

The Norwegian Constitutional Reform 2014; emphasising the right to **environmental protection**, and omission of **freedom of conscience** and of **academic freedom**

Hans Morten Haugen, dr.jur,
Professor of international diakonia,
VID Specialized University
Oslo, Norway
hans.morten.haugen@vid.no

Norwegian Constitution

Adopted 17 May 1814, during the power vacuum between Danish (1380/1537-1814) and Swedish (1814-1905) rule



Process to include a separate human rights chapter: Dokument 16 (2011–2012)

Mandate:

1 strengthen the position of human rights in the Norwegian Constitution

2 Reflect the 2008 Parliament consensus on Church-state relations; amending Section 2:
The Evangelical-Lutheran religion remains the public religion of the State. Those inhabitants, who confess thereto, are bound to raise their children to the same.

To

*Our values will remain our Christian and humanist heritage. This Constitution shall ensure democracy, **a state based on the rule of law and human rights.***

____ The original Section 2 included this; amended 1851/1897/1956

Vitenskapsselskabet
Høgskolen i Oslo
Jesuits and monastic orders are not permitted. Jews are still prohibited from entry to the Realm.

Two main Committee proposals

Civil and political rights:
Innst. 186 S (2013–2014);
chair Jette Christensen; who was
a co-sponsor of both 186 and 187

Economic, social and cultural rights:
Innst. 187 S (2013–2014)
Chair Michael Tetzschner; who was
neither a co-sponsor of 186 nor 187
(but another parliamentarian from the
Conservative Party was)

Environment I



EU Charter of Fundamental Rights

Article 37 - Environmental protection

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Environment II



Originally included in Norwegian Constitution as Section 110 b in 1992 (110 was on labour rights, 110a on Sami rights)

Every person has **a right** to an environment that is conducive to health and to a natural environment whose productivity and diversity are maintained. Natural resources should be managed on the basis of **comprehensive long-term considerations** whereby **this right will be safeguarded for future generations** as well.

In order to **safeguard their right** in accordance with the foregoing paragraph, citizens are entitled to information on the state of the natural environment and on **the effects** of any encroachment on nature that is planned or carried out.

The authorities of the State **shall issue specific provisions for the implementation** of these principles.

Environment III

The last part was amended, as specified in Innst 187:

“the new § 112 gets a new third paragraph to **clarify the duty for the authorities to comply** with the principles (Norwegian: grunnsetninger) in the first paragraph to **implement adequate and necessary measures** to safeguard (Norwegian: sikre) the environment.”

The new wording:

The authorities of the state **shall take measures** for the implementation of these principles.

Arctic Oil: Greenpeace Nordic and Nature and Youth Norway v. Government of Norway; filed in 2016; district court 2017 – lost; appeal courts 2019 – lost; Supreme Court (plenary) 2020

Conscience I



EU Charter of Fundamental Rights

Article 10 - Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.

2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

Conscience II



The old Article 16

*The King ordains all public church services and public worship and all meetings and assemblies dealing with religious matters, and ensures that public teachers of religion **follow the norms prescribed** for them.*

Was amended to

*All inhabitants of the realm shall have the **right to free exercise of their religion**. The Church of Norway, an Evangelical-Lutheran church, will remain the Established Church of Norway and will as such be **supported by the State**. Detailed provisions as to its system will be laid down by law. **All religious and belief communities should be supported on equal terms.***

Conscience III



Proposal for a Section 99 in Innst. 186 S; supported by Centre , Social Liberal, Greens, Socialist Left; **opposed by Progress (populist right), Conservative, Christian Peoples' and Labour**

Everyone has freedom of thought, conscience, religion and worldview (Norw: livsanskuelser). This freedom includes the right to change religion or worldview (Norw: livssyn) of your choice and to practice your religion or worldview (Norw: livssyn) alone or in community with others.

UN Human Rights Committee
CCPR/C/NOR/CO/7
(2018), para 19:

“The State party should guarantee the freedom of thought, conscience and religion equally to all citizens and should include this right in the human rights chapter of the Constitution...”

Scientific /academic freedom I



EU Charter of Fundamental Rights

Article 13 - Freedom of the arts and sciences

The arts and **scientific** research shall be free of constraint.
Academic freedom shall be respected.

International Covenant on Economic, Social and Cultural Rights

Article 15(3): The States Parties to the present Covenant undertake to respect the freedom indispensable for **scientific** research and creative activity.

Scientific / academic freedom II



Innst 187 had three proposals on a Section 107 2nd part; the first was voted over; had a majority (92-77), but not a 2/3 majority:

The freedom of **science** and art must be respected.

The freedom of art and **research** must be respected

The state authorities must respect the freedom of art and **research**

Scientific /academic freedom III

This does not imply that scientific and artistic freedom is not respected:

1 Norwegian Constitution Section 92:

*The authorities of the State shall respect and ensure human rights as they are expressed in this Constitution and in the **treaties** concerning human rights that are binding for Norway.*

2 Norwegian Human Rights Act 1999 lists international human rights treaties that “**shall take precedence** over any other legislative provisions that conflict with them”

3 University and University Colleges Act

Section 1-5(1) (extract): *Universities and university colleges **must promote and safeguard academic freedom.***

Proposed strengthened by NOU 2020:3 to include safeguarding the employees who exercise academic freedom

Section 1-5(3)(a) *Universities or university colleges **may (Norw: kan) not be instructed regarding the academic content of their teaching and the content of research or artistic or academic development work.***