



Norway

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Country Summary: The new Penal Code of 2015 decriminalized blasphemy and defamation while still punishing the violation of privacy. In 2021, three amendments to the Criminal Code were introduced: Section 185 of the Code was amended to include hate speech against a person or group based on their gender expression or gender identity; Section 77 introduced gender and gender expression as an aggravating circumstance in the committal of an offense; and unentitled sharing of infringing images was confirmed as a criminal offense. In 2019, the Working Environment Act was amended to include a general duty for the employer to secure a good environment for free speech in the workplace. Three non-legislative developments are currently underway: one amendment to the Surveillance legislation allowing intelligence services to command digital services providers to facilitate any border crossing communication for analysis. The amendment contains a degree of court control and protection of journalists' sources, but there have been discussions on the amendment's possible chilling effect. One bill proposes a ban on "conversion therapy" and one proposed amendment to the Freedom of Information Act. It establishes that not only internal documents of a government agency but also entries in records relating to internal organ documents, may be exempted from public disclosure. Amendments are also proposed to the Freedom of Information

Regulations and the Archive Regulations to clarify that public bodies may record internal documents of a government agency without information about these documents being published in the public postal journals that are available online.

Introduction

Norway has been number one on the Word Press Freedom Index of Reporters without Borders⁵⁴³ for several years. Norway ranks 4th out of 161 countries in Article 19's 2022 Global Expression Report.⁵⁴⁴ It ranked 1st out of 33 countries in Justitia's 2021 Free Speech Index which looked at public attitudes to freedom of expression.⁵⁴⁵ The media enjoys a high degree of protection through legislation, in terms of protection against defamation charges, protection of sources and independence. It is illustrative that, during recent debates on the implementation of the European Media Freedom Act, the Association of editors-in-chief expressed concern that the regulation could lead to weaker protection than what already exists in Norway. Freedom of expression is also strong in other areas. Academic freedom is protected in universities, although discussions on cancel culture and no-platforming have arisen in Norway as well. A very hot issue regarding freedom of expression at the moment is the burning of the Koran in public. This is considered a protected expression and is, as such, not punishable, even if the context may in certain cases imply hate speech. This has led to much debate since Norwegian and Swedish practice is quite similar, and because this practice has become an issue with Sweden's membership in NATO. It remains to be seen whether such political pressure means that the principled protection of such expressions is weakened.

The Norwegian courts have also traditionally enforced the principles of freedom of expression consistently. An example of that is a Norwegian Supreme Court ruling known as the "Rolfesen case." It was deemed by Columbia University to be the most significant ruling in 2016⁵⁴⁶ for not letting the fight against terror overshadow journalistic source protection. In the case, the police had seized film recordings made by a documentary filmmaker who was working on a film about the recruitment of possible terrorist. The Supreme Court lifted the seizure.

Freedom of expression in the Norwegian workplace seems to be under some pressure. This concerns actual perceived freedom of expression, not legal changes. In fact, legislation on this aspect of freedom of expression is actually improved. However, research shows that fewer people today are willing to make critical statements about the workplace than before. It is uncertain what is the cause of this development. One hypothesis could be increased professionalization in both private and public workplaces, for example the use of designated public relations personnel. Another hypothesis could be that there has been so much focus on

⁵⁴³ <https://rsf.org/en/index>

⁵⁴⁴ <https://www.article19.org/wp-content/uploads/2022/06/A19-GxR-Report-22.pdf>

⁵⁴⁵ <https://futurefreespeech.com/who-cares-about-free-speech-findings-from-a-global-survey-of-free-speech/>

⁵⁴⁶ <https://globalfreedomofexpression.columbia.edu/prizewinners2016/>

rules on whistle blowing, based on certain criteria and case management, that use of the general freedom of expression has been somewhat displaced.

As in all countries, there is a lot of debate in Norway on how to deal with artificial intelligence and various aspects of social media. It is well known that these phenomena could have a large impact on actual freedom of expression. Norway's special position here is that the regulation of these areas takes place through European legal development. It is expected that European rules will be implemented in Norway. At the same time, Norway is not a member of the EU, and has limited influence on the development of these rules. Many would argue that for this reason, the Norwegian authorities have been passive on these issues.

I. Legislation

New penal code

In October 2015, the new Norwegian penal code entered into force. This led to several changes with implications for freedom of expression. Of particular importance are the rules on blasphemy, defamation and privacy.⁵⁴⁷

Blasphemy

Parliament decided that the new law should not include a section criminalizing blasphemy. In April 2015, the Parliament's Justice committee decided to repeal the current blasphemy section, as no one had been prosecuted for breach of the paragraph since the 1930's and the committee also expressed that "as much free and open criticism and debate of religion as possible is a prerequisite for a well-functioning democracy, especially in a multicultural society." Blasphemy is no longer punishable by law in Norway.

Decriminalization of defamation

When the new Penal Code entered into force, defamation was decriminalized. At the same time, a new section 3-6(a) in the Civil Code entered into force.⁵⁴⁸ According to this, the insulted party can claim damages in civil proceedings, based on the criteria developed by the European Court of Human Rights. Through this, Norway adhered to the Parliamentary Assembly of the Council of Europe (PACE) Resolution 1577 Towards Decriminalization of Defamation (2007) and corresponding Recommendation 1814 (2007).

⁵⁴⁷Preparatory Work:

<https://www.stortinget.no/no/Saker-og-publikasjoner/Publikasjoner/Innstillinger/Stortinget/2014-2015/inns-201415-248/>) and

<https://www.stortinget.no/no/Saker-og-publikasjoner/Publikasjoner/Innstillinger/Odelstinget/2008-2009/inno-200809-073/?lvl=0#a13.1.2>

⁵⁴⁸ https://lovdata.no/dokument/NL/lov/1969-06-13-26/KAPITTEL_3#KAPITTEL_3

Privacy

Violation of privacy is not decriminalized; it is still a criminal offense according to Section 267 of the new Penal Code.⁵⁴⁹ The protected “privacy” does not cover all personal data but is limited to publication of sensitive personal information. The maximum penalty for this offense was even raised in the new code, based on the argument that those who have to withstand stronger public criticism, must also have strong protection for the most private.

Hate Speech - Amendments to the Penal code section 185

Section 185 in the Norwegian Penal Code criminalizes hate speech. The section has its foundation in Norway’s ratification to the International Convention on the Elimination of All Forms of Racial Discrimination and has since been amended several times. It constitutes an interference with the right to freedom of expression, to protect people against discriminatory hate speech. Section 185 was amended in January 2021, to also include hate speech against a person or group based on their gender expression or gender identity. The majority of the Parliament’s Judiciary Committee found it important and necessary to protect transgender persons. The majority further pointed out that freedom of expression, belief and religion is strongly protected, and that the provision is not intended to restrict religious communities’ interpretations and statements of their own religious texts.

In August 2022, the Freedom of Expression Commission recommended amending Section 185 to better reflect the threshold for conviction as set up in the Supreme Court’s judgements (discussed in the section on ‘enforcement’ below). The report⁵⁵⁰ has been subjected to a public hearing and the statements are currently under consideration by the Ministry.⁵⁵¹

Amendments in the Penal Code section 77 on Aggravating Circumstances

Section 77 of the Penal Code deals with aggravating circumstances when determining sanctions. As of January 1st 2021, this provision also includes gender expression and gender identity. Paragraph 77 (i) has the following wording:

“In connection with sentencing, aggravating factors to be given particular consideration are that the offense:

⁵⁴⁹ https://lovdata.no/dokument/NL/lov/2005-05-20-28/KAPITTEL_2-9#KAPITTEL_2-9

⁵⁵⁰ <https://www.regjeringen.no/contentassets/753af2a75c21435795cd21bc86faeb2d/no/pdfs/nou202220220009000dddpdfs.pdf>

⁵⁵¹ The consultation statements from different organizations, companies, private parties and public bodies: <https://www.regjeringen.no/no/dokumenter/nou-20229-en-afen-og-opplyst-offentlig-samtale-horing/id2928888/?expand=horingsbrev&lastvisited=undefined>

- i. was motivated by a person's religion or life stance, skin color, national or ethnic origin, homosexual orientation, gender expression or gender identity, disability or other circumstances relating to groups with a particular need for protection,

The amendment aimed to strengthen the protection of trans gender people and others who have a gender identity or expression that goes against the expectations of their surroundings.

Protection of sensitive information

In 2021, amendments were made to Sections 267 (a) and (b) of the Penal Code, criminalizing sharing of infringing images. More specifically, the Penal Code was amended to include sharing of images, films, and audio recordings of offensive or evident private nature, for instance, of someone's sexual life or intimate body parts, someone who is subjected to violence or other humiliations, or someone who finds themselves in a very vulnerable situation. The amendment was intended to ensure that non-consensual sharing of infringing images is a criminal offense, and that this is clearly expressed in the law. The penalty level was also raised for serious cases of unjustified sharing of such images in a new Section 267(b). For other violations, the amendment was meant to establish the level of punishment established in previous case law.

Amendments to the penalty provision for violations of the representative of a foreign state

Section 184 of the Penal Code concerns public order offenses against a foreign state or an intergovernmental organization. The section was clarified in the interests of freedom of expression, so that only illicit insults can be punished, as opposed to the previous wording that stated that insults were punishable by law. At the same time, the scope of the provision was expanded to also include representatives from intergovernmental organizations.

Civil Rights Law

Amendments to the Personal Data Protection Act and the Freedom of Information Act (freedom of expression and information, etc.)

Parliament adopted amendments to the Personal Data Act and the Freedom of Information Act. Section 26 (6) of the Freedom of Information Act makes exceptions to the right of access for compilations and overviews prepared in connection with access to one's own personal data pursuant to the General Data Protection Regulation. Furthermore, there is a new regulation in paragraph 5 regarding deferred access to information from The Norwegian Parliamentary Oversight Committee on Intelligence and Security Services, as well as amendments to Paragraph 3 of the Personal Data Protection Act.

Trade Secrets Act

The new act on trade secrets came into force on January 1st, 2021, and implements the EU's directive on the Protection of Trade Secret. The act aims to simplify the regulations and strengthen the protection of trade secrets by bringing together previously overlapping and scattered rules.

Media Liability Act

A new Media Liability Act was implemented in 2022, clarifying the media's limits when it comes to, among other things, freedom of expression, source protection, and defamation. At the same time, amendments were made to Section 3-6 of the Indemnity Act relating to defamation.

Postal Services Act

The Postal Services Act was amended in 2015 to include a change in the number of redistribution days. The changes were based on the fact that Norwegians send fewer and fewer letters. As opposed to the previous delivery of mail from five times a week, it is now one delivery of postal items every other day, Monday to Friday, in a two-week cycle, to any legal or natural person's place of business or permanent year-round residence. The authority may issue regulations and make individual decisions concerning services subject to delivery, including requirements relating to the scope of services, geographical coverage area, service and quality, collection scheme, and the number and location of expedition locations. The authorities may also issue regulations and make individual decisions on compensatory measures.

Working Environment Act and Whistleblowing

The Working Environment Act was amended in 2017, to provide protection of whistleblowers in chapter 2A.⁵⁵² The rules contain a description of reprehensible acts that can form the basis for whistleblowing, protection of the employee and the employer's duties. In case of any retaliation from the employer, the employee is entitled to damages. In 2019 the protection was further strengthened. In 2019 Section 1-1 c of the Working Environment Act⁵⁵³ was amended to include a general duty for the employer to secure a good environment for free speech in the workplace.

Scope of protection: The chapter in the Working Environment Act relating to notification and health environment and safety, was expanded to also give rights to persons who are not employees. According to the new law "the following persons are regarded as employees

⁵⁵² https://lovdata.no/dokument/NL/lov/2005-06-17-62/KAPITTEL_3#KAPITTEL_3

⁵⁵³ https://lovdata.no/dokument/NL/lov/2005-06-17-62/KAPITTEL_3#KAPITTEL_3

pursuant to the Act's provisions concerning notification and health environment and safety when performing work in undertakings subject to the Act:

- a. students at educational or research institutions,
- b. national servicemen,
- c. persons performing civilian national service and Civil Defense servicemen,
- d. inmates in correctional institutions,
- e. patients in health institutions, rehabilitation institutions and the like,
- f. persons who for training purposes or in connection with work-oriented measures are placed in undertakings without being employees,
- g. persons who without being employees participate in labor market schemes.

Other proposed amendments to the law which are not yet enacted or in force

Surveillance legislation

Norway has two intelligence services: a branch of the police (PST) for domestic matters, and "Etterretningsjenesten" for threats from abroad. Legislation for both services has recently been amended to increase their access to digital information in "bulk." The legislation is only partly in force. For Etterretningsjenesten, Chapter 7 of the Etterretningstjenesteloven⁵⁵⁴ will give the service authority to command digital service providers to facilitate any border crossing communication for analysis. The amendment contains a degree of court control and protection of journalist's sources, but there have been discussions on the amendment's possible chilling effect. The amendment regarding the domestic service (PST) has led to similar discussions. This will give PST authority to download all openly accessible information on the Internet. According to a new section 65(a) in the Politiregisterlov,⁵⁵⁵ such material can be stored for up to five years and, for surveillance purposes only can be analyzed with artificial intelligence.

Ban on Conversion therapy

The Ministry of Culture and Equality has proposed to criminalize "methods for the purpose of prompting another to change, deny or suppress their sexual orientation, or gender identity, which is clearly liable to cause the person in question psychological harm." The Ministry has pointed out that the penalty provision must be interpreted with the Constitution and Norway's human rights obligations. In terms of religious practice, expressions of opinion and religious expression, the threshold for which actions are affected can only be ascertained after a closer assessment of the rights to freedom of religion and freedom of expression. The proposal has

⁵⁵⁴ <https://lovdata.no/dokument/LTI/lov/2020-06-19-77>

⁵⁵⁵ <https://lovdata.no/dokument/NL/lov/2023-04-28-11?q=endring%20politiregisterlov>

been subject to a public hearing, and the statements and proposal are currently being processed by the Ministry.⁵⁵⁶

Proposed amendments to the Act relating to the right of access to documents held by public authorities and public undertakings (Freedom of Information Act)

The Ministry of Justice has proposed an amendment to Section 14 (1) of the Freedom of Information Act that makes it clear that not only internal documents of a government agency as such, but also entries in records relating to internal organ documents, may be exempted from public disclosure. Furthermore, amendments are proposed to the Freedom of Information Regulations and the Archive Regulations to clarify that public bodies may record internal documents of a government agency without information about these documents being published in the public postal journals that are available online through eInnsyn or in some other way. As of April 20th 2023, the proposal is being subjected to a public hearing.

II. Enforcement

Case law from the Supreme court of Norway on hate speech from 2015-2022:

HR-2022-1843-A (gender identity, gender expression): The case concerned the question of whether statements made to a trans woman on Facebook were punishable by the law. The defendant and the victim had known each other for 15-20 years and they had previously had social interaction, including on "laiv", which is a form of role-playing. A few years prior to the Facebook messages, the victim had changed legal gender from male to female, and changed name to a woman's name. The defendant called her, among other things, a perverted male pig with sick fantasies and wrote that it was incomprehensible to him that the authorities still allowed her to care of her kids. The supreme court found that the statements constituted hate speech.

HR-2022-1707-A (ethnicity): The case concerned a man who had shouted at a 16-year-old girl with a Somali background that she should "go back to Somalia, you'll be much better off, because you won't get any NAV⁵⁵⁷ there." The majority of the Supreme Court (3 out of 5 judges) found that the speech was hate speech but would not be so if the victim was an adult. Dissenting judges found that the statement was protected by free speech.

HR-2020-2133-A: (ethnicity) A woman had said, without any prior interactions between the parties, in a queue outside a fast-food restaurant, among other things to a young boy of

⁵⁵⁶ Consultation statements from different organizations, companies, private parties and public bodies here: <https://www.regjeringen.no/no/dokumenter/nytt-lovforslag-om-forbud-mot-konverteringsterapi/id2919197/>

⁵⁵⁷ The Norwegian Labour and Welfare Administration is composed of a central agency and elements of the municipal social service systems. The Norwegian Labour and Welfare Administration helps provide social and economic security while encouraging a transition to activity and employment

African origin: "go back to Africa where you come from, fucking foreigner." The Supreme Court found that the statements were covered by Section 185 of the Penal Code, and constituted hate speech.

HR-2020-185-A (religious background and ethnicity): A man had written several statements about blacks, Muslims and Islam in a closed Facebook group, with 15,000 Members. The court found that the following statements were punishable as hate speech:

"- I guess it's better that we remove these despicable rats from the face of the earth ourselves in my opinion!!"

"- Fill up these soot pipes in containers and drop them at the bottom of the sea

- "Yes, they will disappear the day these steppe baboons go where they belong"

HR-2020-184-A (Ethnicity): A person had written the following about an activist from Somalia in a comment section on a closed Facebook group with about 20,000 members: "fucking black offspring go back to Somalia and stay there your corrupt cockroach." The woman was convicted for hate speech.

Conclusion

The overall trend is that freedom of expression is still being strengthened in Norway, especially for "traditional topics." In particular, it is worth noting that defamation has been decriminalized, blasphemy abolished, and that freedom of expression has been strengthened in working life. The paradoxes of freedom of expression are illustrated by the fact that it has not necessarily led to greater perceived freedom of expression in the workplace. There seems to be an increased informal chilling effect that leads to less criticism. Another problem area is increased monitoring of the Internet to combat terror and serious crimes. This may raise questions about the protection of sources and have a possible chilling effect. These questions are, however, addressed during the national legislative processes. The digital age has meant that questions about artificial intelligence and regulation of social media have become particularly important. In this area, Norway is anticipating regulation from the EU and therefore Norwegian authorities have so far refrained from lawmaking in these domains.