

## NORWAY

Reference is made to the questionnaire with regard to sub-item 6 a (Exchange of national practices on possibilities for the Ministry of Foreign Affairs to raise public international law issues in procedures pending before national tribunals and related to States' or international organisations' immunities) on the Agenda for the Committee of Legal Advisors on Public International Law.

Please find below the answers to the question posed in the questionnaire 21 October 2009. We apologise for the late reply.

### **1. Delegations are invited to provide information on any domestic legislation existing on this particular issue.**

The Act of 17 June 2005 no. 90 relating to mediation and procedure in civil disputes contains in Chapter 30 Appeal to the Supreme Court the following provision:

Section 30-13 The State's right to participate in cases concerning the Constitution or international obligations

(1) The Supreme Court shall notify the Ministry of Justice as representative of the State if a case that is to be heard before the Supreme Court raises the question of setting aside or restrictive interpretation of rules laid down in statute, provisional ordinance or parliamentary decision on the grounds that the rule or decision may be contrary to the Constitution or violate rules that are binding on Norway pursuant to its international obligations. The State is entitled to participate in the case to the extent necessary to safeguard the State's interests with regard to the potential conflict of rules.

(2) If the State participates, the court may decide that the State shall submit written accounts of specific factual and legal issues involved in the case.

Thus, the Ministry of Foreign Affairs may through the appropriate representatives of the Government, participate in cases concerning Norway's international obligations before the Supreme court.

In addition, the Government or a public body can in some cases be entitled to make third party interventions or make written submission to throw light on public interests in accordance with the general provisions on this contained in section 15-7 and 15- 8 of the Act relating to mediation and procedure in civil disputes.

Section 15-7 Third party intervention

(1) Intervention shall be permitted by

a) a person who by virtue of his own legal status has a real interest in one of the parties winning, and

b) associations, foundations and public bodies charged with promoting specific interests in cases that fall within the purpose and normal scope of the organisation pursuant to section 1-4.

(2) Third party intervention shall be declared in pleadings or at a court hearing before the case is ruled on by a final and enforceable judgement. The declaration shall state the grounds for the intervention. The declaration shall be notified to the parties together with a time limit for contesting the intervention. If the intervention is contested, the issue of the right to intervene shall be determined by interlocutory order. An interlocutory order that allows intervention cannot be appealed. The ruling is only binding in the proceedings in the current instance. A person who has declared intervention may exercise procedural rights pursuant to subsections (3) and (4) until an interlocutory order disallowing intervention has been passed.

(3) The intervener shall join the action as it is at the time of joinder. The intervener may take procedural steps for the benefit of the party who is to benefit from the support. Such procedural steps shall not be contrary to those of the party.

(4) If the intervention is based on subsection (1)(b), the procedural rights of the intervener shall be limited to safeguarding the interests of the organisation or body in the issues raised in the action. The intervener cannot claim remedies against the ruling on the claim that is made in the action.

#### Section 15-8 Written submission to throw light on public interests

(1) Written submissions to throw light on matters of public interest that are at stake in a case may be submitted by

- a) organisations and associations within the purpose and normal scope of the organisation, or
- b) a public body within its area of responsibility.

(2) The submission shall be made in a pleading. The court can reject the submission by interlocutory order if the submission due to its form, scope or content is ill suited to throw light on the public interests in the case. If the submission is not rejected, it shall form part of the basis for the decision and shall be distributed to the parties.

## **2. Delegations are invited to inform the Committee as to whether there are any other means for the Ministry of Foreign Affairs of communicating information to national courts and how the Ministry of Foreign Affairs perceives the scope of international legal obligations in [this ] field.**

For example:

- Are there any information related to international legal obligations contained in legislative preparatory works of domestic law on immunities?
- Are there any directives, guidelines or circulars that have been issued on this subject?

According to governmental guidelines (Utredningsinstruksen) international obligations should be considered when the government is preparing to propose new measures. In White Papers on new legislation to the Storting (Parliament) consideration of international obligations are included, where relevant.

Norway ratified the 2004 UN Convention on Jurisdictional Immunities for States and their Property on 27 March 2006. In the process leading up to Norway's ratification, the Government issued a White Paper (St.prp.nr.33, 2005-2006), inviting the Storting (Parliament) to consent to ratification.

The Convention is to a large extent regarded as a codification of customary international law, and the relevant norms are to some extent described in the White Paper. Although not bound by the formulations in the White Paper, there is reason to believe that a Norwegian court faced with an issue of state immunity would look to formulations in the White Paper for possible guidance.

## **3. Delegations are invited to precise whether there are any prohibitions or stated limits in domestic law, which would prevent the transmission of information to national courts by the Ministry of Foreign Affairs. In this regard, are there, in your domestic legal order, any relevant legislation or national practices (any reference of case-law would be appreciated)?**

There are no general provisions in Norwegian law concerning this specific issue. Thus, the general rules apply.

#### Section 11-1 The basis for the court's rulings

(1) Rulings following a main hearing, an appeal hearing, a final hearing in small claims procedure and section 9-5(4) shall be made on the basis of the proceedings at the court hearing. Written submissions shall form part of the basis for the decision only to the extent provided by statute.

(2) Other rulings shall be made on the basis of the case documents and the proceedings at the court hearings.

(3) The court cannot base its ruling on facts in respect of which the parties have not had the opportunity to comment. In that case, the court shall give the parties guidance pursuant to section 11-5 and if necessary proceed with the case pursuant to section 9-17(2).

Section 11-2 The court's position with regard to the procedural steps of the parties

(1) The court may only rule on the claims that are made in the case. The ruling must fall within the scope of the parties' prayers for relief and the court may only base its ruling on the grounds for the prayers for relief that have been invoked. The grounds for the prayers for relief are the material facts upon which a party bases its prayer for relief.

(2) The parties have the primary responsibility for presenting evidence. The court can take care of the presentation of evidence if the parties do not object. The court is not bound by the parties' arguments with regard to questions of evidence.

Section 11-3 The court's responsibility to apply the law

The court shall on its own motion apply current law within the scope of section 11-2(1). In accordance with section 1-1, the court shall ensure that there is a satisfactory basis upon which to apply the law. If the application of law cannot otherwise be clarified in a fully satisfactory manner, the court may decide that evidence of the law shall be presented, or it may allow the parties to present such evidence. The court shall determine the scope of the presentation of evidence and the manner in which it shall be carried out. Statements on the law occasioned by the case may only be submitted as evidence with the consent of all parties.

**4. From a broader perspective, delegations are called upon to express their views as to whether the Ministry of Foreign Affairs can communicate with Parties engaged in procedures before national courts and, if so, as to how it can proceed. In particular with regard to:**

- **The principle of equity of arms (e.g. does the communication with one Party imply informing others about the content of that communication?)**
- **The scope of the communication (e.g. communication of possible factual elements or communication restricted to a single point of law).**
- **the principle of independence of the Judiciary.**
- **any other related issue.**

The Government will normally not be engaged in procedures between private parties before national courts, unless in situations as described in section 30-13, section 15-7 or section 15-8 of the Dispute Act (please see answer to question no. 1). If the Government is asked by one of the private parties to contribute with factual information, and this is presented as evidence, the other party will be informed. As stated in section 11-3, statements on the law occasioned by the case may only be submitted as evidence with the consent of all parties.