Norwegian Life and Society

THE NORWEGIAN LEGAL SYSTEM

Eléonore Maitre-Ekern
Research fellow, Dept. of Public and International Law, UiO

15 April 2013
1. Some questions for reflection:

<table>
<thead>
<tr>
<th>Legal systems:</th>
<th>The Norwegian legal system:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• What is a legal system?</td>
<td>• Similar or different from other legal systems?</td>
</tr>
<tr>
<td>• Why do we need a legal system?</td>
<td>• Different institutions?</td>
</tr>
<tr>
<td>• Which institutions do the legal system consist of?</td>
<td>• Different way of thinking?</td>
</tr>
<tr>
<td>• What do we need “checks and balances” for?</td>
<td>• Different material (substantive rights) rights?</td>
</tr>
</tbody>
</table>
2. Foundation: The Constitution of 1814

- 17\textsuperscript{th} of May 1814

- Constitution: inspired by USA, France and right to self determination

- Radical and democratic
- Constitutional Monarchy - Sovereignty of the People
- Division of powers

- Legally binding? Limiting legislative and executive powers
- Judicial review?
Norway today

• Constitutional monarchy: King Harald V, since 1991

• Prime Minister: Jens Stoltenberg (Labour), since 2005

• State Church: Protestantism
3. The Parliament (Stortinget) – the legislative branch

- Unicameral
- Power to issue new legislation
- The Principle of legality
  - Rule of Law
  - Sovereignty of the people
  - Citizens able to foresee their legal position (legal certainty)
- Constitutional limitations on the legislator
4. The Government – the executive branch

<table>
<thead>
<tr>
<th>The Council of State:</th>
<th>The governmental conference:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Chaired by the King</td>
<td>• Chaired by the Prime Minister</td>
</tr>
<tr>
<td>• Adoption of decisions</td>
<td>• Preliminary discussions</td>
</tr>
<tr>
<td>• Matters of main significance</td>
<td></td>
</tr>
</tbody>
</table>

![Image of governmental conference]
The executive branch (2)

<table>
<thead>
<tr>
<th>Legislative process:</th>
<th>Executive power – enforcing legal order:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Substantial influence on the legislative process (“lov”)</td>
<td>• Criminal cases</td>
</tr>
<tr>
<td>• Power to issue <em>directives</em> (“forskrifter”) – delegated powers</td>
<td>• Civil cases</td>
</tr>
<tr>
<td></td>
<td>• Other fields of law</td>
</tr>
</tbody>
</table>
5. The Court System
- the judicial branch

- The independence of Courts

- Tasks of the Courts
  - Criminal cases
    - No investigative courts
  - Civil cases
    - Not all disputes settled in courts of law
    - Conciliation proceedings
  - Administrative cases

- Courts only rule in *legal matters*
Hierarchy of the Court system

Supreme Court
  “Høyesterett”

Appeal Courts
  ”Lagmannsretten”

District Courts
  ”Tingretten”
District Courts

- 70 District Courts
- Jurisdiction in all matters
  - No division of ordinary courts and administrative courts
  - No division of criminal courts and civil courts
  - No separate constitutional court

Appeal Courts

- Only 6 Appeal Courts
- Right to appeal
  - Civil cases
  - Criminal cases
Supreme Court

• Right to appeal heavily restricted

• Purpose
  – Not to ensure right outcome in each and every case
  – Ensure uniformity of legal process
  – Resolve matters where the law is unclear
  – Develop the law
  – Decide in matters of principle
## Composition of the Courts

<table>
<thead>
<tr>
<th>Professional judges</th>
<th>Lay judges</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>District Courts:</strong></td>
<td><strong>Civil cases:</strong></td>
</tr>
<tr>
<td>1</td>
<td>None, but parties may demand</td>
</tr>
<tr>
<td><strong>Appeals Courts:</strong></td>
<td><strong>Criminal cases:</strong></td>
</tr>
<tr>
<td>3</td>
<td>Lay judges in majority in first and second instance. None in the Supreme Court.</td>
</tr>
<tr>
<td><strong>Supreme Court:</strong></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
</tr>
<tr>
<td>- plenary session: 19</td>
<td></td>
</tr>
</tbody>
</table>
## Court proceedings and hearings

<table>
<thead>
<tr>
<th>Civil cases</th>
<th>Criminal cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strong oral tradition</td>
<td>Oral tradition even stronger</td>
</tr>
<tr>
<td>• Witnesses, documentary evidence and legal arguments presented directly before the court during “main hearing”</td>
<td>• Judges as &quot;tabula rasa&quot;</td>
</tr>
<tr>
<td></td>
<td>• Presumption of innocence</td>
</tr>
<tr>
<td></td>
<td>• Evaluation of evidence</td>
</tr>
<tr>
<td></td>
<td>• Principle of contradiction</td>
</tr>
</tbody>
</table>

**Principle of transparency**
6. A continental or common law system?

**Continental law**
- Extensive and detailed legislation
- Principles of law

**Common law**
- Case-law developed by Courts of law
- Tradition

**Norwegian law**
- Parliamentary legislation key figure
  - Legislation less detailed
  - Trusts the courts to find “the spirit of the law”
- But courts emphasise the “preparatory works” of legislators
  - Supreme Court case-law highly important
  - Courts recognised to “develop law”
  - Fields of law that are not legislated
- Scandinavian “legal pragmatism” – less principles
7. Some major trends in the Norwegian legal system

- Wide administrative powers in the aftermath of WWII
- Increased protection of citizen’s position
- Consumer protection
- Deregulation – more free market
- EU/EEA-legislation
- Human Rights
- Soft on crime – or tougher on crime?
- The aftermath of 22 July 2011?