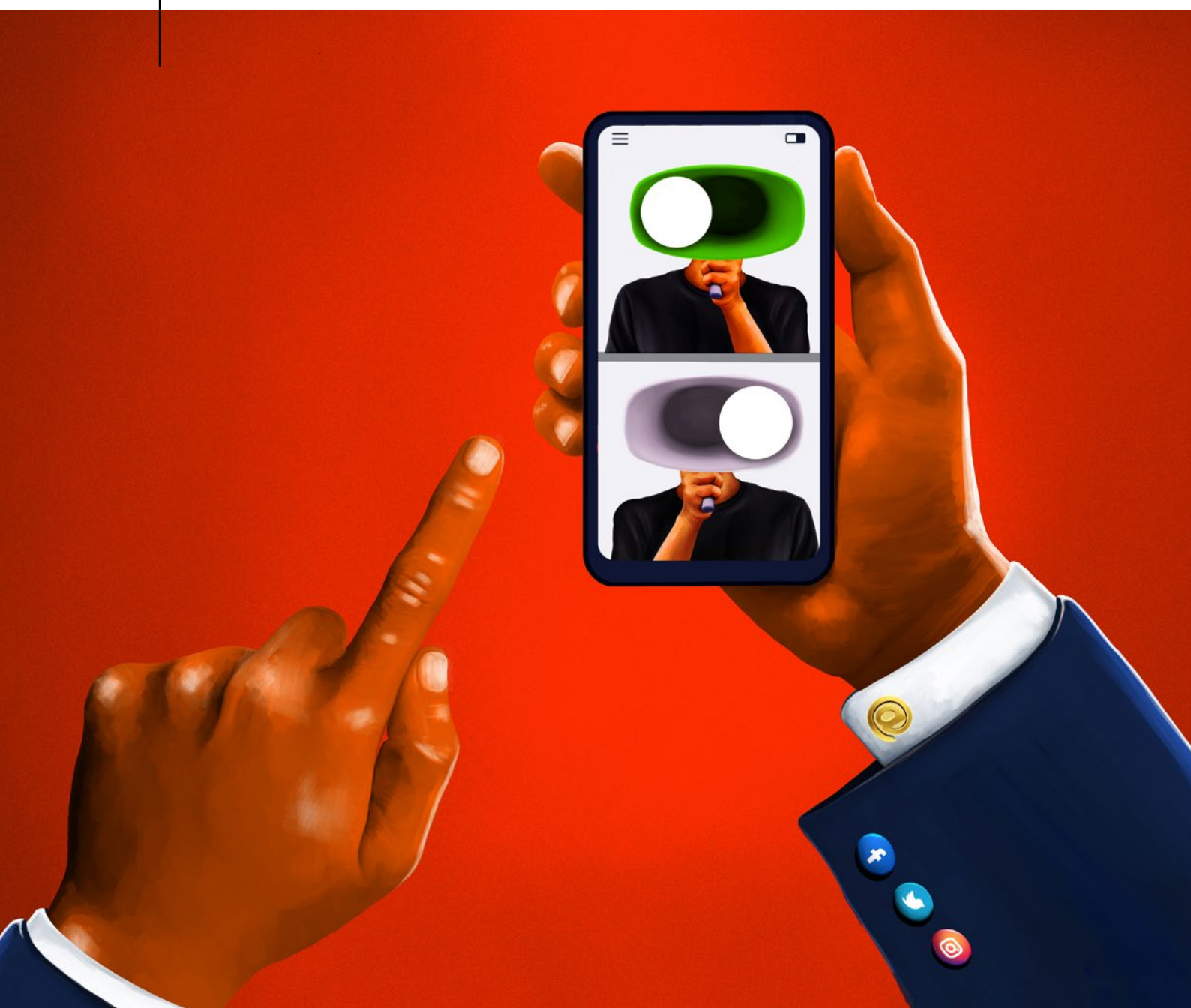


Norwegian Ministry  
of Culture and Equality

Official Norwegian Reports NOU 2022: 9 Summary

# The Norwegian Commission for Freedom of Expression Report





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# 1 Introduction

The current situation for freedom of expression in Norway is very good. In this report, the Freedom of Expression Commission will therefore highlight how we can further develop and strengthen an open and enlightened public discourse. How can we build a good civil defence for tolerance and diversity? What can be done to ensure a broad connection to the public discourse so that we can generate even more diverse participation?

Over the past twenty years, we have experienced a democratisation of the opportunities for freedom of expression, the scope of which is difficult to fathom. Access to information and the opportunities for participation have been revolutionised. At the same time, the technological shift has created new problems. Surveillance, dissemination of misinformation and toxic discourse all challenge freedom of expression.

More sanctions and prohibitions are not the solution to the challenges in the public sphere. A strong and diverse civil society and a sensibly regulated public sphere continue to be the best guarantee of a solid and genuine freedom of expression. Promoting a healthy culture of expression is equally important as safeguarding the legal protection of freedom of expression.

The title of the previous Freedom of Expression Commission in 1999 was derived from the first subsection of Article 100 of the Constitution of Norway: "There shall be freedom of expression." Our title – *Open and enlightened public discourse* – derives from the last subsection of the same Article, known as the infrastructure requirement: "The authorities of the state shall create conditions that facilitate open and enlightened public discourse." How this is to be done in practice is the theme that permeates this report.

The following paragraphs offer a summary of the main points in each individual chapter of the report, followed by a summary of the Commission's recommendations. The Commission unanimously endorses these assessments and recommendations.

## 2 Why we need freedom of expression

Freedom of expression is a human right and is therefore to the benefit of both individuals and society at large. Based on the previous Freedom of Expression Commission's recommendations, the three classic justifications for the value of freedom of expression were in 2004 incorporated into Article 100 of the Constitution of Norway: Freedom of expression is a fundamental right because it contributes to the seeking of truth, the promotion of democracy and the individual's freedom to form opinions.

This Commission agrees with the value of these three justifications but notes that freedom of expression is increasingly the subject of intense debate. The three justifications no longer fully encompass the value of freedom of expression in today's society. Therefore, the Commission highlights tolerance and diversity as supplementary justifications in Chapter Three. Freedom of expression trains our capacity for tolerance; to tolerate opinions that we find objectionable and respond to them using words instead of repression or violence. This is a decisive ability in a diverse society. Considerations for tolerance and diversity imply that freedom of expression needs to be subject to some legal boundaries, in order to protect the dignity of all human beings.

It has not been our mandate to amend the Constitution of Norway; where this justification is laid down. However, the Commission recommends the government to consider adding tolerance and diversity as part of the justification in the now 20-year-old provision.

Traditionally, the justification for freedom of expression has been used as an argument for the absence of regulation. The freest possible public sphere, in which opinions can be challenged, is to ensure the seeking of truth, the promotion of democracy and the individual's freedom to form opinions. This premise is not as unassailable when faced with a new digital public sphere, involving an overload of information, dissemination of disinformation and hate speech. The Commission believes that the absence of regulation now challenges the values which freedom of expression is intended to protect. There is a need for new regulation of the digital infrastructure that makes up the modern public sphere, rather than increased regulation of expression, per se.



### 3 The legal framework of freedom of expression

Freedom of expression is not absolute. It is subject to restrictions when certain conditions are met. In 2020, the Danish Freedom of Expression Commission examined how many restrictions exist in relation to freedom of expression in Denmark, and ended its search with a list of at least 425 statutory provisions.

The Commission has not prepared such a list. However, Chapter Four provides an overview of what legal protection freedom of expression enjoys. The European Court of Human Rights (ECtHR) has over time developed and clarified the protection of freedom of expression in relation to other rights and societal values. The new Article 100 of the Constitution of Norway, which was adopted in 2004, built on the legal developments associated with Article 10 of the European Human Rights Convention (ECHR).

The constitutional protection has a tangible and practical significance. For example, the Norwegian constitutional protection has some unique features, such as a strong protection against prior censorship. This is why the Russian propaganda channels Russia Today and Sputnik were not blocked in connection with the invasion of Ukraine in the winter of 2022. In many other countries where there is no such constitutional ban, residents experienced such prior censorship.

There is also an overview of what might serve as justifications for impinging on freedom of expression, i.e. what limits freedom of expression. Many of these restrictions are common sense, and many are seldom or never discussed in the public sphere. For example, there are more than 200 provisions relating to the duty of confidentiality alone in Norwegian legislation. Other provisions are more familiar and more often discussed in the public sphere, such as the prohibition against hate speech.

## 4 The status of freedom of expression in Norway

Freedom of expression has a strong position in Norway. In several international rankings, Norway tops the list: Nowhere else does freedom of the press enjoy better protection, and there are few places where the value of freedom of expression enjoys greater popular support.

In Chapter Five, the Commission reviews various studies of the conditions for freedom of expression, who participates in the public sphere and what experiences are reported by the public. The studies show that freedom of expression is perceived as having a strong position among Norwegians, although the attitudes become more complex when specific problems are examined.

A small number, about ten per cent of the population, regularly participate in the public sphere with opinions on politics or society. This is a reminder that even though the internet and social media have made it easier for most people to participate, social media is for most people an arena for receiving information and for signalling social belonging through more private expressions.

Studies also show that the most active online debaters, those found in comment sections in newspapers or on social media, are not particularly representative of the population at large. When people are asked why they do not participate, most answer that they simply do not wish to participate in public debates.

There may be several reasons for this. In recent years, a lot of attention has been directed at the various forms of harassment, threats and hate speech online. This chapter reviews various studies of the experiences people have had when using their freedom of expression. The surveys show that a significant minority state that they have experienced various types of unpleasant statements when they have participated in public debate.

The questions posed in these surveys vary, and the way in which terms such as hate speech and insulting behaviour are defined, or whether respondents are even given a definition of the concepts also vary. Therefore, it is not possible to rank what groups in the population experience challenging situations when they express themselves. The studies also provide different answers to questions of whether the situation has worsened in recent years. Nevertheless, there appears to be a clear and worrisome trend where vulnerable minorities in society are subjected to considerable harassment when expressing themselves in public.

In recent years, there has also been a number of debates regarding the possible harmful effects of use of social media. The questions are numerous and complex: Does the use of social media make us addicted and depressed? Is the content that some people immerse themselves in online a causal explanation per se for why they become radicalised? How widespread are filter bubbles and echo chambers really? Do these contribute to increased polarisation in society?

This chapter provides an overview of a selection of singular studies and meta studies. The main finding is that it is difficult to find definite answers as to how harmful social media might be per se. Research findings differ on links between the use of social media on the one hand, and mental illness, addiction and radicalisation on the other.

There has been a widespread concern that social media create filter bubbles and echo chambers, i.e., that people only receive information from a single type of source and tend to discuss with like-minded individuals, resulting in increased polarisation. Here, the research findings are more nuanced than what is often the case in the public debate. It is more common than one might expect to encounter individuals or sources online with different opinions. In a sense, this conclusion is intuitive: The amount of information and the possibilities for exchanging views is for most people far greater with the internet and social media than it was before.

Studies conducted on polarisation also do not provide a basis for concluding that Norway is becoming increasingly polarised. Here, too, the studies diverge, depending on what is being measured. In any case, Norway is, by all accounts, a less polarised society than the impression given by online comment sections.

The Commission's assessment is that by and large, public discourse in Norway is in good health. Freedom of expression, as a value, has a strong position. For most people, it is much easier to express themselves and participate in public debates than before. There is a wealth of opportunities for receiving information and obtaining knowledge and different opinions, both domestically and internationally. There is a wide range of voices and perspectives in public discourse, also from minority groups. The overall impression is that the public space is more comprehensive and diverse than it was when the previous Freedom of Expression Commission submitted its report in 1999.

However, not everything is positive. Several studies show that there are challenges relating to the occurrence of threats, hate speech and various forms of harassment. If certain voices and perspectives are systematically excluded, this will undermine the open and informed public discourse. This needs to be taken seriously.

At the same time, the Commission warns against an overly negative portrayal of the public sphere. In discussions on and debates surrounding the various studies that map hate speech, harassment and similar acts, one might be left with the impression that all public debate is dominated by hate and incitement. The studies which the Commission has mapped do not form a basis for such a conclusion. The Commission encourages a methodical and conceptually accurate and balanced reflection when experiences with the use of freedom of expression are to be studied. We also make several recommendations for further research.

## 5 Broad connection to and participation in the public discourse

If the public discourse is to be open and informed, it needs to have both participants and listeners. A fairly small number participate actively with their own expressions in the public sphere; many only do so a few times over the course of their lives. This is not necessarily a problem.

In the Commission's view, the goal is firstly for as many people as possible to experience a genuine connection to the public sphere. Second, it needs to be facilitated so that different voices are able to be heard, in practice. This is a matter of broad participation in the public sphere.

Chapter Six is based on the concept of broad connection as a basic condition for participation. Such a connection entails that as many people as possible have access to relevant information, that they can connect to and engage in the various issues they believe are important, that they are notified when something is at stake for them, and that they have the resources and opportunities to express themselves when they find it necessary to do so. When society has such prepared citizens, this creates what can be referred to as expression preparedness.

Most people in Norway have a strong connection to the public sphere, even if there are clear differences. Social class, in particular, is an important marker.

Furthermore, the Commission wishes to highlight the situation of persons with disabilities as particularly serious when we underscore the significance of connection. Here, the infrastructure of freedom of expression is not currently strong enough in Norway. If the public sphere is to be accessible to all, it needs to be universally designed, with genuine access to information and opportunities for participation. The goal of universal design is an inclusive approach to freedom of expression for all. A public sphere that has a low threshold for participation and a high degree of accessibility benefits everyone.

Many also experience clear barriers to participation. The Commission wishes to emphasise the challenges that Sámi peoples and persons belonging to minority groups may experience when they express themselves in the public sphere.

The degree of connection and participation is not solely influenced by the legal frameworks of freedom of expression. Generally, it is more important what is socially acceptable to express, what debates you can manage to engage in and what statements private suppliers accept on their platforms. Such factors shape the public sphere. How the public sphere looks and is perceived, will, in some respects, differ from person to person, but will especially be characterised by what climate for expression is dominant, which, in turn, is connected to the culture of expression; the overarching condition we are all part of creating through what we express and how we do so. Many debates on freedom of expression are in reality debates on how the culture of expression should be.

The Norwegian public sphere has expanded and developed throughout history. The road to what is referred to as rhetorical citizenship, a place as an equal participant in the public discourse, has required battles for various groups; from farmers and tenant farmers to labourers, women and ethnic minorities. The struggle for recognition and such a rhetorical citizenship is important. Today, this is often referred to as identity politics. This concept is increasingly used, controversial and politically charged. However, struggles relating to identity politics have largely expanded the scope of expression in the public sphere. New groups and voices have entered the public sphere and enhanced the awareness of others. The goal of modern struggles relating to identity politics should be to expand the rhetorical citizenship for additional groups, rather than limiting the scope of the public sphere for others.

There are frequent debates on possible circumscription, in the form of what is often referred to as cancel culture and deplatforming. How widespread these phenomena are in Norway is difficult to say for certain. The public sphere should, in principle, be spacious. At the same time, most people operate with boundaries for certain types of speech, and for certain actors and whether they should be given a platform or social acceptance. Where it is appropriate to set the boundaries will vary from case to case and will be the subject of continuous debates and negotiations in the public sphere – a continuous conversation on how the culture of expression should look.

The development of an inclusive culture of expression is a shared responsibility. Rhetorical citizenship and broad expression preparedness are developed jointly, through groups and organisations, but also with the contributions of individuals. The public discourse in Norway, today, depends on an active and diverse civil society. A viable democracy, including local democracy, is best achieved by means other than coercion.

In order to stimulate this development, the Commission proposes several specific measures. Among these measures are education and training in the use of freedom of expression in schools and a digital assistance portal for individuals experiencing challenging discussions.

## 6 The internet as infrastructure for freedom of expression

The most important change since the freedom of expression was last evaluated in Norway in 1999, is that the internet has become the fundamental infrastructure for the exercising of freedom of expression and information. This is the topic of Chapter Seven. 98 per cent of the adult population in Norway has access to the internet. 92 per cent use the internet on a daily basis. Less than half listen to the radio or television daily. Only 22 per cent read printed newspapers.

The democratisation of the actual freedom of expression and, not least, freedom of information via the internet has been formidable. At the same time, a massive commercial and, over time, political development has occurred. In the 1990s, the internet was still regarded as a niche technology and as a free space. In recent years, the degree of online freedom has declined.

It has become common to speak about three models for the internet: At the extremes, we find the American model, where the legal restrictions are few and the power of the private companies is enormous, and the Chinese, where the government censorship determines the frameworks. A global struggle is ongoing between these two models, where authoritarian and semi-democratic states are increasingly inspired by the Chinese model. The third model is the European. Here, government censorship is limited, but the political will to regulate is greater than in the U.S. The development of new laws and regulations for the internet in the EU will also determine the legal frameworks in Norway in the years to come.

The last time the conditions for freedom of expression were evaluated, scarcely any of the companies that are currently of decisive importance for the functioning of freedom of expression worldwide even existed: Apple, Microsoft, Alphabet (Google), Amazon and Meta (Facebook).

Several of these companies base their activities on a business model where the raw material is the collection of data. This has formed the basis for dystopian analyses about a surveillance capitalism that threatens personal freedom and democracy. For freedom of expression, concerns regarding what is referred to as a chilling effect are particularly prominent: What effect does it have on our willingness to express ourselves when everything we say and do online can potentially be stored and traced back to us? Developments in both private and government data mapping have been formidable in recent years.

A handful of companies also have large stakes in the physical infrastructure, such as internet cables, Wi-Fi networks and data storage. Digitalisation has also resulted in new vulnerabilities and threats. Weather conditions and human error can also interrupt the channels upon which freedom of information and expression depend and paralyse our society. Digital warfare and cyberattacks have become a real threat, including in Norway.

This complex development affects a number of policy areas where questions of regulation are partially beyond the scope of what this Commission has been tasked with addressing. However, they are relevant reminders of the fact that the framework conditions for freedom of expression relate to far more than what one is and is not allowed to say.

Among other things, the framework conditions relate to the physical infrastructure, per se. How is the access to high-speed broadband internet and how does one ensure that those with ownership of internet access do not prioritise some providers over others? This is also matter of security policy and how to protect oneself against digital attacks and online crime without completely sacrificing the data protection and privacy of individuals. Competition legislation is facing new challenges when the new monopolists do not drive up prices, but become big by offering services for free in return for collecting user data. Tax policies have a direct impact on, among other things, Norwegian media companies, which have seen Facebook and Google take over large shares of the advertising market without being taxed on the actual income from Norway. Furthermore, the regulation of privacy, artificial intelligence and data ownership will also be of significance for actual freedom of expression.

It is in the nature of a report to be problem oriented, and many discussions regarding the impacts of the internet concern problems. Therefore, it is important to remember that the development of the internet has overwhelmingly been positive in relation to the opportunity for most people to receive information and to express themselves. At the same time, the Commission believes there is a need for new regulation of the infrastructure, not least in order to safeguard considerations for the justifications of freedom of expression.

When such regulations are designed, one should be attentive to the regulation paradox: that stricter requirements may end up bolstering the power of the platform companies by formalising their functions and codifying requirements that smaller companies would struggle to observe. Therefore, there is a need for platform pluralism. This should especially be taken into consideration by the authorities when they consider their communication activities.

The power of the global platform companies has to be challenged. This cannot exclusively be solved by way of government regulations and oversight. Vigilance and continuous follow-up are also needed on the part of civil society.

Therefore, the Commission proposes that a Freedom of Expression Council be established in the form of an independent foundation intended to check the activities of the major platform companies and assess the impacts these global companies have on our public discourse and democracy.

## 7 Responsibility for expression online

The Internet's absence of boundaries has triggered extensive debates on the liability of intermediaries. To what extent should platforms such as Facebook, Google, or TikTok be liable for what others express on their platforms? Chapter Eight addresses this issue.

The debates not only concern who is legally liable for illegal content. They also relate to whether or not restrictions should be imposed on content that may be harmful to individuals or society, but which is not illegal.

This especially concerns the right of platform companies to create their own rules. In practice, it is these non-statutory regulations that are the most significant for actual freedom of expression. For example, Facebook and Instagram alone removed more than 20 million expressions relating to COVID-19 in 2021.

Comprehensive statutory regulations that attempt to solve these problems have been in the works in recent years. This chapter provides an overview of the prevailing law in Norway and in the EU, as well as the most important new initiatives in countries that are relevant to examine, in addition to the companies' own content moderation.

The most comprehensive work is occurring under the auspices of the EU through the Digital Services Act (DSA). By all accounts, this will provide complex and innovative guidelines for how social media operates in Norway as well. It is the Commission's understanding that the Act seeks to find solutions to three main challenges for modern social media:

First, users are to be aided out of their state of powerlessness. We will all be given a statutory right to complain about content and to have it removed, but also to receive a justified notification before content is removed, and a right to appeal to an independent body. There will also be a right to be offered content on social media that is not selected based on personal targeting.

Second, the major companies will be forced to grant far more access. New supervisory authorities will have the right to demand necessary information in order to verify whether the biggest companies are complying with the regulatory framework. Researchers will also have a right to increased data access. There will be requirements for transparency among advertisers.

Third; the biggest companies will be forced to consider the harmful effects their products may have on society. These risk assessments are intended to force the companies to consider critically and openly how, among other things, their algorithms may impact risks relating to freedom of expression and the dissemination of illegal content.

The legislation does not grant social media and other types of online platforms editorial responsibility. This is a sensible approach. The transparency and accessibility which online platforms and social media offer has positive aspects that should be preserved. In the Commission's assessment, DSA balances considerations for freedom of expression with the need for legal frameworks in sound manner that offers more rights for users, ensures greater access and addresses potential societal risks. However, this is difficult to assess before the rules have entered into force and been put to use.

The Commission recommends that the work on the introduction of DSA and development of effective national oversight be prioritised. The possibilities for further strengthening of access to and transparency surrounding the platform companies in Norway should be explored. Norway also has the opportunity to influence the companies via the holdings of the Government Pension Fund of Norway.

Legislation cannot be the only solution. The companies that control much of the public discourse, must take responsibility for ensuring personnel that enables them to perform responsible moderation. Those who serve as administrators of online discussion groups in which anything from a few individuals to tens of thousands of people hold discussions, have an important ethical responsibility for the discourse.

This chapter also contains brief accounts and assessments of the challenges relating to anonymity and encryption.



## 8 Disinformation and misinformation

Concerns regarding the spread of false information are nothing new, but the internet has made it easier to spread propaganda, lies and misinformation to a larger audience than just a few years ago. The algorithms of social media increase the distribution of the posts that generate the most engagement. This is often beneficial for those who wish to disseminate what is referred to as fake news.

The Commission's mandate uses the term disinformation. This is the theme of Chapter Nine. This concept describes intentional misleading that is spread with the aim to cause harm. Familiar examples include content from what are referred to as troll factories in Russia. Much of the misinformation that is disseminated is not done by organised campaigns intended to influence and mislead. For instance, many of those who shared conspiracy theories about the COVID-19 virus being spread via 5G radiation may have genuinely believed the claims and shared them to warn others.

If people are no longer able to separate fact from fiction, between what is true and false, this represents a serious threat to the values that freedom of expression is intended to safeguard. Disinformation and misinformation can cause democratic, physical and economic harm. Norway has horrific experiences with physical harm through two terrorist attacks that can be linked to the online dissemination of misinformation and conspiracies. There are also several examples of misinformation being used for financial fraud in Norway. However, no attempts to influence the elections in 2019 and 2021 were detected.

The Commission believes the scale of disinformation that has been uncovered in several countries is cause for concern and increased vigilance in Norway as well. At the same time, it is important to remember that Norway is relatively well equipped. Compared to many other countries, Norway's polarisation is not considerable, its media system is robust and trusted, and the critical media understanding is strong. These are some of the factors that studies have found to be of major significance in terms of how vulnerable a country is to disinformation.

Overall, the Commission believes that democratic preparedness must be built of measures that can strengthen people's critical sense, media knowledge and the informed public discourse. This should primarily occur by further developing the infrastructure of freedom of expression in Norway. The education and media systems are especially important.

New laws that prohibit or censor false statements are not the answer. Statutory regulation of truth is problematic. International cooperation on regulating platforms on which falsehoods are disseminated is more sensible. The same applies to transparency regarding the platform companies handling of misinformation and mechanisms for dissemination.

There may be a need for enhanced preparedness and coordination at the state level in order to be equipped against disinformation, as part of hybrid warfare. Among other things, the Norwegian Government has proposed to make it punishable to cooperate on influence operations with foreign intelligence services. In this connection, the Commission emphasises that preciseness and clear frameworks are crucial to avoid such penal provisions having an unwanted chilling effect on freedom of expression.

## 9 Punishable speech

The Constitution of Norway allows for freedom of expression to be restricted by law. Some restrictions on certain statements are necessary in order to safeguard the freedom of expression for others, as well as fundamental rights and societal values. It should be safe to express oneself, and there are limits as to what an individual should have to tolerate and be subjected to. Thus, there are prohibitions, for instance, against serious stalking and harassment. Chapter Ten discusses relevant penal provisions which are, among other things, intended to safeguard freedom of expression.

The terrorist attack on 22 July 2011 is an unparalleled example of an attack on freedom of expression in Norway. This terrorist murdered Workers' Youth League members because of their political beliefs and engagement. There are also other examples of physical attacks that can be directly linked to expression in Norway. A relatively small but measurable share of the population report that they have been subjected to threats based on their expressions.

Statements that fall in the grey area between what is legal and illegal, or that is not or should be illegal, may create challenges. This especially applies in relation to harassing or unpleasant statements directed at individuals.

Section 185 of the Norwegian Penal Code, which prohibits hate speech, provides protection for specified minorities. This provision is intended to protect both minorities and society at large against hate that may occur in society if hate speech against these groups is allowed to spread. At the same time, the threshold for what constitutes punishable speech must be high. Statements must be what the courts refer to as qualified insulting in order to be punishable. The penal provision has been the subject of a great deal of discussion, despite it being used to a lesser extent than, e.g., the provision concerning harassing conduct.

It is difficult to find answers as to what effect the penal provision actually has on the scope of hate speech. The provision constitutes a protection for vulnerable minorities, has an important symbolic function, and it recognises that certain groups are especially vulnerable. Norway has a human rights obligation to protect against hate speech in its criminal law. Therefore, the Commission believes the penal provision ought to remain in place.

Among the objections to the protection under criminal law against hate speech are the claims that it has a chilling effect, may entail a criminalisation of opinions, and that it is subjective. The Commission has discussed these objections but does not find any indications that the penal provision should be repealed. However, it is crucial that the protection is limited to specific minorities. A further expansion of the grounds of discrimination may result in a protection for all becoming a protection for none. Furthermore, it is a real dilemma that the penal provision is largely used regarding unconsidered and highly derogatory statements and rarely affects the potentially most dangerous statements by well-spoken ideologues.

A key problem with the penal provision is that it is difficult to understand. The Commission presents proposals for amendments to the wording in order to make the statutory text more comprehensible and to clarify what is actually punishable. This does not entail a desire to change the threshold for what is punishable. Furthermore, the Commission recommends supporting organisations that are working actively on countermeasures, and to explore alternative forms of punishment.

A related question is whether an explicit prohibition should be introduced against racist organisations in Norway. Racist ideology is fundamentally contrary to the justifications for freedom of expression. Organised racism is an active opposition to both diversity and tolerance. The Norwegian Penal Code currently contains several provisions that may cover racist organisations for criminal acts. Furthermore, there has recently been a strengthening of the Penal Code which may cover the most aggravated cases of organised dissemination of hate speech. In the Commission's assessment, the Penal Code provides sufficient protection against harmful effects that may be inflicted on vulnerable groups in society by racist organisations.

Two other penal provisions that raise questions of fundamental importance for freedom of expression are Sections 156 and 265. These provisions criminalise the use of abusive language against public officials or what is referred to as particularly exposed occupational groups. The Commission believes it is questionable that abusive language, per se, can be punishable. Words such as tulling [fool], jævla idiot [bloody idiot] and kålorm [caterpillar] are recent examples of speech that has been punished when directed at the police.

Freedom of expression should offer us practice in tolerance; to tolerate statements that we strongly dislike. The Commission recognises that certain occupation groups have a particular need for protection of the performance of their occupation. However, there should be a certain threshold as to what statements should be considered punishable. Therefore, the Commission proposes to amend the wording in these sections so that the threshold for what is punishable is raised.

## 10 The right to information

An open and informed public discourse not only requires the freedom to express oneself and to be able to receive expressions; it also requires the opportunity for people to have access to information. The right to information, or right to demand information, is the topic of Chapter 11. This is something other than freedom of information, which is a freedom to receive all types of speech. A right to demand information concerns the right to information that someone possesses, either by way of access to documents from the public administration or by following court proceedings or meetings at elected bodies. This falls under what is referred to as principle of public access to official records.

The Nordic countries, including Norway, are often considered to be role models in Europe with respect to ensuring the general public's right to access to documents relating to the government's activities. In Norway, the principle of public access to official records is safeguarded under the Constitution and under several other acts, of which the Norwegian Freedom of Information Act is clearly the most important. The tool Einnsyn [joint publication service for central and local government] is unique internationally and makes it easy for everyone who wishes to access public documents. In recent years, the right to access has been further strengthened through decisions in the Supreme Court of Norway and the European Court of Human Rights (ECtHR).

Although the starting point is good, several studies and experiences show that the right to access does not function as well as it should. Some of the challenges are due to the design of the statutory provisions: The rules regarding the duty of confidentiality are many and convoluted and the exceptions to the rules are not always in accordance with the general public's right to demand information. The Norwegian Freedom of Information Act is also difficult to practice and enforce. For example, it does not contain any time limit for the processing of demands for access. The rule regarding the practice of public access is non-mandatory, which means that the assessments are often not realised. Furthermore, breaking the law also has no legal consequences. The statutory right to access in criminal case documents also has several weaknesses.

These challenges are also due to practice: The fact that provisions intended to ensure transparency and the preservation of documents are regularly broken, that demands for access are delayed in controversial cases, and that the duty of confidentiality is at times stretched too far, are just a few indications of this.

This is not necessarily a case of deliberate opposition to transparency in the public administration. Processing demands for access may be perceived as a challenging supplementary task. Technological lags render archiving and process of access cumbersome. The technological infrastructure in the courts is especially lagging behind. Several studies also show that uncertainties relating to the regulatory framework and fears of making mistakes limit access.

In this chapter, the Commission proposes several amendments to the legislation in order to strengthen the right to access and the principle of public access to official records in practice, both in the public administration and in the judicial system. There is also a need for better training in the public administration, to eliminate expenses for bodies wishing to connect with Einnsyn and to ensure better technological equipment in the courts.

## 11 Free media and free expression

The editor-controlled, journalistic media form a key part of the infrastructure for freedom of expression. Chapter 12 addresses the conditions and special rights for the media, including the right of reporting and the protection of sources. The media also have special obligations, including through their editorial responsibility and the Code of Ethics of the Norwegian Press.

Since the last time freedom of expression was evaluated, the framework conditions for the media have changed significantly. Competition for people's attention has increased, and Norwegian media compete not only with one another, but also with content and content providers worldwide. The battle for revenue has especially impacted the newspaper industry. The advertising market has largely been taken over by Facebook and Google.

At the same time, many of the gloomy predictions about the Norwegian media industry have not materialised. This industry continues to be profitable; circulation figures are on the rise; media pluralism is good and digitalisation has enabled new journalistic methods and forms of presentation.

This is occurring in a landscape in which anyone can disseminate news and we have less control over who the sender is and what criteria have formed the basis for the dissemination of information. When the risk of being misinformed or overwhelmed by information increases, it is even more important to have a strong selection of edited and quality assured media with which a large share of the population is engaged.

This is ensured, among other things, through the schemes for media funding. The Commission does not address these arrangements in detail, but instead emphasises the importance of having a well-functioning media policy. Media funding entails obligations: It is important that the media listen to criticism and work systematically to live up to their own ideals regarding responsibility, fact checking and more.

Furthermore, attention should be directed at the risk of uniformity of content in the media, including as a result of more concentrated ownership and exchange of materials. The growth of supplementary niche media contributes to strengthening pluralism and countering blind spots.

It is important that the media reflects different minority groups in society, both in terms of diversity in coverage and in hiring. Regarding the latter point, the Norwegian Broadcasting Corporation (NRK) recruitment efforts may serve as a model. NRK is key for several reasons: A strong and independent

public broadcaster is important for democracy and to ensure access to quality assured information independent of class and economic status. At the same time, NRK's strong position in the Norwegian media market entails some dilemmas. For instance, NRK has become an unreasonably large competitor to other news media.

The Commission encourages a follow-up of the Media Pluralism Committee's recommendation to strengthen NRK's formal independence. In this connection, the independence of NRK Sápmi should also be evaluated.

Trust in the media depends on a clear separation between editorial content and commercial interests. There are especially challenges relating to labelling of what is referred to as content marketing. The industry should take the risk of loss of trust caused by confusion of advertising and editorial contents more seriously.

Since it is, in any case, possible to advertise in other, web-based channels through video, the Commission cannot see that the current prohibition against political TV advertising and life stance advertising appears to be an appropriate measure any longer. Therefore, the Commission believes this prohibition should be repealed.

The Commission has especially evaluated the protection of sources. Protection of sources is crucial in order for society to gain access to important information. A lack of safeguarding of the anonymity of sources may have a chilling effect on the willingness of sources to go to the media. In turn, this will have major consequences for the media's role as watchdog and for society's need for information. Strong protection of sources is therefore necessary. The Commission believes that the current legislation safeguards this protection but recommends better training and knowledge building, both in the media and among civil servants.

## 12 Safety and self-censorship in journalism

Nowhere else on earth is it safer or freer to be a journalist than in Norway. However, here too, journalist may be threatened when performing their social mandate.

Chapter 13 addresses safety and self-censorship in journalism in Norway. Studies conducted on the scope of threats and harassment of journalists do not form a basis for concluding that this is a widespread problem. However, as in many other studies, there is little distinction between threats and what is referred to as insulting behaviour, harassment, offensive language or similar, when people are asked what they have experienced.

Therefore, the Commission requisitioned a set of questions for the annual media survey of 2021. This survey confirms and nuances the situation: There is little to indicate that the safety of most journalists in Norway is threatened. Ten per cent respond that they have received threats. Far more state that they have been subjected to negative characterisations or scolding over the phone.

Journalists belong to an occupational group with considerable power in society. They must therefore accept that there will be reactions to what they disseminate. Threats must be taken seriously. The Commission's assessment is that the current safety of journalists in Norway is generally good. Furthermore, available documentation does not indicate that threats or harassment result in a significant degree of self-censorship. The Commission's assessment is also that the legal protection of the safety of journalists is good, given the current threat assessment. Threats and violence against journalists are prioritised by the Norwegian Prosecuting Authority. This is how it should be.

## 13 Freedom of expression in the arts

Controversies relating to freedom of expression often have their origin in the arts. In Norway, there are also frequent debates regarding art and freedom of expression. In the summer of 2021, the Freedom of Expression Commission found itself in the midst of one such debate.

Chapter 14 addresses what the mandate refers to as artistic freedom of expression. The term itself is not without controversy. In principle, art does not have its own type of freedom of expression. However, over time, the ECtHR has amassed a fairly comprehensive body of case law that sets the boundaries for when artistic expression should enjoy special protection.

Art possesses unique functions as expression. For instance, art can open the public sphere for statements on private matters. Art can express intimate and human experiences in ways journalism and science are incapable of doing. Furthermore, art can explore morals and ethics in a unique fashion.

Because art can challenge boundaries and authorities, artists are also vulnerable in many parts of the world. In Norway, freedom of expression for artists is well protected. Surveys have confirmed that artists also believe this to be the case. Nevertheless, surveys indicate that there are concerns among artists regarding the level of conflict and tone in the public discourse.

As with the media industry, technological developments have also changed the framework conditions for the arts. Digitalisation has offered new opportunities to extend the reach of art and to receive art. This has caused considerable concern, partly due to the income base, concentration of power and copyright.

Freedom of expression in the form of freedom from legal interventions must be accompanied by genuine possibilities for expression for the artists. What is referred to as the infrastructure requirement in the Constitution of Norway is key for the arts. The Commission recommends that this should be embedded in the Norwegian Culture Act and emphasises the significance of a well-developed and broadly accessible infrastructure for art and culture.

The arm's length principle is intended to ensure that the arts are free of political governance. This principle, too, should be codified. This will strengthen the formal independence of art and cultural institutions and will thereby represent a strengthening of freedom of expression in the arts.

At the same time, there are relevant questions regarding how arm's length manifests itself internally in artistic communities. Artist organisations appoint members to several of the committees that allocate funds. These communities are often small. Those who award funds and those who apply for funds tend to know one another. This may contribute to a weak culture of independence and a low level of acceptance for critical discussion within artistic communities. Political opinions or ideological guidelines should not determine who is able to participate in debates or who is able to perform their art.

## 14 Freedom of expression in working life

Employees are protected by the same freedom of expression that applies outside of working life. This applies to employees and managers, whether they are working in the public or private sector. The conditions for expressing oneself in working life concern many. If people refrain from expressing information and opinions they possess or hold by virtue of their work, this is a loss to both the public debate and to society's access to information. Therefore, Chapter 14 is devoted to freedom of expression in working life, despite this not being part of the Commission's mandate.

It is disconcerting when research, surveys and commentary provided to the Commission indicate that any employees and professionals self-censor or refrain entirely from participating in the public debate, and that this development is moving in the wrong direction, where a growing number of employees consider the conditions for freedom of expression to be poor.

The reasons for the use of freedom of expression not functioning as well as they should in working life may be manifold: Culture of expression is a key term. One common denominator of surveys is that critical statements are perceived as being unwelcome. Established norms and practice – the culture – does not facilitate public criticism. Employees in both the private and public sector are expected to express themselves in such a way that they do not threaten the reputation of their employer. The emergence of communication strategies and ethical guidelines is perhaps intended to improve the conditions, but may in many cases have a limiting effect on the willingness to express oneself. Professionalisation of communication activities may have the same effect. The duty of loyalty is often perceived as being more comprehensive than it actually is. At the same time, culture is not the be-all and end-all. Job security is also important in order for employees to be able to experience genuine freedom of expression.

The Commission believes it is important to address the uncertainty that is prevalent among both managers and employees regarding where boundaries are drawn for employees' freedom of expression and its limitations. Uncertainty creates a culture of caution whereby employees who may have important contributions to make to the public debate, and who also wish to contribute, refrain from doing so for fear of making a misstep. Formal and informal reactions to employees making public statements have a negative impact on the culture of expression.

The Commission presents several recommendations on how the conditions can be improved. There is a need for systematic work on the culture of expression through several measures. The Norwegian Working Environment Act should be specified in order to clarify the duty of employers to facilitate a good climate of expression. The Ethical Guidelines for the Public Service should be revised. Finally, the Commission proposes a separate expression code for managers and employees.



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