Norwegian Life and Society

THE NORWEGIAN LEGAL SYSTEM

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Oslo, 7 April 2014
Outline

1. Some questions for reflection
2. Foundation of the country and Constitution
3. The Parliament, the legislative branch
4. The government, the executive
5. The Court, the judiciary
6. Common or civil law system?
7. Major trends
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>
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<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

- 17th 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
- Prime minister: Erna Solberg
- 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>
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<tr>
<td>• Chaired by the King</td>
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<td>• Adoption of decisions</td>
<td>• Preliminary discussions</td>
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<td>• Matters of main significance</td>
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- **The Council of State:**
  - Chaired by the King
  - Adoption of decisions

- **The governmental conference:**
  - Chaired by the Prime Minister
  - Preliminary discussions
  - Matters of main significance
The executive branch (2)

<table>
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<tr>
<th>Legislative process:</th>
<th>Executive power – enforcing legal order:</th>
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</thead>
<tbody>
<tr>
<td>• Substantial influence on the legislative process (&quot;lov&quot;)</td>
<td>• Criminal cases</td>
</tr>
<tr>
<td>• Power to issue <em>directives</em> (&quot;forskrifter&quot;) – 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>
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</thead>
<tbody>
<tr>
<td>District Courts:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Appeals Courts:</td>
<td>3</td>
</tr>
<tr>
<td>Supreme Court:</td>
<td>5</td>
</tr>
<tr>
<td>Supreme Court</td>
<td></td>
</tr>
<tr>
<td>- plenary session:</td>
<td>20</td>
</tr>
</tbody>
</table>

**Civil cases:**

None, but parties may demand

**Criminal cases:**

Lay judges in majority in first and second instance. None in the Supreme Court.
## Court proceedings and hearings

<table>
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<th>Criminal cases</th>
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<tbody>
<tr>
<td>Strong oral tradition</td>
<td>Oral tradition even stronger</td>
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<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>
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<tr>
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<td>- Presumption of innocence</td>
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<td>- Evaluation of evidence</td>
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<tr>
<td></td>
<td>- Principle of contradiction</td>
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</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 and EEA
- Human Rights
- Soft on crime – or tougher on crime?
- The aftermath of 22 July 2011?