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A High Court Plays the Accordion: Validating *Ex Ante* Case Complexity on Oral Arguments

Henrik L. Bentsen[a,b], Gunnar Grendstad[a], William R. Shaffer[c], and Eric N. Waltenburg[c]

[a]Department of Comparative Politics, University of Bergen, Bergen, Norway; [b]NORCE Norwegian Research Centre, Bergen, Norway; [c]Department of Political Science, Purdue University, West Lafayette, IN, USA

ABSTRACT

While high courts with fixed time for oral arguments deprive researchers of the opportunity to extract temporal variance, courts that apply the "accordion model" institutional design and adjust the time for oral arguments according to the perceived complexity of a case are a boon for research that seeks to validate case complexity well ahead of the courts' opinion writing. We analyze an original data set of all 1,402 merits decisions of the Norwegian Supreme Court from 2008 to 2018 where the justices set time for oral arguments to accommodate the anticipated difficulty of the case. Our validation model empirically tests whether and how attributes of a case associated with *ex ante* complexity are linked with time allocated for oral arguments. Cases that deal with international law and civil law, have several legal players, are cross-appeals from lower courts are indicative of greater case complexity. We argue that these results speak powerfully to the use of case attributes and/or the time reserved for oral arguments as *ex ante* measures of case complexity. To enhance the external validity of our findings, future studies should examine whether these results are confirmed in high courts with similar institutional design for oral arguments. Subsequent analyses should also test the degree to which complex cases and/or time for oral arguments have predictive validity on more divergent opinions among the justices and on the time courts and justices need to render a final opinion.

KEYWORDS

Oral arguments; case complexity; supreme courts; processing time; international laws

Introduction

Most courts use a "procrustean bed" when setting the time for oral arguments. That is, regardless of a case's complexity, they reserve a fixed amount of time for a case to be presented during the oral arguments stage of their proceedings. Metaphorically, they act in a manner similar to *Procrustes* from Greek mythology, who received happy travelers by stretching out those who were too short and cutting off the legs of those who were too tall so as to force all travelers to fit the size of his iron bed. By contrast, a few courts rely upon an "accordion model," adjusting the time they allocate for oral arguments according to the perceived complexity of the case to be decided. The institutional difference between the "procrustean bed" and "accordion" models is a boon to researchers who study courts for three reasons.

First, the accordion model of oral arguments delivers novel empirical variation that the procrustean model is unable to offer. Second, while researchers have analyzed the effect of oral

CONTACT Gunnar Grendstad gunnar.grendstad@uib.no Department of Comparative Politics, University of Bergen, Bergen, Norway.

arguments that take place in the procrustean model on case outcomes (Black et al. 2012; Johnson 2004; Johnson and Pryor 2018; Johnson et al. 2006; Ringsmuth and Johnson 2013), the variation in the accordion model's length of oral arguments itself can be used to validate measures of case complexity, thus complementing research on the effects of oral arguments. Third, the extended process of decision making in courts that use the procrustean model fails to pinpoint exactly where case complexity manifests itself and what it impacts. For example, in an early effort to measure the complexity of cases on the U.S. Supreme Court, Maltzman and colleagues (Maltzman and Wahlbeck 1996; see also Maltzman et al. 2001) used the number of separate opinions, the number of issues, and the number of legal provisions in a decision. But when researchers misapply these measures they risk "[flipping] the causal chronology" (Clark et al. 2015:38). For example, complexity is often used as a covariate for dissent, but dissents give rise to separate opinions, an element in the operationalization of complexity. The accordion model, on the other hand, provides an explicit *ex ante* measure of case complexity that if validated can be used to examine the relationship with time between oral arguments and the final opinion as well as the effect of complexity on different aspects of decisional outputs.

But there are practical and theoretical implications as well. As a practical matter, understanding the covariates that are systematically related to case complexity allows courts to better assess the types of appeals that tax their finite resources. Consequently, they will be better able to manage their workload and orchestrate their processing of cases. Theoretically, if judicial scholars are better able to distinguish between *ex ante* and *ex post* case complexity, they will be in a better position to gauge the precise impacts of complexity on judicial outputs. For example, do more complex cases result in more opinions? Intuitively, the answer would seem to be yes. With a valid ex ante measure of case complexity, that intuition could be put to direct empirical tests.

In this paper we analyze the characteristics of cases that are associated with greater complexity and thus would result in more time being allocated for oral arguments by studying a court that only practices the accordion model. Specifically, we examine the Norwegian Supreme Court, which adheres to a legal-cultural tradition of emphasis on oral arguments in the decisional process. This Court carefully adjusts the time allotted for oral arguments according to the expected complexity of the case (Schei 2015). Recognizing that knowledge is gained through comparative analysis, we have built an original data set that covers the years 2008–2018 and includes all 1,402 merits cases heard in oral arguments *en route* to their final decision. We build a validation model and empirically test for the first time how the attributes of a case associated with its complexity shape the time allocated for oral arguments. In identifying a set of case attributes that are associated with complexity and are *ex ante* to a court's merits decisions, our analysis contributes to the theoretical discussions of the measurement of case complexity (see Goelzhauser and Kassow 2019).

Our analysis proceeds as follows. In the next section we discuss how the procedures at the merits stage of Northern European apex courts are distributed along the two dimensions of written versus oral arguments and the procrustean versus accordion models. Here, we discuss in some detail the Norwegian Supreme Court, which is the only court for which relevant information on case complexity and time for oral arguments currently exists, and how its case processing system is linked to its accordion model of oral arguments. In "Case Complexity and Time for Oral Arguments—Toward a Validation Model" section we discuss the theoretical bases for our hypotheses. In "Data and Method" section we describe our research design. "Estimation Results" section discusses our empirical results.

Our analysis confirms that international laws, multiple legal players, cross-appeals from lower courts, and civil law are attributes of a case's complexity and accordingly increase the amount of time allocated for oral arguments. In future research projects this new complexity measure, time allocated for oral argument, will be employed to account for decisional behavior of the Norwegian Supreme Court.

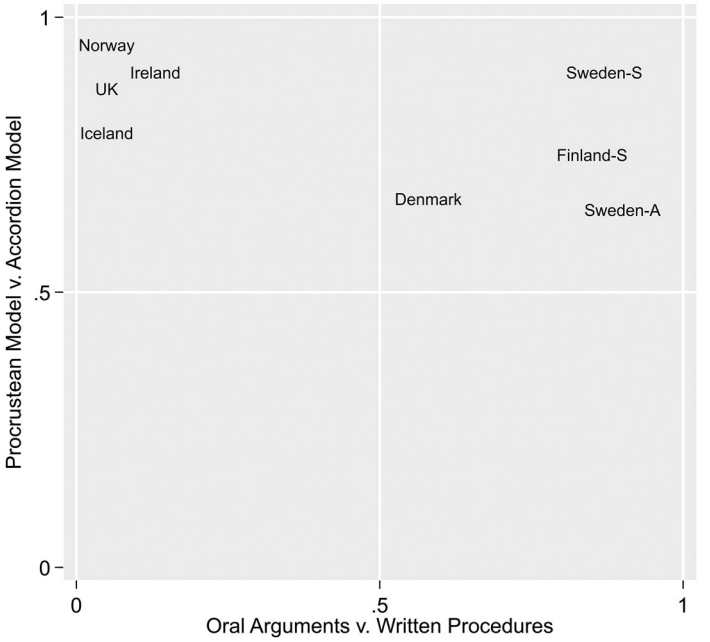

Figure 1. Two institutional dimensions at the merits decision stage. High courts in Northern Europe. Information in the figure is based on answers to questions sent to the courts posted. Sweden-S and Sweden-A are the country's supreme and supreme administrative courts, respectively. Finland-S is Finland's supreme court. Axis represents ordinal scales.

Northern European Legal History Impacts Type of Oral Arguments

Two institutional dimensions are important when studying the impact of case complexity on oral arguments. The first dimension is the degree to which courts' decision-making process turns on oral arguments versus written procedures. The second dimension is the degree to which courts, in advance of oral arguments, fix the time for oral arguments (the procrustean model) or adjust the time allotted according to the complexity of the case (the accordion model). In Europe, only the northern countries found themselves outside the reach of Napoleon's armies and the codifiers of the civil law tradition that followed (Kirby 2007). Thus, only European supreme courts under continuous influence of the British common law and oral traditions are likely to have institutionalized oral arguments.

Figure 1 shows the fourfold space of the two institutional dimensions and maps the location of apex courts in Northern Europe. The positions of the various courts are tentative for two reasons. First, information on the practice of oral arguments is simply considered a practical issue that rarely finds its way into courts' written documents available to the public. Second, this information is rarely sought after and compared across jurisdictions.[1] The lower-right hand quadrant of Figure 1 is empirically empty since fixing time for written procedures is a non-issue. The lower-left hand quadrant is also empty since no apex courts in Northern Europe fix time for oral arguments.[2]

[1]Unless otherwise noted, information on oral arguments versus written procedures and fixed versus flexible time for oral arguments was obtained through direct email correspondence with the courts between April 16 and May 24, 2019.

[2]The U.S. Supreme Court would be located in the very lower left-hand corner due to its default procedure and rigid time limits of allocating 30 minutes of oral arguments to each of the two parties. The U.S. Supreme Court's procrustean model is enforced almost without regard to the significance and the complexity of the case. Rule 28, section 3, on oral arguments states that "Unless the Court directs otherwise, each side is allowed one-half hour for argument. (…) Any request for

The upper part of Figure 1 demonstrates the institutional pattern as well as the geographical location of apex courts in Northern Europe. On the "eastern" side, farthest away from the United Kingdom, Finland's Supreme Court (*Korken Oikeus*), Sweden's Supreme Administrative Court (*Högsta Förvaltningsdomstolen*), and Sweden's Supreme Court (*Högsta Domstolen*) generally adjudicate their cases through written procedures. In the ten to twenty percent of cases heard in oral arguments, however, the time is allotted according to the specific needs of the case in question. In Sweden's Supreme Court, the parties themselves are free to decide how they want to present their arguments and are not bound by a specific time frame. In Sweden's Administrative Court, most cases that have oral arguments are heard for one to four hours, rarely do the arguments go beyond one day. Denmark's Supreme Court (*Højesteret*) hears somewhat more than half of its cases in oral arguments, and about two-thirds of these cases are scheduled for one day. In 2018, the Court allotted a few civil cases more than one day of oral arguments (Højesteret 2019).

On the "western" side of Figure 1, the supreme courts of the United Kingdom, Ireland (*Cúirt Uachtarach na hÉireann*), Iceland (*Haestirettur*), and Norway (*Høyesterett*) all have oral arguments as the default procedure at the merits stage (Bårdsen 2018). In a sense the oral arguments have "the nature of a seminar, with questions and an exchange of opinions between judges and advocates" (Qvigstad and Schei 2018:84). In the United Kingdom, the parties agree on the amount of time for oral submission between themselves; any requests for more than two days of oral arguments in court requires the approval of the presiding justice. In Ireland, the decision regarding the amount of time for oral arguments is based upon the submission by the parties and the assessment of the case management judge in the context of the issue of the appeal. In Iceland, each party is ordinarily given between 30 minutes and one hour for oral arguments, depending on the complexity of the case. No oral arguments have ever exceeded a total of three hours.

The Supreme Court of Norway occupies the top left position of Figure 1. All cases decided on their merits are heard in oral arguments. To the best of our knowledge, no other supreme court is as liberal when allocating time for oral arguments to the parties. As such, the Norwegian Supreme Court represents an "aberration" as to the extent of oral arguments.[3] Here, the accordion model is at its maximum. Moreover, the Court is the only apex court for which systematic data on case complexity and the duration of oral arguments exist.

The Norwegian Supreme Court and Oral Arguments

The Norwegian Supreme Court consists of one chief justice and 19 (associate) justices.[4] It has final jurisdiction in civil, criminal, administrative, and constitutional cases (but decisions can be appealed to international courts). The Norwegian legal system is a mix of civil and common law (Hirschl 2011). New areas of law are conscientiously codified, but the Court is at liberty to establish precedents. The criminal procedure reform of 1995 and the civil law process reform in 2008 gave the Court complete discretionary jurisdiction, and it uses that jurisdictional power to fulfill its role as a court of precedent, pursuing the twin goals of legal clarification and legal development (Grendstad et al. 2015; Sunde 2015).

For a case that is selected for review on its merits by the three-justice gatekeeping Appeals Selection Committee, the justice who reads the appeal first is responsible for moving the case

additional time (…) is rarely accorded." Rules of The Supreme Court of the United States, effective November 13, 2017. [https://www.supremecourt.gov/filingandrules/2017RulesoftheCourt.pdf. Last accessed January 14, 2018].

[3]The term "aberration" (*avvik*) was used by the Norwegian Supreme Court when comparing its institution of oral arguments to other courts [email from the Court April 16, 2019].

[4]In addition, there are 26 clerks and protocol secretaries organized in a pool and about 29 administrative employees (Norges Høyesterett 2019).

forward. Aided by a clerk and staff, the preparatory justice informs the litigants, either by a conference call or in a meeting at the Court, of the legal question(s) that the Court wants the lawyers to address. The justice then estimates the complexity of the case and allocates the amount of time for oral arguments accordingly. Then the Court dockets the case for oral arguments where normally five justices will hear it (Grendstad et al. 2020).

Historically, oral arguments occupy an important position in the Norwegian legal system and have been a feature of the Court's decision-making process since its inception in 1815 (Nylund 2010). "In fact, the Norwegian Supreme Court has one of the strongest oral traditions among third level instances in Europe" (Bårdsen 2018:2). During the oral proceedings, advocates walk the justices through their legal arguments. Indeed, although written briefs are submitted, they largely comprise the outline of an advocate's argument, keywords, and legal references. As such, the written briefs are meant to supplement counsels' oral presentation, not the other way around. The Court believes oral arguments are an especially efficient mechanism for unpacking the essence of a case, in no small part because they enable opposing counsel to respond to one another's claims. In this process, the layers of a legal argument are developed and any weaknesses are laid bare (Schei 2015). Perhaps of greatest consequence, though, the justices are *not* bound to consider evidence or arguments *not* put on the table during oral arguments. Thus, to a significant degree, what is presented during oral arguments provides the basis for the Court's adjudication on the merits.

Case Complexity and Time for Oral Arguments—Toward a Validation Model

Case complexity encompasses both the irreducible complexity of the subject matter (Posner 2013:4) and the law itself, which "is moving continuously, governed by complex acting forces" (Bårdsen 2014:548–549). We define *ex ante* case complexity as the amount of information that must be presented to and processed by the justices in order that they understand the case sufficiently to render a decision (see Goelzhauser and Vouvalis 2014:3; Heise 2004; White 1992:382). Theoretically, we aver, then, that the more requirements imposed on a justice to acquire, store, and analyze information, the more complex the decision-making process (Nie et al. 2019; Cauthen and Latzer 2008). Effectively, this complexity levies a cognitive cost to achieving knowledge and certainty (see Katz and Bommarito 2014:340) that can be quantified as the amount of time necessary to communicate the information relevant to the decision. The time required to communicate the information, in turn, is a function of the information's novelty, intricacy, and breadth. Simply put, those cases that require information to be communicated that is more specialized and unique, concern more segments of society, are especially intricate and/or involve more legal issues and questions should take longer in oral arguments.

Of course, this general expectation is subject to empirical testing. If, in fact, we find that these case attributes are systematically related to more time being allocated for oral arguments, we will have provided some validation for *ex ante* measures of case complexity at an important stage of the decision-making process.

To put it more directly, the following analysis is an effort to assess the validity of the time allocated for oral argument as an *ex ante* measure of complexity across all types of cases appealed to the Supreme Court. Basically, a strategy of estimating convergent validity using regression analysis is adopted to estimate the association between a number of complexity measures in the form of case types, as well as a variety of actors, and our more inclusive index of time allocated for oral argument. For example, if time for oral argument is significantly associated with a complex case type (e.g., EU law), then a measure of convergent validity can be asserted. Case types and a variety of legal actors are treated as independent variables in our regression model, since the Court examines the complexity of these appeals prior to setting the amount of time devoted to

oral argument. Thus, reviewing the case type complexity serves as the basis for allocating time, our comprehensive measure of case complexity.

Ex Ante Measures of Case Complexity

There are a variety of cues associated with a case that would signal to the presiding justice that it involves the type of information that will impose greater cognitive costs and thus should be scheduled for longer oral arguments. These include whether the case concerns international law, attracts multiple legal players, is an appeal from a particular circuit court, was not decided unanimously in the lower court, arrived on appeal from both parties, and the legal category (civil vs. criminal, judgment vs. ruling) the appeal presents.

International Law

International legal rules touch on most areas of Norwegian law (Arnesen and Stenvik 2015); indeed, there has been an "almost overwhelming increase in the last two decades of the international legal system used in Norwegian courts" (Fredriksen 2011:98). Wiklund argued that the "process of Europeanization create[d] a formidable challenge to legal theory [and] legal practice [and] contributed to the uncovering of legal theory problems that have long been latent" (2008:226). The two most important sets of legal instruments are European Union (EU) laws and the European Convention on Human Rights (ECHR) both of which trump national legislation when in conflict. We also argue that the legal instruments that regulate the world's largest common market (EU) and the international laws that protect human rights and fundamental freedoms (ECHR) are different and must be addressed separately.

Norway signed the European Economic Area (EEA) agreement in 1992 and implemented it in 1994. The agreement gives Norway access to the EU's internal market in exchange for faithfully following the Union's laws and regulations (Müller-Graff and Mestad 2014). Whereas European national authorities are required to implement EU secondary law in an effective manner,[5] the transposition of EU law is difficult because of its complexity and its novel contextual application. The same legal concepts may mean different things across the states and the "purposive" interpretation with which EU laws shall be interpreted may be at odds with the textual interpretation in the states. Despite the guidelines that EU law shall be drafted in "clear, simple, and precise" language (European Parliament Council Commission 1998: point 1), "there is no single, magic bullet to deal with complexity of EU secondary law" (Baratta and Carli 2014:13). The burden of ensuring quality in the national parliamentary law-making process is immense "because much of the law is drawn from European instruments, or international instruments, representing sometimes inevitably crude compromises necessary for agreement. Moreover the drafting can be rendered more difficult where political objectives, perhaps particularly populist political objectives, come into play" (Irwin 2018:7). When international law meets national laws and are addressed by national courts, "[the national interpretative] process is certainly rendered more complex by the multiplicity of interpretive approaches drawn from different [European] legal traditions, and not always well-related to each other" (Irwin 2018:10), an "extensive regulatory regime" (Hirschl 2011) that Kelemen (2011) coins "Eurolegalism."

The European Convention on Human Rights ("The Convention for the Protection of Human Rights and Fundamental Freedoms"), "arguably the main convergence engine in European rights discourse" (Hirschl 2011:450), was incorporated into Norwegian law in 1999. In 2014, Norway incorporated several human rights into its Constitution. The intention of the Rights is to establish

[5]EU treaties are primary laws and can be compared to constitutional law at the national level. EU regulations and decisions are secondary laws. Secondary laws are used to implement primary laws.

principles to secure democracy. The European Court of Human Rights (ECtHR) exercises power over national courts through internationally accepted agreements (Phildes 2017). A person whose rights have been violated under the Convention can petition the ECtHR if all national options have been exhausted, that is, only after the Supreme Court has ruled on the case. Some decisions from the ECtHR "are not straightforward and unambiguous, and this complexity could probably only have been avoided by simplifying the ECtHR judgements to a point where important nuances and qualifications would have to be omitted" (Qvigstad and Schei 2018:65).

Norwegian Supreme Court justices have clearly stated that the internationalization and specialization of law generates more case complexity (Bårdsen 2014; Schei 2015; Øie 2018; Bruzelius 2016). We follow the Court's own expectations that cases that refer to EU/EEA laws or ECHR laws are more complex, and we hypothesize that such cases require more time to resolve than cases that do not explicitly relate to these areas of law. Accordingly:

H1: *Cases involving EU or EEA laws are more complex and are associated with more time for oral arguments.*

H2: *Cases involving ECHR laws are more complex and are associated with more time for oral arguments.*

Multiple Players

Practice before the Norwegian Supreme Court allows litigants to bring on additional legal counsel to ensure adequate representation. This is most likely to occur when a case is cognitively demanding. Increased legal assistance follows from the development of the Court toward being a "pure court of precedent and the increasingly more complicated and intricate sources of law" (Øie 2018:5). This development is also a challenge for a judiciary where the justices are expected to be generalists, while lawyers are more specialized.

Third-party intervention, or accessory intervention, occurs when a case attracts social, political, or economic interests beyond those of the immediate parties. Consequently, they present additional legal arguments to the justices that take more time to present and ultimately for the justices to process. While "Norwegian civil procedure is designed for simple, traditional disputes between two parties (…) [r]ules on joinder of claims and parties, and third-party intervention, allow for complex, multi-party disputes" (Backer 2014:117). We expect, then:

H3: *Cases involving legal assistance are more complex and are associated with more time for oral arguments.*

H4: *Cases involving third-party intervention are complex and are associated with more time for oral arguments.*

The Borgarting Court of Appeal

When the legal bureaucracy, itself generating complexity (Posner 2013; Schuck 1992:26), transubstantiates into case complexity, it is likely that it is observed in appeals from a country's largest or most centrally located court of appeal. The Borgarting Court of Appeal is located in Oslo, Norway's capital. It is the appellate court for the Oslo Trial Court, which is the court of venue for the country's large organizations as well as for litigation against the government including issues on national security. Borgarting has jurisdiction over about one-third of Norway's population and decides about one-third of all appellate cases in the country's courts. The government advocate once characterized the Borgarting Court of Appeal as a "large and complex organization" (Sejersted qtd in, Kolsrud 2018). That close to half of all cases decided in merits panels at the Supreme Court came from Borgarting demonstrates its importance. We hypothesize, then, that:

H5: *Cases appealed from the Borgarting Court of Appeal are more complex and are associated with more time for oral arguments.*

Cross Appeals and the Presence of Dissent

An appeal from an appellate court that contains more than one opinion is more likely to indicate the presence of a larger number of issues and thus case complexity (Lindquist et al. 2007). Similarly, when both parties appeal a case to a higher court, it is more likely that the appeal raises more issues than would be true if only one party appealed, resulting in greater complexity. Hettinger, Lindquist, and Martinek explain that "the greater the number of issues raised, the more likely it is that the case itself is complex" (2006:59). And cross-appeals are a strong signal for this (Samaha et al. 2020). Indeed, a cross-appeal, "by definition, raises multiple issues, since both parties are appealing separate issues from the district court's decision" (Moyer 2012:299). Therefore, we expect:

H6: *Cases with more than one opinion from the court of appeal are more complex and are associated with more time for oral arguments.*

H7: *Cases that contain cross-appeal from the court of appeal are more complex and are associated with more time for oral arguments.*

Legal Categories

While a judgment concerns the merits of a case, a ruling concerns the procedures of a case.[6] Although the Appeals Selection Committee decides most rulings, some are granted review and are subject to oral arguments in the decisional panels. As procedural laws are intricate, once the Committee grants merits review to an appeal of a ruling, we expect that review of the ruling requires more effort on the part of the justices than does review of a judgment.

In civil law, the goal is to secure the citizens' need to resolve conflicts within the legal system (Backer 2016). In criminal law, the goal is to secure the rights of the defendant and, in case of guilt, determine the correct punishment. The Supreme Court does not review the evidence related to the question of guilt, only the application of the law (Bårdsen 2014). This procedure eliminates several issues from criminal appeal and instead focuses primarily on establishing sentencing ranges. A government white-paper commission assessing the body of rules on lawyers simply stated that "[c]ivil cases are usually more demanding than criminal cases" (NOU 2015:88). Consequently, since criminal cases are usually considered less complex than civil cases, we hypothesize that civil cases are given more time for oral arguments than criminal cases. Accordingly, we hypothesize that:

H8: *Judgments are allocated less time for oral arguments than rulings.*

H9: *Civil cases are allocated more time for oral arguments than criminal cases.*

Omitted Sources of Complexity

There are three areas of *ex ante* case complexity that we do not include in this analysis. First, some researchers have *a priori* coded different substantive areas of law as either complex or simple. Posner, for instance, listed 27 fields of law affected by external complexity (2013:16–17). Manning and Collinson address the "overwhelmingly complex nature of the Immigration Rules" in England and Wales noted by lawyers (2019:85). Ruhl and colleagues argue, in a discussion of "the U.S. legal 'DNA'," that tax laws are complex and are a highly "interconnected network of cross-citations between and across statutory and regulatory provisions" (2017:1378). Vanberg (2005), in his study of constitutional review in Germany, coded cases as "complex" or "noncomplex" according to the primary policy area that the case touched upon. But it is worth noting that experts using this operationalization of case complexity are not necessarily expected

[6]The Dispute Act Section 19-1 exonerates a lawyer who mixes up the two categories.

to identify the same areas of law as equally complex. Also, such a blunt measure is less sensitive to variation of complexity within areas of law.

Second, Goelzhauser and Kassow (2019) analyze the litigant briefs and use the interests expressed in the briefs to identify the complexity inherent in a case before a court. Their measure is clearly *ex ante*, as the advocates' briefs are filed with the court before oral arguments are heard and a merits decision is rendered. By the nature of the briefs, inspection of the complexity communicated in a brief does not rely upon *a priori* expectations regarding differential complexity across issue areas.[7] Yet, even the use of advocates' briefs has limitations. Most notably, the litigants only raise the level of complexity to their strategic interests. Broader social, political, and economic issues of concern to third parties are left out, for example. Currently, litigant briefs have not been made available at the Norwegian Supreme Court.

Finally, Krehbiel demonstrates how the German Constitutional Court decides whether to hear a case in oral arguments depending on the saliency of the case, as measured by "the number of amicus briefs filed for a case" or involving a federal law (Krehbiel 2016:998).[8] Contrary to the German Constitutional Court, the Norwegian Supreme Court decides all merits cases by oral arguments. Krehbiel's amicus briefs measure should correlate up to a point with our legal assistance and legal intervention variables, while Krehbiel's federal law variable may be parallel to the unitary structure of Norway political system to EU/EEA laws.

Data and Method

To analyze how factors believed to increase case complexity are linked to time allocated for oral arguments, we draw our data from three sources. We pulled basic information on the decisions from the rich Lovdata legal database (www.lovdata.no/). We collected information on allocated time for oral arguments from the Norwegian Supreme Court website (www.domstol.no/hoyesterett/).[9] We merged these two types of data and complemented them with the existing data in the *Doranoh* database (Grendstad et al. 2019).

Dependent Variable: Time Allocated for Oral Arguments

Our dependent variable is the amount of time allocated for oral arguments. International studies demonstrate that a discrete period of time is a valid measure of case complexity. Qvigstad and Schei, in a comparison with the UK system, state that "the oral proceedings [in Norway] are true oral proceedings. (…) The hearing may last for anything from a few hours to a few days, depending on complexity etc." (2018:85). Analyzing civil appeals to Taiwan's Supreme Court, Chen et al. used "elapsed days to case disposition (…) as a proxy for the complexity of the case" (2015:112). In a study on perceived criminal case complexity among jury members, attorneys and judges in U.S. state courts, a reoccurring factor on what constituted a complex case was the number of trial days (Heise 2004).

Norwegian laws require that the oral arguments, as part of the procedures of independent and impartial courts in a system of rule of law, shall be "reasonably proportionate to the importance of the case."[10] Hence, the amount of time allocated is the Supreme Court's best estimate of the proportionality between the complexity of the case and the time the Court needs to hear the complete arguments on the case from the litigants. Former Associate Justice and Chief Justice

[7]See Shapiro (2009) for a discussion on coding issues for complexity.
[8]On other measures of saliency, see Collins and Cooper (2016).
[9]The Court's public window for this information is short and limited to a couple of weeks prior to the oral arguments, limiting the number of cases available for our analysis.
[10]The Dispute Act, Section 1-1.

Tore Schei (2015) concluded that the time allocated to oral arguments has generally been accurate. We argue it is a reliable and valid measure of case complexity.

The Norwegian Supreme Court schedules oral arguments as hours and days. We recode all time estimates to hours based on the Court's standard that one day of oral arguments equals 5.5 hours. The unit of measurement of our dependent variable is hours.

Case complexity as operationalized here may seem to be conflated with the salience of a case. Our measure is predicated on the notion that complex cases do not present obvious or clear decisional pathways. Consequently, they require greater amounts of information in order for the justices to navigate those pathways to a final decision on the merits. And transmitting that information takes time. Of course, complex cases also may be salient, but that is by no means a requirement. How then to isolate the merely complex cases from the complex *and* salient ones? Fortunately, the Norwegian Supreme Court provides us with some guidance. First, as indicated above, former Chief Justice Tore Schei has written that the time allocated for argument reflects the *complexity* of the case (Schei 2015). And second, the Court itself has an institutionalized decisional procedure for cases that it has identified as salient—namely, those cases that involve constitutional issues, judicial review, or especially extraordinary legal issues or questions.[11] The Court does not hear these cases in its normal five-justice decisional panels. Rather, it convenes as either an 11-member Grand Chamber or *en banc* (Grendstad et al. 2015). The analysis that follows is conducted on the more run-of-the-mill decisions from the five-justice panels.

Independent Variables

We used two variables to measure international law in an appeal before the Norwegian Supreme Court.[12] EU/EEA equals 1 if the case refers to EU or EEA laws, 0 otherwise. Similarly, ECHR takes on the value 1 if the case refers to the ECHR, 0 otherwise.

We created two variables to measure the effect of multiple legal players. One variable takes the value of 1 when one or both litigants gain the assistance of additional legal counsel, 0 otherwise. To measure the effect of third-party interveners, a variable that takes the value of 1 when one or more third-party interveners is present in the case, 0 otherwise. Both types of legal players are identified in Lovdata's meta-data of the Court's final decision.[13]

We constructed three variables for lower court disposition. To measure the effect of the most dominant court of appeal, we code appeals from Borgarting's jurisdiction as 1 and the other five courts of appeal as 0. For dissent in the courts of appeal decisions, we created a variable that takes the value of 1 when there is a non-unanimous outcome in the courts of appeal, 0 otherwise. If the Supreme Court bundled appeals, a dissent in any of the appeals defined the case of the bundled appeal as containing a dissent. We coded nineteen appeals from district courts that "leap-frogged" courts of appeal as missing. Finally, cases that are instances of a cross-appeal are coded 1, 0 otherwise.

We used two variables to measure legal categories. To identify the type of case, we created a variable that equals 1 for civil cases, 0 for criminal cases. To account for the differential relationships the types of decision have with case complexity, we created a variable that equals 1 if the decision is a judgment, 0 if the decision is a ruling following the Court's categorization.[14]

[11]Scholars who seek to derive a measurement of complexity using the time allocated for oral argument should be mindful of any institutional procedures that identify salient cases.

[12]Wind (2016) confirms the validity of the Norwegian Supreme Court's citation practice to international law.

[13]In an earlier iteration we counted the number of legal players, but the count measure was methodologically inferior to the dummy variable we use here.

[14]We coded the handful of resolutions as missing because they usually are decided by written procedures.

Table 1. Case complexity and oral arguments: variables.

	Mean	Std.Dev.	Min	Max
Dependent variable:				
Oral arguments	5.976	3.931	0.5	44
Independent variables:				
EU/EEA law	.073	.261	0	1
ECHR law	.205	.404	0	1
Legal assistance	.022	.146	0	1
Third party intervener	.064	.245	0	1
AC Borgarting	.471	.499	0	1
AC dissent	.246	.431	0	1
AC cross appeal	.107	.310	0	1
Judgment	.896	.306	0	1
Civil law	.512	.500	0	1

N = 1,405–1,433.
Data source: lovdata.no; domstol.no/høyesterett; Grendstad et al. (2019).

Descriptive Statistics

Descriptive statistics for all variables are reported in Table 1. A histogram of the dependent variable is presented in Figure 2. The representative case was given about one full day of oral arguments in the Court. The median is 5.5 hours. The average is 5.98 hours. Clearly, the range of time devoted to oral arguments offers a substantial amount of variance. The standard deviation of nearly four hours indicates that the distribution is considerably right skewed (skewness is 2.43). Figure 2 nicely illustrates the departure from a normal distribution, since the observed distribution is taller and thinner than the normal distribution. The characteristic long tail nicely charts the skewness of the distribution of the oral argument dependent variable. Since a normal curve produces a kurtosis value of 3, the difference between the kurtosis value for the observed distribution minus 3 indicates excess kurtosis. In the present case that value is 12.977 (15.977 − 3).

Thirty-three cases have oral arguments lasting at least 15 hours and 13 cases have oral arguments lasting at least 20 hours. Only one of these 33 cases was a criminal case. The two most extreme cases—one requiring 44 hours (eight full days) for oral arguments; the other, 35.75 hours (6.5 days)—concerned economic regulations. In the former, the Court heard arguments on the validity of the Government's amendments of regulations of tariffs on payments for gas shipments through the North Sea pipelines owned by Gassled, a government owned company.[15] The question at bar in the latter case concerned airline pilots' claim for employment in the parent company, Norwegian Air Shuttle, rather than in separate pilot and cabin crew companies.[16] The case in our data that required the least amount of time for oral arguments (30 minutes) was a criminal case where the Court quashed a lower court's decision due to a judge having had a conflict of interest in the case.[17]

The means of our covariates show that there are three times as many cases dealing with ECHR (21 percent) than EU/EEA (7 percent) laws, that the presence of additional legal players in a case is relatively infrequent, that the Borgarting Court of Appeal accounts for almost half of the cases (47 percent), that most of the cases are judgments (90 percent), and that the overall caseload divides almost equally between civil and criminal cases.

Method

To test our nine hypotheses, we began by estimating an ordinary least squares (OLS) regression, treating the time reserved for oral arguments as the dependent variable. However, post-estimation

[15]HR-2018-1258-A. https://lovdata.no/pro/#document/HRENG/avgjorelse/hr-2018-1258-a-eng.
[16]HR-2018-2371-A. https://lovdata.no/pro/#document/HRENG/avgjorelse/hr-2018-2371-a-eng.
[17]Rt-2009-423. https://lovdata.no/pro/#document/HRENG/avgjorelse/hr-2009-735-a-eng.

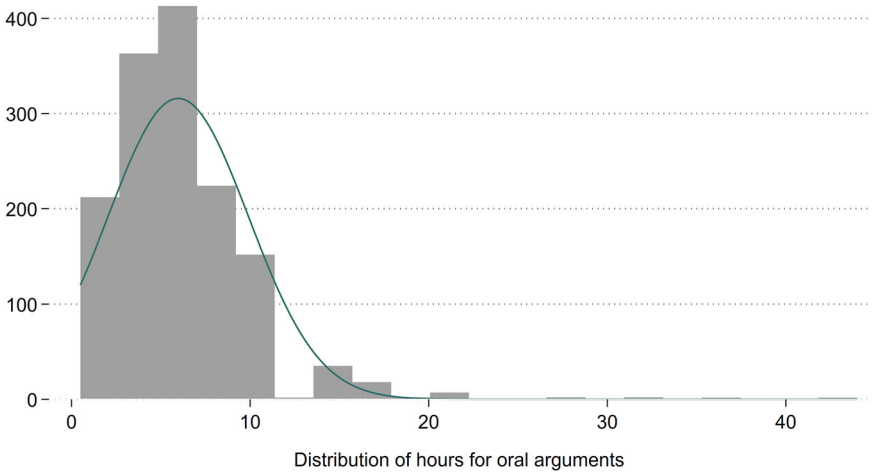

Figure 2. Hours for oral arguments The Norwegian Supreme Court 2008–2018. Datasources: lovdata.no; domstol.no/hoyesterett/; Grendstad et al. (2019). n = 1,402.

analyses revealed that a high level of heteroscedasticity plagued our OLS model. To compensate for this, we took the natural log of the dependent variable and subjected the data to a weighted least squares regression analysis. The result was a model completely devoid of multicollinearity and heteroscedasticity.[18]

Estimation Results

Figure 3 displays the results of the weighted least squares regression analysis of the nine hypothesized relationships discussed above. (See Table A1 in the Appendix for the model estimates underlying the results displayed in Figure 3.) Specifically, the figure shows the regression coefficients of all the independent variables, along with their respective 95 percent confidence intervals, in the analysis. The F-test statistic of 126.42 ($p < .001$) and adjusted R-squared of .45 supply evidence of the strength of the overall statistical model. Post estimation of variance inflation factors and the Breusch-Pagan test demonstrate clearly that the equation is free of multicollinearity and heteroscedasticity.

All but two independent variables exhibit statistically significant associations with the hours of oral arguments dedicated to the cases to be decided by the Supreme Court. On the basis of the regression coefficients displayed in Figure 3, we can safely conclude that both Hypotheses 1 and 2 enjoy strong empirical support. As expected, harmonizing European and national law is a complex process as indicated by the increased time the Norwegian Supreme Court has devoted to cases involving EU/EEA laws and ECHR laws. The fact that both hypotheses were significant supports the argument that EU/EEA laws and ECHR laws are different domains.

[18]The level of correlation between the two most correlated variables—third-party intervention and civil law—is .22. Thus, multicollinearity is not an issue in the regression model. To address the issue of heteroskedasticity, a weighted least squares solution was estimated in which we weighted all independent variables proportional to the log of the squared residuals in the equation. Since all values for the time allotted for oral arguments are greater than zero, we also estimated a zero truncated negative binomial regression model, which produced the same substantive results as the weighted least squares solution. A significant alpha value indicates that the negative binomial model is better than a Poisson solution (see Table A2 in the Appendix). Finally, we also clustered the standard errors on year in the original regression model (see Table A3 in the Appendix) and the model regressing the log of the dependent variable on the different covariates (see Table A4 in the Appendix). In neither case was the directionality or significance of our estimates appreciably changed. We are unable to cluster the standard errors in either the weighted least squares or zero truncated negative binomial regression procedures.

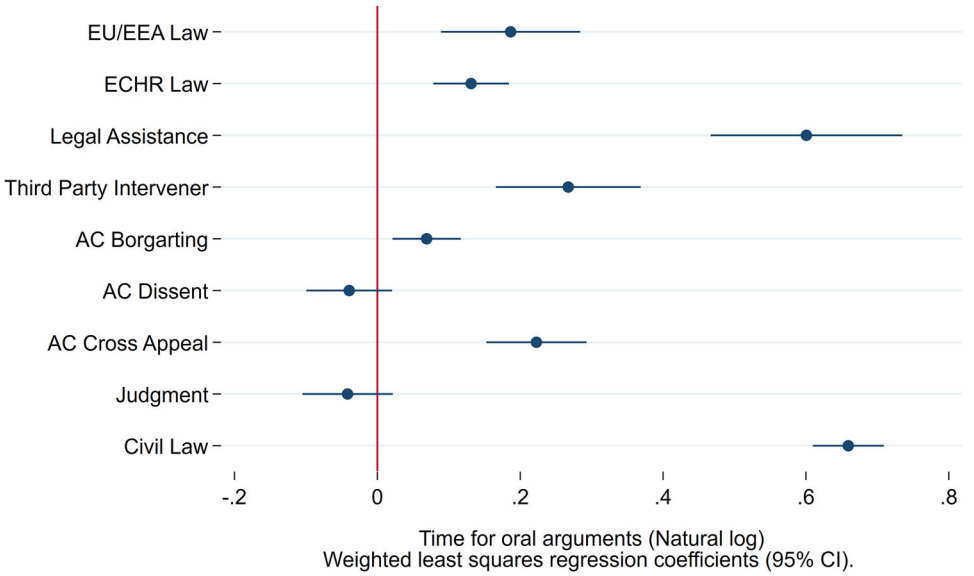

Figure 3. Case complexity predictors of oral arguments. The Norwegian Supreme Court 2008–2018. Datasources: lovdata.no; domstol.no/hoyestereett/; Grendstad et al. (2019). n = 1,402.

Hypotheses 3 and 4 suggest that the addition of legal assistance and presence of third parties that introduce additional information are associated with greater case complexity and will require additional time in oral arguments. As to the former, more legal resources that are brought to bear in a case is an indicator that the case is complex and will require more time for oral arguments. Similarly, the presence of third parties, and the concomitant additional information presented to the justices, is associated with increased time allocated for oral arguments.

Hypotheses 5 through 7 all concern forces associated with lower courts. Hypothesis 5—the contention that the case complexity of suits appealed from Borgarting, the court of appeal located in the capital city of Oslo, bears upon the time reserved for oral arguments—gains scant, but statistically significant, support. Hypothesis 6, positing a relationship between lower court dissent and oral arguments time, fails to achieve statistical significance. However, as expressed in Hypothesis 7, cross-appeals do indeed drive up the time devoted to oral arguments.

Hypothesis 8, suggesting that rulings are allocated more time for oral arguments than are judgments is not supported. However, whether a case involves civil law has a powerful direct association with the time devoted to oral arguments, thus confirming Hypothesis 9, which is grounded in the assumption that criminal cases typically involve sentencing issues alone, while civil cases can embody quite a range of legal questions.

Substantive Importance: Hours of Oral Arguments

Although statistical significance enables us to report on whether our hypotheses are confirmed, it does not fully inform us of the substantive importance of the explanatory variables. To gain some traction on the matter of substantive significance, we compute the predicted natural log of oral arguments for each level of our independent variables, and then transform the predicted values to hours of oral arguments, the original measure. Table 2 displays the estimated differences for the presence or absence of a particular factor.[19]

[19]Table 2 shows hours and decimals. Multiplying the decimal with .60 converts the decimal to minutes.

Table 2. Case complexity predictors of oral arguments.

	Lowest	Highest	Hours	Percent
Independent variable	Value	Value	Difference	Change
EU/EEA law	5.134	6.380	1.246	24.3
ECHR law	5.174	5.912	0.738	14.3
Legal assistance	5.275	8.993	3.718	70.5
Third party intervener	5.285	7.062	1.777	33.6
AC Borgarting	5.174	5.536	0.362	7.0
AC dissent	5.420	5.216	−0.204	−3.7
AC cross appeal	5.246	6.541	1.295	24.7
Judgment	5.561	5.342	−0.219	−3.9
Civil law	3.694	7.142	3.448	93.3

The Norwegian Supreme Court 2008–2018.
Weighted least squares regression predictions in hours.
Note: The table shows hours and decimals. Multiplying the decimal with .60 converts the decimal to minutes.

Turning first to international law, if a case involved an EU/EEA law, the oral arguments time on average was increased by about one hour and a quarter; a matter addressing the ECHR increased oral arguments by a bit less than three-quarters of an hour. Third Party Intervention elevated the deliberation time by about one and three-quarter hours, a sizable increase. Although significant, a case appealed from the Borgarting Court of Appeal increased oral arguments by a scant 22 minutes. A case with multiple appeals increased oral arguments time by about one and one-third hours.

That brings us to the two most powerful determinants of time devoted to oral arguments—the presence of legal assistance and whether the appeal involved civil or criminal law. While there are very few cases where legal assistance was present—less than 3 percent of the time—its availability increased oral arguments time by approximately three and three-quarters hours. In other words, when legal assistance was present for one of the parties, the total time for oral arguments nearly doubled from one day to almost two full days in Court. The impact of whether a case involved criminal or civil law was almost as powerful as legal assistance. A criminal case consumes less than four hours of time, whereas a civil case generates on average over seven hours of oral arguments.

Conclusion and Discussion

For the few courts with an institutional design that permits an accordion model of oral arguments, a valid and reliable operationalization of *ex ante* case complexity is the amount of time allocated for oral arguments. More complex cases present more discrete pieces of information, more informational relationships and associated policy and precedential networks, and more ambiguous legal questions that require greater engineering of the relevant legal rules and principles. And all of this information requires more time to transmit to the justices and for the justices to process. Thus, the amount of time allocated to transmit this information in oral arguments is a function of the expected complexity of the case. To put it concretely, the more complex the case is expected to be, the greater the amount of time that is reserved for the litigants' presentation of the case in oral arguments.

In this analysis, we have tested and validated the associations of a collection of case attributes that we hypothesized are signals of case complexity. We have shown that, in the context of the Norwegian Supreme Court, most of these case attributes are systematically related to the amount of time the Court allocates for its institution of oral arguments. Cases that concern the internationalization of the law (i.e., cases involving EU/EEA and ECHR laws) require more time to present to the justices. We also find that the addition of legal assistance for one of the parties and the presence of third-party interests are indicative of greater case complexity, and are associated with the allocation of additional time. Cases arriving from Borgarting, the court of appeal

located in the capital city of Oslo, impose greater informational demands than cases from the other courts of appeal in the country. Appeals from lower courts require more time for oral arguments when both parties appealed the case but not when the lower court judges failed to see eye-to-eye on the outcome of the case. Finally, because criminal cases primarily concern establishing sentencing ranges, they are allocated less time for oral arguments than are civil cases, which oftentimes present more complicated issues. Based upon our statistical analysis, then, there exists a fair amount of convergent validity between indicators of case complexity as *ex ante* measures of case complexity and the time reserved for oral arguments at least in the context of the Norwegian High Court.

Two immediate questions present themselves. First, do similar case attributes have a similar relationship to the amount of time the other accordion model high courts allocate to their oral arguments? That is, do these case attributes indicate complexity across different courts? As we saw in Figure 1, next to the Norwegian Supreme Court, the high courts of the United Kingdom, Ireland and Iceland, and to some extent even Denmark, all combine oral arguments and the accordion model. Testing for such relationships and finding them will speak powerfully to the use of these case attributes and/or the time reserved for oral arguments as *ex ante* measures of case complexity for the accordion model courts. It also bears discussion that it seems possible that the case attributes we have identified as indicators of complexity would serve as indicators of complexity for the procrustean model courts as well. After all, those attributes that require more time to sufficiently explicate to the justices (and thus longer oral arguments proceedings in the accordion model courts) presumably would result in more elaborate and detailed legal briefs in the procrustean model courts. Regardless of how this tortuous information might be communicated, its presentation will impose greater cognitive costs on the justices as they process it.

Second, does the use of time reserved for oral arguments or the case attributes we have shown to be positively associated with it have predictive validity? For example, we would expect that more complex cases are likely to result in more divergent opinions among the justices. Accordingly, is there a positive correlation between the amount of time reserved for oral arguments and the number of dissenting and/or concurring votes? Similarly, we would expect that more complex cases will take longer for the justices to converge on a majority decision (see Nie et al. 2019; Christensen and Szmer 2012). Thus, is there a positive relationship between the amount of time reserved for oral arguments and the amount of time required for the Court to render its final merits decision? Both of these questions await future analysis.

The principal focus of the preceding analysis has been to test empirically the link between cases known to be complex in nature, as well as the role played by a variety of other actors, and the time allocated for oral argument. While time for oral argument as an overall measure of case complexity is reasonable on the grounds of face and content validity, the regression results reflect a substantial level of convergent validity. Future research could explore potential relationships between this new indicator of case complexity and the decisional behavior of justices. For example, the link between complexity and the amount of ink spilled by justices while penning their opinions would be a plausible hypothesis to address. Such a test would treat the number of words as the dependent variable to be explained by time allocated for oral argument, the independent variable, thereby reversing the role of the complexity index in an estimated regression equation.

A very preliminary test indicates that as time for oral argument increases, so does the number of words justices commit to paper, as reflected in a correlation of .680. Indeed, moving from the smallest amount time for oral argument to its upper reaches, the number of words written increases by 1500 percent.[20] Without a doubt, this reinforces the case for predictive validity. In

[20]The regression equation was estimated using a weighted least squares regression on the natural logs of the variables with five outliers removed in order to remove significant heteroskedasticity.

any event, exploring the impact of the new case complexity measure on decisional behavior is the next phase of the larger research program.

Finally, as we noted above, there are certainly practical implications of these types of results for courts. Systematic identification of the covariates of case complexity will allow high courts with discretionary jurisdiction to better manage their case processing. For example, if their merits docket becomes too crowded with more complex and thus time demanding cases, these courts can opt to decline additional cases, thereby avoiding case backlogs and any deleterious effects such backlogs might have on overall court operations and even public attitudes toward the judiciary.

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ORCID

Eric N. Waltenburg http://orcid.org/0000-0003-3901-2503

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Appendix

Table A1. Case complexity predictors of oral arguments.

Independent variable	Coefficient	(Hypothesized direction)
EU/EEA law	.193**	+
ECHR law	.133**	+
Legal assistance	.533**	+
Third party intervener	.290**	+
AC Borgarting	.068*	+
AC dissent	−.038	+
AC cross appeal	.225**	+
Judgment	−.040	−
Civil law	.659**	+
Constant	1.190**	
F-test	126.42**	

The Norwegian Supreme Court 2008–2018.
Adj $R^2 = .45$.
Root MSE = .44.
N = 1,402.
Mean VIF = 1.05.
Breusch-Pagan heterogeneity test = 0.69; $p = .407$.
*$p < .01$; **$p < .001$.
Note: Weighted least squares regression model. The dependent variable is the natural log of hours of oral arguments.

Table A2. Zero truncated negative binomial regression case complexity predictors of oral arguments.

Independent variable	Coefficient
EU/EEA law	.175***
ECHR law	.097**
Legal assistance	.604***
Third party aid	.260***
AC Borgarting	.091*
AC dissent	−.008
AC cross appeal	.211**
Judgment	−.037
Civil law	.704***
Constant	1.237***
LR-test of alpha	96.52***

The Norwegian Supreme Court 2008–2018.
Adj $R^2 = .112$.
N = 1,402.
*$p < .01$; **$p < .001$; ***$p < .000$.
Note: Zero Truncated Negative Binomial Regression. The dependent variable is hours of oral arguments.

Table A3. OLS regression: case complexity predictors of oral arguments. clustered standard errors.

Independent variable	Coefficient
EU/EEA law	1.364**
ECHR law	.493*
Legal assistance	7.159***
Third party aid	2.283***
AC Borgarting	.542**
AC dissent	−.020
AC cross appeal	1.117***
Judgment	−.034
Civil law	3.590***
Constant	3.311***

The Norwegian Supreme Court 2008–2018.
$R^2 = .417$.
N = 1,402.
*$p < .01$; **$p < .001$; ***$p < .000$.
Note: OLS regression model. The dependent variable is hours of oral arguments.

Table A4. OLS regression case. complexity predictors of oral arguments.

Independent variable	Coefficient
EU/EEA law	.197***
ECHR law	.127***
Legal assistance	.534***
Third party aid	.266***
AC Borgarting	.065***
AC dissent	−.023
AC cross appeal	.223***
Judgment	−.052
Civil law	.720***
Constant	1.168***

The Norwegian Supreme Court 2008–2018.
$R^2 = .485$.
N = 1,402.
*$p < .01$; **$p < .001$; ***$p < .000$.
Note: OLS regression model. The dependent variable is the natural log of hours of oral arguments.