgment in favour of the defendant.

The Act on Limitation provides a general limitation period of three years from the due date.

## 3 Commencing Proceedings

### 3.1 How are civil proceedings commenced (issued and served) in Norway? What various means of service are there? What is the deemed date of service? How is service effected outside Norway? Is there a preferred method of service of foreign proceedings in Norway?

Civil proceedings are commenced by the filing of a claim to the Conciliation Board or by a writ to the local court of first instance. The court then usually serves the claim by sending the claim by ordinary mail with a written acknowledgment of receipt to be returned, with a time limit (usually three weeks) for filing a statement of defence. After the parties have notified the court of their respective procedural address for the case, further documentation can in general be served by the court to that address by using ordinary mail.

Service of documents on persons (natural or a corporation) with a known place of residence abroad shall be carried out through the Norwegian Foreign Ministry service and the corresponding foreign governmental authority.

Norway is a party to the Hague conventions on service of documents in civil and commercial matters, and the convention of taking of evidence. In addition, Norway has concluded treaties with the Nordic countries, and with the UK, Austria and Germany.

In general Norwegian courts will accommodate requests from foreign courts. The main rule is that requests should be submitted through the Norwegian Ministry of Justice. In some instances (Nordic countries and Germany), requests may be exchanged directly between the courts.

### 3.2 Are any pre-action interim remedies available in Norway? How do you apply for them? What are the main criteria for obtaining these?

There is a possibility to apply for an interlocutory decision by the court to secure a claim pending a final judgment in the matter. A claim for payment of money may be secured through seizure of assets (Norwegian: arrest). Other claims may be secured on a temporary basis through an injunction ordering the defendant to abide by specific restrictions, or taking temporary control over assets in the possession of the defendant.

The requirement is that the actions of the debtor indicate that the enforcement of a claim will be impossible or substantially hampered.

A claim for a ruling may only be rendered if the claim and the basis for a temporary security are substantiated. The claimant is liable for any losses suffered by the defendant if the claim was unmerited. The claimant may be required to grant due security for such potential losses.

The court will normally call a hearing of the matter, and render its decision. The court may also render its decision without oral hearings based on the application of the claimant if this is required to prevent losses. In this event, the parties may request a subsequent oral hearing of the matter, after which the court may reconsider its decision.

### 3.3 What are the main elements of the claimant's pleadings?

The claimant's pleadings should name the applicable court, the names of the parties and counsels, the claim, factual circumstances and legal basis, as well as evidence (documents/witnesses) which will be presented.

### 3.4 Can the pleadings be amended? If so, are there any restrictions?

The pleadings can, under the preparatory phase, be amended. A party that is in the wrong can only be admitted permission to amend the pleadings when strong reasons for doing so exist. If it is one of the parties' lawyers that have made the mistake it will only be given permission to amend the pleadings in exceptional cases.

## 4 Defending a Claim

### 4.1 What are the main elements of a statement of defence? Can the defendant bring counterclaims/claim or defence of set-off?

The statement of defence shall inform whether the claim is acknowledged or contested, the grounds and supporting evidence of the facts for contesting, including jurisdictional or other procedural objections and a list of the evidence that will be presented.

Counterclaims and the set-off defences are generally allowed after the rules of joinder of causes of actions.

### 4.2 What is the time limit within which the statement of defence has to be served?

The court sets the deadline, usually three weeks, within which the statement of defence has to be filed with the court.

### 4.3 Is there a mechanism in your civil justice system whereby a defendant can pass on liability by bringing an action against a third party?

A defendant may file a notification of claim against a third party that the defendant holds liable if and to the extent the outcome of the ruling hold the defendant liable.

### 4.4 What happens if the defendant does not defend the claim?

If the defendant fails to defend a civil claim, or fails to file a statement of defence the court may give a judgment in default in favour of the claimant. The defendant can apply for a rehearing or appeal the judgment.

### 4.5 Can the defendant dispute the court's jurisdiction?

If the defendant wishes to dispute the jurisdiction of the court, the defendant needs to state such objection as soon as possible, usually in the statement of defence.

## 5 Joinder & Consolidation

### 5.1 Is there a mechanism in your civil justice system whereby a third party can be joined into ongoing proceedings in appropriate circumstances? If so, what are those circumstances?

A third party can be joined into ongoing proceedings in the preparatory phase, so-called joinder of parties; see question 4.3.

If a case concerns the rights of a third party, he may participate in the proceedings, supporting either party as an intervener.

### 5.2 Does your civil justice system allow for the consolidation of two sets of proceedings in appropriate circumstances? If so, what are those circumstances?

The Norwegian court system allows consolidation of two sets of proceedings in appropriate circumstances.

The court has the power to consolidate two or several actions which raise similar issues for joint hearing. The two sets of proceedings need to be raising similar questions. It must be possible to treat the two cases with the same composition of the court and by the same form of procedure.

### 5.3 Do you have split trials/bifurcation of proceedings?

The Norwegian Dispute Act gives an opportunity for split trials/bifurcation of proceedings. The court may decide that certain claims or defences should be argued and heard separately.

## 6 Duties & Powers of the Courts

### 6.1 Is there any particular case allocation system before the civil courts in Norway? How are cases allocated?

In general there is no case allocation system in Norway. The main rule is that a case is allocated to the court where the defendant has its legal venue. The parties may agree on a specific legal venue.

### 6.2 Do the courts in Norway have any particular case management powers? What interim applications can the parties make? What are the cost consequences?

The Dispute Act empowers the courts with a duty of active case management and the court shall assure that cases are thoroughly and expediently dealt with and that irrelevant matters and evidence are excluded.

In relation to interim measures, see the response to question 3.2.

### 6.3 What sanctions are the courts in Norway empowered to impose on a party that disobeys the court's orders or directions?

The court is empowered with sanctions such as a judgment of default if a party does not attend the trial. The court can also issue deadline fines, court-imposed fines and other impositions of fines, and it may order that a party shall be brought to the hearing. The courts have the power to issue fines based on contempt of court rulings.

### 6.4 Do the courts in Norway have the power to strike out part of a statement of case? If so, in what circumstances?

A court may disallow a case to be heard or a part of a claim to be heard if the case/the claim is not considered a dispute to be resolved based on the rules of law between parties with a specific and actual legal interest as opposed to conflict of interest issues with no direct or indirect legal impact on the parties involved.

### 6.5 Can the civil courts in Norway enter summary judgment?

A party may request that the court follows a simplified process in cases where the outcome seems obvious. The requirement is that

the court finds it clear that a claim will fail, or that the defences are unsustainable. The court renders its judgment on the basis of the filed submissions, without a hearing. The decision to allow a simplified process may not be appealed, but the judgment as such may be appealed under the general rules on appeals.

#### 6.6 Do the courts in Norway have any powers to discontinue or stay the proceedings? If so, in what circumstances?

The proceedings may be split up into several claims or disputes. If the parties, during the proceedings, agree on a claim the court will settle the claim immediately on this basis.

The court may also decide to postpone the trial. It can also order to stay the trial under certain circumstances, for example if a party dies or if the parties make an agreement, to stay the proceedings.

## 7 Disclosure

### 7.1 What are the basic rules of disclosure in civil proceedings in Norway? Are there any classes of documents that do not require disclosure?

As a general rule, any party is under an obligation to disclose documents which are in his possession, or which he may get access to. The parties are required to disclose important documents and other evidence known presumably by only one of the parties, even if such documents or evidence support the other party.

A party may be ordered by the court to respond to questions as to whether they are aware of evidence, and undertake necessary investigations in this respect.

A party may request the counterparty to produce specifically identified documents. It is under the courts discretion to decide how the documents should be produced. The court may also render decisions on enforcement of its ruling in respect of the evidence.

Documents which a party is required to disclose must be reasonably identified. It is not acceptable to file a request for documents generally relevant to the case. As long as the documents are in the possession of a party, they must be produced under litigation, regardless of whether they are held in Norway or abroad.

A party must disclose documents which he may have access to. This would require a party to disclose evidence in the possession of third parties which he controls, such as subsidiaries, provided that the documents are deemed to be relevant to the case. The same applies to documents held by third party advisors, to the extent that a party is entitled to obtain the documents, subject to the client attorney privilege.

### 7.2 What are the rules on privilege in civil proceedings in Norway?

The courts may, under the Dispute Act, not hear evidence in the form of a testimony from lawyers or counsels on information given to them in confidence under the client attorney privilege. The rules on privilege apply directly on information given by the client in confidence related to the actual assignment.

The rules on privilege also apply to in-house counsels, but only to the extent they act as counsel and are subject to the confidentiality restriction under the legislation.

In addition civil servants, doctors, journalists and priests are generally not obliged to provide witness evidence regarding information that they received in the practise of their profession.

Further, a person is always entitled to refuse to reveal a fact if the disclosure of information would be self-incriminatory or it would incriminate a person related to him or her.

### 7.3 What are the rules in Norway with respect to disclosure by third parties?

The courts may upon request of a party order a third party to disclose specific and relevant documents.

### 7.4 What is the court's role in disclosure in civil proceedings in Norway?

In Norwegian civil proceedings the general rule is that the parties are responsible for the provision and presentation of evidence. A party must file a petition if they wish the court to take part in the disclosure or impose orders on disclosure on a party.

### 7.5 Are there any restrictions on the use of documents obtained by disclosure in Norway?

There are several restrictions on the use of documents obtained by disclosure. It is for example not allowed to use documents that are subject to confidentiality or information of importance to national security. Evidence obtained in an improper manner may be disallowed by the court.

## 8 Evidence

### 8.1 What are the basic rules of evidence in Norway?

In Norway the basic rule of evidence is the principle of free evaluation of evidence. Consequently, the court is free to consider the value of the presented evidence. All evidence, including documents, witnesses and inspection, shall generally be presented during the main hearing. The contents of the law do not need to be proven based on the so-called *jura novit curia*.

### 8.2 What types of evidence are admissible, which ones are not? What about expert evidence in particular?

The main types of evidence are documents, witnesses and inspection. Commercial and international disputes may raise complex, technical, financial or other issues. Parties may present expert witnesses to testify in court. The courts may also appoint expert witnesses. Finally, there is an opportunity to request that the local courts and the Appeal's Courts may be supplemented with two expert judges with competence within the relevant fields.

Evidence must in general be presented at the main oral hearing.

### 8.3 Are there any particular rules regarding the calling of witnesses of fact? The making of witness statements or depositions?

Anyone but a party to the case may be heard as a witness under oath. It is in general up to the parties to call the witnesses of fact. Written statements are generally not allowed if the author of the documents is not presented as a witness.

#### 8.4 What is the court's role in the parties' provision of evidence in civil proceedings in Norway?

The court may call expert witnesses, request the parties to clarify the facts or order a third party to present evidence. The court can also disallow irrelevant evidence or disallow evidence based on proportionality.

## 9 Judgments & Orders

#### 9.1 What different types of judgments and orders are the civil courts in Norway empowered to issue and in what circumstances?

The courts judgments are divided into three categories: judgments; decisions; and resolutions. The division of the three forms constitutes a hierarchy, which follows the judgments importance.

The judgment determines the claim that is brought before the court. The decisions determine questions about the procedural issues of the case. Judgments and decisions have to be reasoned, and they may normally be appealed. Resolution is used when a decision is not necessary. Resolutions need not be reasoned, and they are subject to restricted possibilities of appeal.

#### 9.2 What powers do your local courts have to make rulings on damages/interests/costs of the litigation?

The court has the power to issue rulings as to costs incurred by the legal proceedings. The parties must present the claims before the court before the court makes its rulings.

#### 9.3 How can a domestic/foreign judgment be enforced?

A definitive domestic judgment may normally be enforced under the Enforcement Act.

Norway is not a Member of the European Union. Furthermore, civil procedure as such is not covered by the EEA-agreement between the EU and some of the EFTA States, including Norway.

If a civil claim has been resolved in a foreign state by awards in the court system, administrative bodies, arbitration or court settlement, these will be enforceable in Norway to the extent this follows from Norwegian legislation or an agreement with the relevant state.

The Lugano Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (2007) was adopted as Norwegian legislation on 19 June 2009. Judgments which are not recognised under the Lugano-convention may not be enforced in Norway.

Under the Lugano-convention, all judgments given in a state bound by the convention shall be recognised in Norway without any special procedure being required. There are certain limitations.

The right to enforcement in Norway of a foreign judgment, or by a Norwegian judgment abroad, may also follow from an agreement between the two states.

#### 9.4 What are the rules of appeal against a judgment of a civil court of Norway?

A judgment may be appealed based on issues of procedure, the assessment of evidence and factual circumstances, or erroneous application of law.

If the appeal involves disputed amounts to less than NOK 125,000,

consent is required from the Appeal's Court.

The Appeal's Court will process the appeal, instigate a discovery phase and thereafter call an oral hearing. The court will try all parts of the judgements which have been appealed.

The Appeal's Court judgment may be appealed to the Supreme Court. Consent is required from the court and this will normally only be granted in cases which involve issues of principle beyond the specific case, or when it is particularly important to obtain a judgement by the Supreme Court. A judgment rendered by the Supreme Court is definitive.

Under particular circumstances, an appeal may be allowed directly from the local court to the Supreme Court.

## II. DISPUTE RESOLUTION

### 1 Preliminaries

#### 1.1 What methods of dispute resolution are available and frequently used in Norway? Arbitration/Mediation/Tribunals/Ombudsman? (Please provide a brief overview of each available method.)

Private disputes are by mutual agreement to a large extent referred to arbitration, in particular commercial contract disputes. Arbitration is a well-established alternative to litigation in the civil courts.

The Arbitration Act sets out certain fundamental requirements to the process, but in general, the proceedings will follow the agreement between the parties.

An arbitration process and the award are not subject to confidentiality, unless the parties have agreed otherwise. In practice, arbitration proceedings will normally be subject to confidentiality obligations. Arbitration awards may be enforced regardless of where the awards have been rendered, but there are certain limitations.

There are several institutions that have established comprehensive rules and regulations on arbitration procedures in national and international disputes. The Oslo Chamber of Commerce has established a set of procedural rules for arbitration and appoints arbitrators from a group of well qualified individuals.

In later years, mediation has emerged as an important factor in settling disputes. There has been an increasing focus on private or court assisted mediation as a means to resolve disputes.

Mediation is emphasised in the Dispute Act, where the courts now, at any stage of the proceedings, shall consider the possibilities of achieving an amicable settlement of the dispute.

Within specific areas of law, several administrative bodies have been established to resolve disputes. Consumer disputes may be referred to the *Forbrukertvistutvalget* (Consumer Complaints Board). Insurance disputes may be referred to *Forsikringskadenemnda* (Insurance Complaints Board), and consumers' disputes with banks and financial institutions may be referred to *Bankklagenemnda* (Complaints Board for Consumers in Banking and Financial Matters). In general, all rulings rendered by these bodies may be tried in the civil courts.

Complaints in respect of the execution of public authority may be referred to *Sivilombudsmannen*, the Stortingets Ombudsmann for public administration. The purpose of this institution is to prevent abuse of a public authority against private citizens, and to ensure compliance with human rights.

## 1.2 What are the laws or rules governing the different methods of dispute resolution?

Arbitration is governed by the Act on Arbitration (2004). The arbitration must be based on an agreement between the parties, either in respect of the specific dispute, or in respects of disputes arising out of a legal relationship, such as a contract.

Mediation by the court is mainly governed by the Dispute Act.

The several administrative bodies and tribunals are mainly based on various laws and regulations.

The competence of *Sivilombudsmannen* is governed by the Stortingets Ombudsmann Act (1962).

## 1.3 Are there any areas of law in Norway that cannot use arbitration/mediation/tribunals/Ombudsman as a means of dispute resolution?

As a main rule, rights and obligation under civil and commercial law can be settled between the parties. However, there may be certain restrictions, for example in the fields of family, intellectual property and real property law, where the certain disputes under law for reasons of public interest can only be dealt with in the ordinary courts.

## 2 Dispute Resolution Institutions

### 2.1 What are the major dispute resolution institutions in Norway?

The major dispute resolution institutions in Norway are the various tribunals and committees, such as *Forbrukertvistutvalget* and *Sivilombudsmannen*.

### 2.2 Do any of the mentioned dispute resolution mechanisms provide binding and enforceable solutions?

*Forbrukertvistutvalgets* judgments are legally binding between the parties, and it has the same effect as a court ruling. The judgment is a basis for enforcement.

*Sivilombudsmannen* does not issue legally binding decisions, but the decisions are normally followed by the authorities.

## 3 Trends & Developments

### 3.1 Are there any trends in the use of the different dispute resolution methods?

A large share of civil disputes is handled through the Norwegian court system. The courts will always handle a large amount of smaller private disputes. A trend appears to be that more and more large cases are handled by the civil courts and this demands significantly increased resources both from the parties and the court system.

However, it is common for commercial parties to make agreements on arbitration and independent tribunals for resolution of litigation.

### 3.2 Please provide, in no more than 300 words, a summary of any current issues or proceedings affecting the use of those dispute resolution methods in Norway?

The efficiency of proceedings is an issue of current and modern procedural concern. Regarding the new Dispute Act both the courts and practitioners are struggling with adapting to the new regime.

An important objective with the new Dispute Act was to make the courts more competitive in relation to arbitration.



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Kåre I. Moljord has wide experience within the field of corporate and commercial law, particularly on issues related to corporate, accounting and tax law. His work is mainly focused on questions regarding corporate restructuring, transfers of undertakings, mergers and demergers and contract law. Moljord has participated in large M&A transactions in various business sectors.

Moljord has litigated several important cases on corporate law issues before the Supreme Court and is part of the litigation group of the firm.

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