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Norway: Legal Response to Covid-19

Norway [no]

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Except where the text indicates the contrary, the law is as it stood on: 10 January 2021

I. Constitutional Framework

1. Norway is a unitary, parliamentary constitutional monarchy. Its constitution was adopted on 17 May 1814, making it the second-oldest written constitution still in force. The Parliament is unicameral, consisting of 169 members elected from party lists for four years on the basis of proportional representation in 19 multi-seat constituencies.

2. According to Article 12 of the Constitution,¹ the Monarch formally appoints a Government composed of persons representing one or more parties that are positioned to command the confidence of Parliament. Government formation does not require a vote of confidence (investiture), but the Government or individual ministers are required to resign following a successful vote of no confidence in Parliament. The Norwegian Constitution does not provide the Government with a right to dissolve Parliament.

3. Law-making is formally the prerogative of Parliament.² In practice, most statutes are drafted by the Government. Most major statutes have extensive preparatory works prepared by law commissions appointed by the Government and composed of experts and stakeholders. The preparatory works are an important source for the interpretation of statutes. Case law from the Supreme Court, which is a court of precedent, is also an important source of law. The Government can issue provisional statutes in areas of public administration when Parliament is not in session, though this power is rarely used.³ More importantly, the Government is authorised by statutes to issue legally binding regulations (*forskrifter*) supplementing statutes. In volume, regulations vastly surpass statutes.

4. The Government is head of the executive branch, organized in a hierarchical structure. As a general rule, Government, acting collectively in the Council of State or acting through its ministers operating within the sphere of their respective ministries, can issue binding instructions to lower-level administrative bodies unless prohibited by law.

5. The judicial system consists of general courts having full competence in both civil and criminal cases. A very limited number of special courts as well as a large number of independent court-like administrative tribunals also decide cases at first instance, with appeals lying to the general courts.

6. In addition to the national political and administrative level, there are also administrative bodies and representative assemblies at regional level in the 11 provinces (*fylke*) and at local level in each of the 356 municipalities (*kommune*). Local self-government is guaranteed by Article 49 of the Constitution and regulated in the Local Government Act 2018. However, the regional and local governments have only the powers provided to them by statutes. As outlined in Part II below, the Infection Control Act 1994 provides the municipalities with extensive powers in relation to infection control.

7. The response to the pandemic has not changed the basic constitutional structure of the state. However, certain measures have created tensions in the division of powers between

the executive and the legislative branches, detailed in Parts II.B and C, and III.A respectively, as well as between national and local authorities, detailed in Part IV.A.1.

II. Applicable Legal Framework

A. Constitutional and international law

8. The Constitution is the highest source of law, prevailing over statutes and regulations. All courts can review the constitutionality of both laws and administrative decisions in concrete cases.⁴ Norwegian courts are quite deferential on the constitutionality of legislation compared to most specialized constitutional courts but are far more active than their Nordic counterparts.⁵ As a general rule, judicial review of legislation will be more intense concerning human rights than issues concerning the separation of powers.⁶ Norway is not a member of the European Union (EU) but associated with the EU through a number of agreements, notably as a member of both the European Economic Area (EEA) and the Schengen Area,⁷ incorporating the relevant parts of EU law (the *acquis*) into Norwegian law. With respect to international law, the Norwegian legal system is formally a dualist system, but legislation as well as interpretative principles allow international law to influence Norwegian law pervasively, including on the interpretation of the Constitution.⁸

9. There has been no decision to derogate from the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), nor from any other international convention. The Constitution does not formally permit derogation from any of its provisions. All measures to control the pandemic interfering with basic rights protected by the Constitution and the ECHR must be prescribed by law, have a legitimate aim, and be proportionate to the aim pursued.⁹

10. There is no formal constitutional procedure for declaring a national state of emergency and no such concept exists in Norwegian law. Public emergencies are regulated by a set of laws pertaining to specific situations, including public health emergencies, detailed in Part II.B below.

11. The World Health Organization's (WHO) International Health Regulations (IHR) are implemented through the 2007 IHR regulation pursuant to the Infection Control Act 1994.¹⁰ This regulation complements the Infection Control Act 1994, the Health Preparedness Act 2000, and the Public Health Act 2011, so that they jointly fulfil the IHR obligations. The regulation establishes the Norwegian Institute of Public Health (*Folkehelseinstituttet*) (NIPH) as national contact point to convey WHO recommendations. The NIPH referred to the WHO and IHR when it advised against mandatory quarantine for entry into Norway in relation to the extensive public health measures on 12 and 15 March 2020, detailed in Part IV.A below.¹¹ The WHO's declaration of 11 March 2020 of Covid-19 as a pandemic has been cited by both the Norwegian Directorate of Health (*Helsedirektoratet*) in the aforementioned decisions of 12 and 15 March 2020,¹² as well as by the Government in relation to measures taken against Covid-19.¹³ The Norwegian Government has also expressed strong public support for the WHO in its leadership of the effort to defeat the pandemic.¹⁴ At the EU level, Norway also participates in the European Centre for Disease Prevention and Control,¹⁵ and the NIPH is Norway's Coordinating Competent Body.

B. Statutory provisions

12. The primary public health measures have relied mainly on legislation that predated the pandemic: The Infection Control Act 1994 and the Health Preparedness Act 2000. The Infection Control Act 1994 was last updated in 2019 prior to the pandemic, and also through an amendment of 23 June 2020 (section 4-3a) during the pandemic. The 1994 Act confers vast powers on the Government to enact public health regulations and measures for controlling the spread of infectious diseases in Norway, as well as on local officials to adopt

further local measures. Most of the public health measures taken against the outbreak of Covid-19 were made according to the 1994 Act, including the closing of schools, private and public institutions, movement restrictions (section 4-1), and quarantine regulations (section 4-3). The Health Preparedness Act 2000 confers powers on the Government to organize health professionals and institutions in case of a national health emergency.

13. As for new pandemic specific legislation, the Corona Act 2020 delegated legislative powers to the Government, namely the authority to make regulations that supplement or deviate from 62 statutes listed in the Act.¹⁶ The purpose of this Act was to allow the Government to make rapid amendments to existing regulations in order to manage the economic and social effects of the infection control measures. The Corona Act 2020 came into force on 27 March 2020. Though subject to a one-month sunset clause, it was extended by Parliament on 27 April 2020 and expired on 27 May 2020.

14. Neither the Infection Control Act 1994 nor the Corona Act 2020 contained a specific procedure for declaring a public health emergency. However, the Health Preparedness Act 2000 requires the Government to declare a public health emergency for one month at a time (section 1-5). Nevertheless, its effects are limited to the health sector only. The Government declared a public health emergency under the 2000 Act for the first time during the pandemic on 6 March 2020, under which the Ministry of Health and Care Services and the Directorate of Health were given the powers of requisition of health equipment (section 3-1), as well as the power to order health professionals to remain on duty (section 4-1) and to relocate them (sections 5-1 and 5-2).

15. The Corona Act 2020 was fast-tracked and incited public debate, but was adopted unanimously by Parliament. The Government presented a draft to Parliament on 18 March 2020. Parliament negotiated with the Government for three days and invited a few institutions and legal scholars to assess the draft proposal. The hearings and the negotiations resulted in strengthened parliamentary scrutiny and judicial control as well as a more limited scope and time-frame for the Government's powers. The Act passed the first reading on 21 March and the second on 24 March and was enacted on 27 March 2020.

16. After the Corona Act 2020 expired on 27 May 2020, infection control measures have been based on the Infection Control Act 1994 and the Health Preparedness Act 2000. On 23 June, Parliament amended the 1994 Act, authorising the Government to make regulations to prevent the spread of Covid-19 (section 4-3a), by restricting the right to free movement (section 106 of the Constitution), and by isolating people both confirmed and suspected of being infected with Covid-19.

17. In addition to these three statutes, a large amount of legislation was passed by Parliament in 2020 to manage the economic, administrative, and social effects of the pandemic and adopt the measures to contain it. These statutes were temporary, and included acts regulating schools and nurseries, financial aid, use of audio and video in courts, etc (see Parts IV and V below).

C. Executive rule-making powers

18. An important part of all Norwegian legislation is found in regulations (*forskrifter*) adopted by the Government in the Council of State by royal decree, by individual ministers, or, less commonly, by Government agencies, and which have the force of law upon being made. The power to adopt regulations is conferred on the Government by statute.

19. As of 10 January 2021, at least 141 Covid-19 related regulations had been adopted at the national level either in the form of new regulations or in the form of amendments to existing non-pandemic specific regulations.¹⁷ At the local level, 311 local regulations on Covid-19 had been adopted between 12 March and 10 January 2021.

20. Regulations are subject to certain constitutional limitations: they cannot conflict with higher norms, such as primary legislation and the constitution. Due to the constitutional legality principle, regulations can only supplement or specify coercive measures and criminal offences provided by statute.¹⁸ Regulations are also subject to procedural requirements set out in the Public Administration Act 1967, including rules on hearings and notification of affected parties.

21. In relation to the Covid-19 pandemic, the Government has to a large extent relied on regulations to implement public health measures. The Infection Control Act 1994 provides a statutory basis for imposing infection control measures, such as restrictions on movement and social gatherings, the closing of public and private institutions, isolation, and quarantine. The specific criteria for imposing such measures have been set in regulations and amended in accordance with changes in the pandemic situation. The most important regulation on specific measures to control the pandemic, the Covid-19 regulation of 27 March 2020, has been amended 60 times since its adoption.¹⁹

22. In relation to serious communicable diseases, the existing legislation provided the Government with extended regulatory powers before the Covid-19 pandemic. Section 7-12 of the Infection Control Act 1994 and section 6-2 of the Health Preparedness Act 2000 authorise the Government to adopt regulations that derogate from existing statutes, if necessary to safeguard public health. In relation to the Covid-19 pandemic, the Government has adopted several regulations pursuant to section 7-12 of the Infection Control Act 1994, including the controversial ban on residence in leisure homes, detailed in Part IV.A.1 below.

23. All pandemic-specific regulations and amendments to existing regulations have been temporary. Most are limited in time by being legally limited to the duration of the Covid-19 situation,²⁰ while others include sunset clauses, typically with a duration of six months,²¹ but in some cases up to one year.²² The Corona Act 2020 expressly required regulations to be temporary and to expire automatically with the expiration of the statute, which was limited to one month.²³ A number of these regulations were subsequently extended by Parliament as temporary statutes. Derogations from existing legislation according to section 6-2 of the Health Preparedness Act 2000 are also limited to one month.

24. There has been limited parliamentary scrutiny and judicial review of the regulations adopted pursuant to the Infection Control Act 1994, detailed in Part III.A and C below.

D. Guidance

25. Official guidance to the public and public authorities is gathered on several websites, published by the Government itself, the Directorate for e-health (*Direktoratet for ehelse*), the Norwegian Directorate of Health, and the NIPH.

26. Legal rules enacted to control infection are binding and violations may be subject to fines or criminal charges, whereas guidance to the public is advisory. Directives given to public authorities are binding within the limits of the law. Guidance is used extensively to supplement legal rules, and to affect behaviour by resort to soft recommendations instead of using hard law. On occasion, the latter can follow an ineffective attempt to use the former to address problematic behaviour. One example concerned the attempt to prevent people from staying in their leisure homes located outside their home municipality. The Prime Minister first attempted a soft approach on 14 March 2020, recommending all owners of

leisure homes to go back to their main home and stay there.²⁴ The following day the Government adopted a regulation authorising the Ministry to enact a ban if necessary, and called on people to voluntarily return to their homes immediately.²⁵ Since a number of people did not return, a ban was introduced as hard law on 19 March 2020.²⁶

27. While the Government has kept the formal distinction between law and guidance clear in its written communications, the media have often failed to communicate this distinction. Moreover, during the press briefings, ministers have contributed to the confusion between hard law and non-legally binding guidance.

28. In the early phase of the pandemic, polls showed that most people had either received or read official information about it and knew how to protect against the infection.²⁷ However, there are examples throughout the pandemic of Government guidance being ambiguous, not least because there are four different websites publishing official guidance as well as examples of contradictory advice from national and local authorities.

III. Institutions and Oversight

A. The role of legislatures in supervising the executive

29. The Norwegian Parliament engages in scrutiny of the Government's performance chiefly through the normal parliamentary scrutiny system. This includes the weekly Question Time with Government ministers, written questions and interpellations addressed to ministers, debate on Covid-19-related bills presented by the Government, and through the functioning of various standing committees. All of these instruments have been actively used by opposition parties to scrutinize the Government's response to Covid-19.

30. In addition to its ordinary *ex post* scrutiny role, Parliament has adopted numerous resolutions requiring the Government to adopt specific measures throughout the pandemic, most of which address the economic and social effects of the infection control measures.²⁸ For example, on 16 March 2020, Parliament adopted 14 resolutions asking the Government for specific budgetary and fiscal measures to ease the economic effects of the public health measures imposed four days earlier. In the Norwegian parliamentary system, resolutions are considered politically binding for a minority government, which is required to present an annual report on their followup.²⁹

31. The Corona Act 2020, detailed in Part II.B above, established a specific regime for parliamentary scrutiny of regulations adopted under that statute. To mitigate the exceptionally broad powers of the Government to derogate from existing statutes, section 5 of the Corona Act 2020 allowed one third of the members of parliament to veto a Government regulation or parts of it. To render the minority veto effective, the Act required the entry into force of regulations to be delayed until one day after Parliament had received written notification of the issuance of the regulation.³⁰ Members of parliament were also allowed to oppose a regulation by simple written notification instead of a vote in the plenary. These legislative measures allowed Parliament to exercise scrutiny of regulations before they came into force, which probably lowered the political threshold for intervening in Government measures. During the two months the Corona Act 2020 was in force, out of a total of 32 regulations adopted, five regulations amending education legislation were partially suspended by Parliament applying the minority veto.³¹

32. There is no general requirement in Norwegian law for Government regulations to be confirmed or renewed by Parliament. Parliament can at any time terminate the regulation-making powers of the Government by a legislative act, but this is rare and there are not any examples in relation to the pandemic. However, a specific scheme for parliamentary scrutiny is established in section 7-12 of the Infection Control Act 1994, detailed in Part

II.C.22 above, which also allows the Government to derogate from existing legislation, including by extending the scope of its own powers. For such section 7-12 regulations derogating from legislation, the Government must immediately notify Parliament, and convene it if not in session, as well as putting before Parliament the regulation as a legislative bill within 30 days. The procedural requirements follow from Infection Control Act 1994, sections 3 and 4, which refers to the procedure concerning derogations in times of war in the Act Relating to Special Measures in Time of War, Threat of War, and Similar Circumstances 1950. Between 27 March and 27 May 2020, this notification requirement was suspended by the Corona Act 2020,³² and by 10 January 2021 no Covid-19-related regulation has been put before Parliament pursuant to section 7-12 of the Infection Control Act 1994.

33. The scope and content of the Government's regulatory powers have been discussed in Parliament at different stages of the pandemic. In relation to the adoption of the Corona Act 2020, the Government's draft law drew strong public and political criticism for conferring on the Government excessively vast and unrestrained regulatory powers.³³ As a result, Parliament limited the scope of the Government's powers and embedded stronger parliamentary control with regard to regulations derogating from existing legislation.³⁴ While Parliament passed the Act unanimously on 24 March 2020, a significant minority of three parties voted against extending the Act for another month on 21 April.³⁵ Concerns over the Government's vast powers to impose intrusive measures according to the Infection Control Act 1994 along with the limited parliamentary scrutiny of such measures, prompted Parliament to adopt a resolution on 17 November 2020 asking the government to revise the Act.³⁶ However, citing concerns for amending the legislative framework during the pandemic, the majority called on the Government to await revision of the Act until the Coronavirus Commission appointed by the Government, as detailed in Part III.G below, has published its evaluation of the Covid-19 measures.

B. The functioning of the legislature where its ordinary business is disrupted

34. The Norwegian Parliament has operated more or less as normal in its legislative and scrutiny function throughout the pandemic. At no point did the Parliament suspend its operations, though the committees' activities were limited for about a month after the public health measures of 12 March 2020.

35. Passage of legislation was not suspended during the period of extensive public health measures from 12 March. Even though Parliament on 27 March transferred vast regulatory powers to the Government with the Corona Act 2020, Parliament adopted 36 laws during the two-month period the Act was in force, 17 of which were Covid-19 related.

36. The key decisions concerning the operations of Parliament during the pandemic have been taken by the Presidium in concert with the political party groups.³⁷ The Presidium is composed of six members, elected proportionally according to the size of the party groups, and chaired by the President of the Parliament. None of the measures appear to have been controversial.

37. Before and shortly after the introduction of public health measures on 12 March 2020, the Presidium adopted a number of measures to protect the Parliament against the pandemic while maintaining its 'core activity':

- On 5 March, international travels on behalf of the Parliament were suspended.³⁸

- On 11 March, all domestic travel by committees was suspended, Parliament was closed for public visits, public access to parliamentary debates was limited and later suspended until mid-April, and committee hearings were conducted by written procedure or video conference.³⁹
- On 12 March, the day of public health measures, the Presidium decided after consulting with the leaders of the parliamentary party groups⁴⁰ that the Parliament would only deal with urgent issues until the end of April.⁴¹ During much of this period, the parliamentary committees considered only pandemic-related cases. From mid-April, the Parliament resumed normal operation, dealing with both pandemic-related and other business. Oral debates with ministers resumed in late April-early May.
- On 12 March, Parliament also temporarily amended its Rules of Procedure to allow for committee meetings and voting in committees to be held by video conference.⁴²
- On 16 March, Parliament suspended the normal 10 April deadline for considering government propositions for adoption in the Spring session in order to allow for pandemic-related legislative and budgetary measures.⁴³
- To deal with urgent matters relating to the pandemic, a Special Coronavirus Committee was set up on 16 March 2020.⁴⁴ The Committee consists of the President of the Parliament and the leaders of each of the nine parliamentary party groups. This committee prepared the Corona Act 2020.
- Unless otherwise stated, all of the above measures are still in force as of 10 January 2021.⁴⁵

38. As for voting, on 14 May 2020, the Presidium recommended to the party groups that only 87 out of 169 members, which is the quorum requirement,⁴⁶ would attend plenary meetings and voting, maintaining their proportional representation.⁴⁷ As of 12 November, Parliament still conducts plenary sessions, voting with the minimum quorum requirement. This arrangement was also extended to four constitutional amendments on 14 May, which were adopted with the minimum constitutional quorum of two-thirds of the members of Parliament present. However, with respect to the 26 May amendments to the Biotechnology Act 2003, which concerned controversial issues such as egg donation, assisted insemination, and surrogacy, the eight members of the Christian Democrats (Krf) forced a full plenary by declaring that all of their members would attend the vote. In order to comply with infection control measures, glass partitions had to be installed between the seats, to the total cost of NOK 225,000 (EUR 22,800) and criticism from other party groups.⁴⁸

C. Role of and access to courts

39. The pandemic and the measures taken to control it had immediate and significant consequences for proceedings before the courts. In the weeks following the public health measures on 12 March 2020, up to 90 per cent of all court proceedings were postponed.⁴⁹ The Norwegian member of the European Commission for the Efficiency of Justice stated: 'I believe it is fair to say that the efficiency of the Norwegian courts has been hurt badly so far during the pandemic.'⁵⁰ The initial severe delays in court proceedings may have been exacerbated by Norwegian procedural law, according to which courts are heavily reliant on

oral proceedings, not only in criminal cases, but also in civil cases, including administrative cases.⁵¹

40. On 27 March 2020, the Government adopted by virtue of the Corona Act 2020 a temporary regulation on 'simplifications and measures within the justice sector to remedy consequences of the outbreak of Covid-19'.⁵² This regulation allowed the courts to hold remote hearings if doing so was necessary and unproblematic (*ubetenkelig*). According to this regulation, the court should hear the views of the parties before deciding to hold remote hearings. In criminal cases, the court must take into account whether remote hearings would be justifiable given the specific characteristics of each case and the rights of the accused. The court would also be required to provide the accused with access to confidential communication with their counsel. The regulation also allowed for increased use of written proceedings in cases of prolonged custody, restraining orders, and upholding the revocation of drivers' licences, as well as in appeals proceedings not involving the assessment of evidence in criminal cases. Furthermore, the regulation authorised the use of electronic signatures and video conference for the members of the courts.

41. The requirements for the use of remote hearings were subsequently clarified by the Supreme Court. In a decision of 8 May 2020, the Appeals Selection Committee of the Supreme Court held that Article 5(3) of the ECHR and Article 94 of the Constitution prohibited remote hearings for the initial decision to remand a person into custody.⁵³ Moreover, the Supreme Court gave the temporary regulation a narrow reading and found that it did not allow courts to decide remote hearings simply by reference to the need for general infection control. Instead, courts were required to justify the use of remote hearings by reference to the individual circumstances pertaining to each case.

42. Additional measures related to courts were introduced on 26 May 2020 by a temporary law on 'adaptations to procedural regulations due to the outbreak of Covid-19'.⁵⁴ The measures included written procedure for specific cases, expansion of the cases where the accused can plead guilty for a simplified criminal procedure, simplified rules for the selection of lay judges, rules on remote pronouncement of documents, and the transfer of cases between courts on the same level. Similar measures were introduced for the County Social Welfare Boards.

43. Practical measures to overcome the effects of infection control measures in courts include a guide for infection control in courts published on 28 April 2020,⁵⁵ and the allocation in May of NOK 62 million for the acquisition of technical equipment, as well as funding for additional judges and prosecutors to prevent delays in court proceedings.⁵⁶

44. Despite the infection control measures introduced in mid-March 2020, and initial reports of delays, statistics for the first half of 2020 show no significant delay in case processing time by courts of first instance and appeal courts, and only a minor reduction in cases decided by courts of first instance.⁵⁷ The Norwegian Court Administration reported in June that delays in court proceedings occurred until around 1 May 2020, after which the capacity of the judicial system began to normalise.⁵⁸ It appears then, that the courts managed to overcome the initial disruption by their own means and possibly by means of the allocation of new technical equipment and personnel.

45. It was unclear whether some of these measures were compatible with fundamental rights guaranteed by the ECHR and the Constitution. Both instruments provide the right to a 'public hearing within a reasonable time' (Article 6 ECHR, section 95 Constitution) and impose strict temporal and procedural requirements on decisions to remand a person into custody (Article 5 ECHR, section 94 Constitution). While the courts appear to have maintained a minimum operation to fulfil their obligations in regard to custody cases and other serious interferences in rights and freedoms, the use of remote hearings by

videoconference might in some cases have effectively suspended the right to a public hearing since the aforementioned temporary law of 26 May 2020 does not require a video link to the proceedings be made available to the public.⁵⁹ The aforementioned ruling of the Supreme Court also shows that courts may have been too quick to resort to remote hearings without a proper necessity assessment.

46. As for access to courts, the pandemic revealed a lack of centralised coordination in the partial shutdown and subsequent reopening of the courts. The return to normalcy varied from court to court, dependent on the assessment of each court president.⁶⁰ In one case in mid-April 2020, when other courts had resumed normal operation, the president of one court of appeal unilaterally decided to close the court for the remainder of the month due to reports of Covid-19 infections during proceedings in another court.⁶¹ The uncoordinated response of Norwegian courts to the pandemic was partly due to systemic features of the legal framework for the Norwegian judicial system, which has no independent body that can issue binding instructions to the courts. The Norwegian Court Administration is a government agency, that is barred from interfering with the exercise of judicial power by virtue of the principle of the independence of the judiciary. While the Court Administration had already, on 12 March 2020, issued a recommendation to courts to reduce operations due to concerns about Covid-19 infection, the decision to reduce and resume operations was left to the court presidents, and recommendations were not always followed.⁶² The uncertainties regarding access to court were addressed in the aforementioned temporary law of 26 May 2020, which allows for the transfer of one or more cases from one court to another court on the same level at the request of the court president or, if the court in question was 'out of operation', by a decision of a higher court.

47. Norwegian courts of all levels can review and strike down any administrative decision or regulation for going beyond the statutory limitations (principle of legality), for violating norms both in the Constitution as well as in human rights treaties incorporated in the Human Rights Act 1999, most notably the ECHR. No Covid-19 related regulative measures have been reviewed by the courts so far, save for the aforementioned regulation on remote hearings in court proceedings. For certain coercive measures related to infection control, such as compulsory medical examination and isolation of individuals, section 7-5 of the Infection Control Act 1994 requires the consent of the County Social Welfare Board, which is an independent tribunal. Its decisions can be appealed to the ordinary courts. No such decisions have been taken during the Covid-19 pandemic at time of writing.

D. Elections

48. No elections have been held during the pandemic. Parliamentary elections are scheduled for September 2021. As of 10 January 2021, the Government has proposed minor temporary amendments to the Election Act 2002 in order to provide the election authorities with some flexibility in voting procedures and locations, in order to accommodate possible infection control measures.⁶³

E. Scientific Advice

49. Scientific advice in relation to pandemics is regulated by the Infection Control Act 1994. According to section 7-9 of that Act, the NIPH shall monitor both the national and international epidemiological situation, conduct health analyses, conduct research on infection control, and ensure necessary vaccine supplies and preparedness. This body of public health experts is responsible for scientific advice and guidance in infection control for both national and municipal institutions, health professionals, and the general public.

50. The NIPH is placed directly under the Ministry of Health and Public Services and is not formally independent of the Government. However, the NIPH is de facto independent in its scientific work and advice.⁶⁴ There is no statutory requirement for the NIPH's advice to be published, but in accordance with its de facto independent function, the NIPH has regularly published reports, risk assessments, and guidance on Covid-19 independently of and sometimes contrary to the advice of Government.⁶⁵

51. Section 7-10 of the Infection Control Act 1994 expressly requires the Directorate of Health, which is an executive agency and professional authority under the Ministry of Health and Care Services and responsible for national infection control measures, to base its assessments on scientific advice from the NIPH. However, the scientific advice of the NIPH is binding for neither the Directorate of Health, the Government, nor the municipalities. On several occasions, for example in the decision to close schools as part of the public health measures strategy, the Government and the Directorate of Health have adopted measures not fully conforming with the scientific advice of the NIPH.⁶⁶

52. Before the pandemic in 2019, the Ministry of Health and Care Services established the Committee for preparedness against biological incidents (*Beredskapsutvalget for biologiske hendelser*). The Committee's task is to co-ordinate the national response to biological incidents, including pandemics. The Committee is chaired by the Director of the Directorate of Health and consists of representatives from government agencies, the Ministry of Foreign Affairs, and the Armed Forces. The Committee held its first meeting on 3 February 2020 in preparation for Covid-19 and recommended to persons in positions critical to society to work from home for 14 days after their entry into Norway.⁶⁷ Being a body organized within the executive for internal coordination, the Committee has no statutory basis, and its operations are not transparent.

F. Freedom of the press and freedom of information

53. There is no indication of any restrictions on the press during the pandemic. However, one incident has been discussed in the press and in social media. On 27 October 2020, the Minister of Health in a heated debate on public television argued that the host should not ask him questions as to whether the Government's regulations on face coverings complied with scientific advice.⁶⁸ Also, citing freedom of expression, the Government and the police did not intervene in the Black Lives Matter demonstrations held in the cities of Oslo, Bergen, and Kristiansand on 5 June 2020, gathering thousands of people, even though pandemic regulations at the time did not permit gatherings of more than 50 people.⁶⁹ Other demonstrations have also been allowed throughout the country during the pandemic.

54. The compliance with freedom of information laws by public authorities has been continuously discussed since the introduction of the first infection control measures in March 2020. On 3 April 2020, the Government introduced general guidance to public authorities managing access to public documents on Covid-19.⁷⁰ The main purpose of the guidance is to ensure the right of access to information, however, press organizations have expressed concerns that access to information is supposed to be decided by the Ministry that owns the document in each particular case.⁷¹ Another concern has been the lack of public hearings related to the review of temporary Covid-19 related statutes and regulations. To some extent, and in particular for social and economic measures pursuant to the Corona Act 2020, the Government had sent draft regulations on public hearings either 24 or 48 hours before their adoption.⁷² However, no hearings have been held for

regulations pursuant to the Infection Control Act 1994, which contains the most intrusive public health measures, detailed in Part IV.A below.

G. Ombuds and oversight bodies

55. The Parliamentary Ombudsman is appointed by Parliament to safeguard the rights of individual citizens in their dealings with the public administration. The Ombudsman has not undertaken any general accountability investigations for pandemic-related policy so far. In Norway, the Ombudsman is also charged with monitoring and investigating abuses of the rights of people deprived of their liberty under the 2002 Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). Acting under the OPCAT mandate, in June 2020 the Parliamentary Ombudsman conducted a thorough review of infection control measures imposed on prison inmates during the Covid-19 pandemic.⁷³ The report found that the application of 14 days isolation to all new inmates in Norwegian prisons as an infection control measure, did not comply with the legal requirements of necessity and proportionality. On 22 June, the measures were lifted.⁷⁴ New measures introduced on 4 January 2021 require individual assessment in accordance with the Ombudsman's report.⁷⁵

56. On 24 April 2020, the Government appointed an independent commission to evaluate all aspects of the authorities' management of the Covid-19 pandemic.⁷⁶ The so-called 'Coronavirus commission' is planned to present its report in March 2021.

IV. Public Health Measures, Enforcement and Compliance

A. Public health measures

57. Since the outbreak of Covid-19, the public health measures adopted in Norway have combined hard and soft regulatory techniques. In a press briefing on 12 March 2020 the Norwegian Prime Minister characterized the measures then enacted as 'the most sweeping measures Norway has seen in peacetime'.⁷⁷ At that point a number of specific measures were enacted closing kindergartens, schools, universities, prohibiting public gatherings, imposing strict restriction on travel, and measures requiring quarantine and isolation. Pursuant to section 4-1 of the Infection Control Act 1994, the measures on 12 March were enacted by the Norwegian Directorate of Health, not the Ministry of Health and Care Services nor the Government, through a decision of the Council of State. However, the Directorate acted in close cooperation with the Ministry and the Government, and both the Ministry and the local municipalities have supplemented the measures enacted by the Directorate in regulations, detailed in Part II.C.19 above.

58. We have divided the public health measures enacted from the outbreak of the pandemic up until 10 January 2021 into three phases. The first phase runs from 12 March 2020 until the revocation of several measures on 12 June 2020. The second phase runs from early autumn 2020 until January 2021, a period in which many of the outbreaks as well as the measures were local. The third phase, from 3 January 2021, started as the Prime Minister of Norway again announced the adoption of new national measures by the central authorities.

59. In Norway, the Infection Control Act 1994 provides both the Government and the municipalities with wide powers to enact public health measures. As a unitary state without any federal structures, Norway's 356 municipalities are however provided with limited powers, and their use of those powers are subject to extensive control by the state, including in the area of infection control. On the central level, the Infection Control Act 1994 allows the delegation of certain powers to the Ministry of Health and Care Services. Delegations are to be decided by the Council of State with royal approbation, limited in time solely by the decision of the Council. The powers of the Council of State under section 7-12

of the Infection Control Act, detailed in Part II.C.22 above, were delegated to the Ministry on 27 February 2020.⁷⁸ Moreover, section 4-1 of the Infection Control Act 1994 authorises a subordinate administrative body staffed and led by professionals—the Directorate of Health—to enact national public health measures. In fact, the set of public health measures of 12 March 2020 were adopted by the Directorate of Health acting under the section 4-1 of the Infection Control Act 1994, without formal involvement of the Government, which is accountable to Parliament. However, such acts of delegation may violate a constitutional rule requiring the Government to decide all matters of importance in the Council of State with royal approbation and, thus, subject to parliamentary scrutiny.⁷⁹ While the distribution of authority under the Infection Control Act 1994 to the different levels—the Council of State, the Ministry, the Directorate, and the municipalities—may overlap, there are no provisions authorising municipalities to lift regulations imposed by the central government and its administration. The authority provided to the municipalities may however be used to supplement regulations imposed by the central level.

60. Part IV.A (paras 1–10) below covers public health measures enacted by authorities, both at the national and local level. As there are striking differences between the largest and smallest municipalities in Norway in terms of population—ranging from 693.494 inhabitants in Oslo municipality to 292 in Utsira municipality—there are also significant differences between the measures enacted at the municipal level. A list of all major national responses to the coronavirus is published on the government website.⁸⁰ Similar lists are published by the municipalities of Oslo and Bergen.⁸¹

1. Individual mobility restrictions on citizens (stay-at-home, curfews, etc)

61. In the first phase of public health measures, from 12 March 2020 to 12 June 2020, general mobility restrictions on citizens such as stay at home and curfew orders were not imposed in Norway. One significant part of the Norwegian government’s communication strategy was to mobilise a national *dugnad*, a specific Norwegian social norm of solidarity, appealing to everyone to follow official guidance and work from home, if possible.⁸²

62. In addition, on 19 March 2020, the Ministry of Health and Care Services prohibited overnight stays in leisure homes located in municipalities other than the registered home residence of an individual.⁸³ The prohibition was enacted as a ministerial regulation, under sections 7-17 and 4-3 of the Infection Control Act 1994.⁸⁴ The prohibition was justified on the basis that there is insufficient health service capacity in small municipalities with many leisure homes. The prohibition was lifted on 20 April 2020 and is still one of the most controversial measures introduced during the pandemic, due to the specific cultural significance of leisure homes in Norway. Both its legality and utility were publicly questioned.⁸⁵

63. Legal measures and recommendations were gradually relaxed from 7 April 2020, and the Ministry of Health and Care Services revoked a number of the specific measures on 12 June 2020, including measures closing universities and technical schools.⁸⁶

64. While the general restrictions imposed by the Government and the Directorate are subject to judicial review, there are only a few cases in which such review was exercised in practice, detailed in Part III.C above.

65. In addition to central regulations, local regulations have been enacted which have also affected the general mobility of citizens. Several municipalities introduced specific quarantine rules, aiming in particular to protect municipalities in the North from the large number of infections of Covid-19 in the South. For example, the municipality of Bardu (in the Northern part of Norway) introduced quarantine rules for everyone staying or planning to stay within the municipality, and who have stayed for more than 24 hours outside the

region where the municipality is located (Nordland).⁸⁷ Nevertheless, within a few days, the County Governor in Troms and Finnmark county annulled the local regulation as it was not justified on medical grounds.⁸⁸ According to the County Governor, the municipality had failed to give sufficiently precise grounds for the strict rule. However, other local quarantine rules remained in force and became a source of controversy between local authorities and the national authorities.⁸⁹

66. While many public health measures had been revoked by mid-June 2020, measures were again adopted in autumn 2020 due to increasing infection rates of Covid-19. These second phase measures were primarily on the local level, by the municipalities in close cooperation with the central authorities. One example is the situation in the municipality of Oslo, where the Norwegian Directorate of Health and the NIPH issued a letter including detailed assessment and advice on which measures to adopt in order to keep control.⁹⁰ Moreover, in early January 2021, the public health measures entered a new phase. Under section 4-1 of the Infection Control Act 1994, the Ministry adopted new measures including prohibiting more than five people from meeting in private homes, and prohibiting all restaurants, bars, and cafés from serving alcohol.

67. However, at the local level, the largest municipality, Oslo, has introduced stricter regulations, obliging both employers and employees to work from home as much as possible.

2. Restrictions on international and internal travel

68. Restrictions on international travel were imposed by several regulations enacted in March 2020. On 12 March, the Directorate of Health enacted a regulation pursuant to the Health Preparedness Act 2000 prohibiting all medical personnel working with patients to travel abroad. The prohibition applied both to work-related and private travel.⁹¹ On 13 March, the Government enacted a regulation imposing a 14-day quarantine on persons arriving in Norway from countries other than Sweden or Finland pursuant to the Infection Control Act 1994.⁹² The regulation also applied to persons who arrived in Norway from Sweden or Finland following a stay in other countries during the previous 14 days. Moreover, on 15 March 2020, the Government enacted a regulation prohibiting all foreigners without a residence permit from entering the country.⁹³ Both regulations were amended several times, before they were repealed on 27 March and replaced by a general regulation on Covid-19 measures (the Covid-19 regulation).⁹⁴

69. Since 15 July 2020, the Covid-19 regulation has included particular arrangements for citizens from the EU, Schengen, and European Free Trade Association (EFTA) countries.⁹⁵ The Norwegian regulations are not (yet) identical to Council Recommendation (EU) 2020/1475 of 13 October 2020 on a coordinated approach to the restriction of free movement in response to the Covid-19 pandemic.⁹⁶ However, there are similarities between the Norwegian regulations and the EU recommendation. In line with the recommendation, the Norwegian regulations applies different rules to different regions within the EU, Schengen, and EFTA countries depending on the cumulative Covid-19 case notification rate.⁹⁷ The Covid-19 regulation determines that exceptional rules apply to areas where necessary test rates are missing, or the test rates are less than 300 per 100,000 persons, or otherwise where new cases exceed 150 per 100,000 over the last 14 days, or new cases are 50 or more per 100,000 persons if 4% or more are having positive tests.⁹⁸ Currently, the EU recommendation is under scrutiny with a view to being incorporated into the EEA Agreement 1994.

70. There have been no laws restraining internal travel within Norway, other than those referred to in Part IV.A.1 above pertaining to the ban on overnight stays at leisure homes and particular quarantine rules enacted by municipalities.

3. Limitations on public and private gatherings and events

71. The Directorate of Health prohibited public gatherings of more than 500 participants on 11 March 2020.⁹⁹ The next day, all cultural and sport events were prohibited in the aforementioned public health measures decision on 12 March 2020.¹⁰⁰ At that time, the prohibition was legally binding until 26 March 2020, but was prolonged along with other measures until 7 May 2020. From this date, the Government allowed for gatherings and events of up to 50 participants. From 15 June 2020 the Government allowed for gatherings and events of 200 participants.

72. On 5 November 2020, new and stricter national measures were enacted, effective from 9 November. According to the new measures, private gatherings and events within the household were limited to 20 people, but up to 50 people were allowed at indoor events without fixed seats. At events where everyone in the audience could sit in fixed seats, up to 200 participants were allowed.¹⁰¹ In addition, guidance was issued advising people to stay at home as much as possible and to limit social contact with other people (see Part IV.A.1 above). At the local level, several municipalities introduced stricter regulations. For example, the municipality of Bergen prohibited all private gatherings of more than five persons on 6 November 2020. Before the 2020 Christmas holidays, the Government advised people to not exceed more than 10 people in private gatherings,¹⁰² but the national regulations of 20 people in private gatherings were not changed. Some municipalities enacted local regulations permitting private gatherings of no more than 10 people during the holidays. Following concerns of a spike in infection rates during the holidays, stricter national measures were enacted on 3 January 2021 for a period of 14 days.¹⁰³ In addition to advice to avoid social contact and travel, private gatherings were limited to five persons, indoor events to 10 persons but allowing for 200 persons in indoor events with fixed seats, and the same for outdoor events without fixed seats, and 600 persons for outdoor events with fixed seats.¹⁰⁴

4. Closure of premises and facilities (eg schools, shops, services, parks, churches, sport facilities)

73. With the national public health measures of 12 March 2020, detailed in Part IV.A above, schools and universities were closed from 13 March 2020.¹⁰⁵ During the week of 11–15 May 2020, all schools reopened with social distancing guidance in place, following a Government decision on 7 May 2020. To comply with distancing guidance, several schools were open to only half of the students at a time. A full reopening occurred after the summer vacation from August 2020 onwards throughout the whole country, with the possibility for local authorities to close schools or certain grade levels or groups, if necessary. The section 4-1 of the Infection Control Act 1994 also confers powers on municipalities to close schools due to the spread of communicable diseases, and this provision was used to close schools in certain municipalities after local Covid-19 outbreaks from August 2020. The local decisions were to comply with a ‘traffic light system’, developed by the Directorate of Education, where schools were supposed to be placed at either green, yellow, or red level according to the severity of local outbreaks near the schools.¹⁰⁶ With the aforementioned measures of 3 January 2021, all schools in the country with children above the age of 12 were temporarily placed at red level, due to the increasing spread of Covid-19 during the holidays, meaning

the schools were either forced to close down or stay open to only half of the students at a time.

74. The regulation of businesses comprised mandatory closures of some businesses, restrictions on operating hours, restrictions on sales, and physical distancing. During the first phase of the response to the pandemic, the businesses which were required to close on 12 March 2020 included all places serving food and beverages in which it was impossible to keep a physical distance of one metre.¹⁰⁷ Businesses with physical contact with customers, such as hairdressers, beauty salons, tattoo shops, massage institutes, and so on, were totally closed. These businesses gradually reopened from the end of April 2020 onwards under general guidance given by the Directorate of Health.¹⁰⁸ The guidance was made mandatory to these businesses in order to comply with the Covid-19 regulations given by the Government. Gyms, swimming pools, and sport arenas were also shut down, and were not allowed to reopen until June 2020.

75. In the second phase of the response to the pandemic, local regulations applied to restaurants and bars, especially in Oslo from 8 October 2020,¹⁰⁹ and Bergen from 8 September 2020.¹¹⁰ With effect from 7 November 2020, national regulations prohibited the serving of spirits in restaurants and bars after midnight, and a governmental recommendation advised some municipalities to decide on whether to adopt stricter regulations.¹¹¹ In several cities, local regulations introduced further restrictions on restaurants, bars, and sports. In Oslo on 6 November 2020, the local authorities introduced a total prohibition of serving spirits in restaurant and bars.¹¹² With the Government regulations of 3 January 2021, a total ban on serving spirits was made national.

76. Parks were not closed, although children's playgrounds in schoolyards and nurseries were for the most part closed during the first phase of the pandemic, from 12 March until the reopening of schools on 11 May 2020. Following a relatively low infection rate in Norway during the summer, reporting less than 150 incidents per week from mid-May until mid-July,¹¹³ in the second week of August 2020 freshers at universities gathered in the parks in the cities in 'to get to know each other' parties and unfortunately spread Covid-19 in the cities of Bergen and Trondheim. The increased infection rates of Covid-19 related to student activities and parties led to massive media coverage and general encouragement from local officials and government ministers to reduce social activities. In some of the larger cities, the police enforced the general prohibition on drinking alcoholic beverages in public places such as parks envisaged in the Criminal Code 2005, and also required large student gatherings in parks to split up according to the national Covid-19 regulations.¹¹⁴

5. Physical distancing

77. At the national level, no legal requirement for physical distancing between members of the public has been introduced. However, the Government's official guidance stressed that there should be at least one metre physical distance between non-family members, which is often referred to as 'the metre'.¹¹⁵ For some gatherings and businesses 'the metre' was made mandatory to keep the business running. For theatres and movie theatres, concerts, weddings, funerals, and other gatherings, 'the metre' became mandatory.¹¹⁶ Not surprisingly, the spread of Covid-19 seemed harder to control where people ignored 'the meter' due to alcohol or parties in general, leading to stricter regulations on gatherings and on businesses serving alcoholic beverages, detailed in Part IV.A.71 above.

6. Use of face coverings and personal protective equipment (PPE)

78. Face covering was not recommended in Norway during the first phase of the response to the pandemic. Starting from 17 August 2020 onwards, the Government recommended commuters in the Oslo-area use face coverings if they were unable to keep a physical distance of one metre on trains and buses.¹¹⁷ The recommendation was only partially followed, and the municipality of Oslo introduced on 28 September 2020 mandatory face covering on public transport if it is impracticable to keep a physical distance of one metre.¹¹⁸ Similar rules have been introduced in other municipalities, some as mandatory and others as a general guidance. During November 2020, the same mandatory usage of face coverings was applied to shopping centres, stores, and shops in several municipalities, eg in Oslo from 29 October 2020.¹¹⁹

7. Isolation of infected individuals and quarantine of individuals suspected of infection

79. The general regulation-making power under the Infection Control Act 1994 can be used to force a person to (a) submit to medical examination (section 3-3), unless the examination is highly invasive; (b) be kept in isolation if infected by a dangerous communicable disease (section 5-3); and (c) be kept in quarantine if suspected of infection by a communicable disease (sections 4-2 and 4-3). However, the 1994 Act states that all measures pursuant to the Act shall be based on 'clear medical' advice and be deemed 'necessary' and 'proportionate' in relation to both infection control in general and in each particular case (section 1-5).

80. The Covid-19 regulation (Chapter 2) contains detailed rules on quarantine and isolation specifically for Covid-19 and it has been updated several times. Isolation is prescribed for persons with actual infection based on PCR tests, requiring them to stay isolated in their homes together with their family members (section 7). Quarantine is prescribed for persons that either (a) have been close to a person infected with Covid-19 for more than 15 minutes and with a physical distance of less than 2 metres; or (b) have entered the country from a red-listed area outside of Norway (section 4). In the first phase of the response to the pandemic, the quarantine lasted for 14 days, but was adjusted to 10 days on 7 May 2020 by amendments to the Covid-19 regulation, detailed in Part II.C.21 above. Isolated persons were prohibited from leaving their home, while persons in quarantine were allowed to do necessary errands if all precautions were taken, eg exercising or walking the dog while maintaining social distancing. The Covid-19 regulation also made exceptions to the quarantine rules for some groups entering the country, such as sports professionals and workers within the EEA area. The detailed regulations on who was exempted from the quarantine rules, were adjusted several times. In the second phase of the response to the pandemic, the Government changed the rules on 6 November, restricting entry into the country by imposing a mandatory stay at designated quarantine hotels for 10 days,¹²⁰ with only partial reimbursement of the costs for foreign workers.¹²¹

8. Testing, treatment, and vaccination

81. Testing, treatment, and vaccination are all free of charge in Norway. However, in the first phase of the pandemic, from late-February until late-May 2020, testing required a recommendation from health professionals. In February and March, such recommendation was only given to health professionals or to very sick persons arriving from abroad. Thus, the Directorate of Health stated in October 2020 that it was likely that 5 to 10 times as many people suffered from Covid-19 in Norway in March and April 2020 than registered.¹²² In November 2020, the NIPH still estimated that only 4 out of 10 incidents were found in October.¹²³ Most infected people were not treated, but isolated, while those hospitalized were treated in public hospitals. Due to effective measures against the spread of Covid-19

so far, the hospitals have been able to treat everybody in need of lifesaving treatment. As of 6 January 2021, 53,326 people have tested positive for Covid-19, and 467 have died.

82. The first doses of the Pfizer vaccine arrived in Oslo on 26 December 2020, and a disabled 67 year-old man became the first to be vaccinated.¹²⁴ The vaccination plan, schedule, and priorities are drawn up and administered by the NIPH and decided by Ministry of Health and Care Services.¹²⁵ On 22 December 2020, upon the advice of the NIPH, the Ministry of Health and Care Services decided that the elderly and others staying in long-term facilities were to be vaccinated first.¹²⁶ The decision was publicly criticised by health professionals, leading to the NIPH to change the priorities so that front line health professionals were also allowed vaccination at an early stage.¹²⁷ The vaccine is so far voluntary, but according to the section 3-8 of the Infection Control Act 1994, the Ministry of Health and Care Services can by regulation order mandatory vaccination for whole or parts of the population, or impose movement restrictions on non-vaccinated persons, if such vaccination is 'absolutely necessary (*'avgjørende'*) to neutralise a serious outbreak of a dangerous communicable disease'.

9. Contact tracing procedures

83. The legal basis for contact tracing guidance is section 3-6 of the Infection Control Act 1994. In March 2020, the Government and the Directorate of Health stated that the strategy was to strike down the pandemic in Norway.¹²⁸ From mid-May it became clear that the Government strategy had changed somewhat to tracing and isolating incidents of Covid-19, though a change in strategy was never explicitly communicated. The general governmental strategy was to combat the pandemic in Norway by implementing mandatory contact tracing guidance in all municipalities.¹²⁹ The strategy was based on four criteria; test, isolation, tracing, and quarantine, called 'TISK' in Norwegian. Due to mandatory provisions on testing, isolation, tracing, and quarantine in the 1994 Act, all measures in the TISK strategy are expressly provided for in the legal framework. There are no reports of people refusing to test voluntarily, if asked to do so by local officials. However, there have been a few incidents where local officials have reported people not willing to help with tracing Covid-19, and on 21 October 2020 the Minister of Health and Care Services called on people not to joke or invent fake names to prevent or delay the work of those tracing the infection.¹³⁰

10. Measures in long-term care facilities or homes for the elderly, restrictions on visitors etc

84. According to the section 7-1 of the Infection Control Act 1994, infection control measures for residential care for the elderly falls under the responsibility of local authorities. During the public health measures from 12 March 2020 until the end of May, the municipalities decided to impose either restrictions or a total ban on visits in homes for the elderly. After only a few weeks, there were a massive amount of complaints against the total bans on visits, which were leaving the elderly totally isolated. Gradually the prohibitions were lifted, and national guidance was given by the Directorate of Health on 27 May 2020 to the municipalities on how to open to visitors, and still manage to prevent an outbreak of Covid-19.¹³¹

B. Enforcement and Compliance

1. Enforcement

85. According to the Covid-19 regulation pursuant to the Infection Control Act 1994, violations of public health regulations can lead to either a civil fine or imprisonment of up to six months. However, not all public health regulations are subject to enforcement. In general, the Government has repeatedly appealed to the public to fight the pandemic together, based on willingness and caring for each other. The amount of the fine depends on the violation, but the Director of Public Prosecutions levies a fixed fine of NOK 20,000 (approximately € 2,000) for violations regarding the isolation and quarantine rules.¹³² For violations of local regulations, the police may fine up to the same amount. However, the standard for ordinary violations within the Oslo Police District is set to NOK 2,000 (approximately € 200) for not wearing face coverings on public transport when required, to NOK 10,000 (approximately € 1,000) for hosting gatherings of more people than allowed, and to NOK 5,000 (approximately € 500) for attending such a gathering.¹³³ The fines are levied through criminal procedure.

86. The National Police Directorate has confirmed that as of 25 October 2020 there were 428 criminal cases related to Covid-19, or 8 per 100,000, whereas 205 of these cases represented breaches of regulations on isolation, quarantine, and gatherings, others represented fraud, threats, violence, and other violations related to Covid-19.¹³⁴

87. The Armed Forces have only played a limited role in enforcing Covid-19 measures. During the public health measures in March 2020, some military personnel were deployed on the request and under the command of the police¹³⁵ to control the border with Sweden.¹³⁶ In relation to communicable diseases, the section 4-10 of the Infection Control Act 1994 requires the Armed Forces to assist in the application of measures pursuant to the Act.

2. Compliance

88. A key aim of the public health measures introduced on 12 March 2020 was to reduce mobility in society. Mobile data analysis by the largest telephone service provider Telenor suggests a reduction of mobility between municipalities of more than 60% by 7 April compared to before the introduction of public health measures on 12 March.¹³⁷ Mobile data analysis by the mobile service provider Telia found 35% less mobility within municipalities on a national level and more in the largest cities following the 12 March measures.¹³⁸ Analysis of mobile data in the capital Oslo in November 2020, showed that mobility within the city remained more than 25% lower than at the same time in 2019.¹³⁹

89. As for other public health measures, they appear to have been largely complied with. A poll published on 11 November 2020 shows that 9 out of 10 complied with hand washing and physical distance requirements, and a majority of the population observed face mask requirements.¹⁴⁰ However, according to the same poll, only 3 out of 10 believed other people complied with infection control measures. A scientific study covering the months of April to July 2020 found that self-adherence to quarantine and isolation requirements was low and declined over time, questioning the effect of such measures.¹⁴¹ The most debated measures are the use of face coverings and regulation of visitors in private homes. A study published on 8 August 2020, before face coverings were made mandatory in certain areas and for certain activities, showed that 17% of the adult population would refuse to wear face coverings no matter if regulations made them mandatory or not.¹⁴² This attitude might

have contributed to later regulations making face coverings mandatory only in situations where social distancing are impossible.

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Footnotes:

¹ Last amended 14 May 2020.

² Constitution, arts 75-79.

³ Constitution, art 17.

⁴ Constitution, art 89.

⁵ See E Smith, 'Judicial Review of Legislation' in H Krunke and B Thorarsen, *The Nordic Constitutions. A Comparative and Contextual Study* (Hart Publishing 2018) ch 5.

⁶ See eg *War Crimes Judgment* HR-2010-257-P (Supreme Ct of Norway [hereinafter SCN]).

⁷ EEA Agreement 1994.

⁸ See eg Human Rights Act 1999; EEA Act 1992; see also *Holship Norge AS and ors v Norwegian Transport Workers' Union, Norwegian Confederation of Trade Unions (intervener)* Judgment HR-2016-2554-P (SCN).

⁹ *Maria Judgment and order* HR-2015-206-A (SCN).

¹⁰ Regulation on warning of and measures in case of serious events concerning international public health (the IHR regulation) (FOR-2007-12-21-1573) (21 December 2007).

¹¹ See Norwegian Institute for Public Health, 'Covid-19-epidemien: Risikovurdering og respons i Norge' (12 March 2020).

¹² Directorate of Health, Decision under the Act relating to control of communicable diseases, section 4-1, second paragraph, on quarantine (isolation) after travelling outside the Nordic region (12 March 2020); Directorate of Health, Decision pursuant to the Act on protection against infectious diseases § 4-1 second paragraph on closure of business (15 March 2020).

¹³ See eg Norwegian Government, 'Long-term strategy and plan for dealing with the covid-19 pandemic and adjustment of measures' (7 May 2020).

¹⁴ See eg The Minister of Health and Care Services, 'Stay at home if you become ill' (Press conference, 18 May 2020).

¹⁵ Council Regulation (EC) 851/2004 of the European Parliament and of the Council of 21 April 2004 establishing a European Centre for Disease Prevention and Control ([2004]OJ

L142/1); incorporated into the EEA Agreement 1994 by Decision of the EEA Joint Committee No 23/2005 (JCD) 023/2005) (8 February 2005).

- 16** Corona Act 2020; Norwegian Parliament, 'The Corona Act' (26 March 2020).
- 17** All Norwegian legal sources are published on www.lovdata.no. Most regulations dealing with the pandemic have 'Covid-19' in the title of the regulation. The non-subscription database only contains legislation in force.
- 18** Constitution, arts 96, 113.
- 19** Regulation on infection control measures etc. by the coronavirus outbreak (the Covid-19 regulation) (FOR-2020-03-27-470) (27 March 2020).
- 20** See eg Regulation on rules for educational support for 2019-2020 due to the outbreak of coronavirus (Covid-19) (FOR-2020-04-03-569) (3 April 2020).
- 21** See eg Temporary regulation on exceptions from the Planning and Building Act 2008 to remedy consequences of the Covid-19 outbreak (FOR-2020-12-18-2840) (18 December 2020).
- 22** See Temporary regulation on advance payment of unemployment benefits to remedy the consequences of Covid-19 (FOR-2020-05-20-1029) (20 May 2020).
- 23** Corona Act 2020, s 4.
- 24** Norwegian Government, 'The Prime Minister's introduction on the press conference on the coronavirus' (14 March 2020).
- 25** Norwegian Government, 'The Government can ban stays in leisure homes etc.' (15 March 2020).
- 26** Norwegian Government, 'Introduces a ban on leisure homes' (19 March 2020).
- 27** Norwegian Directorate of Health, 'People know how to avoid spreading the infection' (17 March 2020).
- 28** A complete list over parliamentary resolutions (*anmodningsvedtak*) in the 2019-2020 parliamentary term are listed at the Parliament's website (accessed 11 November 2020). Most Covid-19 related resolutions are indicated with the word *virusutbruddet* in brackets.
- 29** Rules of Procedure of the Norwegian Parliament, s 14 no 8b.
- 30** See also the corresponding amendment on 24 March 2020 of the Rules of Procedure of the Norwegian Parliament, s 50a.
- 31** President of the Norwegian Parliament, 'Declarations of non-support to regulations pursuant to the Corona Act 2020' (28 March 2020).
- 32** See Corona Act 2020, s 8.
- 33** See eg V Heljesen and E Senel, 'The Progress Party moves to curtail the Government's crisis law' NRK (Online, 20 March 2020).

- 34** Coronavirus Special Committee, 'Innst. 204 L (2019-2020) Recommendation to the Storting from the special committee to deal with special cases concerning the corona crisis' (21 March 2020).
- 35** Norwegian Parliament, 'Vote count per party' (21 April 2020); Coronavirus Special Committee, 'Innst. 240 L (2019-2020) Recommendation to the Storting from the special committee to deal with special cases concerning the corona crisis' (21 March 2020).
- 36** See Standing Committee on Health and Care Services, 'Innst. 56 S (2020-2021) on Representative proposals from the Storting representatives Audun Lysbakken, Petter Eide and Nicholas Wilkinson on limiting the government's powers in the Infection Control Act' (3 November 2020).
- 37** Rules of Procedure of the Norwegian Parliament, ss 6-9a.
- 38** Presidium of the Norwegian Parliament, 'Decisions from the Presidium's meeting 5 March 2020'.
- 39** Presidium of the Norwegian Parliament, 'Decisions from the Presidium's meeting 11 March 2020'; Norwegian Parliament, 'The Storting steps up its coronavirus measures' (12 March 2020).
- ³⁹ Constitution, art 73.
- 40** Norwegian Parliament, 'Parliamentary Party Groups' (accessed 11 November 2020).
- 41** Norwegian Parliament, 'Dispatch of information to the Coronavirus Commission' (7 October 2020) 3-4.
- 42** Rules of Procedure of the Norwegian Parliament, ss 25, 26.
- 43** Rules of Procedure of the Norwegian Parliament, s 47.
- 44** Norwegian Parliament, 'The Storting constitutes a coronavirus special committee' (16 March 2020).
- 45** Presidium of the Norwegian Parliament, 'The Storting extends measures against corona' (17 December 2020).
- 46** See Constitution, art 73.
- 47** Presidium of the Norwegian Parliament, 'Decisions from the Presidium's meeting 14 May 2020'.
- 48** K Hellesnes, 'Christian Democrats got approval for full plenary in the Parliament' NRK (Online, 22 May 2020).
- 49** K Kolsrud, 'We cannot shut down the third branch of government' Rett24 (Online, 16 April 2020).
- 50** Council of Europe, 'Management of the judiciary - compilation of comments and comments by country' (10 July 2020).
- 51** I L Backer, *Norsk Sivilprosess* (Universitetsforlaget Oslo 2015) 99-102.

- 52** Temporary regulation on simplifications and measures within the justice sector to remedy consequences of the outbreak of Covid-19 (FOR-2020-03-27-459) (27 March 2020).
- 53** *A v Public Prosecution Authority* Order HR-2020-972-U (Appeals Selection Committee SCN).
- 54** Temporary law on adjustments in the procedural regulations as a result of the outbreak of covid-19 (Ministry of Justice and Public Security) (26 May 2020).
- 55** Norwegian Court Administration and the Norwegian Institute for Public Health, 'Guide in infection control for Norwegian courts in physical court sessions' (28 April 2020).
- 56** Norwegian Government, 'The Coronavirus situation: 62 millions extra to reduce queues in courts and prosecution' (29 May 2020).
- 57** Norwegian Court Administration, biannual statistics 2020 for the Courts of Appeal and the Courts of First Instance.
- 58** Minutes of the meeting of the Board of the Norwegian Court Administration, 15 and 16 June 2020.
- 59** See eg Association of Norwegian Editors, 'Concerning the proposal to extend the law on 'adaptations to procedural regulation due to the outbreak of Covid-19 - written submission' (15 September 2020).
- 60** J H Egge et al, 'Store koronaforskjeller i tingrettene: Advokat frykter brudd på menneskerettigheter' NRK (Online, 14 May 2020).
- 61** K Kolsrud, 'Agder lagmannsrett stopper alt - andre domstoler går nesten for fullt' Rett24 (Online, 21 April 2020).
- 62** Minutes of the meeting of the Board of the Norwegian Court Administration, 6 April 2020.
- 63** Ministry of Local Government and Modernisation, 'Proposition for temporary amendments to the Election Act 2002 and the Local Government Act 2018 due to the outbreak of Covid-19' (15 December 2020).
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