COUNTRY COMPARATIVE GUIDES 2023

The Legal 500 Country Comparative Guides

Norway

LITIGATION

Contributor

Advokatfirmaet Thommessen AS

Eirik W. Raanes

Partner | era@thommessen.no

Mathilde Rye Ramberg

Managing Associate | emr@thommessen.no

Nanette Arvesen

Managing Associate | nar@thommessen.no

Anders Eide Røyneberg

Senior Associate | arr@thommessen.no

This country-specific Q&A provides an overview of litigation laws and regulations applicable in Norway.

For a full list of jurisdictional Q&As visit **legal500.com/guides**

NORWAY
LITIGATION

1. What are the main methods of resolving disputes in your jurisdiction?

Disputes that are not settled amicably, either privately or following judicial mediation, are usually resolved either by the ordinary courts or by arbitration. Although ordinary courts traditionally have had a strong standing in Norway, an increasing number of commercial disputes are referred to arbitration.

2. What are the main procedural rules governing litigation in your jurisdiction?

Dispute resolution before the ordinary courts is based on an adversarial model pursuant to the rules of the Norwegian Dispute Act. Although proceedings are issued and prepared through written submissions, the judgment may only be based on the pieces of evidence which have been presented directly to the judge during the oral hearing. The court hearings are therefore comparatively long and characterised by continuous oral argument and direct presentation of evidence, including oral examination of documents and witness testimonies.

3. What is the structure and organisation of local courts dealing with claims in your jurisdiction? What is the final court of appeal?

Norway's ordinary court system has a three-tier, hierarchical structure, comprising 23 district courts at first instance, six courts of appeal as ordinary appellate courts and the Supreme Court at the apex. In addition to the three main tiers, there are mediation bodies with limited jurisdiction in civil cases and special courts for land consolidation and labour cases.

4. How long does it typically take from commencing proceedings to get to trial in your jurisdiction?

In 2022, on average, it took 5.6 months from a legal action was initiated until the hearing on the merits took place before the district courts. The same applies for the case processing time from appeal to the hearing in the courts of appeal. The case processing time for the Supreme Court was slightly longer, with an average of 6.3 months. In complex, commercial disputes, the case processing time may be significantly longer.

5. Are hearings held in public and are documents filed at court available to the public in your jurisdiction? Are there any exceptions?

With some exceptions, oral hearings are open to the public. The public is entitled to access court records, records of judicial mediation, judicial rulings, and statements of costs in most cases, as well as the parties' written closing remarks. Excepted are pleadings and written evidence in general submitted to the court as part of the preparatory phase.

6. What, if any, are the relevant limitation periods in your jurisdiction?

Monetary claims are subject to a three-year limitation period. The same limitation period applies whether the claim is based on contract or tort. The starting point differs between claims with and without contractual basis, and the limitation period may, subject to specific conditions, in both cases be extended to a theoretical maximum of 13 and 20 years respectively.

In general, civil proceedings are not subject to procedural limitation rules, but there are certain statutory exceptions, notably for e.g. tax claims, patent ownership claims, employee dismissal validity claims, eviction claims, and claims regarding the validity of a decision by the shareholders' meeting in limited liability companies. Legal action relating to such claims must generally be brought within a few months.

7. What, if any, are the pre-action conduct requirements in your jurisdiction and what, if any, are the consequences of non-compliance?

According to the Dispute Act, the claimant has a duty to give the plaintiff a written notice describing the claim and its basis before a lawsuit is filed. The plaintiff is, within reasonable time, obliged to clarify whether the claim is disputed or accepted in full or in part. Failure to notify or respond is not formally sanctioned, but may influence the court's decision on whether to award legal costs.

8. How are proceedings commenced in your jurisdiction? Is service necessary and, if so, is this done by the court (or its agent) or by the parties?

To bring a legal action, the claimant must file a statement of claim presenting key factual and legal aspects of the case with the court. The courts ensure that the statement of claim is served on respondents domiciled in Norway. If the respondent is neither a Norwegian resident, nor represented by a Norwegian lawyer, the statement of claim must be served under applicable international conventions.

9. How does the court determine whether it has jurisdiction over a claim in your jurisdiction?

Professional parties tend to agree on the legal venue as part of their contract, and jurisdiction clauses are accepted under Norwegian law. Absent an agreement on jurisdiction, the competent court is usually the court in whose jurisdiction the respondent is domiciled. To some extent and in certain cases, however, the claimant may choose the forum.

Jurisdiction in cross border cases is governed by the Lugano Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters or, if not applicable, a 'closest connection' test, calling for the court to identify which jurisdiction is the most closely connected to the matter at hand.

If the court's jurisdiction is disputed, the court will decide on its jurisdiction based on the evidence and arguments presented by the parties. This is usually decided on written submissions, but a separate oral hearing may be held if considered appropriate.

10. How does the court determine which law governs the claims in your jurisdiction?

Professional parties tend to agree on the governing law as part of the contract, and the Norwegian courts have recognised the parties' choice of law repeatedly and consistently. Although not implemented and formally binding in Norway, the Supreme Court has in recent years been more inclined to align Norwegian private international law with specific rules laid down in the EU Rome I and Rome II regulations. Examples are torts/delicts, contracts relating to immovable property and contracts of carriage. In addition, certain specific conflict of law rules have been codified in Norway by implementation of international conventions and EU/EEA legislative acts, notably with regard to the sale of goods and insurance contracts.

If the applicable law is disputed, the court will decide on the choice of law based on evidence and arguments presented by the parties. If considered appropriate, an oral hearing may be held.

11. In what circumstances, if any, can claims be disposed of without a full trial in your jurisdiction?

Ordinarily, the court decides on whether to dismiss a case based on the parties' written submissions only, for example if it is uncertain whether the procedural conditions are satisfied, if the claim has already been decided between the same parties, or lis pendens. In complex questions, however, the court regularly convenes the parties for oral arguments. Examples are jurisdictional issues in cross border cases or the scope of an arbitration clause. In addition, a simplified procedures applies for claims less than NOK 250,000, or if it is evident that the claim or objections to the claim cannot succeed.

12. What, if any, are the main types of interim remedies available in your jurisdiction?

Monetary claims may be secured by arrest of assets, while claims for injunctive relief may be secured by a preliminary injunction.

13. After a claim has been commenced, what written documents must (or can) the parties submit in your jurisdiction? What is

the usual timetable?

Following the plaintiff's statement of claim and the defendant's statement of defence, it is not generally obligatory to submit further documents and evidence. Evidence must, however, be submitted during the preparatory stage of the proceedings, and it is usual for the parties to submit further documents and evidence in the period of time prior to the hearing. Such submissions may be made on the parties' own initiative, following a deadline decided by the court, or a timetable agreed in a case management meeting between the court and the parties. Ordinarily, the preparatory stage of the proceedings ends two or three weeks before the oral hearing, and the parties are then usually required to submit closing written statements briefly stating the parties' views on the claim and its factual and legal basis.

14. What, if any, are the rules for disclosure of documents in your jurisdiction? Are there any exceptions (e.g. on grounds of privilege, confidentiality or public interest)?

The parties are under a duty to ensure that the factual basis of the case is correctly and completely elucidated, and are in principle obligated to disclose admissible documents of relevance to the dispute on their own initiative. Disclosure may also be prompted by a party's request for access to evidence. If the request for access to evidence concerns relevant admissible evidence and is sufficiently specified, and not disproportionate, the other party is required to grant access. The obligation to grant access is, however, not sanctioned by fines or other formal penalties.

The required specification, scoping, relevance and proportionality of requests for access to evidence imply that the Anglo-American concept of 'discovery' has no parallel under Norwegian procedural law.

Some evidence is inadmissible because of its contents or nature. An important example is correspondence and oral information that is subject to attorney-client privilege, which cannot be disclosed without the client's consent. As another example, a party may refuse to disclose business or trade secrets orally or in documents. The court may, however, order the commercially sensitive information to be disclosed if it is contended to be sufficiently important to the matter at hand. A party requested to disclose such information may, on the other hand, move for such evidence only to be presented without public access and subject to confidentiality.

If a request for access to evidence is disputed, the court will decide on whether the request must be complied with based on the parties' arguments, usually in writing but sometimes orally in a hearing. The court will then either issue an order for access to evidence, or dismiss the request. Such decisions may be appealed with delaying effect.

15. How is witness evidence dealt with in your jurisdiction (and in particular, do witnesses give oral and/or written evidence and what, if any, are the rules on cross-examination)? Are depositions permitted?

In proceedings before district courts and the courts of appeal, witness evidence is ordinarily given orally during the main hearing, without previous submissions of written testimonies. Written testimonies are allowed, but only if the other party consents or is given the opportunity to cross-examine the witness during the hearing. Written testimonies are rarely used before the ordinary courts, but are seen more frequently in arbitrations.

Witnesses are generally not allowed to attend the hearing before they give their testimony. The counsel summoning the witness usually examines the witness before the opposing counsel is given the opportunity to cross-examine. Cross-examination is not subject to specific rules. However, different from the common law tradition, the courts will generally strike down or disregard leading questions. In addition to the parties, the judges sometimes intervene with follow-up questions to the witness, and oftentimes examines the witness themselves towards the end of the testimony.

Witnesses normally give their testimony in person during the main hearing. If accepted by the court, witnesses may also give their testimony by video or phone during the main hearing. Pre-hearing depositions are subject to strict requirements, and are rarely used.

16. Is expert evidence permitted in your jurisdiction? If so, how is it dealt with (and in particular, are experts appointed by the court or the parties, and what duties do they owe)?

Expert evidence is permitted and frequently used in complex or technical disputes. Expert witnesses may be appointed by the court, but are regularly called by each of the parties on their own initiative. The expert witness

usually produces a report based on a mandate defined by the court or the instructing party, and the report is then submitted as evidence.

During the oral hearing, the expert witness is, as a general rule, subject to the same rules on examination and cross-examination by the parties and the court. A notable difference is, however, that the expert witness is permitted to attend the hearing in its entirety and may examine parties or witnesses.

17. Can final and interim decisions be appealed in your jurisdiction? If so, to which court(s) and within what timescale?

Court decisions, interim and other, can generally be appealed. District court rulings may be appealed to a court of appeal, and the Supreme Court is the appellate court for court of appeal rulings. Appeals to the Supreme Court require leave, and the conditions for granting leave is that the case is of great importance or general legal interest. Leave is also required for appeals to the courts of appeal if the case concerns small value claims. Furthermore, the court may, as a matter of exception, refuse to hear an appeal if it is clearly most likely that it cannot succeed.

The appellant must, usually within one month of service of the lower court's ruling, file a written notice of appeal, describing the alleged errors in the appealed ruling. The courts will ex officio ensure that the case meets the formal appeal requirements, but the courts do not examine the substantive grounds for appeal, except for the very limited screening of obviously non-viable appeals.

18. What are the rules governing enforcement of foreign judgments in your jurisdiction?

A judgement against a Norwegian party passed by the courts of a foreign state, may be recognized and enforced in Norway if this follows from Norwegian law or agreement with the foreign state in question, or the jurisdiction of the foreign court has been specifically agreed between the parties in the particular case.

Norway is a party to the Lugano Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters, and to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Judgements rendered by the courts of the United Kingdom are recognised and enforced in Norway pursuant to a bilateral agreement.

Generally, in order for a judgment to be enforceable, it must be final and include an order to pay or render something, or to take, refrain from or tolerate certain actions. A judgment will only be recognised or enforced if it is enforceable in and pursuant to the laws of the country in which it has been passed, and the recognition and enforcement of the judgment is not considered to be in conflict with ordre public.

19. Can the costs of litigation (e.g. court costs, as well as the parties' costs of instructing lawyers, experts and other professionals) be recovered from the other side in your jurisdiction?

The main rule is that a party prevailing in a legal action is entitled to full compensation for its necessary legal costs from the opponent. A party is considered to have prevailed if the court either finds in favour of the party in whole or in main, or the opponent's claim is dismissed or quashed. Whether the party has prevailed in whole or in main will ultimately be subject to the court's discretion.

The courts furthermore have the power to assess the extent to which the prevailing party's legal costs are necessary and thereby qualify for compensation. Legal cost statements are submitted to the court at the end of the main hearing (or in the last written pleading if the dispute is decided without an oral hearing). The court is required to examine the amount of the cost claims regardless of whether the parties object to their opponent's statement.

Legal costs rulings are handed down separately by each court adjudicating the underlying dispute. The ruling may be appealed, either as part of an appeal on the merits or separately.

The extent to which the courts actively review legal costs varies. However, the courts have assumed a somewhat more assertive role in the last couple of years, due to a noticeable increase in cost levels.

20. What, if any, are the collective redress (e.g. class action) mechanisms in your jurisdiction?

Class actions are permitted if several legal persons have claims or obligations based on the same or substantially similar factual and legal grounds. The claims can be handled by the court with the same composition and primarily according to the same procedural rules. Class

action is the best method for handling the claims, and it is possible to appoint a representative for the class. Class actions may be opt-in or opt-out. Opt-in class actions include all legal persons who have claims within the scope of the class action, and are registered as class members. The opt-out class actions, on the other hand, include all who have not actively opted out. These actions are available if the individual claims concern such small values or interests that a significant majority of them cannot be expected to be pursued through individual lawsuits, and it is not anticipated that the individual claims will raise questions requiring individual treatment.

21. What, if any, are the mechanisms for joining third parties to ongoing proceedings and/or consolidating two sets of proceedings in your jurisdiction?

Ongoing proceedings may be consolidated for joint hearing and joint ruling if the cases raise similar issues. The court hearing may be conducted with the same composition and pursuant to principally the same procedural rules.

In order for third parties to join, or be joined, as a party to the ongoing proceedings, two fundamental requirements must be satisfied. Firstly, the Norwegian courts must have jurisdiction over the matter, and secondly the claims may be heard by the court with the same composition and pursuant to principally the same procedural rules. In addition, if a third party wants to join the ongoing proceedings, the third party must intend to submit an independent prayer for relief concerning the subject matter of the dispute, or to submit a claim that is so closely connected to the original claim that it ought to be heard in the same proceedings. If instead one of the parties wants to bring a claim against a third party into the ongoing proceedings, either the court or both parties must consent. The court will consent if the claims are so closely connected that they should be heard in the same proceedings, and the joining does not considerably delay or complicate the proceedings.

Instead of joining the third party in the ongoing proceedings, a party may issue a third party notice. The notice interrupts the limitation period for the notified claim, and may secure time to assess whether the claim should be pursued based on the outcome of the ongoing proceedings.

22. Are third parties allowed to fund litigation in your jurisdiction? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?

Litigation funding is allowed and not formally restricted in Norway. A third party funder cannot not be held responsible for legal costs, unless the third party is found liable according to ordinary tort law. Since litigation funding in reality only exceptionally would be available for manifestly unfounded, harassing lawsuits, such third party liability for legal costs is impractical. We note that in opt-out class actions, a third party litigation funder will not be awarded any legal costs before the class members have received their compensation.

23. What has been the impact of the COVID-19 pandemic on litigation in your jurisdiction?

There are currently no COVID-19 related restrictions impacting litigation in Norway. During the pandemic, quite a few oral hearings were postponed, but generally Norwegian courts quickly adapted to the situation and made wider use of digital tools, remote video hearings and witness testimonies than before.

24. What is the main advantage and the main disadvantage of litigating international commercial disputes in your jurisdiction?

The main advantage of litigating international commercial disputes in Norway is that cases are processed within a comparatively reasonable time. Further, court cases in Norway are to a greater extent controlled by the parties, particularly in larger commercial cases. This may give predictability and an opportunity to adapt the proceedings to the individual case.

As for the main disadvantage, main hearings in Norway are characterised by being lengthy. Since the judgment may only be based on the evidence which has been presented directly to the judge, any evidence and arguments previously submitted in pleadings must, in addition to witness testimony, be presented orally during the hearing.

25. What is the most likely growth area for commercial disputes in your jurisdiction for the next 5 years?

Due to the rapid pace of digital transformation, we

expect that technology and the digital sector will be a growth areas for commercial disputes in Norway, including intellectual property disputes, data privacy issues, and cybersecurity breaches. We also expect to see climate litigation disputes in one way or another.

26. What, if any, will be the impact of technology on commercial litigation in your jurisdiction in the next 5 years?

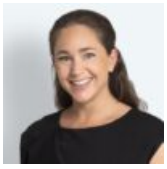
Technology will most likely have a significant impact on commercial litigation in Norway in the next five years. Legal technology tools, including tools for case management, document review and predictive analytics, are being more and more used. These technologies can automate some of the tasks in litigation, making the process more efficient and save costs.

Contributors

Eirik W. Raanes
Partner
era@thommessen.no

Mathilde Rye Ramberg
Managing Associate
emr@thommessen.no

Nanette Arvesen
Managing Associate
nar@thommessen.no



Anders Eide Røyneberg
Senior Associate
arr@thommessen.no