

Ministry of Health and Care Services

Only sent by e-mail

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Consultation Statement – Temporary amendments to the Infection Control Act – extension of rules concerning corona certificates

1 INTRODUCTION

We refer you to the consultation letter dated 11 February 2022 concerning the extension of the rules regarding corona certificates. The deadline for consultations is 04 March 2022.

The law firm of Elden Advokatfirma AS, represented by attorney John Christian Elden, has been contacted by the organization Stop Lockdown (Enterprise Registration Number 926 724 045) to assist in a legal challenge against various measures that the Norwegian government wishes to implement around the coronavirus situation.

The current consultation response is delivered on behalf of Stop Lockdown, representing the organization's view.

1.1 About Stop Lockdown

Stop Lockdown is an association with 935 members, at present, with a wide and representative sample from the population of Norway, started by the association's chairperson Siw K Sommer Winther. Winther has 13 years of experience as the head and editor of the culture and fact divisions at the Norwegian Broadcasting Corporation (NRK Kultur and NRK Fakta) and 2 years as head of branding at the Norwegian Red Cross. She has also run her own company for 8 years. The vice chairperson of the association is Nicolay Normann Nordgaard Grundt. He is self-employed and serves as lead candidate and a member of the executive committee of a political party. The association also has a board of directors, articles of association and a good economy.

The association is politically neutral and aims to provide supplementary information about lockdown measures and the rights, laws and human rights of Norwegian citizens in relation to such measures – based on solid journalistic and legal sources.

2 PRIMARY REMARKS

Stop Lockdown strongly opposes the proposal and believes it should not be adopted.

Stop Lockdown would like to point out that the measure implies a massive and invasive threat to individuals and the risk of violating the law, the Norwegian Constitution and human rights is extremely high if the proposal is adopted in its present form.

At a primary level, the proposal implies continuing the use of corona certificates. This applies even if

- (1) there are currently no circumstances in which such measures are needed
- (2) the measure is not based on sound professional judgement
- (3) the measure does not set any, or at least very vague, limits on the effect of the proposal.

2.1 General information about infection control measures

Since the outbreak of the COVID-19 pandemic in Norway in the spring of 2020, the Norwegian population has been subject to invasive infection control measures adopted in reference to the legal provisions of the Act Relating to the Control of Communicable Diseases (smittevernloven). During the past couple years, the members of SL have watched as individuals, families, businesses and groups have been brutally affected by the control measures, economically and socially.

The infection situation is now completely different, and in Stop Lockdown's opinion COVID-19 does not represent any particular health risk to the general public or population of Norway today.

Despite the fact that the need for, and the appropriateness of, infection control measures such as this and other measures like corona certificates have no basis – in Stop Lockdown's opinion – we are still witnessing proposals to extend measures like this.

We now have excellent knowledge about the great burden these infection control measures have. Despite knowing what great burden these infection control measures would have on the population, along with the limited and lack of efficacy such measures would actually have, the uncertainties surrounding the long-term effects and dangers of vaccination, the high death rates following vaccination, the low death and hospitalisation rates resulting from COVID-19, Stop Lockdown believes that continuing to impose invasive measures such as these is not proportionate.

This applies in particular to measures such as the one discussed here. Non-vaccinated persons are among those who have been the hardest hit by the government's imposed measures. Despite this, we are still seeing proposals that would prolong and reinforce the negative effects of the infection control measures in a way that hits this group the hardest.

The proposal is particularly problematic as it raises a number of unresolved questions about the relationship between human rights and the Constitution. As the consultation paper notes, invasive measures threaten key rights in national laws, the Constitution and human rights. As we have seen before during the pandemic, as the Corona Commission concluded, the assessments around fundamental rights were extremely poor.

Few limits, if any, were set for how a corona certificate should be used. What we are really looking at, is limiting people's ability to meet loved ones and family, visit sick or dying family members, take part in cultural life, and have the opportunity to work and travel, differentiated by whether you have the opportunity or desire to be vaccinated. If we consider the legal aspects of proportionality, invasive measures like this can only be adopted if they are absolutely necessary. In Stop Lockdown's opinion, such invasive discrimination is not proportionate at this point in time.

The proposal appears to be based on the idea that further assessments related to fundamental rights shall take place at the next adoption of the measures. However, such assessments have not been made sufficiently in the past. This gives great reason to fear that the far-reaching authorisations granted here will lead to serious and invasive measures, without having assessed the proportionality of such decisions sufficiently.

Stop Lockdown is particularly concerned about the inadequate level of assessment on the effects of infection control measures held up against the harmful effects they have. The authorities have implemented a number of measures with little or no knowledge about how they can be expected to work. At the same time, Stop Lockdown believes that the harmful effects of the measures are consistently being ignored.

Stop Lockdown is primarily concerned about the terrible risks of such measures, without them having a sufficient medical or legal justification for implementation. In Stop Lockdown's opinion, COVID-19 does not represent any particular risk to society at this time. There is no reason to continue applying strict measures or allowing more invasive measures to be implemented, in the current situation. There is strong concern that the introduction of such far-reaching and imprecise measures can lead to misuse and abuse by the government that are detrimental to our freedoms and a violation of our fundamental rights.

Stop Lockdown therefore believes the proposal should not be adopted.

3 FACTUAL ASPECTS

3.1 Background Information

The reason for this consultation process is, as everyone knows, the introduction of the strongest and most invasive measures ever introduced in Norway during peacetime as a response to the SARS-CoV-2 virus and COVID-19.

In the period following the process conference on 12 March 2020, Norway's population has lived under strict national and/or local infection control measures at various times to prevent the spread of infection and potential strain on hospital services and municipal infection control services. Some parts of the country have also been subject to a complete lockdown of their local community. Larger groups have been refused entry into the country for extended periods, and this has hindered ordinary family life and business. The burden on individuals and society have been considerable.

The authorities have stated that the purpose has been to protect the lives and health of citizens.

Stop Lockdown is of the opinion that the measures have no real medical or legal basis for implementation. This applies to our knowledge about the harmful effects of the measures themselves and the risks related to the disease and disease burden.

That means that the knowledge we have now must form the basis for the introduction of any infection control measures for the future. It is this knowledge base, in light of the authorities' reasoning, which the courts must use to assess whether the requirements laid down in national law, the Constitution and international human rights have been complied with.

3.2 Considerations on the figures for mortality from COVID-19 in light of the figures for general influenza

In Stop Lockdown's opinion, COVID-19 today is no more dangerous than the common flu and provides no basis for infection control measures.

This is especially true for the risk of death from COVID-19. We would remind you that other diseases like influenza, on average, claim about 900 deaths annually in Norway. In 2017/2018, Norway experienced an estimated 1400 influenza-related deaths. In 2016, there were 1700 deaths from influenza. In the same period, 7600 patients were hospitalised with a diagnosed influenza. Approximately two-thirds of these were 60 years old or older, and thus about a third were younger than that. The normal figures for hospital admissions range between 3000 and 8000 persons per season; see <https://www.fhi.no/nyheter/2018/rekordmange-influensasyke/>

By comparison, from February 2020 to 20 February 2022 (over a two-year period), 1596 deaths were recorded that can be linked to COVID-19. FHI itself points out, these figures are not necessarily trustworthy as it is not always possible to determine whether a patient died *due to* or *with* COVID-19; see page 16 of the COVID-19 Situation Report for Week 7.

For context, it should be pointed out that the median age for deaths as a result of COVID-19 is 85; see the same document. At the same time, life expectancy in 2020 for Norway was 84.9 years for women and 81.5 years for men.

Overall during the pandemic, 8915 people with COVID-19 have been admitted to hospitals as the main reason up to the same date; see page 9 of the COVID-19 Situation Report for Week 7. In comparison, from December 2020 to February 2021, FHI recorded 29,108 deaths among people who have received a vaccine against COVID-19.

3.3 Effect of COVID-19 vaccines

Stop Lockdown believes that any measures to combat COVID-19 will discriminate against our citizens by vaccination status. This contravention of our rights must be based on a sound assessment of the appropriateness of the vaccines.

3.3.1 *Negative side effects of the vaccine*

All of the vaccines now actively used for vaccination of Norway's population (BioNTech/Pfizer and Moderna) have only been given conditional approval by European Medicines Agency (EMA), see Norwegian Medicines Agency, "Overview of corona vaccines approved or under approval", *Norwegian Medicines Agency*, 5 January 2022, <https://legemiddelverket.no/godkjenning/koronavaksiner/status-pa-koronavaksiner-under-godkjenning>(read 26 February 2022).

The Norwegian Medicines Agency itself emphasises that such an approval is given "*before we have long-term data on the effects and side effects*", see the Norwegian Medicines Agency, "Approval Process for Corona Vaccines", see *Norwegian Medicines Agency*, 22 October 2020, <https://legemiddelverket.no/godkjenning/koronavaksiner/godkjenningsprosessen-for-vaccines-against-COVID-19#approval-process> (read 6 May 2021).

In this regard, it is particularly worth noting that the Pfizer vaccine was the basis for 90% of all vaccine-related deaths in Norway according to the Norwegian Medicines Agency's weekly reports. As of 15 February 2022, there were 56,479 reports of adverse reactions. In addition to death, a number of other serious side effects such as myocarditis have been recorded, even among very young people. Stop Lockdown is curious as to why vaccination using the Pfizer vaccine has therefore not been stopped, and that the health authorities also recommend the use of a third booster shot with Pfizer. Despite such serious side effects, and in view of the fact that Pfizer has been repeatedly convicted of corruption several times in the past, vaccination with their product has not been stopped.

The side effects are serious and can lead to death even for young teenagers who are not particularly vulnerable in medical terms; see Gill, Tashjian, Duncanson, *Autopsy Histopathologic Cardiac Findings in Two Adolescents Following the Second COVID-19 Vaccine Dose*, Arch Pathol Lab Med (2022), 14 February 2022.

In Stop Lockdown's opinion, not only do the vaccines have negative side effects, but there are also a number of negative long-term effects such as mRNA vaccines which may weaken the immune system's natural reactions; see F. Konstantin Föhse, Büsranur Geckin, et al., *The BNT162b2 mRNA vaccine against SARS-CoV-2 reprograms both adaptive and innate immune responses*, medRxiv 2021.05.03.21256520, <https://doi.org/10.1101/2021.05.03.21256520>). Cases have been discovered that indicate a faster development of cancer following vaccination; see Goldman, Bron, et al., *Rapid Progression of Angioimmunoblastic T Cell Lymphoma Following BNT162b2 mRNA Vaccine Booster Shot: A Case Report*, Frontiers in Medicine vol. 8, 2021, <https://doi.org/10.3389/fmed.2021.798095>. Swedish researchers found indications that the vaccine impairs the cells' ability to repair their own DNA; see Jiang and Mei, *SARS-CoV-2 Spike Impairs DNA Damage Repair and Inhibits V(D)J Recombination In Vitro*, Viruses 2021 13 (10) 2056, <https://doi.org/10.3390/v13102056>. There are findings of doubled rates of prediction of heart attacks; see Gundry *Observational Findings of PULS Cardiac Test Findings for Inflammatory Markers in Patients Receiving mRNA Vaccines*, Circulation Vol 144 2021, https://www.ahajournals.org/doi/10.1161/circ.144.suppl_1.10712. Furthermore, a study found that the mRNA vaccine affects protein synthesis, and that there is a possible direct causal link between such disorders and the development of neurodegenerative diseases and heart inflammation; see Seneff, Night et al., *Innate Immune Suppression by SARS-CoV-2 mRNA Vaccinations: The role of G-quadruplexes, exosomes and microRNAs*, Authorea. 21 January 2022, <https://doi.org/10.22541/au.164276411.10570847/v1>.

If we look at the negative side effects compared with vaccination with the swine flu vaccine Pandemrix vaccine back in 2009 and 2010, this scenario becomes even more frightening.

There was limited experience from clinical trials with the vaccine in question before it was used in Norway (among other countries), see the Norwegian Medicines Agency, "Side effects of Vaccines – What Did We Learn from the 2009 Pandemic?", *Norwegian Medicines Agency*, 13 November 2020, <https://legemiddelverket.no/nyheter/bivirkninger-av-vaksiner-hva-lerte-vi-av-pandemien-i-2009#brukes-pandemrix-fortsatt?> (read 26 February 2022). Since then, this vaccine has been linked to narcolepsy, and the vaccine is no longer used in Norway and was deregistered in the EU in 2015.

Since then, vaccination for the swine flu has been referred to as a *medical catastrophe* by infection control expert Preben Aavitsland, see Hødnebo, Line, "– The Damage caused by Pandemrix was a Disaster", *NRK*, 21 January 2013, <https://www.nrk.no/livsstil/-en-medisinsk-katastrofe-1.10880384> (read 06 May 2021), and has resulted in a decade of compensation payments from the Norwegian Patient Injury Compensation Office (see NPE, "Ten years of Compensation Payments after Vaccination against the Swine Flu", *NPE*, 21 February 2021, <https://www.npe.no/no/Om-NPE/Organisasjon/arsrapporter/arsrapport-2019/juridisk-og-saksbehandling/ti-ar-med-erstatninger-etter-vaksine-mot-svineinfluensa/> (read 06 May 2021).

Stop Lockdown is of the opinion that the COVID-19 vaccines have already caused far worse outcomes than the swine flu vaccination, when the swine flu vaccine was stopped after 10 deaths, regardless of cause of death, and the latest statistics indicate that 29 108 people have died after receiving a COVID-19 vaccination in Norway.

Stop Lockdown would further point out that both Norway and Europe near the end of 2021 have experienced noticeable excess mortality, without anyone knowing the underlying causes. Figures from Statistics Norway also indicate that the mortality rate in the population increased in the autumn of 2021, which coincides with a period with various infection control measures mandated by the authorities, and which in light of the above cannot be explained by COVID-19 deaths. A total of 11,982 persons died in the fourth quarter of 2021, while the average for the same period 2016-2020 was 10,380. This indicates a mortality rate of 15.4%, while we see that the numbers of deaths after COVID-19 are lower than for a general influenza season. A researcher at the University of Alberta concluded that countries with high vaccination rates have high mortality rates, and that the link between the roll-out of vaccine programmes and both the development of cases of COVID-19 and deaths was clear and significant; see Beattie, *Worldwide Bayesian Causal Impact Analysis of Vaccine Administration on Deaths and Cases Associated with COVID-19: A BigData Analysis of 145 Countries*, 2021, <http://dx.doi.org/10.13140/RG.2.2.34214.65605>.

Stop Lockdown believes this excess mortality is due to the COVID-19 vaccinations, without any work being done by the authorities or research communities to clarify the cause.

Stop Lockdown is of the opinion that vaccination conflicts with the ethical guidelines laid down in the Nuremberg Code. In Stop Lockdown's opinion, vaccinations are always experimental to some extent, which requires explicit and fully informed consent. The risks taken must be outweighed by their humanitarian significance. In light of the significant uncertainties that exist, as well as the limited risk COVID-19 now poses compared with general influenza, it is clear that vaccination does not fully meet the requirements for such measures. This implies in all cases that people who choose not to vaccinate themselves must be fully respected by state authorities for their choice.

We would also remind you of the Council of Europe's PACE Resolution 2361 (2021), which in section 7.3 of the Resolution states that no one should be pressured to vaccinate themselves and that no one should be treated for discrimination due to not being vaccinated, regardless of the cause.

In Stop Lockdown's opinion, vaccinating the population with a vaccine that has not undergone long-term studies can also have unintended and tragic outcomes in the short and long term. Thus, there must be an opportunity for individuals, especially those who do not have underlying illnesses or conditions or for other reasons, to be strongly advised against inoculation, to have time to consider whether they want to expose themselves to such potential risks.

This is especially true now that we know that vaccination seems to have a modest impact on reducing infection, as stated below.

3.3.2 *Impact of vaccines on number of infected*

Vaccination does not appear to have resulted in any reduced infection; infection rates are now twice as high as they were at the same time last year, and the number of hospitalisations and deaths from COVID-19 have not decreased, either for vaccinated or non-vaccinated. In a letter dated 21 January 2022 from the Norwegian Directorate of Health, we read that the vaccine only protects against infection to a limited extent:

The situation is different after Omicron took over. Vaccines and having already contracted the virus protect significantly less from this new variant. This means vaccinated people and people who have already had COVID-19 also contribute to the spread of infection. Measures that pretend to prevent the spread of infection in society have to be relevant. Since vaccinated persons also become infected and contribute to the spread of infection, and in addition make up the majority of the population, prohibiting the non-vaccinated is not an appropriate means of preventing the spread of infection.

Stop Lockdown believes we can read the same out of FHI's own figures; see page 37 of the FHI Weekly Report for Week 7. Although we cannot draw definitive conclusions from the figures, we see here how the incidence of COVID-19 per 100,000 inhabitants is lower for those who are not vaccinated than the group that has received two vaccine doses. As for the group of three vaccine doses, the authorities do not recommend testing this group to confirm infection, and thus the numbers do not give a decisive indication of incidence for this group.

3.3.3 *Conclusion*

In Stop Lockdown's opinion and in light of the major and severe side effects of vaccination compared with the modest impact vaccines actually have on countering infection in the population, the government's measures cannot be based on schemes that distinguish between the vaccinated and non-vaccinated.

3.3.4 *Considering the knowledge base regarding the effectiveness of corona certificates*

Furthermore, we must emphasise that, in Stop Lockdown's opinion, there is no scientific basis for arguing that corona certificates, to differentiate between different groups in society, have any influence on controlling the infection.

In FHI's Assignment Response 554, they emphasise precisely that the knowledge base regarding the impact of such measures is weak, and that the measure will be very invasive; see e.g. page 11 of the Assignment Response, where FHI concludes that

We have little confidence that preventive use of corona certificates can significantly prevent the spread of infection

The same Assignment Response also describes FHI's conclusions regarding the use of corona certificates in different sectors of society. It must be noted that FHI concludes here that corona certificates will not be effective for employees in the health services, and that infection is only due to visitors to a limited extent – and that other measures are therefore more effective. For that reason, FHI advises against the use of corona certificates in the health services

Regarding the use of corona certificates in working life, FHI wrote explicitly that this issue was not assessed; see page 20.

The same applies to the social consequences of corona certificates; see page 20.

Overall, this indicates that there is no proof that using corona certificates would have any effect. If anything, the scientific basis points to the fact that corona certificates have NO significant effects. The effects of the certificate on major sectors like working life has not been studied or assessed. The same applies to the social consequences of corona certificates, despite the fact that the measure would be very invasive and can have extensive negative consequences.

As pointed out below, the scientific basis for such measures is key to assessing the legality of the measure. In this case, however, the knowledge and evidence for effectiveness are poor at best. In Stop Lockdown's opinion, this should be a decisive factor on assessing the legality of introducing measures like this.

3.4 Considering the harmful effects on society of lockdown measures

In Stop Lockdown's opinion, the harmful effects of lockdown measures are significant. This applies at the societal level and to the individual citizen.

Lockdown measures have, among other things, extensive economic consequences. This has led to a significant increase in unemployment, a large fall in GDP and trade surplus, a significant decline in the tourism industry in terms of travel and hotel accommodation, a high increase in the debt ratio and a large expected increase in bankruptcies.

Lockdown measures also have significant consequences for the mental and physical health of the population. Despite the fact that no mortality can be detected, the measures entail, among other things, the postponement of necessary health care caused by crisis management measures in hospitals, including surgery and diagnostics for such illnesses as cancer. The measures have had significant psychological consequences, including doubling in suicide hotline enquiries, increased drug use among young people, increased rates of young people with severe mental disorders and a sharp increase in anxiety and depression among adults.

The measures have also caused considerable social problems, especially for children and adolescents. There has been a sharp increase, 36%, in violence against children. Marriage rates have also declined. The education of our children and young people has been put on hold, unskilled instructors have been used in our schools, quality has generally decreased and motivation among children to attend digital school and complete their education has further fallen. In light of what we know about the long-term effects of such problems among children and adolescents, the adverse effects in this field will be large and long-lasting.

The measures have also had significant consequences on employment, including a fall in employment, increased use of home office and an expected sharp increase in bankruptcies among several industries.

If we acknowledge that the consequences have been great, we also see how the factual basis for implementing measures that have negative impacts and harmful effects is lacking or missing in its entirety. The authorities have – to little or no extent – gathered knowledge on the negative harmful effects of the measures.

At the same time, Stop Lockdown suggests that recent research shows how the measures had little or no effect on COVID-19 mortality. For example, a study in Applied Economics concluded that the lockdown measures have on average reduced mortality by 0.2%; see Herby, Jonung and Hanke, *A Literature Review and Meta-Analysis of the Effects of Lockdowns on COVID-19 Mortality*, Studies of Applied Economics NO. 200, January 2022; see <https://sites.krieger.jhu.edu/iae/files/2022/01/A-Literature-Review-and-Meta-Analysis-of-the-Effects-of-Lockdowns-on-COVID-19-Mortality.pdf>). A large number of researchers from a number of reputable research institutions have advocated using selective infection control measures to put all resources into protecting the vulnerable groups instead of keeping young, healthy people at home – as we can read in the Great Barrington Declaration, among other findings.

4 LEGAL ASPECTS

The consultation paper proposes continuing the temporary provisions for coronary certificates, which means it will also be possible to demand proof of vaccination and disclosing health information on individual citizens, as well as differentiating between citizens as a result of this. As the Ministry points out, this in itself does not provide legal basis for discriminating against citizens, but it will form the legal basis in which such discrimination can take place. The bill also expands the scope of use of the corona certificate, so that it will no longer only serve to facilitate invasive measures, but also form the basis for more invasive measures by the authorities.

In Stop Lockdown's opinion, the proposed measures threaten a number of key principles for Rule of Law and entail a great risk of violating the fundamental rights of Norwegian citizens.

The use of measures like corona certificates is extremely invasive and challenges a number of statutory and constitutional rights. Although the proposal itself does not provide a legal basis for discriminating against citizens, there is a risk that the legal basis for corona certificates, once granted, will lower the threshold for rules based on such discrimination.

There is also a high risk that such rules will be introduced without sufficient awareness of basic rights, as the proposal does not set either limits or guidelines for the use of the certificate.

5 CONSIDERING THE PRINCIPLES OF THE COMMUNICABLE DISEASES CONTROL ACT

In Stop Lockdown's opinion, the Ministry's proposal does not comply with the principles for and laid out in the Communicable Diseases Control Act.

Pursuant to Section 1-5 of the Act, measures taken shall be based on a clear medical basis and be appropriate after an overall assessment. Although exceptions to this legal requirement may be made by law, temporary legislation should also be considered on the basis of these principles in the legislative process.

In Stop Lockdown's opinion, it is obvious that the proposal in its current form does not meet any of the requirements laid out in Section 1-5 of the Act.

As far as medical grounds are concerned, FHI itself states that corona certificates would *NOT* be appropriate; see page 11 of Assignment Report #554. FHI emphasised a number of undesirable effects, including the division it would create among the population, that citizens would be pressured to vaccinate themselves without cause, and that it would create special burdens for people who do not have the opportunity or who choose not to be vaccinated. One particular risk factor of corona certificates is that they would maintaining strict measures that are longer than necessary; see page 9 of the same FHI document. FHI further writes that corona certificates would weaken popular support for infection control measures and undermine confidence in the health authorities. At the same time, the scientific basis points out that the positive effect of such certificates is very limited.

Even FHI pointed out that several European countries have tried national corona certificates for a long time, without seeing any noticeable impact on the infection situation; see page 8 of the FHI document.

The assignment requested comprehensive "infection control justifications for not ending the use of" corona certificates as in the present proposal. FHI responded to this negatively in the Assignment Response, and as stated above their professional justification was that their "confidence was very limited" in using corona certificates to prevent the spread of infection.

In Stop Lockdown's opinion, the proposal lacks any medical or legal justifications. A proposed intervention that has no real legal or medical justification would greatly undermine confidence in the authorities' handling of COVID-19. We are now at a stage where there is good knowledge about the effectiveness and effects of various measures. We should be setting stricter and stricter requirements for the authorities' justifications in using such measures. Continuing and expanding the legal provisions that provide legal authority to take invasive measures, with the major potential harmful effects this involves, without the need or positive effect of the measure, must be avoided.

5.1 Considering the right to respect for privacy and family life

The right to respect for privacy, family life and home is protected by Section 102 of the Constitution, which reads as follows:

"Everyone has the right to the respect of their privacy and family life, their home and their communication. Search of private homes shall not be made except in criminal cases.

The authorities of the State shall ensure the protection of personal integrity."

The protection is further established in Article 8 the ECHR and Article 17 of the ICCPR; the former reads as follows:

- 1. Everyone has the right to respect for his private and family life, his home and his correspondence.*
- 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

As stated above, the first line of Section 102(1) of the Norwegian Constitution has clear similarities with ECHR Article 8 and must be interpreted in light of this. Although Section 102 of the Constitution does not establish that there is the right to or conditions for infringement of the right, it is assumed in legal practice that intervening on this right is legal if the intervention has an adequate legal basis, pursues a legitimate purpose and is proportionate; see the Norwegian Legal Gazette Rt. 2014, page 1105 paragraph 28 and Rt. 2015, page 93 paragraph 60.

The content of such rights is further elaborated on in HR-2015-00206-A, among other court findings, and we read from sections 58-59 that

"The term privacy encompasses a wide range of areas – any exhaustive definition does not exist; see the plenary judgement in Rt. 2012, page 2039 paragraph 70. But central to the present practice of the European Court of Human Rights (ECHR) is, among other things, the physical and mental integrity of the human being, all the different elements of the individual's identity in the broadest sense, and his or her personal autonomy. According to ECHR's fairly extensive practice, family life refers to more specific relationships between people, such as in established relationships and through the bonds between parents and children. The line between the human relationships that make up a family life and those that are part of the private life is not sharply drawn.

The right to respect for privacy and family life primarily entails protection against unwarranted public intervention. To some extent, the requirement for respect also constitutes positive obligations for the public sector, in the sense that measures must be taken to ensure against intervention by other private companies: see Rt. 2013 page 588 paragraphs 41-49 and further references. The duty to safeguard such rights is now also rooted in Section 92 of the Constitution."

As the Ministry points out, the proposal entails that legal grounds be granted for infringing on this right.

The interventions apply to rights regarding one's health information and the effects the proposal would have on e.g. implementing entry restrictions based on health status and allowing people to visit health institutions.

In Stop Lockdown's opinion, the Ministry's interpretation of the ECHR Vavříčka decision is poor, and the conclusions drawn by the Ministry regarding its application in this matter are weak.

In the Vavříčka case, as the Ministry points out, emphasis must be placed on assessing among different rights, and the authorities have a certain margin of judgement in such cases. However, the extent to which the margin of discretion can reach is based on a specific assessment, which must be assessed, e.g., on the basis of how thorough an assessment of the health and legal aspects the authorities have made.

In Stop Lockdown's opinion, the case differs on significant points from the vaccine certificate scheme that the proposal lays out.

First, the vaccine programme in Vavříčka had a sound basis and had been developed over a long time based on general medical principles, and it was adopted after a lengthy and thorough legislative process over several years. The process allowed everyone with different views to offer an opinion, and that the politicians who adopted the scheme made a thorough and balanced assessment of the various considerations.

In our case, however, we are talking about a rapidly developed vaccine which parts of the population distrust considerably. A number of very serious side effects have been identified. The choice among part of the population to reject vaccination is fully legitimate. In light of the overall degree of immunity in society, it does not pose a danger of any importance. This suggests that the authorities must respect the choices of individual citizens to a greater extent than in the Vavříčka case.

The same applies to the political process. This bill is being proposed on a very weak basis and with little justification. The Ministry points out that the corona certificate will have an impact on the organization of infection control measures in the future, see section 6.2, and specifies the possible effects it may have on a number of different areas of society. This indicates very invasive measures. Despite this, we know little about what kind of measures would be appropriate, and how state authorities believe that different considerations should be weighed against each other. Earlier in the process, we saw how the political processes for adopting infection control measures in the form of regulations, and by the local authorities, have been hasty, of poor legislative quality, with poor justifications, and without proper political processes in advance.

A sound political process must also be based on access to good and relevant information and relevant justifications from the authorities. In a number of contexts, it has been stressed that the justifications given by the authorities are too limited for the population to make their own decisions as to whether the authorities have made lawful and justifiable deliberations. In the same way, the authorities have withheld relevant information such as medical and legal findings from subordinate agencies that prove there was no need for such restrictions afterwards. Stop Lockdown has been denied access to all the information we requested. In Stop Lockdown's opinion, this undermines the confidence in the political process.

The emphasis placed on a proper political process in the Vavříčka case must also be seen in light of the apparent lack of justifications and grounds for the authorities' proposals in this case. Professional agencies within the government point out that measures such as corona certificates have significant adverse side effects, and almost no positive effect, as stated above. It is therefore unlikely that international courts would give the Norwegian authorities the same margin of discretion for a proposal like this, as would be provided by well-founded measures.

The decision in the Vavříčka case builds on the fact that the schemes which were under scrutiny in that case – although being invasive measures – did not entail overly invasive consequences if one failed to vaccinate, and that exceptions were made for people who had good reason to choose not to take the vaccine.

However, the Ministry's proposal opens the way for extremely invasive consequences for those who refuse to vaccinate. For people with family abroad, this may mean years of separation from their immediate family. For example, people with close family in the United States have not seen each other in years. If the use of corona certificates at such places as elderly homes is permitted, we fear that people who will not or cannot be vaccinated will not be allowed to meet dying family members. If a corona certificate is permitted in working life, the non-vaccinated may lose their jobs and careers. These are significantly more invasive consequences than children not being allowed to attend a state kindergarten, as in the Vavříčka decision.

The Ministry's proposal also does not allow for any exceptions, e.g. for health reasons or as a result of beliefs. This means that people with the very best reasons for not being vaccinated are also among those hardest hit by the Ministry's proposal. The same group is among those hardest hit during the pandemic.

In light of this, the Ministry's viewpoints on the Vavříčka case appear weak. The trade-offs that underpinned the Czech scheme were of a more complementary and completely different quality than the basis for the present proposal. At the same time, the proposal entails far more invasive measures with weak justifications.

5.2 Protection from discrimination

The basic provision on the principle of equality and the protection from discrimination follows from Section 98 of the Norwegian Constitution, which reads as follows:

*"Everyone is equal under the law.
No human being must be subject to unfair or disproportionate differential treatment."*

The provision states that everyone is equal before the law, and that no one should be subjected to unfair or disproportionate discrimination. The protection against discrimination is further enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms (**ECHR**) Article 14, the International Covenant on Civil and Political Rights (**ICCPR**) Article 26, and Article 2 of the International Covenant on Economic, Social and Cultural Rights (**ICESCR**) Article 2.

Furthermore, reference is made to Section 6 of the Norwegian Equality and Anti-Discrimination Act, which elaborates on the specificity of the prohibition against discrimination.

The first subsection of the provision states that

"Discrimination on the basis of gender, pregnancy, leave in connection with childbirth or adoption, care responsibilities, ethnicity, religion, belief, disability, sexual orientation, gender identity, gender expression, age or combinations of these factors is prohibited. Ethnicity includes national origin, descent, skin colour and language."

The wording *on the basis of* indicates that there must be a causal relationship between the discriminating treatment and the basis for discrimination referred to in the provision. However, Section 8 of subsection four of the provision specifies that indirect differential treatment under Section 8 of the Equality and Anti-Discrimination Act is also covered by the prohibition.

However, the prohibition pursuant to Section 6 of the Equality and Anti-Discrimination Act is not absolute, and may be legal if it has an objective purpose, is necessary to achieve its purpose and does not have a disproportionately negative impact on the person or persons subject to the differential treatment; see Section 9(1) of the Equality and Anti-Discrimination Act. The three conditions, all of which must be met for the differential treatment to be legal, are elaborated in the preparatory work on the provision, which states that (Prop. 81 L (2016-2017), page 315). As stated above, a comprehensive and concrete assessment shall be made in order to determine whether differential treatment is legal or not.

The proposal currently provides little guidance on how to avoid discrimination as a result of personal choices concerning one's own health. The only thing that is said, is the clear starting point that differential treatment must not be unacceptable or disproportionate. The Ministry does not discuss this any further in its assessment. The lack of discussion means that the proposal does not contain any kind of reality assessment as to whether the proposal will be in violation of this right.

There are several religions and beliefs that do not allow vaccination, and people with disabilities may have social obstacles that result in them being unable to take advantage of any vaccinations that are offered, or political beliefs that entail that they wish to refrain from vaccinating themselves. Illness may also cause some people to avoid the vaccine.

Regarding the concept of *proportionality assessment*, it is assumed that societal benefits from its use will not outweigh the potentially invasive use of the restrictions which the proposal implies, especially the invasive and discriminatory effects this will have on vulnerable groups, including people with poor health or religious minorities, who cannot be vaccinated. We refer you in particular to FHI's discussion on corona certificates, where professionals within public agencies consider corona certificates unsuitable for reducing infection.

Measures such as this will further affect those that have so far been hardest hit by the measures. There are non-vaccinated persons with ties to third countries, who have been completely cut off from their friends and family abroad. The fact that this affects those who have so far been most vulnerable during the pandemic because they have not been able to vaccinate for various reasons means that the requirements for societal benefits must be set very high.

In conclusion, we would remind you that it is a criminal offence to choose one's customers based on beliefs and disabilities pursuant to Section 186 of the Norwegian Penal Code. Employers are also not allowed to discriminate on these grounds pursuant to Section 30 of the Equality and Anti-Discrimination Act.

Stop Lockdown wishes to emphasise that a corona certificate can facilitate discrimination and lead us away from the ideal of equal treatment regardless of health status.

5.3 Freedom of thought, faith and belief, and freedom of assembly

The proposal may also entail restrictions to the rights of freedom of thought, faith and belief. According to ECHR Article 9, everyone has a fundamental freedom to have their own opinion on religious and non-religious matters. This is one of the most fundamental and basic rights protected by ECHR, it is absolute and unconditional, and the states have no opportunity to in any way intervene to influence a person's opinion (see e.g. the decision in *Ivanova versus Bulgaria*, 52435/99 paragraph 79

The fundamental nature of the rights guaranteed in Article 9 § 1 of the Convention is also reflected in the wording of the paragraph providing for limitations on them. [...] it emphasises the primary importance of the right to freedom of thought, conscience and religion and the fact that a State cannot dictate what a person believes or take coercive steps to make him change his beliefs.

The right also entails, among other things, the right to keep one's religion secret, as well as to protect against various measures that a state might impose, that might result from one's convictions, including termination from employment. Reference is made here to *Ivanova versus Bulgaria*, cited above, paragraph 80, as well as *Mockute versus Lithuania* 664509/09 paragraph 119, where we read

*The Court reiterates that freedom to manifest one's religious beliefs comprises also a negative aspect, namely the right of individuals not to be required to reveal their faith or religious beliefs and not to be compelled to assume a stance from which it may be inferred whether or not they have such beliefs (see *Alexandridis versus Greece*, #19516/06, § 38, 21 February 2008, and *Grzelak versus Poland*, #7710/02, § 87, 15 June 2010). Consequently, State authorities are not entitled to intervene in the sphere of an individual's freedom of conscience and to seek to discover his or her religious beliefs or oblige him or her to disclose such beliefs (see *Alexandridis*, cited above, § 38, and *Sinan Işık versus Turkey*, #21924/05, § 41, ECHR 2010).*

Introducing corona certificates threatens such rights. People can have many reasons for choosing not to vaccinate themselves. These can be political reasons, religious reasons, or various reasons related to beliefs or faith.

On page 19 of the Commission's consultation document, we read that the right to non-discrimination shall be respected. In practice, however, we risk seeing such personal choices based on either personal freedom of thought or a particular belief being discriminated against when travelling and entering. Thus, the proposal violates all such rights.

6 PARTICULAR COMMENTS ON THE MINISTRY'S REPORT ON "THE USE OF CORONA CERTIFICATES AS DOCUMENTATION"

Section 6.2 of the consultation document states that the Ministry believes there is a distinction between infection control measures and documentation.

In Stop Lockdown's opinion, the Ministry is granting the corona certificate a range that far outreaches what the scheme was originally intended for – namely, easing the burden of infection control measures. The Ministry here abandons its previous legal opinion that one should distinguish between corona certificates via relief and introducing burdensome measures.

However, the Ministry goes even further, setting out as its starting point that the use of a corona certificate must be considered in order for infection control measures to be generally proportionate; see section 6.2, penultimate paragraph.

In Stop Lockdown's opinion, we see a particular danger that lies in the adoption of the proposal here. As the Ministry points out, adopting the proposal may entail a significant obligation to use corona certificates in other areas. The range to which introducing corona certificates can reach can go a long way, and the consequences are unclear. The further trade-offs of how conflicting rights here should be weighed against each other have not been made.

7 SUMMARY OF OUR CRITICISM OF THE PROPOSAL

Seen as a whole, the conditions described above imply that the proposal as described in the consultation document must be rejected. This is especially true in light of the State's obligations under the Constitution and international human rights conventions, as well as the requirements of national legislation.

Measures that have already been implemented to combat COVID-19 have proven to be very invasive to fundamental human rights. The measures have been implemented on the weakest medical, legal and professional justifications and are maintained much longer than there are grounds for doing so.

This implies that we should be very reluctant to accept further regulation and intervention. This applies in particular to authorisations with unclear frameworks and with few clear guidelines for exercising authority once the decision becomes legislation. As the Ministry itself points out, the consequences of adopting the proposal can be far-reaching and difficult to predict.

The proposal's assessment of appropriateness and proportionality is particularly weak. This is a natural consequence of the fact that the proposal for legislation has such an imprecise framework. Nevertheless, this means that key assessments have not been made. The trade-offs between conflicting considerations have not been properly made, and the proposal will give the legislation little democratic legitimacy.

The proposal is particularly problematic in light of the lack of justifications for the proposal. Not even the State's own agencies are positive about the proposal. These are extremely invasive measures which have great potential to harm the lives of individuals and society and undermine trust in the authorities. This implies that the grounds for implementing such programmes must be verifiable and justifiable to the extreme. When scientific grounds for the measure are completely lacking, a measure like this cannot be adopted.

As the State's agencies themselves point out, the main effect of introducing such measures would be to exert pressure to get people to vaccinate themselves. However, the vaccines undoubtedly have the potential for negative and very serious side effects, which can lead to injury and death. We need to understand that this makes people worried. Now that vaccinations have less impact on further infection, we must respect people's individual choices without indirectly pushing them to vaccinate by excluding them from different arenas in society.

Stop Lockdown believes that – in the current situation – there is no need for infection control measures whatsoever. There is little risk of the disease today. The risk can in no way outweigh the considerable burden that such infection control measures imply. Norway must aim to return to a normal everyday life – as soon as possible.

In Stop Lockdown's opinion, the corona certificate scheme must be terminated immediately.

Yours truly,
ELDEN ADVOKATFIRMA AS

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attorney

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