Freedom of Expression and the Law

Vidar Strømme

Introduction: Freedom of expression as political philosophy, as natural law, and as positive law

Freedom of speech is a fundamental prerequisite for a functioning society, for democracy, for institutions such as universities and colleges, and for the individual.

This chapter is about the legal regulation of freedom of expression in Norway. Freedom of expression is a human right. Since the terms freedom of expression and human rights often are used interchangeably but have slightly different meanings, I

will start by exploring the history of freedom of expression and its implications.

A foundation for freedom of expression can be found in political philosophy, where freedom of expression has been justified in different ways. The ideas of the enlightenment are still alive and have had direct significance for the wording of the Norwegian constitutional provision on freedom of expression, Section 100. The trial of Galileo Galilei in 1633 is perceived as a breakthrough for the idea that rational criticism is a prerequisite for truth-seeking, development, and human interaction. Many philosophers during the 17th and 18th centuries emphasized freedom of speech. John Milton's *Areopagitica* was central for the abolition of censorship. John Locke is another well-known advocate for freedom of expression.

These reflections were not unknown in Norway at the same time. Among others, Ludvig Holberg communicated the ideas of the enlightenment and claimed that 'the greater the character of a people, the greater freedom it gives its poets'.

Later political philosophers have also developed justifications for freedom of expression. For example, Ronald Dworkin has shown how freedom of expression can be rooted in a principle of equality and not just in a principle of freedom. Everybody is responsible for informing themselves and making their own decisions, and everyone must then be able to obtain information and communicate to the same extent (Dworkin, 1977). Karl Popper has justified the freedom of speech in two ways. As a philosopher of science, he has shown that the quest for truth is a continuous process that will die if the expression of hypotheses, conjectures, and refutations is not encouraged (Popper, 1974). As a political philosopher, Popper argued that the processes of democracies and open societies presuppose freedom of expression (Popper, 1973).

This philosophical area overlaps with human rights thinking, understood as a search for universal norms that apply to all

human beings – a natural law. The boundaries are not sharp, but those who want to present norms on natural law can be said to have greater ambitions than those who reflect on ethical issues. The natural law norms are typically claimed to be valid, not just well-founded. This validity is derived from different authorities. Immanuel Kant was deeply concerned with freedom of expression and based freedom of expression norms on rationality. When human rights and international law entered national legal systems, God was designated as the undeniable authority of the norms. This is evident in John Locke's work, but more subdued in Hugo Grotius, who is considered as one of the founders of international law (Grotius, 1631).

The topic of this chapter is not political philosophy or natural law but a third category, the positive law – the law applied by the courts. The ideas of freedom of expression and of natural law found their way into constitutions and conventions, which are legal documents. The ideas became human rights and eventually became part of the positive law that was enforced by the courts in each country. Freedom of expression as a legal concept is, in principle, treated in Norwegian law in the same way as other rules, such as rules on damages and purchase of goods. Legal rules, (legal) literature, and practice from the courts form the basis for deciding what is 'right' in each individual case. The Norwegian legislation explicitly paves the way for certain international conventions to have a direct impact in Norwegian law so that we also have to look beyond the country's own legislation. The rules on freedom of expression in Norway are valid by virtue of being part of this legal system.

The legal review below will, therefore, aim to elucidate and explain the legal basis of freedom of expression. Where do we find this basis and how far does it reach? What exactly is this freedom of expression; what is its content? It is also natural to look at typical conflict situations and what guidelines exist to resolve them.

Although the subject of this chapter is positive law, it is nevertheless important to emphasize that the fundamental reflections on freedom of expression are also central to the law. Both the legislators' and the courts' reasoning largely indicates deliberations that can be said to have a philosophical approach. For example, in several cases, the Supreme Court has considered what long-term 'chilling effect' it may have for freedom of expression if the media is required to disclose information about journalistic sources (Supreme Court, Runestein case, 2010 and Rolfsen Case, 2015). In order to arrive at a legal argumentation, it is therefore important to have an understanding of both the legal framework and of the underlying ideas. For this reason, basic political philosophy still remains relevant.

When the Norwegian constitution Section 100 was revised in 2004, important parts of the basic ideas underpinning freedom of expression were included in the actual text of the section. The reason for this was a desire to force subsequent lawmakers and courts to review these fundamental considerations when ruling in individual cases or enacting new laws (NOU 1999:27, p. 243). The preparatory work for Section 100 also contains discussions on the philosophical basis for freedom of expression. Among others, the philosopher Karl Popper is referenced (NOU 1999:27, p. 23 and 25).

It is thus the intention that the legal patterns of argumentation should be open and take into account the basic reasons for freedom of expression. This also has implications for legal discussions on freedom of speech at universities and colleges. These institutions are based on the same ideals as the freedom of expression itself; freedom of expression should thus be particularly protected there.

The basis of the legal freedom of expression in Norway

In Norway, freedom of expression is protected by the Constitution, as stipulated in Section 100. This protection sets the terms for ordinary legislation; the Parliament (*Storting*) cannot enact laws that violate provisions in the Constitution. The protection is particularly effective because the courts have the opportunity to override laws that violate the Constitution. Judicial review of legislation by the courts has been practised from the 19th century, and from 2015 it is stipulated in Section 89 of the Constitution.

Section 100 of the Constitution has protected freedom of expression since 1814, but the protection was strengthened and clarified by an amendment of the Constitution in 2004.

The first paragraph of Section 100 asserts that there shall be freedom of expression. In the remainder of the section, it is emphasized that freedom of expression is the main rule, and the strict criteria for any exemptions to this main rule are laid out. Only if these criteria are met, will the legislature or courts have authority to intervene in freedom of expression.

There is reason to note this structure of the provision: the main rule and the starting point is the freedom of expression, and any restriction of this freedom must be justified in a convincing manner, based on the criteria in the provision. If such a justification cannot be established, freedom of expression prevails. This starting point applies in general terms and encompasses all aspects of speech, from students' everyday statements on social media to art and serious political debates.

Section 100 of the Constitution has these features in common with Article 10 of the European Convention on Human Rights (ECHR). Article 10 of the ECHR is also a very general provision that covers all aspects of freedom of expression.

Article 10, in general, prohibits any interference with freedom of expression, except when such interference is 'necessary in a democratic society' based on a strict proportionality assessment. Through the Human Rights Act of 1999, the ECHR is made part of Norwegian law.

Another common feature between the Constitution and the ECHR is that interference in the freedom of expression presupposes that the legislature has established a legal basis for the procedure, so that interference is 'according to law'. Good arguments are not enough to restrict freedom of expression. A ban on the actual statements in the form of law must also be in place. Examples of such laws are the Criminal Code's prohibition against espionage and hate speech, as well as the rules of damages for violating privacy and defamation.

ECHR Article 10 has had, and still has, great significance in Norwegian law, because the European Court of Human Rights (ECtHR) has produced a large number of precedents that help to clarify the rights.

The importance of the primacy of freedom of expression was manifested in Norwegian law around the turn of the millennium after ECHR Article 10 was made an integral part of Norwegian law. During this period, the ECtHR found that Norway had violated the right to freedom of expression in three cases. These cases were brought by Norwegian media companies and authors, who claimed that they were wrongfully convicted of defamation in Norwegian courts. ECtHR agreed and found that Norwegian courts had wrongfully interfered in their exercise of freedom of expression (ECtHR Nilsen and Johnsen, 1999; Bergens Tidende, 2000; Bladet Tromsø, 1999). Thus, it turned out that Norwegian legal provisions did not necessarily meet the strict requirements for freedom of expression, although this had been taken for granted in Norway up until then. The Norwegian legislation on defamation was strict. The rules were designed

as penal provisions, in which the person who had uttered any defamatory accusation was initially responsible if he could not provide a sound reason for acquittal.

After this, Norwegian courts had to acknowledge that freedom of expression must be the starting point for the deliberations in such cases. Restricting freedom of expression, e.g. through a defamation sentence, can only take place if the strict criteria for the exemptions are convincingly established. This may seem like an insignificant nuance, and Norwegian lawyers believed that the courts had always adhered to human rights. The subtle distinction, however, had great consequences and illustrates the importance of such patterns of argumentation. Before these realizations, the media had lost almost every court case on defamation. Later the results were the opposite; the media won almost all cases (see Schiøtz and Strømme, 2002, p. 401).

ECHR had also emphasized the importance of freedom of expression to a greater extent than in Norwegian tradition. Already in the 1970s, in the so-called Handyside case, regarding the confiscation of a controversial book for pupils, the ECtHR highlighted this in a manner cited in many subsequent cases. Here, the court stated that freedom of expression is one of the essential foundations of a 'democratic society':

> Freedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man. Subject to paragraph 2 of Article 10 (art. 10–2), it is applicable not only to 'information' or 'ideas' that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the state or any sector of the population. Such are the demands of the pluralism, tolerance and broadmindedness without which there is no 'democratic society'. This means, amongst other things that every 'formality', 'condition', 'restriction' or

> 'penalty' imposed in this sphere must be proportionate to the legitimate aim pursued.

This is now the prevailing view in recent Norwegian case law, and the reference to the development of society, democracy, and the development of the individual is found in Section 100 of the Constitution as it reads after 2004.

The most important foundation for freedom of expression in Norway is thus the Constitution, Section 100 and ECHR, Article 10. Article 19 of the United Nations Convention on Civil and Political Rights (ICCPR) has similar content, but since it does not have its own court of law, Article 19 is often most important in political discussions.

In addition, Norway has laws that regulate the more detailed aspects of freedom of expression, such as the government's duty to provide access to their documents, rules on the judiciary's relations with the public, witness duty, and the protection of whistle-blowers.

Different aspects of freedom of expression

Freedom of expression, the provisions of Section 100 of the Constitution, and ECHR Article 10 relate to different categories of, or relations to, expressions. One main category is the right to communicate 'outwards' by making statements in speech, writing, or any other form. Freedom of expression also includes, however, the right to receive information from others. Since freedom of expression is so important, another issue is whether the authorities have a positive duty to facilitate free speech in the best possible way. Freedom of speech also includes a right not to speak—a negative expression of freedom. What about unexpressed mental content? Are thoughts and opinions protected? And if so, what does that entail?

Below is an overview of these categories, the freedom of communication, infrastructure requirements, the right to information and freedom of thought. After this overview, I will proceed with an overview of the position of freedom of expression at universities and colleges, before we deal with some more concrete and practical situations that may arise at such institutions.

Freedom of communication

When people refer to freedom of expression or speech, mostly they are referring to freedom of communication (see Eggen, *Ytringsfrihet*, 2002, part III). This includes the right to make statements as one pleases, with restrictions for the sake of the reputation and privacy of others or, for example, national security reasons. The legal challenge is as follows: what is 'necessary' in a democratic society, and is there established legislature providing a sufficient legal basis for any restrictions? The category 'freedom of communication' also covers issues of censorship or 'prior restraint', as well as the many questions regarding who is to be held liable for digital social media defamations. At universities and colleges, for example, questions can also arise as to whether it is possible to dismiss professors based on statements they have made. If utterances have special protection, as opposed to actions, where is the boundary between an expression and an action? Is it possible to ban certain clothes?

The strong protection of the freedom of communication is stipulated in the first four paragraphs of Section 100 of the Constitution:

> There shall be freedom of expression.
>
> No person may be held liable in law for having imparted or received information, ideas or messages unless this can be justified

> in relation to the grounds for freedom of expression, which are the seeking of truth, the promotion of democracy and the individual's freedom to form opinions. Such legal liability shall be prescribed by law.
>
> Everyone shall be free to speak his mind frankly on the administration of the State and on any other subject whatsoever. Clearly defined limitations to this right may only be imposed when particularly weighty considerations so justify in relation to the grounds for freedom of expression.
>
> Prior censorship and other preventive measures may not be applied unless so required in order to protect children and young persons from the harmful influence of moving pictures. Censorship of letters may only be imposed in institutions.

In Norwegian, the old-fashioned term 'should' (*bør*) is used in the first paragraph, but there is agreement that 'shall' reflects the true meaning.

The fundamental protection of freedom to communicate is specified in the second paragraph, that no one shall be held liable for any utterances unless the liability can be justified on the basis of the same three ideas that freedom of expression is based upon (the seeking of truth, the promotion of democracy, and the individual's freedom to form opinions). This requirement ensures that any curtailment on the freedom of expression must be in accordance with the basis of freedom of expression. Freedom of speech is not absolute, but it is not sufficient that any state agency believes that some restriction ought to be implemented. Any possible need for interference must be tested against the basic ideas of freedom of expression in each individual case and be found to outweigh the value of free expressions, measured on the same scale.

The legislature must adhere to these principles, for example when enacting strict libel provisions, and so must the courts and any administrative branch when deciding in individual cases.

The provision also applies regardless of the form of interference in the freedom of expression. Sanctions such as punishment and damages obviously fall within the scope, and the same applies to direct bans on expressions. An example of a ban came up in 2007, when the District Court in Oslo had decided that the Norwegian Broadcasting Corporation (NRK) could not broadcast a TV program that revealed police methods in a serious criminal case (the NOKAS case), because the broadcasting could place implicated persons in physical danger. The Supreme Court, on the other hand, ruled that banning the program would be illegal and contrary to the Constitution (Supreme Court, Brennpunkt case, 2007).

Other regulations that are not sanctions may also be in conflict with the protection if the regulation hinders freedom of expression. The Constitution should be understood in the same way as ECHR Article 10, and the ECtHR has, on several occasions, emphasized that it is the practical realities that are decisive. For example, the ECtHR has rejected a ban on political advertising on television, even if the expressions were not banned as such as advertising was allowed in other media (ECtHR TV Vest, 2008). The ECtHR has also applied these principles in cases on, for example, stringent requirements for issuing press releases (ECtHR Karademirci, 2005), and restrictions on money that can be used for election campaigns (ECtHR Bowman, 1998).

The provision also applies regardless of the form of the expressions. The protection does not only apply to text, but also to images or electronically transmitted statements. As stated in the quotation from the Handyside case, the protection not only covers advanced debate and statements but also statements that, based on their content and form, shock or disturb any sector of the population. There is a wealth of practice, especially at the ECtHR, where, for example, racist and pornographic utterances

are dealt with, cases on cartoons and satire, and everything from textbooks to social media expressions.

The protection under both the Constitution Section 100 and the ECHR is thus extensive. Almost no cases have been resolved with the argument that freedom of expression does not apply. This does not mean all expressions are protected, however. The crucial point is usually whether, despite the protection, it is necessary to intervene in the freedom of expression, i.e. whether the proportionality test is successful. This model of two steps is quite similar in the Constitution and the ECHR. In the first step it is considered whether there are any interference in the broadly defined right. The possible breaches of the right are considered in the second step, in the proportionality test. The model is evident in the two paragraphs of Article 10, which read as follows:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority . . .

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

In order for any interference to be 'necessary in a democratic society', based on the stated criteria, the ECtHR requires that a

'pressing social need' must be demonstrated, and this is a strict requirement. The national state is given a certain amount of discretion by these assessments, a 'margin of appreciation', but the leeway is often narrow with regards to freedom of expression.

It is often a matter of weighing the freedom of speech against 'the rights of others', such as the reputation or privacy of others, or protection against racist utterances. To the extent that such opposing rights themselves are protected under the Constitution or the ECHR, the trade-off must be considered as a trade-off between two values of equal weight.

While Article 10 of the ECHR sets out the criteria for interfering in the freedom of expression, Section 100 of the Constitution refers to the positive basis for freedom of expression: the search for truth, the functioning of democracy, and the individual's personal formation of opinions. The wording of Section 100 was drafted by a Norwegian working group, the Freedom of Expression Commission (*Ytringsfrihetskommisjonen*). The reasoning is explained in the Commission's 1999 report, 'Freedom of speech should take place' (NOU 1999:27). The Freedom of Expression Commission particularly emphasized seeking truth as an important value. One cannot find the truth once and for all. Science and knowledge accumulation are processes, and these processes require freedom of expression.

This rationale is close to the Humboldtian education ideal discussed below in connection with academic freedom. In addition, the third rationale, the individual's free opinion formation, is particularly relevant to universities and colleges. While the first rationale is particularly relevant for the scientific staff, the value of each person's development is critical when evaluating regulations that will affect students. As we shall see, the current legislation indicates that freedom of expression holds a particularly strong position at universities and colleges.

Infrastructure requirements

Infrastructure requirements mean possible obligations for the state to ensure real access to freedom of communication. While the section on freedom of communication concerned the state's interference in freedom of expression, the topic here is whether the state must also positively facilitate the opportunity for the public to use their right to free speech. Freedom of communication is a negative freedom for the citizen, freedom from interference in expressions. Possible infrastructure requirements relate to positive duties for the public sector to establish systems that encourage free speech, such as providing a legal framework for maintaining a plethora of public media, providing legal assistance for those accused of speech-related violations, or establishing a suitable framework for free expressions at universities.

Unlike Article 10 of the ECHR, Section 100 of the Constitution has a final paragraph, not cited above. This paragraph is labelled the 'infrastructure requirement rule' and reads as follows:

> It is the responsibility of the authorities of the State to create conditions that facilitate open and enlightened public discourse.

Based on this special provision, it is reasonable to assume that such positive duties exist for the Norwegian national authorities. However, how far these duties extend is uncertain. In the preparatory work (NOU 1999:27, Chapter 2), it is pointed out that the requirement for an 'open' conversation means that the state must facilitate broad participation in debates which cannot be left to the market and institutions to steer without intervention.

One particular question is whether this provision applies to attempts to no-platform unwanted persons or views at universities.

Freedom of information and right to information

It follows from Section 100 of the Constitution that freedom of expression is not limited to making statements or sharing opinions. It also protects the right to receive information. This aspect is often called the freedom of information.

In principle, it should be permissible for everybody to visit lectures of all kinds, and there should be a very high threshold for sanctioning anybody for reading or possessing 'banned' literature. Examples of such prohibitions in Norwegian law can be found in Section 311 of the Criminal Code, which prohibits 'acquiring' or 'possessing' representations of sexual abuse against children. The Criminal Code can also be applied to receiving information as part of, for example, espionage or fraudulent behaviour in the stock market.

The freedom of information sometimes collides with other legal principles, as in cases regarding illegal downloading and use of copyrighted material.

A prerequisite for sanctioning such forms of receiving and using information is, as with freedom of communication, that the interference in the freedom of information is necessary. In borderline cases, prohibitions such as those mentioned above can also be problematic. What if the mentioned images of children have a strong artistic dimension, and what if the copyrighted material is used by journalists to reveal dubious or illegal activities? The police must necessarily be in possession of images of abuse in order to investigate such crimes, but what limits must the police operate within to gain access to it? It is thus clear that the prohibition of receiving and possessing information cannot be a blanket ban. In some cases, like in the ones mentioned above, there may be legitimate reasons to handle such material. Thus, any interference into freedom of expression must be individually

considered and should not extend beyond the purpose of the ban.

In addition, freedom of expression in some instances entails a right to obtain information—an information right. This means that citizens are entitled to access public information, a right which entails a duty of openness. If such information rights exist under the Constitution or the ECHR, this right cannot be circumvented by adopting rules on, for example, confidentiality or archiving, which prevent such access.

It is clear that to some extent, such information rights actually exist, protected by the ECHR and the Constitution. Two quite new Norwegian Supreme Court decisions are illustrating. One of the cases looked at whether the Norwegian Broadcasting Corporation, NRK, could demand the release of old audiotape recordings from the spy case against the former state secretary Arne Treholt in 1985. The prosecuting authority claimed in vain that criminal procedure rules prevented this and that the information should be kept in the archives of the police (Supreme Court, Treholt case, 2013). In another case, NRK also succeeded in a claim for access to film recordings from an episode where a patient was killed during a fight with the police and an ambulance driver during hospital admission (Supreme Court, hospital case, 2015).

The principles of information rights generally apply not only to the prosecuting authority but to any public authority. This does not mean, however, that any public authority is obliged to hand out all possible information. The cases show that in order for an enforceable information right to exist, the information is required to have some significance or general interest. If that is the case, the ECHR and the Constitution apply, and the crucial question is whether the authority can refuse to hand over the information, despite this. This is the same 'necessity' assessment as discussed above but formulated as a question of whether it is necessary in a democratic society to exempt the information from access.

Freedom of thought and negative freedom of expression

There is agreement among jurists that Section 100 of the Constitution protects a right to believe what one wants, even though this right is not explicitly mentioned in the text. The freedom comprises the right to have any possible thoughts and ideas, on any subject.

It should be assumed that this freedom of thought is absolute. The state has no right to intervene in the freedom of thought, no matter what reasons may exist. This is also enshrined in ECHR Articles 9 and 10. There should be no 'thought censorship' whatsoever.

After expressing a thought, however, the thought will appear as some form of utterance. The absolute protection then ceases. After the expression of a thought or idea, the question is simply whether the expression as such is protected.

In practice, the protection of freedom of thought will function as a protection against indoctrination or attitude campaigns, and as an obstacle to demanding binding promises to hold certain opinions as conditions for employment or admission as a student. Every person can have thoughts and opinions as he or she pleases. But does this imply a right to have these opinions in peace, in the sense that others must refrain from trying to change these opinions? Can a state employer or college fill a building with religious symbols incompatible with other views, in order to attract some people and deter others?

These questions were crucial in a well-known case on the use of crucifixes at Italian schools (ECtHR Lautsi and others, 2011). The ECtHR found, under considerable doubt, that the use of crucifixes was acceptable because this was a tradition in the country, and especially because it followed from another article in ECHR that the parents had a protected right to choose

schools for their children. The latter reason does not apply to universities and high schools in general, which must, therefore, be careful if considering such practice.

Absolute freedom of thought must necessarily correspond with a right to refuse to give information about these thoughts, i.e. negative freedom of expression.

It must be assumed that the right to indulge in silence is protected by the Constitution and the ECHR.

However, there can be no general right to remain silent, regardless of the subject and situation. On the contrary, there are many legitimate statutory duties to provide information to the authorities in various situations. For example, in a modern society, one has to report information on income, finances, and business activities, and one cannot refuse to take an exam referring to the negative freedom of expression. A witness in a court must, as the main rule, give his or her testimony as requested.

In order to establish a right to negative freedom of expression, the justification must be sought in the same way that otherwise justify the freedom of expression. What is 'necessary in a democratic society'?

A central principle that can be labelled as a negative freedom of expression is the media's right to protect their sources. The principle is enshrined in both the Norwegian constitution Section 100 and ECHR Article 10, because a lack of such a right would have a 'chilling effect' on the freedom of expression. A good example of legal reasoning on this question is a Norwegian Supreme Court ruling on the protection of a filmmaker's material. The filmmaker wanted to create documentary films about 'warriors' who joined the IS. The Norwegian security police (PST) wanted insight into his material and seized the film material that would reveal involved persons and their motives. The seizure was annulled by the Supreme Court (Supreme Court, Rolfsen case, 2015). The rationale is particularly illustrative

because it shows how the arguments for such a seizure must be compatible with the arguments for freedom of expression. It is not sufficient to refer to the fight against terror if the reasons for interference are not sufficient in the individual case. The decision was translated into English and given a special award at Columbia University as the best court ruling on freedom of expression in the world in 2015.

Another example of negative freedom of expression is the right to remain silent in criminal investigations directed at oneself, a right that also follows from the ban on so-called self-incrimination. No one is obliged to aid in the conviction of themselves.

Freedom of expression at universities and colleges

The Humboldtian education ideal is often said to be the basis for Norwegian universities and colleges. The basic idea is that research should be free and independent, and that teaching should be based on research. The reason for, and the content of, this academic freedom largely corresponds to the ideas of freedom of expression. In Norway, it is also accepted that the freedom of expression must be strongly protected in these institutions. This follows partly from the legislation on universities and colleges but is also accepted in areas that are not directly regulated in the law.

The Norwegian law on universities and colleges is from 2005, and in 2007, the amended law (Section 1–5) emphasized academic freedom in particular: '[u]niversities and colleges shall promote and protect academic freedom'.

The law stipulates that research, teaching, and professional and artistic work must maintain a high level of professionalism

and be conducted in accordance with recognized scientific, artistic, and educational principles. It is also specified that the owner of the institution is not allowed to give instructions on learning content or individual research. The individual employee also has an individual right to his or her own work within the framework of the employment contract.

The law expressly states that there should be transparency around research and that employees have the right to publish.

The right to publish implies an emphasis on freedom of expression. But the enactment of academic freedom strengthens the freedom of expression in general, even though the concept of freedom of expression is not used in the law. The preparatory work for the law indicates that freedom of expression is meant to be a part of academic freedom, and points out that, by virtue of their teaching and research roles, employees should have 'a particularly wide latitude to make bold statements' (NOU 2006:19, p. 37).

The preparatory work for the law also refers to a joint statement from the Global Colloquium of University Presidents in 2005, which emphasizes the importance of freedom of expression:

> Academic freedom may be defined as the freedom to conduct research, teach, speak, and publish, subject to norms and standards of scholarly inquiry, without interference of penalty, wherever the search for truth and understanding may lead (NOU 2006:19, p. 12).

This foundation is almost a repetition of the reasons for freedom of expression, as listed in Section 100 of the Constitution. The search for truth and the development of each individual's scientific and social skills is the basis for both academic freedom and freedom of expression.

Universities and colleges must thus vigorously protect freedom of expression, also beyond what is directly dealt with in legislation. Not only is the right to publish and speak almost

unlimited ('freedom of communication'), the rights of employees must also be vigorously protected when it comes to the other aspects of freedom of expression discussed above. For example, a researcher must be able to demand a great deal of access to relevant information ('right to information'), and it must be almost unthinkable to punish a researcher for having received information ('freedom of information').

Norwegian courts have assumed that freedom of expression prevails at universities and colleges, including outside the core activities of research and teaching. In particular, it is assumed that the wide-ranging freedom of expression also applies to administrative issues. In 2011, the Supreme Court dealt with a question of whether a professor of medieval history was lawfully dismissed from his position at the university. He had sent emails with unusual strong wordings, criticizing colleagues in connection with examination schemes, and the courts found that he had for a long time refused to attend meetings and thus created a difficult working environment. The Supreme Court upheld the dismissal but stated that Section 100 and ECHR Article 10 of the Constitution:

> ... provides a *very broad* framework for what a scientific employee can say about *academic and administrative* issues, even if this involves criticizing management. The free academic exchange of views is a fundamental value and a prerequisite for universities and colleges to be able to fulfil their mission in a democratic society. In this connection, reference is made to the ECtHR judgment of 23 June 2009 in the case of Sorguc vs Turkey (17089/03) (ECtHR-2003-17089) Section 35, cf. Section 21. A scientific employee must also consider *his behaviour* towards colleagues and others he comes into contact with in his position. He must also consider his *working environment*. In *the most serious* cases, freedom of speech will also have to give way on an arena such as this,

> in the sense that expressions that are unjustifiable ('utilbørlig') due to form, timing, forum, scope, or detrimental effect, can form the basis for summary dismissal (emphasis added) (Supreme Court, professor case, 2011).

It follows that the authorities' interference in freedom of expression must be reserved for 'the most serious cases', even if the topic is administrative matters and not research. In the actual case, this was only acceptable because the utterances and other acts had actual effects on the working environment. That being the case, the utterances were not just abstract expressions; they could be understood as actions. How the boundary between utterances and actions should be drawn is, however, not further discussed in the ruling.

Although freedom of expression is particularly prevalent at universities and colleges, questions regarding boundaries between the acceptable and illegal may arise. As a rule, one sees that the same general principles apply in this arena, as in the rest of society. Balancing the interests could nevertheless give different results due to the academic ideals. In what follows, I will give some examples of how I believe the boundaries should be drawn in different situations.

Defamation, privacy, and hate speech—classic balancing of interests

Most of the educational institutions do have stories about personal controversies, which can appear eccentric from a distance. Often such disputes are academic disagreements but can also pertain to the size of offices or to promotions or wage issues. The question is whether colleagues or other individuals at such institutions can make stronger accusations than elsewhere.

In Norway, there are statutory provisions that make it illegal to allege untruths of a serious nature about others, for example, make accusations of breaches of law or of professional incompetence. If such accusations amount to defamation or libel, the responsible party can be ordered to pay damages for any economic loss and to pay punitive damages. Earlier, these provisions were contained in the Criminal Code, but are now of a purely civil nature (Law on Torts, 1969, Article 3–6a).

In addition, violating privacy is actually a crime, according to the Criminal Code (Section 267). These are not necessarily offensive charges but disclosure of sensitive and private information about, for example, illness or marital problems, or improper sharing of sensitive images on social media.

In the ECHR, the protection of reputation and privacy are considered two aspects of the protection of the private sphere. What is considered two legal principles in Norway is therefore regulated in one provision in the ECHR, namely Article 8 on the protection of privacy. Norwegian courts use the same balancing model that ECtHR has established for this protection. The model for assessment established according to Article 8 is relatively simple and consists of a list of factors that are to be considered (ECtHR Von Hannover, and Axel Springer, 2012). These factors are as follows—in descending degree of importance:

The first factor, which the court calls 'an initial essential criterion', is whether the expressions can be said to be of 'general interest'. ECtHR's practice shows that little is needed to constitute 'general interest'. The strength of this factor depends on the degree of public interest in the impugned expression. At universities and colleges, the protection of academic freedom will mean that utterances concerning academic issues enjoy a high degree of protection. On the other hand, expressions about purely private matters are unlikely to be accepted any more than elsewhere in society.

The next factor is labelled 'another important' topic and usually applies to the media. This factor emphasizes the function of the media as a 'public watchdog' and the importance of this role in a democratic society. This factor even implies an acceptance of mistakes and errors, in order not to deter the participants from carrying out the activity. The factor may also be applied if the statements are made as a result of research, and authors of scientific publications could also invoke the argument. Both media and science have a watchdog function, and both will from time to time make mistakes. As the social benefit of possessing functional watchdogs is essential, it should outweigh the need to protect insulted persons, especially if the activity is carried out in good faith.

The third factor focuses on the subject of criticism. To what extent does the subject deserve the criticism? In its list of factors, the ECtHR states that these are 'also factors to be taken into consideration'. The fact that it is relevant whether the criticism is justifiable is almost self-explanatory. However, the significance must not be exaggerated; what is justifiable or not is often not known until long after the speech situation. Freedom of expression should focus on the situation when expressions are made and ensure that nobody is unduly deterred from making statements at the outset.

In the fourth place, ECtHR has gathered elements that 'may also be taken into account'. This applies in particular to the degree of insult in the expression, and whether the utterance has led to negative consequences for the persons involved.

The fifth step is considering factors that 'cannot be disregarded'. Here the courts consider, for example, how the information was obtained, and whether any ethical misconduct has been committed during the work.

In general, employees or students at universities and colleges cannot argue that there is a different threshold for defamation or libel regarding personal matters there than in the rest of society. If the impugned statements stem from professional

disagreement, however, stronger words might be permitted.

There is also reason to note that individuals who are exposed to defamation do not have to accept as much as the institution where they are employed.

The ban on hate speech is of a different nature than the rules on defamation and privacy. Section 185 of the Criminal Code prohibits hateful expressions made in public directed at certain groups or individuals based on their ethnic or national origin, religion, gender, or disabilities. The background for the ban is the Convention on the Elimination of All Forms of Racial Discrimination from 1965, obliging the states to establish effective preventive strategies against racism. As freedom of expression is protected in the Norwegian constitution, on the other hand, all cases on hate speech must be carefully considered so that both the Convention and the Constitution can be adhered to.

In recent cases, the Supreme Court has made a clear distinction between expressions directed at religion as such on the one hand and against people exercising the religion on the other hand. A statement on Facebook containing expressions like 'black spawn of the devil' and 'go back to Somalia and stay there, you corrupt cockroach' directed at a certain person, amounted to hate speech. The statement 'utter filth, this damned Islamic cult of Satan' was not considered hate speech, as it had a subject—religion—and was not directed at persons. According to the Supreme Court, the right to criticize religion lies at the core of the right to free expression (Supreme Court, racist cases, 2020).

Freedom of speech for employees

In this section, I will consider what limitations the employment status has for the degree of freedom of speech.

A general norm in Norwegian labour law is that employees

must be loyal to their employer. As long as the employee keeps within this principle of loyalty, he or she cannot be ordered to keep silent or be sanctioned for any expressions.

The principle of loyalty is a general principle in labour law. It is not statutory but developed in case law and may vary from area to area. At universities and colleges, Section 1–5 of the law, on academic freedom, will be a starting point. Freedom of expression is protected by the Constitution and thus has a higher rank than the duty of loyalty that stems from case law. If a statement is actually protected by freedom of expression, freedom should take precedence.

In addition, in order for violations of a duty of loyalty to lead to sanctions, a disciplinary penalty for example, some additional conditions must be fulfilled.

First, the principle of loyalty exists only between the employer and the employee. There is no corresponding obligation to be loyal towards colleagues or the outside world in general. A scientific employee can thus become very unpopular with colleagues or most people without the employer being able to sanction any expressions or behaviour. The employer's interests are only affected if the behaviour is of such a magnitude that it affects the working environment. This was the reasoning in the case regarding the dismissal of a history professor mentioned above.

Secondly, disloyal utterances must have a real detrimental effect before it can form the basis for sanctions. It is not enough that a statement is somewhat controversial or inaccurate, and it is not enough that this provokes a discussion or that others feel insulted. Universities and colleges should be able to cope with disagreements and highly engaged persons.

For a dismissal, several other conditions must be fulfilled, as follows from the Government Employees Act, Sections 20 and 26. The breaches of duty must consist of repeated violations, grave violations, or continued violations after warnings have been issued. Such cases are very rare.

In addition to the mentioned case of the history professor, the Supreme Court has ruled on a case regarding an associate professor in high school who in his teaching had maintained the superiority of the Germanic race and denial of the Holocaust (Supreme Court, teacher case, 1982).

The Supreme Court found that the dismissal of the associate professor was valid. Here too, the court refrained from linking the dismissal directly to statements, since freedom of expression was emphasized in the case. Instead, the court pointed out that a person who taught history this way could not be fit as a teacher, and this lack of competence was held as the basis for dismissal. One can probably criticize how the courts in these cases rely on an unclear distinction between utterances and actions, but at least the judgments imply that the threshold for dismissal is high.

In 2019, in a third case also involving a history professor, the courts again found the dismissal warranted. This professor was, among other things, accused of having sent messages of a sexual nature to students and colleagues. The professor characterized himself in an interview as Norway's 'first metoo victim'. Regardless, the debate shows some of the difficult assessments that need to be made. When the trial came up, the professor's messages and posts on social media were not highlighted. The court's reasoning was mainly that the professor had repeatedly acted intoxicated in a work context.

Student freedom of expression

The general freedom of expression also applies to students. The question is whether they, as students, have greater freedom of expression than what they would otherwise have.

The law on universities and colleges applies to students. The principle of academic freedom stipulated in § 1–5 must also include

them, but the specific rights in the provision are only related to persons who conduct research and education, i.e. the employees.

Universities and colleges are not just places where students learn academic knowledge. Traditionally, such institutions should also facilitate the students' participation in debate and democratic processes and contribute to their personal development as good citizens. These social aims are partly fulfilled through certain student associations called 'studentsamskipnad'. These student associations shall provide for the students' welfare and serve as platforms for educating democratic skills. A separate law on these student associations was enacted in 2007. In addition, a separate regulation was issued in 2008. This regulation describes in more detail how the student associations shall provide 'social, democratic, professional, and cultural measures . . .' (Section 5).

According to these rules, the state has a role in preparing students for their role in a democratic society, and for their personal development. These values coincide with the core values spelt out in Section 100 of the Constitution, indicating that students should enjoy a high degree of freedom of expression.

This does not mean that there are special rules for students, however, only that this background must be taken into consideration in legal assessments. For example, as student associations are supposed to be a training ground for argumentation and debates, statements during debate must be highly provocative or shocking for sanctions to be justified.

Radicalization, control, and no-platforming

Universities and colleges are, naturally, places for radical thinking and rebellion among young people. This is, in principle, desirable rather than problematic. On the other hand, groups that have illegal or even violent potential may also emerge.

This applies to political extremism of various kinds and also to extreme religious groups.

Are the adverse effects of this something that educational institutions should try to counteract, and if so, how? Are there any legal limits for the students' own measures, by excluding, for example, certain groups or individuals from the premises through no-platforming?

Preventing radicalization and violent extremism is a legitimate task. However, there is a number of principles that limit the methods that can be applied.

In Norwegian law, the investigation or monitoring of persons is entrusted to the police, activities that must be legally authorized and justifiable before they are initiated. If colleges or universities are to initiate measures against radicalization, these must, therefore, be limited to measures that cannot be regarded as such interventions. Educational institutions are not allowed to exercise power towards persons and cannot intervene in an individual's private life. If the institutions believe that threats of radicalization need mitigation, the means must be limited to educating employees on these topics and increasing vigilance. Nothing prevents an institution from cooperating with the police, but this cannot consist in any systematic monitoring of persons.

One method of preventing radicalization is to control or prevent utterances. Student organizations in several countries have implemented principles of no-platforming to prevent unwanted persons or speeches, initially to stop racist or fascist utterances. The best-known example is the National Union of Students in Britain, which has introduced such a policy, primarily to block speeches from members of the British National Party. In addition, many individual cases of such practice are known. For example, the author and feminist Germaine Greer was no-platformed in 2015, because she had spoken earlier about transgender people in a way that was criticized. Some wonder whether educational

institutions have failed to equip their students well enough to endure the stresses of freedom of speech. Not only should one be offered 'safe spaces' and be given 'trigger warnings'; the most provocative utterances should also be completely forbidden. Are there any legal limits for implementing such a policy?

Basically, no one is entitled to the right to speak on others' arenas, and nobody can demand to have an audience. Just like newspaper editors, the right to refuse someone to speak in their own arena, is part of the freedom of speech.

The 'platform' available to a social actor, like a newspaper, a theatre, or a university, is embedded in legal rules and is usually governed by ethical principles. The holder of the platform basically has the right to decide who is allowed to speak and about what subject. The legal framework is quite similar for different 'platforms' and prohibits incitement of violence, defamation, violation of privacy, and hate speech. The ethical principles can vary widely from a free academic rostrum to a newspaper editor's specific view of society that he or she wants to promote.

Common to these platforms, however, is that the one who controls the platform has the freedom to make decisions within these legal and ethical frameworks. Neither the university director nor the editor is obliged to give anybody access to speak. On the other hand, they also have no obligation to refuse anyone to speak. In order for the platform to maintain its integrity, it is important to note that freedom of expression does not require such extra duties. If we hold that anybody has a right to speak, climate 'realists', vaccine opponents, and political extremists would have to be invited to events in a disproportionate degree and so-called 'false balance' would be the result. If we hold that a duty to refuse certain people to speak exist, no-platforming is the result.

This means that both the university director, the editor, and other platform owners should resist attempts to influence their right to choose who is to speak.

On the other hand, when one can choose speakers, it is perfectly legitimate to define any platform narrowly. There is nothing wrong with creating an association or a newspaper where only climate realists get their say, and no one else. This is also a consequence of the freedom of expression. At universities and colleges, however, this does not necessarily apply in the same way.

There are at least two situations where it is not permissible to point-blank refuse groups or individuals with unpopular views, as long as they remain within the legal and ethical framework.

The first situation is where the university or college itself chooses to follow principles of no-platforming. According to the Act relating to universities and university colleges, Section 1–5, on academic freedom, the person who is responsible for research and teaching must be able to choose the method, content, and structure of these tasks. This must entail an obligation to protect the academic employee who wishes to use controversial literature or invite a controversial colleague if he or she considers this to be professionally sound. A policy of excluding people or groups solely on the basis of political views, detached from the subject matter of the profession, must be said to be fundamentally in violation of academic freedom. Since the educational institution itself can choose whom they want to invite, such conflicts will most likely arise if instructions are given to cancel invitations that employees have already made.

In a pending draft on a new law on universities and colleges, the committee has proposed to strengthen the institution's duty to protect employees against such pressure (NOU 2020:3, p. 132). The committee observes that it is not sufficient that the law establishes a principle of academic freedom in a debate climate that is increasingly polarized. The law must also oblige the institution to protect each individual who wishes to exercise this freedom.

The second situation is where student organizations introduce broad principles of no-platforming. For the students, the

legal starting point is different from that of the institutions: As the holder of their own platform, they are free to decide who is to speak. However, this freedom does not fully apply.

Through the Norwegian legislature on colleges, universities, and student associations, the state and school owners have a responsibility for the students' welfare, participation in debates, etc. and for making premises and resources available for such purposes. These services should be available to 'all students' according to the regulation, Section 8. The state pays substantial sums for these goods that are meant to benefit all students. According to the Norwegian tradition, stipulated in the regulations, this scheme is called 'free station' (*fri stasjon*).

When funds are given to benefit 'all students', the state must ensure that all students benefit and that no groups are excluded. It becomes particularly important when these benefits and grants are meant to increase participation in social and democratic processes. These government funds can be seen as a concrete result of the state fulfilling its duty pursuant to Section 100 of the Constitution, as the funds are given to secure an infrastructure for an 'enlightened public discourse' at universities and colleges. Against this background, it seems legally unacceptable to allow student organizations with far-reaching no-platforming principles to have exclusive use of the resources made available under these schemes.

Prohibiting and regulating the use of religious clothing

As the only Nordic country, Norway adopted a national ban on the use of garments covering the face in 2018. The law is effective from 1 August 2018. Prohibitions have been introduced throughout the school sector, in primary schools, folk high schools, in vocational educations, and in the introduction programs for

newly arrived immigrants. In the law on universities and colleges, the ban has been included as a new Section 7–8.

The law has a broad formulation. The ban applies to both students and employees. It applies to several situations. The law mentions teaching and 'similar situations', as well as 'trips, expeditions, and the like' that take place in connection with teaching. If one is to use such clothing, it must be justified by 'climatic, educational, learning, health, or safety' reasons. Religious reasons are not mentioned.

The reason for the ban is, in particular, the use of religious headgear such as *niqab* and *burka*. However, the law applies to all types of garments. The prohibition may seem extensive, as it bans clothing which completely or partially covers the face, but it is likely to be understood that only garments covering the essential parts of the face are prohibited.

The question of whether this prohibition violates the freedom of expression has not been fully clarified. Even if the ban should not be regarded as violating freedom of expression, it is not a given that it is politically desirable. The protection of free speech, like other human rights, is only a minimum right. In the period after the ban was introduced, there has been relatively little debate on this regulation in Norway.

According to ECtHR case law, it is clear that such a ban is an interference in the rights as per ECHR. Usually, this is discussed as an interference with the right to privacy and freedom of belief under ECHR Articles 8 and 9, but one may equally refer to the freedom of expression in Article 10.

The legal question is thus not whether the ban is an interference, but whether the interference can be justified as 'necessary in a democratic society'. This requirement of 'necessity' must be thoroughly justified as discussed above, pure political considerations are not sufficient. One of the legitimate considerations that may justify an intervention is the 'protection of the rights

and freedoms of others'. According to case law, consideration for safety can be relevant, and especially in an ECtHR decision (ECtHR, SAS case, 2014) it was emphasized that the use of face-covering headgear could undermine a 'respect for the minimum requirements of life in the society', which is a prerequisite for 'living together' in a society.

The latter decision concerned a ban on such garments in all public places in France, not just schools. Many have perceived this decision as a reasonably safe indication that the Norwegian ban will also stand since ECtHR accepted a more extensive ban in this case. On the other hand, the reasoning is somewhat different in France than in Norway. The Norwegian ban is based on teaching conditions, while the French ban applied to the public space based on safety concerns. The argument in the French decision, on 'life in the society', might not be directly applicable to the Norwegian ban.

There are also several decisions by the ECtHR that allow bans on facial garments in schools and universities. Several of these are summed up in the above-mentioned SAS case. These decisions, however, originate from countries where the use of certain headgear has resulted in violence and other effects that ECtHR considered the domestic authorities to be better placed to consider. These cases seem to contain a factor that is missing in the Norwegian deliberations, namely deep conflicts between religious groups. According to ECtHR, such conflicts make it,

> . . . necessary to place limitations on freedom to manifest one's religion or beliefs in order to reconcile the interests of various groups and to ensure that everyone's beliefs are respected (ECtHR SAS 2014, § 126).

In these cases, it was crucial that the aim was to prevent riots and unrest based on religion, while the Norwegian ban is not justified on such considerations.

Although the Norwegian ban generally complies with the ECHR, in practice, individual cases may appear that do not. While legislation deals with general categories, the courts deal with specific cases. The ban is comprehensive, and it must be decided whether it should be applied or not in many situations. One challenge may be that the Norwegian provision requires that the use of the headgear must be justified in cases of doubt, while the articles in the ECHR and the Norwegian constitution require that the prohibition must be convincingly justified.

Concluding remarks

As shown above, the legal protection of freedom of expression is deeply rooted in social philosophy and protected through legal norms that are often labelled as human rights law. These norms are, however, also ordinary legal norms, like all other domestic rules.

Both international and domestic norms on freedom of expression have a process of testing any interference in freedom of speech, through specific steps.

The first step is to consider whether the utterance or act is protected at all. Is a ban on certain public demonstrations a ban of acts or of expressions? Is an order to show your driving license to a police officer an interference in freedom of expression? Generally, the protection can be applied to a broad area, not only to traditional speech or writing. The protection applies regardless of form, and an indirect effect on freedom of speech might be sufficient. Very few court cases are solved on the basis that the protection does not apply at all. It does not only apply to active speech, but also the right to receive information, and imposes a certain duty on the state to provide means for communication in society.

The next step considers whether such interference in freedom of expression is necessary in a democratic society. In most court cases, this is the crucial question. This is a strict test, where the state must offer convincing and sufficient arguments for each regulation. The balancing test is, in principle, always the same, but the outcome will depend on the nature and severity of the interference and the speech situation.

Academic freedom is intertwined with freedom of expression. At universities and colleges, the ideal of academic freedom should pave the way for even stronger freedom of expression. And according to both domestic and international court decisions, this is indeed so.

The freedom of expression is, however, not won once and for all. Maintaining this freedom requires constant vigilance. At universities and colleges, increased commercialization can imply less leeway for deviating expressions. The fight for equality and social justice inevitably leads to a paradox of tolerance: to what extent should we tolerate the intolerant? The debate over these questions is in itself one of the most important exercises of the freedom of expression.

References

Dworkin, R. (1977). *Taking Rights Seriously*. Harvard: Harvard University Press.
ECtHR, Handyside vs UK, Judgment 7 December 1976.
ECtHR, Bowmann vs UK, Judgment 19 February 1998.
ECtHR, Bladet Tromsø and Stensaas vs Norway, Judgment 20 May 1999.
ECtHR, Nilsen and Johnsen vs Norway, Judgment 25 November 1999.
ECtHR, Bergens Tidende and others vs Norway, 2 May 2000.
ECtHR, Karademirci vs Turkey, Judgment 25 January 2005.
ECtHR, TV Vest AS and Rogaland pensjonistparti vs Norway, Judgment 11 December 2008.
ECtHR, Lautsi and others vs Italy, Judgment in Grand Chamber 18 March 2011.
ECtHR, Von Hannover vs Germany, Judgment 7 February 2012.
ECtHR, Axel Springer vs Germany, Judgment 7 February 2012.
ECtHR, SAS vs France, Judgment 1 July 2014.
Eggen, K. (2002). *Ytringsfrihet* (Freedom of Expression). Oslo: Cappelen Akademisk forlag.
FOR-2008-07-22-828 om studentsamskipnader (Regulation on Student Associations).
Grotius, H. (1631). *De Jure Belli ac Pacis*. Paris: Apud Nicalaum Buon.
Holberg, L. (1984). *Memoarer. Breve til en høyvelbåren herre 2*. Oslo: Aschehoug.
Høyesterett Rt-1982-1729, (Norwegian Supreme Court, Teacher case).
Høyesterett Rt-2007–404 (Norwegian Supreme Court Brennpunkt case).
Høyesterett Rt-2011–1011 (Norwegian Supreme Court, Professor case).
Høyesterett Rt-2010–1381 (Norwegian Supreme Court, Runestein case).
Høyesterett Rt-2013–374 (Norwegian Supreme Court, Treholt case).
Høyesterett Rt-2015–1286 (Norwegian Supreme Court, Rolfsen case).

Høyesterett Rt-2015–1467 (Norwegian Supreme Court, Hospital case).

Høyesterett Rt-2020-185-A and B (Norwegian Supreme Court, Racist cases).

LOV-1999-05-21-30 om styrking av menneskerettighetenes stilling i norsk rett (Law on Strengthening the Status of Human Rights in Norwegian Law).

LOV-2017-06-16-67 om statens ansatte mv. (Law on Government Employees).

LOV-2005-04-01 om universiteter og høyskoler (Law on Universities and Colleges).

LOV-2007-12-14 om studentsamskipnader (Law on Student Associations).

Milton, J. (1644). *Areopagitica: A Speech of Mr. John Milton for the Liberty of Unlicensed Printing, To the Parliament of England*. A pamphlet.

NOU 1999:27, *Ytringsfrihet bør finde sted* (The Freedom of Expression Commission).

NOU 2006:19, *Akademisk frihet* (Academic Freedom).

NOU 2020:3, Ny lov om universiteter og høyskoler (Draft of New Law on Universities and Colleges).

Popper, K. (1973). *The Open Society and its Enemy,* vol. I and II. London: Routledge & Kegan Paul.

Popper, K. (1974). *Conjectures and Refutations: The Growth of Scientific Knowledge*. London: Routledge & Kegan Paul.

Schiøtz, C. and Strømme, V. (2002), 'Paradigmeskifte i injurieretten' (Paradigm Shift in Libel Law), *Lov og Rett,* 2002, pp. 401–401.