



## SUPREME COURT OF NORWAY

**Chambers of  
The Chief Justice**

Oslo, 4 October 2007

President of the Constitutional Court  
of the Republic of Lithuania  
Dr. Egidijus Kūris  
Gedimino pr. 36  
LT-01104 Vilnius  
Lithuania

Dear President Kūris,

With reference to your letter of 22 March 2007, I hereby forward the national report of the Supreme Court of Norway on the questionnaire prepared for the XIV Congress of European Constitutional Courts.

As indicated in my letter of 4 January 2007, the topic for this year's Congress addresses issues which are uncommon in Norwegian constitutional law. Until this day, there have been no examples of cases involving the problem of legislative omission in Norwegian constitutional jurisprudence.

From our point of view, most questions in the questionnaire presupposes however – at least to some extent – the existence of such problems in constitutional jurisprudence. For these reasons, we have found it difficult to reply to the questionnaire. Therefore, instead of replying to the questionnaire, we will give a brief overview of the system of judicial review in Norway. Although I apologise for the inconvenience the non-response to the questionnaire may cause, I still hope our following remarks will be of interest.

First, one of the main features of the system of judicial review in Norway is its concrete character, i.e. that judicial review of the constitutionality of ordinary legislation can only be undertaken in connection with individual cases brought forward by someone with sufficient legal interest in having it resolved. Hence, it is not feasible to have the constitutionality of a sub-constitutional norm as such, i.e. *in abstracto*, tested by the judiciary.

As for the effect of decisions, should a court find an act of Parliament unconstitutional, the effect of unconstitutionality will never go beyond the possible non-application of the act in question. In other words, Norwegian courts can never

declare a legislative provision null and void as such. Moreover, a decision will only be legally binding *inter partes*, i.e. on those who formally are parties to the dispute. Nevertheless, the *actual* effect of a decision where the Supreme Court finds a legislative provision unconstitutional, may very well be that the provision must be regarded as null and void *erga omnes*, i.e. in relation to everyone. The reason for this is that a decision in which judicial review is undertaken will set precedent for other cases, i.e. that it must be applied or followed in all other cases regarding the question resolved in the precedent case.

As an example, the Supreme Court of Norway recently adjudicated, in three cases, on the constitutionality of two sections in the Site Leasehold Act. In one of these cases, the Court found the section in question, which applied to fixed-term leases, to be unconstitutional. Although the formal effect of this was non-appliance of the section in the specific case, the case establishes a precedent which, in reality, will affect all fixed-term leases in Norway.

Similarly, should the legislature have failed in passing legislation provided for by the Constitution, the Supreme Court can never order Parliament to adopt laws so as to remedy the omission. However, a legislative omission will never result in a legal gap as such, since the courts always must find a solution to the legal problem(s) put before them. For instance, the omission may, under special circumstances, be grounds for actions for damages against the State. This also applies if the legislature has failed in passing legislation provided for by an international agreement to which Norway is a party. In a recent example of the latter, Parliament had, through a legislative omission, failed to fulfil Norway's obligation under the European Economic Area (EEA) Agreement to fully implement the first three EC Motor Insurance Directives. As a result of the failed implementation, a passenger who was injured in an accident incurred a loss, since the driver's insurance did not cover liability for her injury. In a subsequent action brought by the passenger, the Supreme Court found the State to be liable to pay damages for the losses incurred.

I look forward to an interesting Congress in Vilnius.

Yours sincerely,



Tore Schei