

State of the Rule of Law in Europe in 2022



Reports from National Human Rights Institutions

Norway

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Norwegian National Human Rights Institution

Impact of 2021 rule of law reporting

Impact on the Institution's work

Rule of law is a priority for the Norwegian NHRI (Norges institusjon for menneskerettigheter – NIM), and the Institution has benefitted from information contained in the previous ENNHRI rule of law reports. The Institution has, however, not had any concrete follow-up initiatives based on these reports.

Independence and effectiveness of the NHRI

The conditions are good for the Norwegian NHRI to effectively carry out its work. Regarding the follow-up to its recommendations, the Institution has a constructive dialogue with the authorities, also on issues where their opinions diverge.

Human rights are well integrated into the Norwegian legal system and Norwegian courts follow the general principle that domestic law should be interpreted in accordance with international law. The drafting and consultation procedures for new legislation also include a thorough consideration of human rights implications.

International accreditation status and SCA recommendations

The Norwegian National Human Rights Institution was accredited with A-status in March 2017.

The SCA acknowledged that the Norwegian NHRI interprets its mandate broadly but encouraged the NHRI to advocate for amendments to its legislation that would provide the NHRI with an explicit mandate to encourage ratification or accession to international human rights instruments.

It acknowledged that the NHRIs had reported that, in practice, the selection and appointment process is conducted in an open and transparent manner. However, the SCA took the view that the selection process enshrined in the legislation was not sufficiently broad and transparent. In particular, the legislation does not specify the process for achieving broad consultation and participation in the application, screening, selection and

appointments process. The SCA encouraged the NHRI to advocate for the formalization and application of a process that is clear, transparent and participatory.

Further, the SCA encouraged the NHRI to continue to develop, formalise and maintain working relationships, as appropriate, with other domestic institutions established for the promotion and protection of human rights, including in particular Ombuds institutions and civil society organizations in Norway.

Additionally, the SCA acknowledged that the NHRI reported that it intended to propose amendments to its enabling law to specify the grounds and process for dismissal.

Finally, the SCA noted that the enabling legislation is silent on members' functional immunity, and reminded that NHRI and its staff should be protected from legal liability for acts undertaken in good faith in their official capacity.

References

- https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/SCA_Final_Report_-_March_2017-English.pdf

Regulatory framework

The Norwegian Institution functions on a legislative basis. The Institution has the mandate to contribute to access to justice for individuals, including through awareness-raising. The Institution may also give input to the courts i.a. through third party interventions concerning general questions within its mandate.

The national regulatory framework applicable to the Institution has not changed since the 2021 report. The Institution indicated it is not necessary to strengthen the regulatory framework.

References

- <https://www.nhri.no/en/the-national-institution-act/>

Enabling and safe space

The relevant state authorities have good awareness of the Institution's mandate, independence and role.

The Institution has adequate access to information and to policy makers and is it involved in all stages of legislation and policy making with human rights implications. As mentioned, the Institution has a constructive dialogue with the authorities.

The addressees of the Institution's recommendations are not legally obliged to provide a timely and reasoned reply. However, the Government agencies generally provide timely responses to inquiries.

According to practice, the Government informs the Parliament annually on the follow-up to the recommendations contained in the annual reports the NHRI submits to Parliament. This practice functions well.

Specific measures to protect and support the Institution, heads of Institution and staff against threats and harassment and any other forms of intimidation (including SLAPP actions) are not in place. Such measures are not considered necessary.

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

The Norwegian Institution submits its annual budget proposals to Parliament. The resources allocated to the Norwegian NHRI are sufficient to enable it to carry out its mandate in an efficient way. The Institution has, however, proposed to Parliament to allocate additional resources to the NHRI in order to expand its activities.

Human rights defenders and civil society space

The Norwegian NHRI has not found any evidence of laws, measures or practices that could negatively impact civic space or unduly limit human rights defenders' activities, including as regards access to and involvement of civil society actors in law and policy making.

Checks and balances

The Norwegian NHRI has not found any examples of laws, processes or practices negatively impacting the system of checks and balances. The drafting and consultation procedures for new legislation include a consideration of human rights implications.

Trust amongst citizens and between citizens and the public administration

The Norwegian NHRI does not have sufficient evidence to state whether the authorities do enough to foster a high level of trust. The general impression is, however, that there is a high level of trust between citizens and the public administration in Norway.

NHRIs as part of the system of checks and balances

The Norwegian NHRI is invited to submit comments and proposals to all relevant legislative initiatives. The drafting of such comments and proposals on how draft legislation can be improved from a human rights perspective is a major part of its work.

Functioning of the justice system

In general, the Institution's human rights monitoring and reporting has not found evidence of any laws, measures or practices that restrict access to justice and/or effective judicial protection.

As mentioned in previous ENNHRI rule of law reports, the Norwegian NHRI has expressed concerns over the inadequate funding of the Norwegian courts and how this has led to longer case processing times, that in some cases may have amounted to violations of the right to a judicial decision within a reasonable time. This right is recognized in both the Norwegian Constitution and the European Convention on Human Rights (ECHR).

Although the overall picture is that Norway has a well-functioning judiciary, the NHRI has pointed out in annual reports that the threshold for receiving free legal aid is too high. The income threshold for free legal aid in 2021 was NOK 246 000,- for singles and NOK 369 000,- for spouses and others who live together and have a common economy. The asset limit for free legal aid is NOK 100 000.

NHRI's recommendations to national and regional authorities

- The NHRI recommends the threshold for receiving free legal aid to be decreased.

Media freedom, pluralism and safety of journalists

The Norwegian NHRI has not found evidence of laws, measures or practices in Norway that restrict a free and pluralist media environment. However, the Institution has in previous years commented on some legislative and policy developments with a view to further strengthening media pluralism in Norway. More detailed information is included in the chapter on Norway of the 2020 ENNHRI Rule of law report.

Impact of measures taken in response to COVID-19 on the national rule of law environment

The Institution indicated that the overall situation as regards the Covid-19 outbreak, and the impact of related measures on the rule of law and human rights, has improved since the last report.

Although the infection rate increased during the last part of 2021, the health authorities were better prepared than in 2020 and the vaccination rate is very high in Norway.

Emergency regimes and related measures

During the first part of 2021, the Government and local authorities imposed significant limitations on the freedom of movement and right to the enjoyment of private life. There were significant restrictions on the number of guests a household could have in their house or apartment. Gatherings outside the home, like in restaurants, were also significantly restricted in terms of number of people that could participate. In Norway, the authorities also imposed wide-ranging quarantine measures on people travelling into Norway. Many people were obliged to stay in a designated hotel during the quarantine.

These measures phased out to a large extent during the early autumn of 2021. Some measures were re-introduced in December 2021, but they were significantly more limited. The re-introduced measures concern, for example, the recommendation of working at home as far as possible and the prohibition on restaurants and bars to serve alcoholic beverages.

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

At present it is difficult to assess the medium and long-term implications arising from the COVID 19 outbreak and the measures taken to address it. The Institution is not in a position to determine that they will affect the rule of law and human rights protection in Norway in a negative manner.

Actions taken by the NHRI to promote and protect rule of law and human rights in the crisis context

The Institution has contacted Government authorities in many cases, in particular, concerning the effects of the measures taken in response to the COVID-19 pandemic on the rights of children and people with disabilities. The Institution warned against the temporary closing of schools during the pandemic. The Institution also argued strongly against some laws suggested by the Government, like the power for the Government to enact curfews, which were eventually not passed.

In 2020, the NHRI made a submission to the Parliamentary Committee on "Special Issues Concerning the Corona Crisis" with two suggestions for amendments to the Corona Act. The first suggestion was to clarify the purpose of the Act in Section 1 to ensure that measures are limited to what is strictly necessary. The second suggestion was to add a requirement in Section 5 of the Act to ensure that assessments made by the Government as the basis for preparing temporary regulations are made publicly available. When the various submissions to the Committee were followed up in 2021, the Government took considerable account of the Institution's recommendations.

The NHRI has also made, and will continue to make, hearing submissions regarding temporary regulations made pursuant to the Corona Act. The first submission made by the NHRI in this regard concerned measures to strengthen the efficiency of the judicial system, with the NHRI recommending that steps are taken to ensure that the use of remote audio/video technology in litigation is consistent with the right to a fair trial. The second submission concerned the enforcement of penalties in the criminal justice system, with the NHRI recommending that steps are taken to ensure that restrictions on prisoner visitation are consistent with the right to respect for family life and to ensure that the use of electronic monitoring (house arrest) is consistent with the State's duty to protect citizens from violence. The NHRI will continue to make such submissions and will post them on its website.

References

- <https://www.nhri.no/2020/innsspill-til-stortingets-koronakomite-om-koronaloven/>
- <https://www.nhri.no/2020/horingsinnspill-om-midlertidig-forskrift-i-medhold-av-koronaloven-om-forenklinger-og-tiltak-innenfor-justissektoren-for-a-avhjelp-konsekvenser-av-utbrudd-av-covid-19/>
- <https://www.nhri.no/2020/horingsinnspill-forslag-til-midlertidig-forskrift-om-straffegjennomforing-i-medhold-av-koronaloven/>

Most important challenges due to COVID-19 for the NHRI's functioning

For the time being, the COVID 19 does not adversely affect the functioning of the NHRI.

NHRI's recommendations to national and regional authorities

- The authorities must uphold the principle of the necessary intervention and carry out thorough proportionality assessments of all measures taken during crises, when the measures intervene in human rights.
- The Government has an obligation to release new law proposals for consultation. The consultative function should be used as far as practicable, even when measures are urgent.
- In all measures, special consideration must be given to vulnerable groups and their needs.