



ROYAL NORWEGIAN  
MINISTRY OF JUSTICE AND PUBLIC SECURITY

EFTA Surveillance Authority  
Avenue des Arts 19H  
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Your ref.  
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Our ref.  
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**Request for information regarding an own initiative case concerning claims for damages against Norwegian municipalities based on their alleged breach of EEA law**

Reference is made to the authority's letter of 5 July 2021 requesting information regarding the claims for damages against Norwegian municipalities based on their alleged breach of EEA law.

The Norwegian Government has taken note of the judgment of the Borgarting Court of Appeal of 19 November 2020 (LB-2020-11829), as well as the subsequent ruling of the Norwegian Supreme Court of 10 March 2021 (HR-2021-546-U). The Government is pleased to elaborate on the precedential effects of court rulings in general terms and the current legal framework regulating which public body is the correct subject for claims for damages for alleged breaches of EEA law. The principle of judicial independence restrains, however, the possibility of providing any details on the Government's views on the abovementioned rulings in specific.

**Question 1: Precedential effects of rulings**

Although the Norwegian legal system does not operate with a strict doctrine of *stare decisis*, court decisions are considered relevant legal sources when interpreting the law. Rulings from the Supreme Court are generally accorded significant weight, whereas rulings from lower instance courts generally carry less authority. Some areas of the law – including tort law – have traditionally been developed primarily through case law.

**Question 2: Current legal framework regulating which public body is the correct subject for claims for damages for alleged breaches of EEA law**

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The question of which public body is the correct subject for claims for damages for alleged breaches of EEA law, raises both procedural and substantial issues.

The procedural issues are regulated by the Dispute Act. As noted by the Court of Appeal in the abovementioned judgment, the Dispute Act does not contain any provisions that explicitly regulate against which public body the claimant should file a claim for damages. While section 1-5 determines which public body is the correct subject for claims regarding the *validity* of an administrative decision, it does not specify the proper party against whom to file a claim for *damages*. In lack of any specific regulation, the question must be considered in light of general principles of admissibility, which are found mainly in section 1-3 of the Act. These principles entail that the claimant may direct the claim against any person or body that the claimant considers liable for the alleged breach. In other words, the Norwegian procedural rules do not prohibit the claimant from directing its claim for damages against the party it considers liable, irrespective of whether the claim is based on alleged breaches of national law or EEA law. This is illustrated by the fact that the Court of Appeal in the abovementioned judgment did not dismiss the case, but made a decision on its merits.

The pertinent question is therefore which public body is liable for damages pursuant to the applicable substantive law. As noted previously, Norwegian tort law remains mostly non-statutory. In line with general principles of liability, the body that has *caused* the relevant breach of EEA law (the tortfeasor), is the correct subject for claims for damages. In line with municipalities' individual duty of loyalty and obligation to interpret Norwegian law in an EEA-conform way, a municipality is the correct subject for a claim for damages where the breach is caused by the municipality itself. However, this may be different in the special situation where the municipality has based its decision directly on legislation which is in conflict with Norway's obligations under the EEA agreement. The breach of EEA law, and the corresponding loss for the party concerned, is in such a situation caused by the State, and a claim for damages may therefore in these circumstances always be directed at the State.

The Government cannot exclude the possibility that there may be instances where a claimant might find it difficult to decide which public body to sue. These potential difficulties will be equivalent whether the case concerns a breach of EEA law or non-EEA law. However, in the overwhelming majority of cases it is fairly simple to determine which public body has caused the alleged breach, and the Government therefore considers that the current legal framework is in line with the requirement of legal certainty.

Yours sincerely

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*The document is approved electronically, as such no handwritten signatures are required.*