

THE MOST CONTROVERSIAL DECISIONS: PREPARATION AND PROMULGATION

By Trond Dolva
Justice of the Supreme Court of Norway
(Original text in English)

I. Introduction

I was at first sight a bit puzzled by the wording of our theme. Coming from the supreme courts of many countries, I think that the decisions that we have to give in our day-to-day work, generally speaking, are most controversial. This is the result of the selection or screening of cases that are admitted to be presented before the courts of ultimate jurisdiction.

Having said this, I am inclined to think that we ought to examine the rules and practices used in preparing our decisions in general, and see to it that they are good and adequate, and, in particular, that they are flexible enough, so that they may be adapted to the particular features of every case, even the most complex and controversial ones.

This is why I will focus on rules and practices of preparing judicial decisions in general, mostly in civil cases – but hopefully not forgetting the particular challenge of the most controversial ones.

II. The rules and practices governing the preparation of court decisions differ from country to country according to the various legal systems and traditions. That is why we have come together to learn from each other.

In order to be understood, I will have to give a brief introduction to my background and the Norwegian legal system. Norway is one of the five Nordic countries. Even if there are considerable differences between these countries, it may be right to say that our legal systems represent a group of its own, situated somewhere between the continental system and the common law system – but in some respects with features borrowed or influenced from one or the other of these greater systems.

Norway being a little country with 4 ½ million inhabitants, the court system is a very simple one – with practically speaking almost no special courts. The courts are organized in three levels – in a pyramid with first and second instance courts – leading up to the Supreme Court with almost general competence – in civil, administrative and penal law and acting also as a Constitutional Court controlling the constitutionality of Parliament acts as well as the legality of acts of the executive power. The only exception to this is that the Supreme Court in penal cases does not decide the question of guilt – this is exclusively decided by the two lower instances. The Supreme Court is not a cassation court, but has competence both regarding questions of fact and law. The twenty justices of the Supreme Court decide all types of cases – without specialisation.

The role of the Supreme Court is often described to be threefold: It is the guardian of the unity of the law with the task to clarify the law and to contribute to the development of the law. This has obviously an important impact on how the decisions of the Supreme Court are prepared and formulated.