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## **EUROPEAN SOCIAL CHARTER**

9<sup>th</sup> National Report on the implementation of  
the European Social Charter

submitted by

**THE GOVERNMENT OF NORWAY**

(Articles 1, 9, 10, 15, 20, 24 and 25  
for the period 01/01/2007 – 31/12/2010)

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**CYCLE 2012**

Oslo, 28/11/2011

## **NORWAYS NINTH REPORT ON THE IMPLEMENTATION OF THE REVISED EUROPEAN SOCIAL CHARTER**

Reference period: 01/01/2007 – 31/12/2010

Replies to the ECSR's questions and requests for further information are integrated in the text under the relevant article.

### **ARTICLE 1**

*The right to work*

#### ***Article 1§1- Policy of full employment***

Full employment is an important goal for the labour and welfare policy in Norway. The right to work is of crucial importance both to each individual and to society.

In June 2006 the Norwegian Labour and Welfare Service (NAV) was established.

*The Labour and Welfare Administration Act* concern the purpose of the new Service. The Act lays down important principles of confidentiality, consumer involvement, and the duty of the new Service to provide information and guidance to the users.

Section 14a of the Act provides that all users who approach the Labour and Welfare Administration with a request or a need for assistance in obtaining employment shall be entitled to an assessment of their need for assistance. Users whose need for assistance is established are entitled to participate in the preparation of a specific plan of action directed at solving their employment needs. Assessment of the needs of all users, including immigrants and long-term unemployed, is based on the follow-up methods of the Labour and Welfare Administration.

The aim of the Labour Market Act is to facilitate an inclusive working life through a well-functioning labour market with high levels of occupational employment and low unemployment. Among other things, the Act stipulates what basic services and rights users can expect from NAV local office

Active labour market programmes (ALMP) are important policy instruments aimed at promoting a well-functioning labour market. ALMP aim at contributing to increased participation in employment, reduced unemployment and combating exclusion by helping people with problems on the labour market to find work and become active. ALMP shall be offered on the basis of an individual assessment of each individual's need for assistance in finding and keeping jobs.

The Labour and Welfare Administration has a broad range of programmes and measures at its disposal. These are measures to help improving the individual's chances of finding employment through qualification and work training. The measures can be divided into

follow-up measures, job-finding measures, work experience, training, temporary jobs and work permanently adapted to the individual needs.

In 2010 there were 76 800 persons participating in different labour market measures.

High priority groups in the labour market policy include young people, long-term unemployed, immigrants and persons with reduced working capacity.

The labour market measures shall be adjusted to the individual needs and the regional labour market situation. Some groups may have particular challenges associated with integration in the ordinary labour market are Therefore, specially adapted labour market training is provided for example for immigrants, qualifying them to work in specific occupations and trades, such as courses for work as nursing assistants, practice-oriented language courses in the health and care sector, and courses in welding, child care and cleaning. Courses are also held in working-life knowledge for persons of foreign-language background with work experience, and job clubs with work experience are organised for persons of foreign-language background.

### ***The introduction programme for newly arrived immigrants***

The introduction programme for newly arrived immigrants is a municipal responsibility. The central government part of the Labour and Welfare Administration cooperates with the municipalities on implementation of the programme. The municipalities are responsible for ensuring that the immigrants who are to participate in the introduction programme are notified of this as soon as possible, and not later than three months after taking up residence in the municipality. The municipality is to assist in preparing an individual plan and provide a contact person. The participant is provided with guidance interviews, instruction in Norwegian language and society, language practice and, if appropriate, a language practice place. The municipality is also responsible for establishing the participant's educational and occupational background and for translating the relevant documents needed for approval. The municipality also issues a certificate of participation and pays introduction benefit to the participant.

The Labour and Welfare Administration is required to assist in establishing the participant's occupational and educational background and provide information regarding the labour market and educational opportunities to programme participants, teachers, contact persons, etc. It is to provide guidance on appropriate employment-oriented measures, and provide information on vacant posts and appropriate measures. Participants in employment-oriented measures are to be followed up by the Labour and Welfare Administration.

The cooperation with municipalities on work with immigrants and refugees functions consistently well in many counties. Interprofessional cooperation and cooperation with the municipality's refugee service are important success factors. In order to meet the users' needs as well as possible efforts are made to achieve both flexibility and intensity in the use of the Labour and Welfare Administration's resources and the municipalities' training facilities. Challenges encountered in relation to individual users include language, culture and communication as well as education and expertise from the country of origin that is not recognised in Norway.

Statistics Norway presents annual reports showing the percentage of the participants who leave the introduction programme and who are employed or participate in ordinary education direct after ending the program, and then one year later:

- 57 per cent of participants ending the introduction programme in 2008 were employed or participating in ordinary education in November 2009. 67 per cent of the men, and 48 per cent of the women ending the program were employed or in education. 16 per cent were registered unemployed or participating in employment-oriented measures. 27 per cent were registered by different or no information.
- 63 per cent of the participants completing the programme in 2007 were employed or participating in ordinary education in 2008. 48 per cent of the women ending the program were employed or in education. 13 per cent were registered unemployed or participating in employment-oriented measures. 24 per cent were registered by different or no information.
- 65 per cent of the participants completing the programme in 2006 were employed or participating in ordinary education in 2007.
- The result attainment has decreased 2006-2009.
- The results vary when analysing the numbers according to gender, country of origin and the participants' resident municipality. For instance close to 80 per cent of men from Eritrea were employed or in education in 2009 (one year after completing the programme), while about 40 per cent of women from Somalia achieved the same. Still women in total have experienced increasing results 2006-2009.
- Figures from Statistics Norway indicate that 11 800 persons participated in the introduction programme and the Norwegian language training during 2010; 50 per cent women and 50 per cent men. In 2010 the largest portion of participants originated from Eritrea, Somalia, Iraq, Afghanistan and the area of Palestine. The majority of the participants were between 26-35 years.

Several evaluations have been completed to assess the results of the introduction programme and the Norwegian language training. These evaluations are based both on qualitative and quantitative data. Relevant evaluations are:

- Fafo, in cooperation with the Institute of Social Research (ISF) in 2011 analysed why some groups of women only to a very small extent achieve employment or start ordinary education when finishing the introduction programme. The report documents major differences when it comes to content, possibilities and quality of the programmes in the different municipals. The number of women participating in programs with low progress is much larger than the number of men. This is the main reason why women in average are at a lower level of qualification than men when ending the introduction program. Fafo's study indicates that women to a smaller extent than men participate in work - or language practice and other employment measures.

- Rambøll Management Consulting (2011) has analysed the results of the introduction program. An important element of their analysis was the possible consequences of the NAV-reform on the organisation of the introduction program. Rambøll's study documents that 43 per cent of the municipalities included in their study had organised the management of the introduction program within NAV. Whether the program is organised within or outside NAV do not influence the results (measured in number of participants who are employed or participated in ordinary education after ending the program) to a large extent. There are great differences in result attainment between the municipalities. The report indicates that there are several factors influencing the result attainment, and some measures are believed to be influential. For instance: Better coordination of municipal and state initiatives.

The Labour and Welfare Directorate has entered into a cooperative agreement with IMDi. Most counties have entered into local cooperative agreements with regional offices of IMDi and agreements have been entered into between NAV offices and municipalities in the county. The objective is to strengthen interprofessional cooperation in relation to the target group.

**The New Chance – scheme** has been in effect since 2005. The New Chance project experiments with two-year paid programmes specifically for immigrants who after several years in Norway do not have a permanent connection to the labour market. The goal is to enable the participants to become self-reliant through daily and yearly employment or in mainstream education. The project is commissioned and financed by the Norwegian Directorate of Integration and Diversity (IMDI).

The project's target groups in 2011:

- Immigrant women who are not working and who are not receiving social benefits, but who are provided for by their husbands.
- Unemployed persons with immigrant background between 18-25 years.

### ***The Qualification Programme***

On 1 November 2007, the Government introduced the qualification programme with associated benefit for persons with significantly impaired work and earning capacity and with little or no entitlement to social benefits. The qualification programme is the Government's most important measure in the fight against poverty and is a major instrument for realisation of the NAV reform. The programme was implemented in pace with the establishment of NAV offices during the period from 2007 to 2010.

By means of more binding, systematic and continuous follow-up of the target group, the qualification programme is intended to help in reducing the number of recipients of social benefits, while increasing the number entering gainful employment. A fundamental principle is individual design of the qualification programme. This involves adapting the content to individual qualifications and needs. The programme must contain employment-oriented measures and job seeking, and may consist of measures from the municipality, the county authority, the Labour and Welfare Administration, other central government authorities, NGOs and private enterprises. The programme may also contain other measures that are involved in supporting and preparing transition to employment. Such measures include motivation and training measures, coping training, etc. Time may also be

set aside for medical assistance, training and individual initiative. Participation in qualifying activities should enhance individual participants' sense of coping and quality of life.

The qualification programme is laid down in the Act relating to Social Services in the Labour and Welfare Administration, and is to be administered by the NAV offices. It requires the use of all of the resources of the NAV office. Participation in the programme confers the right to qualification benefit, which corresponds to approximately twice the basic amount under the National Insurance Scheme. Persons under 25 years of age are entitled to receive two-thirds of twice the basic amount.

There has been and continues to be a considerable political focus on the qualification programme. It was the first measure to require a binding cooperation between municipal and central government areas of responsibility at NAV offices. The qualification programme thus reflects the intentions of the NAV reform. The scheme has a consolidating effect on the municipal co-ownership of the Labour and Welfare Administration, requires use of all of the NAV offices' resources for follow-up and demands well integrated services in all areas of responsibility.

At the end of August 2011, approximately 7 350 persons were currently taking part in a qualification programme.

#### **National strategy of Work and Mental Health (2007-2012)**

People with mental health disorders or problems (MHP) in Norway represent a large share of those excluded from working life. Having access to work and other meaningful activities is an area of high priority both for the Norwegian government, NGOs and users of Public Health, Labour and Welfare Services.

The target group of the National strategy of Work and Mental Health are people with mental health disorders and problems in the working age group, with special attention towards people who are under 35 years old. The target group includes those who also have substance abuse problems or other difficulties in addition to mental health disorders or problems.

The strategy has two overall aims, one is to prevent exclusion from the working life and the other is to create an even more inclusive labour market for people with mental disabilities. The target areas of the strategy are co-operations between public offices and coordinated public services, user-directed support, different labour marked programs and programs related to network building, skills and competence. The goal is to form appropriate arenas of co-operations between The Norwegian Employment and Welfare Administration and the health sector, and coordinated services for people on the border of or outside the labour market with mental disabilities.

A number of the measures in the National Strategic Plan for Work and Mental Health 2007-2012 are building on positive experiences and evaluations of pilot projects. A number of ongoing measures are also being evaluated.

#### ***The labour market situation (including average waiting period for employment-oriented measures )***

In the 3rd quarter of 2011, the labour force participation rate (the sum of employed and unemployed) in Norway was 71.8 per cent. This is the same level as in the 3rd quarter of

2010. The employment rate in Norway is high and the unemployment rate is low compared to other European countries. The unemployment rate by the 3<sup>rd</sup> quarter of 2011 was 3,2 per cent. Persons in the age group 15-24 have the highest unemployment rate with 8,4 per cent. Still, young people seem to have shorter periods of unemployment than others.

Reference is made to this annex from Statistics Norway:

[http://www.ssb.no/english/subjects/06/01/aku\\_en/tab-2011-11-02-18-en.html](http://www.ssb.no/english/subjects/06/01/aku_en/tab-2011-11-02-18-en.html)

Even though the labour market situation in Norway is good compared to other European countries, a large proportion is outside of the labour force and the number of people receiving health related benefits is increasing.

Immigrants, youth, long-term unemployed and persons with reduced work capacity due to health problems have lower labour market participation. These groups are being prioritized in the labour market policy in order to increase their employment,

Users of the Labour and Welfare service are entitled to an assessment of their need for assistance in obtaining employment (§14a). They can also be entitled to a specific plan of Action describing adequate measures and activities to strengthen their opportunities at the Labour market. Unemployed and persons with reduced working capacity who need labour market assistance have access to Active Labour Market Programs (ALMP). For persons with reduced work capacity due to health problems, an early intervention can be crucial to avoid exclusion from the labour market and benefit dependence. According to the Directorate of Labour and Welfare (April 2011) the waiting period between the decision made in Section 14 a (identifying the need for assistance) and the approved Activity plan was 83 days or less for persons with reduced work capacity. The waiting period between the Activity Plan and the participation in ALMP was 123 days. The reliability of these statistics is for the moment uncertain, due to lack of experience in producing and assessing data for these waiting periods. The Directorate is working on improving the statistics in this area, as well as supplementing the data with statistics for the waiting period before a person receives the decision on 14a.

Effects of the ALMP on employment can be difficult to measure. Both selection and displacement effects has to be taken into consideration. Studies have shown that active labour market programmes have a modest but positive effect on employment in Norway, especially taylored programmes for vulnerable groups (such as immigrants, disabled etc ). Wage subsidies seems to have the most positive job effects, but selection problems may occur .

Reference is further made to the enclosed statistical annex with information from the Norwegian Labour and Welfare Directorate, Research Unit (as of 28 March 2011) with tables for transition from ordinary labour market measures to employment, measured 6 and 18 months after completion.

*Article1§2- Prohibition of all forms of discrimination in employment and prohibition of forced or compulsory labour*

#### Anti-discrimination legislation

We refer to Norway's previous report.

Norway's legislation concerning discrimination in employment is distributed between a number of different Acts. Chapter 13 of the Working Environment Act applies to protection against discrimination in employment on the basis of age, sexual orientation, membership of a trade union and part-time or temporary employment. Specific bases for discrimination are dealt with in separate Acts. These include the Gender Equality Act and the Act on prohibition of discrimination based on ethnicity, religion, etc. In 2009, the Anti-Discrimination and Accessibility Act, which applies to discrimination on the basis of disability, entered into force (see the comments under article 15).

Protection against discrimination on the basis of ethnicity, religion, etc. was removed from the Working Environment Act in 2006, and protection against discrimination on the basis of disability was removed from the Act in 2009. This did not weaken the protection since the provisions removed from the Working Environment Act were replaced by new statutes. The Anti-Discrimination Act and the Anti-Discrimination and Accessibility Act provide general protection against discrimination, not only in working life, but also in other areas of society. In order to avoid double legislation and to make it clear that these anti-discrimination provisions also apply to employment relationships, the Working Environment Act includes references to these Acts.

In 2009, provisions concerning the obligation to make active efforts and to report on measures implemented were added to the Anti-Discrimination Act. Private sector employers that regularly employ more than 50 workers and public sector employers are to make active, targeted and systematic efforts to promote the purpose of the Act within their undertakings. For employers, the obligation to make active efforts includes recruitment, pay and working conditions, promotions, development opportunities and protection against harassment. Employee and employer organisations are obliged to make active efforts within their spheres of activity. The Gender Equality Act and the Anti-Discrimination and Accessibility Act have corresponding provisions concerning the obligation to make active efforts and to report on measures implemented.

The provisions of the various Acts are somewhat differently worded, but in principle provide the same protection against discrimination in working life. However, the Working Environment Act has no separate provision concerning an obligation to make active efforts and to report on measures implemented in association with efforts to achieve equality.

In 2009, a government-appointed commission submitted a proposal for a compiled Act against discrimination (NOU 2009: 14 *Comprehensive protection against discrimination*). One purpose of this work was to harmonise the provisions of the various Acts. The Commission's recommendations were subjected to a broad round of consultation.

The Government is currently working on follow-up of the Commission's recommendations, and aims to submit a Bill in 2012-2013. The Government will make efforts to ensure robust and harmonised protection against discrimination by means of separate Acts relating to the various bases for discrimination, as today. This will entail that the Gender Equality Act, the Anti-Discrimination Act and the Anti-Discrimination and Accessibility Act will be maintained as separate statutes. In addition, the Government is working on a new Act against discrimination on the basis of sexual orientation, sexual identity and sexual expression.

#### Other measures



*The action plan – A better quality of life for lesbians, gays, bisexuals and trans persons (LGBT) 2009–2012*

In 2008, the Government submitted the action plan “A better quality of life for lesbians, gays, bisexuals and trans persons 2009-2012”. A main goal of the plan is a society characterised by openness, tolerance and inclusion, also as regards sexual orientation and the various forms of sexual expression. The overall purpose of the action plan is to put an end to the discrimination met with by lesbians, gays, bisexuals and trans persons, among other areas, in working life, and to promote better living conditions and quality of life for these groups.

Measures in the area of working life include research into how lesbians, gays, bisexuals and trans persons are received at the workplace, measures for attitude change in working life, training of safety representatives and working environment committees, dialogue meetings with the social partners, review of the central government employment policy and preparation of an information booklet on diversity in the Civil Service. A national resource centre has been established in the LGBT field, which also works on issues associated with working life. A number of the measures mentioned above have been implemented.

*The action plan to promote equality and prevent ethnic discrimination 2009–2012*

In 2009, the Government submitted an action plan to promote equality and prevent ethnic discrimination. The measures outlined in the plan are particularly aimed at combating discrimination against immigrants and their children, Sami people and national minorities.

One of the main goals of the action plan is to promote a satisfactory implementation in anti-discrimination legislation of the new obligation to make active efforts and to report on measures implemented. Another main goal is to increase knowledge of the types, scope and causes of discrimination in order to implement more effective measures.

The plan includes a number of measures directed at working life as well as measures in other areas of society. The measures include guidance and information on the anti-discrimination provisions, employee surveys, survey of the proportion of immigrants in the workforce, mentor programmes for women of minority background and programmes for diversity management. Most of the measures have been implemented.

During the period covered by the plan, the Government is cooperating with the main employer and employee federations on joint measures included in the plan to combat discrimination in working life. A reference group has been established to follow up the plan with representatives from the Equality and Anti-Discrimination Ombud and various interest organisations.

1.G Restrictions

In the case of vessels with a gross tonnage greater than 250 tonnes, the master is required to be either Norwegian or a national of an EEA country, cf. section 4-2, (1) (d) of the Regulations of 9 May 2003 No. 687 (Qualification Regulations). Pursuant to section 8-6 (3) of the Qualification Regulations, dispensation may be granted from the national provision so that nationals of non-EEA countries may serve as masters on Norwegian vessels registered in the Norwegian International Ship Register. This is done by applying to the Norwegian Maritime Directorate for endorsement of national certificates (i.e. recognition of qualifications and certification outside the EEA area) pursuant to section 8-4 of the Qualification Regulations. The application must enclose confirmation by the shipping

company that the person concerned is to be appointed as master of the vessel referred to, and must also enclose valid certificates and documentation by the Norwegian Maritime Directorate regarding which classes and grades under the STCW Convention are covered by the certificate. In addition, it must be documented that the person concerned has satisfactory knowledge of the English language and is sufficiently familiar with the Norwegian legislation. In the case of masters, the shipping company shall document that the person concerned is familiar with Norwegian legislation and has the necessary language qualifications acquired through participation in an approved course and has successfully passed an approved test, cf section 8-4 (4) of the Qualification Regulations of 9 May 2003 No. 687. Pursuant to section 8-6 (3), emergency preparedness may be taken into consideration when considering applications for such dispensation. The dispensation is subject to the duration of national certificates for the vessel. We are not aware of any cases where the Norwegian Maritime Directorate has rejected applications for such dispensation.

#### 1. Prohibition of Forced Labour

Reference is made to previous reports.

#### **Prison work**

Pursuant to section 3 (3) of the Execution of Sentences Act of 2001, convicted persons have a duty to take an active part during the execution of a sentence. If the duty to take an active part is not complied with, daily pay will normally be withdrawn. The Correctional Services may not order persons remanded in custody to take part in such activities. They may, however, be ordered to help with necessary cleaning and other housework in the prison, cf. section 49 of the Execution of Sentences Act of 2001.

Requirements regarding the consent of convicted persons in connection with activation in work for private individuals or private companies is not specifically regulated by current legislation. This is probably because private companies are not directly involved in operation of work provision in Norwegian prisons. Convicted persons may however be allowed outside the prison on a daily basis – so-called day release – in order to take part in work outside the prison. The employer may in such case belong either to the private sector or to the public sector. The consent of the convicted person is a condition when granting day release. The same applies to a community sentence imposed pursuant to section 16 of the Execution of Sentences Act of 2001. It is in such cases a precondition of the sentence that the convicted person shall have a permanent residence and be employed in a form of work, training or other measures.

#### **Forced labour in domestic environment**

The Committee asks (in a general question directed to all parties to the agreement) to what extent Norway has statutory provisions to assist in combating forced labour, particularly in “domestic work” (work at the home of the employer), and what measures have been established for implementing these measures.

The Norwegian Labour Inspection Authority is not aware of any *specific* statutory provisions for combating forced labour other than the provision in section 224 (b) of the Norwegian Penal Code that any person who by force, threats, misuse of another person’s vulnerability or other improper conduct exploits another person for the purpose of *forced labour or forced services, including begging*, or who induces another person to allow himself or herself to be used for such purposes, shall be guilty of human trafficking and shall be liable to

imprisonment for a term not exceeding five years. Section 224, second paragraph, provides that the penal prohibition shall also apply to any person who aids and abets such exploitation or inducement or who provides payment or any other advantage in order to obtain consent to such exploitation. The sentencing framework for aggravated human trafficking is imprisonment for a term not exceeding ten years. In deciding whether the offence is aggravated, particular importance shall be attached to whether the person exposed to the act was under 18 years of age, whether gross violence or coercion was used or whether the act led to considerable gain.

In the following, we will provide details of legislation that may *indirectly* assist in combating forced labour. Firstly, there is a general prohibition against child labour. This is laid down in section 11-1 of the Working Environment Act. Children under 15 years of age may however to a limited extent perform cultural or light work provided the child is 13 years of age or more. Children of 14 years of age or more may perform work that forms part of their schooling or practical vocational guidance approved by the school authorities. According to the same provision, persons under 18 years of age must not perform work that may be detrimental to their safety, health, development or schooling.

The Regulations concerning Work Performed by Children and Young People of 30 April 1998 No. 551, were issued pursuant to section 11-1 of the Act. The Regulations provide further requirements regarding employers' specific risk assessments in connection with employment of persons under 18 years of age, prohibition of certain work operations, etc. The Norwegian Labour Inspection Authority supervises compliance with the provisions of the Regulations and of chapter 11 of the Working Environment Act.

Pursuant to section 18-6 of the Working Environment Act, the Norwegian Labour Inspection Authority may issue orders to employers who violate the Act and regulations issued pursuant to the Act. Pursuant to section 19-1, an employer or proprietor of an undertaking who breaches the provisions is liable to a fine or imprisonment.

Section 2-1 of the Education Act (the Act of 17 July 1998 No. 61), states that children have the right to a public primary and lower secondary education. If a pupil is absent without leave from compulsory instruction (up to 10th grade), his or her parents or those who are in loco parentis may be liable to fines if the absence is a result of deliberate or negligent actions by them. The Act may thus be said to contribute indirectly to combating child labour.

The Regulations concerning Domestic Work, Attention and Nursing in the Private Employer's Home or Household of 5 June 2002 No. 716, provide specific rules for workers who perform work in the employer's home. The Regulations impose requirements with respect to employment contracts, provisions concerning working hours and time off, cf. sections 6 and 7, and rules concerning summary dismissal and dismissal with notice, cf. sections 9–12. Dismissal must be objectively justified on the basis of circumstances relating to the employer or the employee. The Norwegian Labour Inspection Authority is only obliged to provide guidance on the provisions of the Regulations, cf. section 14. This is a natural consequence of the fact that the work is performed in the employer's home and of Article 8 of the European Convention on Human Rights on the right to respect for private life. If a measure constitutes an intervention in the right to respect for private life, it may be justified if the conditions of Article 8, second paragraph, are met. The second paragraph provides that "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 for the protection of the rights and freedoms of others”.

In Norway, it is mainly relevant to view forced labour in close conjunction with migration crime. As referred to below, the police have prepared a report that refers to the need for first-line authorities with authority in the area of immigration. The Norwegian Labour Inspection Authority would be one of these first-line authorities. The Immigration Act of 15 May 2008 No. 35 and the General Application Act of 4 June 1993 No. 58 give the Norwegian Labour Inspection Authority responsibility and authority for supervision of terms of wages and employment for foreign workers. Since forced labour must be viewed in close conjunction with migration crime, these Acts are indirectly relevant to combating forced labour. The Norwegian Labour Inspection Authority supervises the compliance of undertakings' with the conditions for residence permits as regards terms of wages and employment and the scope of the post pursuant to section 27 of the Immigration Act. The Norwegian Labour Inspection Authority is required to notify the immigration authorities on suspicion of any breach of the terms of wages and employment. The Authority may also issue orders or make other individual decisions pursuant to the Working Environment Act. Section 108 of the Immigration Act, which contains the penal provisions of the Act, includes a wide range of offences and levels of gravity from unlawful residence to unlawful use of labour and facilitating this. The sentencing framework ranges from fines to six years' imprisonment. The indicators in the Penal Code that often arise in connection with the Immigration Act are false testimony (cf. section 166 of the Penal Code) and forgery (cf. section 182 of the Penal Code).

The Norwegian Labour Inspection Authority supervises undertakings, inter alia, with a focus on social dumping. By social dumping is meant that foreign workers receive substantially inferior terms of wages and employment than are usual for Norwegian workers. With a focus on social dumping, cases bordering on forced labour can also be detected. The Norwegian Labour Inspection Authority is primarily involved in prevention, but may also report violations of the Working Environment Act, cf. section 19-1 of the Act.

Pursuant to section 11 of the General Application Act, the Norwegian Labour Inspection Authority is required to supervise compliance with terms of wages and employment following from decisions concerning general application. During the last five years, the Norwegian Labour Inspection Authority's inspectors have conducted more than 10 000 inspections aimed at detecting social dumping. The Authority has revealed that foreign workers are often subjected to working-hours arrangements involving adverse strain and to deficient safety training, which may result in a greater risk of accidents and injury to health. In many cases, they also receive lower pay than their Norwegian colleagues. The General Application Act empowers the Norwegian Labour Inspection Authority to issue orders or make other individual decisions in cases where pay within a sector is regulated by collective agreements subject to general application, which require pay in the sector concerned to be in compliance with specific minimum rates. Collective agreements for the building trade, agriculture and horticulture, cleaning companies and the maritime construction industry have all been made subject to general application.

In addition to the employer's responsibility for ensuring compliance with the requirements regarding terms of wages and employment, the Regulations on the Obligation to Provide Information, the Obligation to Ensure Compliance and the Right of Inspection of 22 February 2008 No. 166 provide that, in connection with the use of contractors and subcontractors,

obligations are also imposed on the contracting entity/purchaser (a natural or legal person who engages contractors or suppliers to carry out an assignment). The Regulations apply where work is performed within the scope of general application regulations, cf. section 2 of the Regulations, cf. section 3 of the General Application Act. Pursuant to the Regulations, the contracting entity has two principal obligations. Firstly, to inform contractors or subcontractors of the terms of wages and employment and secondly to ensure compliance with the general application regulations.

In addition, there are separate Regulations concerning Identity Cards (ID Cards) at Construction Sites of 30 March 2007 No. 366. Subject to the Regulations, all undertakings that perform work at construction sites, both Norwegian and foreign, are required to provide their workers with ID cards. The purpose is to identify both the individual worker and the employer. Foreign workers employed by foreign companies on contract at construction sites in Norway must also carry ID cards. This also applies to short-term contracts. One-man enterprises (including those that operate on their own) shall have ID cards. Undertakings (skilled tradesmen) who only provide services in the consumer market are also obliged to provide their employees (and/or themselves) with ID cards. If hired workers are used on the construction site, it is the labour hire company that is to ensure that the hired workers are provided with ID cards. The requirement for an ID card also applies to personnel who perform support functions such as cleaning, catering etc. where such support functions are permanently established on the site. In the case of cleaning companies, it is now proposed that these must be authorised to provide such services, and that the employer must ensure that his employees are provided with ID cards.

Finally, we draw attention to the Regulations of 4 June 2008 No. 541 concerning Personnel Provision Undertakings (undertakings that hire out workers) that operate in Norway. The Regulations require the personnel provision undertakings to be registered as limited liability companies or public limited liability companies in Norway or to furnish security in the form of guarantees from banks or insurance companies for equity corresponding to the minimum share capital requirement for limited liability companies or public limited liability companies laid down in the Limited Liability Companies Act of 13 June 1997 No. 44 and the Public Limited Liability Companies Act of 13 June 1997 No. 45. It is also required that foreign personnel provision undertakings with no permanent place of business or residence in Norway shall have or appoint a representative in Norway. The Regulations require that personnel provision undertakings intending to operate in Norway shall notify the Norwegian Labour Inspection Authority.

The Norwegian Labour Inspection Authority considers that the above provisions may help to curb forced labour since they jointly ensure transparency and documentation requirements, thus enabling more extensive control by the authorities.

In view of their work in the employer's home, au pairs are a potentially vulnerable group that are not in principle regarded as employees. Au pairs are by definition not employees. The intention of the au pair scheme is cultural exchange. "The European Treaty on Au pair Placements" provides the basis of the rules laid down by the Norwegian Directorate of Immigration for providing residence for au pairs in Norway.

The Norwegian Directorate of Immigration grants residence to au pairs for periods of up to two years. It requires that the scheme involves childminding, domestic work or care of animals. Working hours must not exceed five hours per day, maximally 30 hours per week,

which must not be exceeded even in exchange for additional payment. The host family is required to ensure that the au pair is given the opportunity to attend Norwegian language instruction and leisure activities, and shall pay for Norwegian language courses up to an amount of NOK 6000 per year. During the contract period, the au pair is to reside with the host family and have a separate room in the host family's residence, have free board and lodging and receive a minimum pocket money/pay of NOK 4000 before tax per month. In legal theory, it is nevertheless assumed that the Regulations concerning Domestic Work, Attention and Nursing in the Private Employer's Home or Household in many cases apply to au pair work. (See the view expressed by the Professor of Labour Law Henning Jakhelln at arbeidsrett.no). The Norwegian Labour Inspection Authority holds the view that the question of whether au pairs are to be regarded as employees must be decided on the basis of a specific assessment, where the principal question must be whether the au pair's stay has the character of an employer/employee relationship. A decisive factor must be whether the au pair must be available for approximately five hours per day or longer, for example, in connection with minding of children who do not attend a day care facility full time, but must be minded by the au pair. Although the Directorate of Immigration expressly requires that daily working hours must not exceed five hours, several investigations show that both the au pair and the host family are often unaware of this limit on working hours. Many also receive additional payment although this is prohibited. The fact that they are required to pay tax on their "pocket money" is grounds for regarding them as employees, thereby entitled to the appropriate protection.

In Norway, many au pairs come from outside the EEA area, and have little knowledge of the language or of their rights. Few are members of trade unions since they are not traditionally viewed as employees. Their motive, which in principle is supposed to be cultural experience, is in many cases economic, and the stay is viewed as work to provide for their families in their country of origin. There is therefore often a strong dependence on the host family, and it should therefore be considered whether they should be allowed to benefit from such legislation as protection against dismissal.

In Norway, there has recently been a much keener focus on enabling the authorities to detect forced labour and human trafficking. A "Guide to identifying victims of human trafficking" has been prepared, listing characteristics indicating forced labour: lack of freedom to terminate the employment owing to debt, threats and lack of funds, lack of necessary language skills, lack of knowledge of the rules for Norwegian working life, low or non-existent pay, lack of an employment contract/ false employment contract, unlawfully long shifts, little or no time off, heavy or hazardous work, hazardous physical conditions at the workplace, unacceptable sanitary conditions, lack of suitable work equipment, e.g. prescribed protective equipment.

We refer further to the report on forced labour – "*Tvangsarbeid – kartlegging av indikatorer*" [Forced Labour – Survey of Indicators] prepared by the Immigration and Administration Section of Oslo Police District in June 2011, which, in 2010, in a letter of allocation from the Norwegian Police Directorate, was assigned the task of surveying forced labour. The assignment is in compliance with the Norwegian Action Plan against Human Trafficking, which describes the need for increased efforts to combat forced labour. The report establishes that forced labour is perhaps the most serious form of migration crime. The report is based on a survey during the period from October 2010 to April 2011, and is a structured review of various types of information associated with indicators of forced labour. The police have little experience of forced labour cases, but the scale of related types of case is nevertheless

considerable. The report therefore focuses on indicators for detecting forced labour in order to provide the authorities with an instrument for reacting. The report proposes a number of measures – including improved coordination of the first line authorities, basic competence in identity control, etc.

## 2. Other aspects – **Privacy at work**

For further information about relevant legislation regarding human freedom and dignity and the protection of personal or private life in the employment relationship please see the following link to the Working Environment Act in English:

<http://www.arbeidstilsynet.no/binfil/download2.php?tid=92156>

Act of 17 June 2005 No. 62 relating to working environment, working hours and employment protection, etc. (Working Environment Act) as subsequently amended, last be Act of 23 February 2007 No. 10, applies to all workers both in private and in public sector.

Chapter 4 - Requirements regarding the working environment – consists of the following 6 sections: General requirements regarding the working environment; Requirements regarding arrangement, participation and development; Requirements regarding the psychosocial working environment; Requirements regarding the physical working environment; Chemical and biological health hazards; Adaptation for employees with reduced capacity for work.

Section 4-3 (1) Requirements regarding the psychosocial working environment states that the work shall be arranged so as to preserve the employees' integrity and dignity.

The requirement was introduced as a result of a discussion whether waitresses could be forced to work top-less in certain bars.

This is a framework legislation and there is very little case law.

Section 4-3 (3) states, that employees shall not be subjected to harassment or other improper conduct.

Section 4-3 (4) states, that employees shall , as far as possible, be protected against violence, threats and undesirable strain as a result of contact with other persons.

It is the employer who is responsible for the compliance of these rules. The Labour Inspectorate performs supervisory activities with these provisions.

Chapter 9 of the Working Environment Act contains regulation on control measures in the undertaking. Section 9-1 Conditions for control measures in the undertaking was introduced in 2005 as a result of new technological developments that made it possible for the employer to get hold of information about the employee both at work and at home through for instance PC, web-camera, e-mail etc. 24 hours a day. Prior to the amendment of the act control measures were regulated in the collective agreements.

Section 9-1 reads as follow:

1. The employer may only implement control measures in relation to employees when such measures are objectively justified by circumstances relating to the undertaking and it does not involve undue strain on the employees.

2. The Personal Data Act shall apply to the employer's handling of information concerning employees in connection with control measures unless otherwise provided by this Act or another Act (This act implements an EU –directive in this area.)

#### Section 9-2 Consultations, information and evaluation of control measures

1. The employer is obliged as early as possible to discuss needs, design, implementation and major changes to control measures in the undertaking with the employees elected representatives.
2. Before implementing such measures, the employer shall provide the affected employees with information concerning:
  - a. The purpose of the control measures,
  - b. Practical consequences of the control measures, including how the control measures will be implemented,
  - c. The assumed duration of the control measures.
3. The employer shall in cooperation with the employees elected representatives, regularly evaluate the need for those control measures that are implemented.

#### Section 9-3 Obtaining health information on appointment of employees

1. The employer must not, when advertising for new employees or in any other manner, request applicants to provide other health information than is necessary in relation to performance of the duties associated with the post. Nor may the employer implement measures in order to obtain health information in any manner.
2. ....

#### Section 9-4 Medical examination of job applicants and employees

1. The employer may only require medical examination to be conducted :
  - a. when provided by statutes or regulations
  - b. in connection with posts involving particularly high risks
  - c. When the employer finds it necessary in order to protect life or health.

The Labour Inspectorate also performs supervisory activities related to chapter 9.

Chapter 10 Working hours may also be relevant in this regard. Section 10-2 (4) states that an employee who for health, social, or other weighty welfare reasons needs to have his normal working hours reduced shall have this right if the reduction of working hours can be arranged without major inconvenience to the undertaking etc.

A typical situation is where parents, who have small children, need to have reduced hours due to be able to take proper care of their children.

#### *Article 1§3 – Free employment services*

The Norwegian Labour and Welfare Administration plays an important role in ensuring job opportunities for as many people as possible. An important goal is to get more people into work and activities and have less people on welfare benefits. There is no charge for employment services in Norway.

The Labour and Welfare Administration (NAV) has a good overview of the number of vacant posts. This is because a number of employers report vacant posts to NAV and because NAV itself obtains information concerning vacant posts from official publications by means of a service that records the posts in the Labour and Welfare Administration's



register. A major channel for advertising vacancies is the Internet, which is increasingly used by enterprises and other undertakings.

Still, investigations show that a number of vacancies are not advertised via the normal channels, but via networks, websites, temporary agencies, etc. The market share, i.e. the proportion of vacant posts reported to NAV (directly reported vacancies as well as vacancies reported by the undertakings themselves to nav.no) is approximately 30%.

This means that many placements are made via the Internet and other channels that NAV has no control over.

The emphasis of the NAV's employment services is on job seeking and self-activation early in the period of unemployment. More information, advice and closer follow-up is offered for those who need it. For persons who need more assistance, active labour market programmes can be offered. The programmes may contain recruitment/ job-placement measures, job training and labour market training measures

#### *Article 1§4 – Vocational guidance, training and rehabilitation*

Reference is made to previous reports.

Reference is additionally made to the information provided in respect of articles 9, 10 and 15.

#### **ARTICLE 9 - The right to vocational guidance**

According to section 9-2 of the Education Act, pupils have the right to necessary guidance on education, careers and social matters.

In 2009, the Ministry of Education and Research issued new regulations regarding the right to such guidance, cf. chapter 22 of the regulations issued pursuant to the Education Act. In addition to these regulations, the Ministry has issued a set of recommended formal qualifications and competence criteria for counsellors. These amendments to the legal framework have strengthened and clarified pupils' right to such guidance.

Each individual municipality is responsible for providing guidance in accordance with the Education Act in primary and lower secondary schools, while county authorities are responsible for providing guidance in upper secondary schools. In lower secondary education, vocational guidance is provided to all pupils through the mandatory subject "Selection of Education". The subject is an important part of the fulfilment of pupils' right to vocational guidance.

The municipalities and county authorities receive a block grant each year from the state. The grant is intended to cover the costs of all the different municipal and county municipal responsibilities, such as providing primary and secondary education in accordance with the Education Act. Vocational guidance is funded through this block grant scheme.

NAV takes part in regional partnerships for career advice in cooperation with county authorities among others. Most counties have established career advice centres that supplement the career advice services provided to schoolchildren and job seekers at NAV offices.

## **ARTICLE 10 - *The right to appropriate facilities for vocational training***

### ***Article 10§1***

Reference is made to previous reports.

Persons with reduced work capability who needs assistance in finding a job can participate in different qualification measures and education through ALMP. Education increases job opportunities for disabled persons. In October 2011 one out of three persons with reduced work capability participated in qualification measures /programmes.

### ***Article 10§2***

Reference is made to previous reports.

### ***Article 10§3***

*Vocational training and retraining of adult workers - unemployed persons:* In all counties, NAV has entered into cooperation agreements with the education sector. The objective is to strengthen the cooperation on overlapping target groups in order to enable more young and adult job seekers to take upper secondary education with a view to gaining a more stable attachment to working life. Areas of cooperation include validation of prior learning and work experience, career advice and the combination of education and work experience under the auspices of NAV.

### ***Article 10§4***

*Long-term unemployed persons:* Long-term unemployed are persons who have been out of work for more than 26 weeks. By this definition 30 per cent of the unemployed in Norway were long-term unemployed in the 3. quarter of 2011.

Pursuant to section 14a of the Act relating to the Norwegian Labour and Welfare Administration, all users who approach the Labour and Welfare Administration with a request or a need for assistance in obtaining employment are entitled to an assessment of their need for assistance. Users whose need for assistance is established are entitled to participate in the preparation of a specific plan of action directed at solving their employment needs. Assessment of the needs of all users, including immigrants and long-term unemployed, is based on the follow-up methods of the Labour and Welfare Administration.

In 2011, young people, long-term unemployed, immigrants and persons with reduced working capacity are high-priority groups for employment-oriented measures. Employment-oriented measures are allocated and implemented on the basis of assessment of individual needs. The Labour and Welfare Administration has a broad range of measures at its disposal. It does not have specific measures for long-term unemployed, since this is a heterogeneous group, and employment-oriented measures are allocated on the basis of individual needs.

In addition, the Labour and Welfare Administration guarantees of measures for long-term unemployed and for long-term unemployed young people between 20 and 24 years of age.

The guarantee of measures for long-term unemployed applies to job seekers over 24 years who have been seeking employment for two years, and have been continuously completely unemployed during the last six months. This is thus a narrower group than that normally referred to as long-term unemployed or long-term job seekers. The guarantee of measures for long-term unemployed young people between 20–24 years applies to job seekers between 20 and 24 years of age who have been continuously completely unemployed for six months. The guarantees apply to the provision of measures. The whole range of employment-oriented measures is available for inclusion. The choice of measures is determined by individual needs.

The Labour and Welfare Directorate is not aware of any new effect studies associated with long-term unemployed and employment-oriented measures. The Labour and Welfare Directorate has no overview of funds specifically used for employment-oriented measures for long-term unemployed.

### *Article 10§5*

Vocational training and university education is free of charge in Norway. There are no tuition fees apart from a registration fee that amounts to less than EUR 100. Financial support from the Norwegian State Educational Loan Fund (Lånkassen) consists of a loan and grants to cover the costs of studying in Norway (living expenses, books, travel).

Article 10§5 (b) states that economic support must be provided whenever it is “appropriate”. It is our understanding that the article does not state that economic support must be provided in all cases. Besides lawful residence, additional conditions can be established.

One of the aims of the Norwegian system for study financing has been, and still is, to help in ensuring the availability to society and the labour market of competent personnel, cf. section 1 of the Act relating to student grants. In order to achieve this aim, it is necessary to ensure the existence of a link between the person applying for a student grant or loan and the Norwegian society/labour market. A small country like Norway cannot bear the economic burden of providing support from the State Educational Loan Fund to everyone. People who are not connected to Norway by family ties and who come to Norway either to work or to study do not immediately acquire such a link.

Norway provides a very high level of educational support. It is the Norwegian view that it is legitimate to want to ensure that there is a strong link between the person seeking a student grant or loan and Norwegian society. Therefore, people who hold a family immigration permit are immediately eligible for student support. The same applies to refugees who are granted asylum.

In our view, people who have resided in Norway for two years and who, during this period, have been part of the Norwegian labour market have acquired close ties to Norway. Our interpretation of what is “appropriate” is the same as that of the Danish authorities. We consider this interpretation to be justified and in conformity with article 10§5.

**ARTICLE 15 - *The right of persons with disabilities to interdependence, social integration and participation in the life of the community***

***The Anti-Discrimination and Accessibility Act***

The Anti-Discrimination and Accessibility Act implements obligations pursuant to article 15. In the following, we provide an overview of the main provisions of the Act. Individual questions are responded to in connection with the various sections of the Act. The text of the Act is enclosed in Norwegian and English.

*New Act of 2009*

The Anti-Discrimination and Accessibility Act (the Act of June 20 2008 No 42 relating to a prohibition against discrimination on the basis of disability) entered into force on 1 January 2009. The Act replaces the provisions of the Working Environment Act concerning discrimination on the basis of disability and concerning individual adaptation. The new provisions provide equally good protection. In addition, the new Act contains provisions concerning universal design and the obligation to make active efforts to achieve equality. The Working Environment Act includes a reference to the Anti-Discrimination and Accessibility Act.

The Act provides general protection against discrimination on the basis of disability. The protection applies to physical, mental and cognitive disabilities. The purpose of the Act is to promote equality and ensure equal opportunities for and rights to social participation for all persons regardless of disabilities and to prevent discrimination on the basis of disability. The Act is moreover designed to help to dismantle disabling barriers created by society and to prevent new ones from being created.

The Act applies in all areas of society, such as working life, education, services, transport, health, hotels and catering, cultural life, financial services, etc. The Act applies to both the private and the public sector. However, the Act does not apply to family life and other circumstances of a personal nature.

*The prohibition against discrimination*

The Anti-Discrimination and Accessibility Act prohibits discrimination and harassment. It also prohibits aiding and abetting discrimination and harassment and instructing anyone to carry out discrimination or harassment.

The Act provides that direct and indirect discrimination on the basis of disability are prohibited. By direct discrimination is meant that the objective or effect of an act or omission is that persons are, on the basis of a disability, treated in a worse fashion than other people are, have been or would have been treated in a similar situation. By indirect discrimination is meant any apparently neutral decision, condition, practice, act or omission that results in persons, on the basis of a disability, being placed in a worse position than other people.

The prohibition against discrimination applies to discrimination on the basis of a functional ability that is impaired, is assumed to be impaired, has been impaired or may come to be impaired. The protection against discrimination does not apply only to discrimination on the

basis of a person's own disabilities. It also applies to discrimination of a person on the basis of his or her association with a person with disabilities.

Differential treatment that is necessary in order to achieve a legitimate aim, and which does not involve a disproportionate intervention in relation to the person or persons so treated, is not regarded as discrimination. Such differential treatment in working life must also be necessary for the performance of the work or occupation. Preferential treatment that helps to promote the purpose of the Act is not deemed to be discrimination.

The Act prohibits harassment on the basis of disability. By harassment is meant acts, omissions or statements that seem or aim to seem offensive, frightening, hostile, degrading or humiliating. The prohibition applies to harassment on the basis of a functional ability that is impaired, is assumed to be impaired, has been impaired or may come to be impaired as well as harassment of a person on the basis of his or her association with a person with disabilities. Employers and managements of organisations and educational institutions shall, within their areas of responsibility, prevent and seek to prevent harassment from occurring.

#### *The employer's obligation to disclose information on matters concerning appointments*

The Act imposes on employers the obligation to disclose information in matters concerning appointments. A job applicant who believes himself or herself to have been discriminated against in breach of the prohibition against discrimination or in breach of the employer's obligation to ensure individual adaptation may demand that the employer provide information in writing concerning the educational qualifications, practice or other clearly ascertainable qualifications of the appointee for the post in question.

#### *The obligation to make active efforts and to report on measures implemented*

Pursuant to the Act, public authorities are to make active, targeted and systematic efforts to promote the purpose of the Act within their spheres of activity.

Private sector employers that regularly employ more than 50 workers and public sector employers, are to make active, targeted and systematic efforts to promote the purpose of the Act within their undertakings. For employers, the obligation to make active efforts includes recruitment, pay and working conditions, promotions, development opportunities and protection against harassment. Employee and employer organisations are correspondingly obliged to make active efforts within their spheres of activity. Undertakings are required to provide an account of measures that have been implemented or that are planned to be implemented in order to promote the purpose of the Act.

#### *Universal design*

Public and private undertakings that serve the general public have a general obligation to ensure the universal design of the undertaking's normal functions. Universal design is defined by the Act as design or adaptation of the main solution as regards the physical environment so that the normal function of the undertaking can be used by as many people as possible. The obligation applies to physical objects such as buildings and transport equipment and to ICT.

The obligation only applies provided that it does not entail an undue burden for the undertaking. When assessing whether the design or adaptation entails an undue burden, particular importance shall be attached to the consequences of the adaptation in dismantling disabling barriers, whether the undertaking's normal function is of a public nature, the

necessary costs of the adaptation, and the undertaking's resources, security considerations and safety considerations.

Specific provisions concerning universal design are laid down in planning and building legislation, transport legislation and other sectoral legislation.

#### *Individual adaptation*

The obligation to ensure individual adaptation is incumbent upon employers, pre-school day-care facilities, educational institutions and certain municipal social services. The obligation to ensure individual adaptation does not apply to measures that entail an undue burden. When assessing whether the adaptation entails an undue burden, particular importance shall be attached to the consequences of the adaptation in dismantling disabling barriers, the necessary costs of the adaptation and the undertaking's resources. Individual adaptation is oriented towards individual needs. The provisions concerning individual adaptation are additional to and supplement the obligation to ensure universal design.

#### *Protection against reprisal*

It is prohibited to carry out a reprisal against anyone who has made a complaint concerning a breach of the Act, or who has let it be known that a complaint may be made.

#### *Shared burden of proof*

If there are any circumstances that give reason to believe that discrimination has taken place, it shall be assumed to have taken place unless the person responsible produces evidence showing that the discrimination has not taken place. Shared burden of proof also applies to disputes concerning breach of the provisions concerning universal design and individual adaptation.

#### *Sanctions*

Anyone who negligently acts in contravention of the discrimination prohibition of the Act may be ordered to pay damages to the aggrieved party. This also applies to breaches of the provisions concerning individual adaptation. Ordinary negligence is a sufficient basis of liability for compensatory damages. In the case of discrimination in working life, there is a special provision concerning the employer's liability for compensatory damages, according to which a job applicant or employee may claim compensation without regard to the fault of the employer. Compensation for financial loss resulting from a breach of the Act may be claimed pursuant to the ordinary rules governing damages.

#### *Enforcement*

Like other anti-discrimination Acts, the Anti-Discrimination and Accessibility Act is enforced by the Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal. We refer to previous reports.

During 2009, the Equality and Anti-Discrimination Ombud received a large number of enquiries concerning the Anti-Discrimination and Accessibility Act. The Ombud has provided a written guide to the Act and has held a number of lectures in various parts of Norway. The number of cases associated with disability has increased since the Anti-Discrimination and Accessibility Act entered into force. Out of a total of 303 complaints brought before the Ombud in 2009, 154 concerned discrimination on the basis of disability. No figures are yet available for 2010 and 2011.

Very many of these complaints concerned a lack of universal design. Both municipal/central government and private undertakings have been reported to the Ombud for lack of universal design. In some of the cases, the Ombud concluded that the undertakings were in breach of the obligation to ensure universal design. In other cases, the Ombud concluded that the Act had not been contravened since it would entail an undue burden for the undertakings to make the necessary improvements.

Some of the Ombud's rulings have been appealed to the Equality and Anti-Discrimination Tribunal. Two of these are referred to below.

Norway has a separate statute concerning the establishment of councils and other forms of representation in municipalities and counties for persons with disabilities and their adaptation to the community at large. These councils are to be consulted on all matters affecting persons with disabilities.

### *Article 15§1*

#### **Discrimination in the education sector**

We refer to the Committee's conclusion of 2008 that Norwegian legislation was not in conformity with article 15§1 of the Convention as regards anti-discrimination provisions covering education for persons with disabilities.

#### *The Anti-Discrimination and Accessibility Act*

The Anti-Discrimination and Accessibility Act provides protection against discrimination on the basis of disability in schools and educational institutions. The Act entered into force on 1 January 2009. Discrimination on the basis of disability is prohibited in schools and educational institutions. The requirement regarding universal design applies to adaptation of physical conditions to the needs of the general public at schools and educational institutions. In this context, pupils are regarded as the general public. School buildings, teaching premises, canteens, etc. used by pupils attending the school are thus to be universally designed. Pupils and students with disabilities are also entitled – within reason – to individual adaptation of the teaching premises and teaching in order to ensure equal educational opportunities. This provision emphasises the rights pursuant to the Education Act. Public schools and educational institutions are obliged to make active efforts to achieve equality. We refer to the general account of the Act, above.

It follows from this that persons with disabilities are in principle to have the opportunity to attend normal school and educational provision. The Act has a strict norm for objectivity if the normal educational provision cannot be used.

Breach of the Act is subject to compensation. See the above account. We refer otherwise to previous reports.

#### *Case law*

We have no judicial precedents concerning discrimination on the basis of disability in the education sector. However, the Equality and Anti-Discrimination Ombud has received a number of complaints regarding a lack of universal design of educational buildings.

The Equality and Anti-Discrimination Tribunal considered a case concerning universal design in 2010 (Case 40/2010). The case concerned the question of the obligation to ensure universal design of a municipal school. The complainant was the Norwegian Association for the Disabled.

There was agreement that the school was not universally designed. Several entrances lacked door openers, and the thresholds of several of the entrance doors were too high. Owing to the lack of a lift, several classrooms and other common rooms were inaccessible to wheelchair users. Parts of the first and second floor of the school were only partly accessible to wheelchair users. The school had no toilets specially adapted to persons with reduced mobility.

The municipality submitted that rehabilitation falls outside the general obligation regarding universal design pursuant to the Anti-Discrimination and Accessibility Act. Existing buildings are instead to be subject to regulations issued pursuant to the Planning and Building Act. In view of the lack of such provisions, the municipality is not obliged to ensure universal design of existing buildings. It was also stated that such rehabilitation would be unduly expensive for the municipality.

The Tribunal found that the obligation regarding universal design pursuant to the Anti-Discrimination and Accessibility Act applied to both new and existing buildings. However, as long as no separate provisions have been issued laying down specific requirements with regard to universal design of existing buildings, the Tribunal concluded that the obligation to ensure universal design of existing buildings must be subject to a clearly restrictive proportionality assessment.

According to the Tribunal, on the basis of the general rule laid down in the Anti-Discrimination and Accessibility Act, only simple measures can be imposed for existing buildings. It must be possible to implement the measures without major financial investments, and without the social priorities that must be made in connection with the drafting of regulations pursuant to the Planning and Building Act. The Tribunal therefore concluded that measures such as installation of a lift and rebuilding of toilets could not be imposed where this would result in major costs for the undertaking. The Tribunal did not specify what simple measures must be carried out to satisfy current requirements. The Tribunal concluded that the circumstances were not contrary to the Act. The case has not been brought before the court.

The Ministry of Education and Research has stressed the responsibility of the higher education institutions to implement action plans as mentioned, and the institutions have reported on their efforts. However, the Ministry has not performed an assessment of these efforts, and thus cannot provide information on the concrete impact on a national level.

### *Article 15§2*

#### **Discrimination in working life**

The Anti-Discrimination and Accessibility Act provides protection against discrimination on the basis of disability in working life through prohibition of discrimination and by means of the obligation to ensure individual adaptation. These provisions are identical to those



previously included in the Working Environment Act. In addition, from the entry into force of the new Act in 2009, employers acquired an obligation to make active efforts to achieve equality (obligation to make active efforts and to report on measures implemented). We refer to the general account of the Act, above.

The Equality and Anti-Discrimination Ombud has considered a number of cases concerning a lack of individual adaptation in working life. No such cases have been considered by the Equality and Anti-Discrimination Tribunal or by the courts.

The Working Environment Act provides that in cases of discrimination on the basis of disability, the Anti-Discrimination and Accessibility Act shall now apply, cf. section 13-1, sixth paragraph, of the Working Environment Act.

Since the report of 2007, section 13-5 of the Act has thus been repealed owing to amendments to the Anti-Discrimination and Accessibility Act, which entered into force on 1 January 2009. The provision is now covered by section 12 of the Anti-Discrimination and Accessibility Act. It is laid down in the provision that employers shall, within reason, individually adapt workplaces and tasks in order to ensure that employees or job-seekers with disabilities can obtain or retain a job.

The Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal monitors compliance with and assists in implementing the Anti-Discrimination and Accessibility Act, cf. section 1 (3) of the Anti-Discrimination Ombud Act of 10 June 2005 No. 40. The Equality and Anti-Discrimination Ombud also monitors compliance with chapter 13 of the Working Environment Act with the exception of section 13-1, third paragraph, and section 13-9, cf. section 1 (4) of the Anti-Discrimination Ombud Act.

It follows from both the Working Environment Act and the Anti-Discrimination and Accessibility Act that employers shall have a particular obligation to adapt to the needs of workers with disabilities. The main difference between the provisions of the two Acts is that the Working Environment Act regulates cases where an employee who initially has 100% capacity for work suffers a reduction in working capacity with a consequent need for adaptive measures during the restorative period, whereas the Anti-Discrimination and Accessibility Act also applies in cases where an employee is already disabled when entering into the employment contract, and therefore performs in compliance with the employment contract since the employer knew at the time the contract was entered into that the workers had a reduced working capacity.

The Norwegian Labour Inspection Authority continues otherwise to monitor compliance with the employer's general obligation to adapt to the needs of workers who have suffered a reduction in working capacity owing to sickness, fatigue or the like, cf. section 4-6 of the Working Environment Act. The provision establishes the employer's obligation, as far as possible, to implement the necessary measures to enable the employee to retain his job or obtain other suitable employment. A practical aspect of the provision is obligation on the part of the employer, in consultation with the employee, to prepare a follow-up plan when the employee has been wholly or partly absent from work for a period of four weeks. The plan must contain an assessment of the employee's responsibilities and working capacity, appropriate measures by the employer, any appropriate measures involving the assistance of the authorities and plans for further follow-up, cf. section 4-6, third paragraph of the Act.

Pursuant to section 4-6, the Norwegian Labour Inspection Authority has issued orders following inspection of undertakings in Norway. In 2007, 326 such orders were issued, in 2008, 406 orders, in 2009, 152 orders, in 2010, 49 orders, and to date this year, 18 orders have been issued pursuant to this provision.

As previously reported, the Norwegian Labour Inspection Authority is responsible for ensuring that the requirements regarding accessibility for workers with disabilities have been met when assessing consent for erection of buildings or for performance of construction work involving the employment of workers. This is laid down in section 18-9 of the Working Environment Act. The Norwegian Labour Inspection Authority is stringent in its practice of this legislation. It is a fundamental requirement of building and planning that toilets and staff rooms be adapted to the needs of persons with disabilities, and that lifts be installed between floors, at least in new buildings, and generally in connection with renovation of buildings.

As regards case law, we are familiar with cases concerning claims of unfair dismissal where one of the matters raised has been the question of whether the employer has fulfilled his obligation to adapt to the needs of disabled workers. See, inter alia, the judgments of Oslo District Court TOSLO-2009-117509, Drammen District Court, RG-2005-807, and Bergen District Court TBERG-2010-33846. In these cases, the court found that the employer had failed to fulfil his obligation to make such adaptation.

### **Employment of persons with disabilities**

If there are applicants with disabilities who are qualified for a vacant position, government agencies are obliged to interview at least one such qualified applicant. The applicant must meet the minimum formal requirements for the job. Agencies may also deviate from the merit principle by recruiting such an applicant even though there are better qualified applicants.

The definition of disabled, however, is quite narrow. Applicants must be registered as disabled by the Labour and Welfare Service according to objective medical criteria. They must have completed rehabilitation arranged by the Labour and Welfare Service and they must be recipients of disability benefits. In addition, they must be unemployed and be expected to be unemployed in the foreseeable future.

The Ministry of Government Administration, Reform and Church Affairs, jointly with government agencies, has organized a trainee program for disabled persons with higher education. Many agencies are reluctant to recruit persons with disabilities, and HR staff and managers have little experience with disabled persons. Also, many well educated persons with disabilities have little work experience. Most trainees are initially hired temporarily for one and a half years but, to date, approximately half of them have been recruited permanently after the trainee period.

The trainee programs increase the employer's opportunity to recruit well-qualified candidates and to gain experience and competence in adaptation. Trainees must have formal qualifications and personal qualities needed for agency positions, and are expected to carry out normal agency tasks. They are paid in accordance with normal wage rates. As well as participating in a special education program with themes such as "how to become a good civil servant", they take part in networking with other trainees, and are given support by external

mentors. Networking is also arranged for middle managers responsible for trainees. Approximately 20–25 trainees have attended each program. The third program started in the spring of 2011.

Under the Basic Agreement for the Civil Service, agencies are required to encourage underrepresented groups, such as disabled persons, to apply for vacant positions.

According to Statistics Norway, approximately 7–8% of all civil service employees are persons with disabilities.

### ***The adaptation guarantee***

The adaptation guarantee is a scheme designed to ensure the security of employees and employers that persons with disabilities are provided with the necessary aids, adaptation and follow-up. The scheme, which consists of an advance guarantee of adaptation and follow-up at the workplace, is available to both individuals and enterprises.

The adaptation guarantee is a new working approach to assisting persons with disabilities who need adaptation in order to obtain or retain employment. The adaptation guarantee includes all available instruments and measures, and is a written service guarantee obliging the Labour and Welfare Administration to provide rapid processing of cases and adapted follow-up of participants and employers within defined time limits.

The guarantee may be given to undertakings, job seekers and persons currently in employment. Use of the adaptation guarantee helps to ensure that more people obtain employment, and supports the assistance and follow-up of the Labour and Welfare Administration. The guarantee plays an important role in achieving a higher rate of employment, particularly because it provides security not only to users, but also to employers, who become more open to taking on workers with reduced working capacity, while ensuring the participation of all parties. The purpose of the guarantee is to ensure a high quality of assistance and service from the Labour and Welfare Administration.

Priority is to be given to users with disabilities who need to obtain employment, particularly young users in the transition between education and work. Use of the adaptation guarantee increases in pace with the increased employment orientation, follow-up and marketing activities of the Labour and Welfare Administration. The guarantee is used in an increasing number of priority areas, e.g. providing for and following up users who need adaptation and technical aids, assisting young people to enter the labour market, following up sick leave and attending to matters concerning mental health and the workplace.

The adaptation guarantee scheme became nationwide from 2008. At the end of August 2011, a total of 1 529 users and employers have an active adaptation guarantee.

### ***Transition to work for persons with reduced working capacity***

In October 2011 there were 58 361 persons with reduced work capacity participating in active labour market programmes.

Since the date of the previous report, the basis for the statistics concerning persons with reduced working capacity has been changed. The statistics were previously based on status reports from former job seekers indicating their current status on the labour market. In

2009, register-based statistics were introduced, where the reference date for all former NAV users is set at 6 months following termination of their job-seeker status.

The figures from the monthly register-based statistics will deviate from the previous statistics based on status reports from the users. The introduction of the new production arrangement will thus result in a break in the statistics.

In 2011, the transition to work for persons with reduced working capacity amounts to an average of approximately 46% up to the end of July.

### **New memorandum of understanding on a more inclusive working life that applies from March 2010–31 December 2013**

Objective of the cooperation:

The primary objective of the Agreement on an Inclusive Working Life is:

To prevent and reduce sickness absenteeism, strengthen presence at work and improve the working environment, and prevent exclusion and withdrawal from working life.

The three subsidiary objectives at the national level outlined in previous agreements on an inclusive working life are to be maintained. In order to achieve these objectives, more importance is attached to systematic preventive EHS measures in undertakings than in the previous agreements.

The three subsidiary objectives are:

- Reduce sickness absenteeism by 20% compared with the level in the second quarter of 2001. This entails that sickness absenteeism at the national level is not to exceed 5.6%.
- Increase employment of persons with disabilities. The specific objectives of the previous supplementary agreements are to be maintained.
- Prolong gainful employment of persons over 50 years of age by six months. By this, is meant an increase compared with 2009 in the average duration of gainful employment (for persons over 50 years of age).

#### **Employment strategy for disabled**

In 2011 the Norwegian government presented a new Job strategy for persons with disabilities. The Job strategy was partly based on objective 2 of the Agreement on an Inclusive Working Life, to increase employment of persons with disabilities. The strategic plan was made in close cooperation with the social partners and organisations representing persons with disabilities. The target group for the strategic plan will be persons with disabilities who, for various reasons, are unemployed, but wish to work – especially young persons. The job strategy includes a range of concrete measures which will be put into action in 2012 such as strengthening work-related measures, hiring project leaders and coordinators in NAV and strengthen an existing system of ability assistance which helps individuals function in working life.

#### **Reform of the Norwegian Labour and Welfare Services – NAV**

### The organisation

By the start of 2010, the Labour and Welfare Administration had mainly completed its establishment of NAV offices throughout Norway. The organisational part of the task assigned by the Storting and the Government involving implementation of the NAV reform was thus complete. Establishment of only a few units remained. A demanding establishment phase, characterised by readjustment and considerable pressure of work for all employees, was thus at an end. In 2010, with the physical establishment behind us, the Norwegian Labour and Welfare Administration now entered a new phase.

### New follow-up methods and rehabilitation allowance

The entry into force on 1 February 2010 of section 14a of the Act relating to the Norwegian Labour and Welfare Service heralded a new stage in the realisation of the NAV reform. This new provision introduces a right on the part of users to systematic assessment of their need for assistance with regard to employment. The provision establishes the right of all users to individual assessment regardless of the benefits they receive. This has provided the Norwegian Labour and Welfare Administration with a new common working method for follow-up of users across the boundary of responsibility between state and municipality. The new provision and the introduction of rehabilitation allowance from 1 March 2010 together constitute a milestone for the Labour and Welfare Administration.

### The Agreement on an Inclusive Working Life

The new Agreement on an Inclusive Working Life between the social partners and the Government, which came into force on 1 March 2010, largely maintains the responsibility of the Labour and Welfare Administration. The agreement assigns major responsibilities to the Labour and Welfare Administration associated with efforts to reduce sickness absenteeism, a task of major importance both to individual workers/job seekers and to undertakings. Here too, the responsibilities of the Labour and Welfare Administration form part of the goal of “more people in work and in activity, fewer on benefit”. The National Coordination Unit for Inclusive Working Life was established on 1 January 2011. However, it will be some time before it is staffed and fully operative.

### New pension scheme

New rules for retirement pension were introduced on 1 January 2011. The rules affect all current and future recipients of retirement pension, but have most significance for persons born in 1944 or later. The Labour and Welfare Administration has responsibility for preparing and implementing the pensions reform adopted by the Storting in spring 2009. In 2010, considerable efforts were invested in preparing the implementation of the new pension scheme. These efforts included information and guidance to users both directly and via the media, as well as via the Labour and Welfare Administration’s website. In addition, claims from users who wished to draw pension from January 2011 were effectively dealt with as they were received.

### Quality of benefit management

The control strategy, the Action Plan for Internal Control 2010-2011 and ongoing follow-up have provided the agency with a more systematic approach to improvement of internal control in the area of benefit. By implementing key matching and other measures outlined in the Action Plan, the agency improved the quality of decisions. In connection with certain types of benefit, electronic document management also helps to enhance traceability during processing of cases.

### User-oriented services

In 2010, the Labour and Welfare Administration further developed its web-based services. The portal nav.no has been given a tidier and more user-friendly layout with a particular emphasis on self-service. The pensions project has developed a web-based service for calculating pensions (“Din pensjon” [Your pension]) which is used a great deal. From 1 November, most of the forms available from the Labour and Welfare Administration were made available on the Web.

*Telephone services* in the Labour and Welfare Administration have been gradually improved during 2010. From December 2009, five of the counties with helplines have been linked together in a single queue. This means that, when users ring a helpline in their county, the call is automatically channelled to the adviser who can answer most rapidly, regardless of which helpline the adviser belongs to. Goal achievement in relation to telephone answers has increased throughout 2010. The debt telephone – 800GJELD – a national financial advice helpline at the Labour and Welfare Administration has been in operation for over a year and has provided many people with useful guidance.

### **Article 15§3**

#### **Discrimination in the housing sector, transport, culture, entertainment, etc.**

The Anti-Discrimination and Accessibility Act provides protection against discrimination on the basis of disability in all areas, including housing, transport, ICT, services, culture, entertainment, etc. The Act entered into force on 1 January 2009. The Act prohibits discrimination as regards housing, transport, culture, entertainment, etc. Public authorities are to make active, targeted and systematic efforts to promote the purpose of the Act within their spheres of activity. In addition, there are provisions concerning universal design and individual adaptation in the pre-school day care sector. We refer to the general account of the Act, above.

The Equality and Anti-Discrimination Ombud has considered a number of cases concerning discrimination in areas associated with participation and accessibility in the community. The cases concerned issues such as access to bars, restaurants, etc., parking, access to use motor vehicles in built-up areas and universal design of shops. One of these was appealed to the Equality and Anti-Discrimination Tribunal. This case (29/2010) involved a complaint concerning lack of universal design at an airport. The complainant submitted that the airport lacked a lift for access to the street. The Tribunal concluded that this was a breach of the obligation to ensure universal design. The Tribunal ordered the undertaking to establish a satisfactory solution as soon as possible, and within six months at the latest. The case has not been brought before the court.

### Other measures

*The action plan “Norway universally designed by 2025”*

In 2009, the Government submitted an action plan for universal design and increased accessibility 2009–2013. It is the Government’s vision that Norway will be universally designed by 2025. This is ambitious, but possible. The overall goal is that the action plan is to support the implementation of a new Anti-Discrimination and Accessibility Act, a new Planning and Building Act as well as other new legislation concerning universal design. The action plan is also intended to help in meeting Norway’s obligations in connection with a ratification of the United Nations Convention on the Rights of Persons with Disabilities. A copy of the report (English version) is enclosed here.” The English version is available at [http://www.universal-design.environment.no/images/stories/Norway\\_universally\\_designed\\_by\\_2025-web.pdf](http://www.universal-design.environment.no/images/stories/Norway_universally_designed_by_2025-web.pdf)

### **Access to technical aids for persons with disabilities**

The term “persons with disabilities” covers a wide range of cases, demanding different types of measures, including technical aids and necessary adaptation in order to facilitate participation in employment, education and daily life in general. Sections 10-5, 10-6 and 10-7 of the National Insurance Act state explicitly the individual right of permanently disabled persons to technical aids. In Norway, the provision of most technical aids is based on a “borrow-and-return” model, in which the National Insurance Administration covers the full cost and remains the owner. However, for a few types of technical aid financial support is granted directly to the disabled person, who can choose directly among different suppliers according to her/his personal needs and individual preferences. Technical aids in these categories include products, such as hearing aids and ordinary, unadapted motorised vehicles. Financial support for hearing aids normally covers the full cost, whereas, in the case of ordinary, unadapted motorised vehicles, a means-tested grant may be obtained, subject to a maximum of NOK 149 200. In the case of disabled persons assessed to have no functional capability to move in and out of an ordinary vehicle, the National Insurance Scheme may cover all costs of obtaining an individually adapted vehicle which can carry wheelchairs.

Technical aids are provided to help in solving practical problems of disabled persons at home, at school or at work, and require expertise from different sectors and levels of government. The municipal sector is responsible for health and rehabilitation at the local level, including assessing needs and providing technical aids to provide for temporary needs. When the municipalities in a region lack the required expertise, they can call upon additional expertise from an assistive technology centre in the region. There are 18 assistive technology centres throughout the country, each one of them responsible for coordinating training and expertise for the municipalities in their respective region.

As in all other sectors under the Norwegian Labour and Welfare Administration, a regulatory framework and formal processes have been established in accordance with national legislation for handling appeals and complaints concerning provision of technical aids.

In June 2010, in order to meet the needs of an ageing population and the challenges arising from increased longevity, the Norwegian Government circulated for comment a green paper proposing a number of amendments to legislation, policy and practice on the basis of a review of existing policies in the field of technical aids. The responses and views of numerous organisations and individuals to the green paper, along with the proposals set forth, provide a good starting point for continued improvement and development of legislation, policies and practice in the field of technical aids.

As a general rule, there is no charge for technical aids.

## **Universal design**

As a follow up of section 11 of the Anti-Discrimination and Accessibility Act on Universal design of ICT, the Ministry of Government Administration and Reform is preparing regulations which will specify the requirements for universal design of ICT solutions with a focus on the user interfaces used in vending machines and on-line solutions. Requirements will be based on international standards and guidelines.

The Planning and Building Act provides requirements regarding universal design of public buildings and work buildings. Requirements are also provided regarding accessibility to dwellings. The requirements regarding universal design and accessibility are designed to ensure that buildings, dwellings and outdoor areas as far as possible can be used by everyone without special adaptation or special solutions. The main solution must be inclusive, so that it may be used equally by as many people as possible.

By means of the action plan for universal design and increased accessibility, the Government has set targets for ensuring equality and promoting equal opportunities for all, regardless of functional ability. The plan is being implemented by providing information and raising competence and by means of legal and economic instruments.

## **Housing**

There is no specific provision concerning housing rights in legislation but the Government is required to provide appropriate housing for disadvantaged groups including people with disabilities. The Government's main aim is to increase the number of specifically adapted dwellings and residences. In 2006, 37% of Norway's social housing was fully accessible to wheelchair users whereas this was the case in only 7% of ordinary housing.

### **Accessibility - housing**

No complete enumeration investigating accessibility in the housing stock has been conducted since the last Population and Housing Census in 2001. However, there are questions concerning the accessibility of housing in the Surveys of Living Conditions, which are selective surveys. (Note: This does not refer to universal design)

In 2001, the Population and Housing Census showed only 7% of the housing stock to be accessible to wheelchair users. By accessible is here meant that a wheelchair user can use the bathroom, WC, one bedroom, kitchen and living room.

The questions concerning housing conditions in the Survey of Living Conditions ask about accessibility outside and inside the dwelling. In the 2007 survey, 17% of households state that the household has at least one member with disabilities. Physical disability is given here as the most usual type of disability. In the living conditions statistics, a dwelling is deemed accessible when a wheelchair user can access the dwellings entrance door and enter the dwelling as well as use all rooms in the dwelling. In 30% of dwellings, there are no obstacles to accessibility outside the dwelling. In 24% of dwellings, a wheelchair user would have no problems in entering the dwelling through the entrance door.

When the wheelchair user enters the dwelling, he or she needs to be able to use the various rooms. An important classification here would be dependent on whether or not the dwelling



has two or more floors. Detached houses in Norway traditionally have two or more floors, and 56% of dwellings have two or more floors. In these cases, a major measure of accessibility inside the dwelling is the question of which rooms are on the entry floor. In the 2007 survey, 10% of all dwellings had full wheelchair accessibility both to the entrance door of the dwelling and inside the dwelling, i.e. all types of room are accessible to wheelchairs and are located on the entrance floor. This is a significant increase from the 2004 Survey of Living Conditions, which showed that 7% of dwellings had such accessibility.

The new Planning and Building Act of 2010 tightened requirements regarding accessibility for new dwellings. In the case of dwellings with main functions on one floor (bathroom, WC, at least one bedroom, kitchen, living room), access shall be without steps. Requirements are imposed regarding accessibility inside the dwelling and regarding storerooms and balconies. A lift is now required in multi-dwelling buildings with three or more floors. Accessibility also applies to fire safety and evacuation of buildings.

### **Housing grants**

Housing grants for adaptation of dwellings are provided for improvement of existing dwellings, particularly for elderly and disabled persons residing in dwellings that have not been adapted for use by disabled persons.

In 2010, a total of 1851 grants were made amounting to a total value of NOK 86 million. In 2012, the allocation for grants for adaptation of dwellings will be increased by NOK 23 million.

### **Access to transport**

A universally designed transport system is one of four primary goals outlined in Report No. 16 (2008 – 2009) to the Storting *National Transport Plan (NTP) 2010-2019*. For the plan period 2010 – 2014, the intermediate goal associated with the fourth main goal is that the public transport system is to be more universally designed. The Ministry of Transport's strategy associated with this goal is described in chapter 13 "Transport for All - Universal Design" of the National Transport Plan for 2010–2019. The agencies' efforts to meet the intermediate goal are consolidated in the sectoral action plans of the NTP. In connection with the fiscal budget for 2012, the agencies are to report on efforts and goal attainment in 2010, the first year of the NTP period.

All new buses with more than 23 passenger seats to be put in service in Norway must accommodate physically disabled persons or be universally designed. These requirements have applied to all new urban buses (class I buses) since 13 February 2004, regardless of whether or not they are in service. In the case of new suburban and express buses (class II and III buses) to be put into service, requirements regarding accessibility for persons with disabilities will apply from 1 January 2010.

In the case of express buses requirements regarding transport of persons with reduced mobility have been in place since 1 January 2006. The requirement applies to all express buses regardless of whether this was a condition of licensing. For coaches and buses with less than 23 passenger seats (class A and B buses), no specific accessibility requirements have been established.

It is up to the transport purchaser to specify requirements to the transporter regarding the standard of such vehicles.

For trains, trams and underground railways, separate regulations will be issued concerning universal design of rolling stock. No date has yet been set for this. Commission Decision 2008/164/EC concerning the technical specification of interoperability relating to persons with reduced mobility in the trans-European conventional and high-speed rail system has been implemented in the EEA Agreement.

In the planning phase and in further development of all transport infrastructure, regard must be paid to the universal design requirements laid down in the Planning and Building Act and technical regulations.

The Norwegian State Railways currently has a total of approximately 15 different main train types or variants of main train types in service. This amounts to a total stock of 364 units. The Norwegian State Railways has a programme for upgrading of stock with a lifetime beyond 2010/2011, including improved accessibility, e.g. by installation of a wheelchair lift in some carriages. The Norwegian State Railways has entered into a contract for delivery of 50 new trains that meet the universal design requirements. These trains are to be put in service from 2012.

Since 2006, approximately NOK 50 million has been allocated annually to the grant scheme whereby county authorities and municipalities can apply for funding for accessibility measures. The purpose of the scheme is to promote more rapid and better coordinated efforts by all actors involved in ensuring a more accessible transport system. Applicants are required to contribute a minimum of 25% of the costs.

The Directorate of Public Roads is revising its handbooks in order to ensure improved safeguarding of universal design in operations and maintenance and in the design of pedestrian crossings. In spring 2011, Handbook 278 *Guide to Universal Design of Roads and Streets* was issued.

An electronic guide to standards relevant to universal design of the travel chain will be launched in 2012. The Ministry of Transport is in dialogue with the other Nordic countries on further development of the guide to include standards and guidelines relevant to all of the Nordic countries. The guide will be useful to contractors seeking commissions in the Nordic transport market.

The description on page 37 of the national report of 2007 of universal service obligations (USO) and adaptation pursuant to the current Electronic Communications Act and the forthcoming electronic communications package is still correct. We do not plan any changes, but have begun to include a sentence such as: It is our experience that, although the rapid technological development may result in increased differentiation, it has also resulted in services that were previously specially adapted, such as text telephone and videotelephony, which have now become generally available on the market.

At the bottom of page 37 in the national report of 2007, we refer to the experimental scheme to provide disabled people with transport to work and education. In 2008, this experiment was transferred in its entirety to the Norwegian Labour and Welfare Administration, and is classified under aids.

## Cultural activities

At a general level, we refer to

- *the Government's Action Plan for Universal Design and Increased Accessibility 2009-2013*, which aims at implementation of universal design in Norway by 2025, and
- the following sections of the new *Act relating to a prohibition against discrimination on the basis of disability of June 20 2008, No 42 (Anti-Discrimination and Accessibility Act)*: Section 9 Obligation regarding general accommodation (universal design), section 10 Universal design of buildings, facilities, etc. and section 11 Requirement of universal design of information and communication technology (ICT).

### Access to cultural buildings

We refer to section 1-1, final paragraph, of the new *Act of 27 June 2008 No. 71 relating to Planning and the Processing of Building Applications (the Planning and Building Act)*, which is worded as follows:

*“The principle of design for universal accessibility shall be taken into account in planning and in requirements relating to individual building projects. The same applies to due regard for the environment in which children and youth grow up and to the aesthetic design of project surroundings.”*

All institutions that have new buildings or plan improvements to old ones must pay regard to the criteria for good universal design in their planning.

We refer otherwise to the previous National Report.

### Programme for accompanying persons

We refer to the previous National Report.

Access to exhibitions and activities in the archives, libraries and museums sector

In the 2008 statistical survey of museums, museums were asked to state whether their facilities were adapted for people with disabilities. Out of a total of 166 institutions, 60 (36%) answered “yes”, 83 (50%) answered “partly” and 23 (14%) answered “no”. As many as 86% have thus fully or partly adapted their physical environments.

We refer otherwise to the previous National Report.

### Digitisation

Report No. 24 (2008-2009) to the Storting *National Strategy for Digital Preservation and Dissemination of Cultural Heritage (the Digitisation Report)* establishes that

*“The Government requires that solutions for access to and dissemination of cultural and knowledge resources in archives, libraries and museums will comply with the requirements*

*of the Anti-Discrimination and Accessibility Act that new ICT solutions must be universally designed as from 1 July 2011.”*

In its grant letters to institutions in the archive, library and museum sector, the Ministry of Culture requests that websites be universally designed.

In the 2008 statistical survey of museums, museums were asked whether their websites complied with the WAI standard (*Web Accessibility Initiative*). 58 (35%) answered “yes” and 108 (65%) “no”.

### **Theatre in sign language**

We refer to the previous National Report.

### **The voluntary sector**

According to recent research, persons with disabilities participate in the voluntary sector at largely the same level as the population at large. However, there are variations. The proportionate number of persons with disabilities among members of cultural organisations is equal to that of non-disabled persons. In sports, the proportionate number of volunteers and members with disabilities is somewhat lower than that of non-disabled persons. In health, care and rescue work, the proportionate number of members with disabilities is higher than that of non-disabled persons.

### **Sporting activities**

We refer to the previous National Report. The report below has been updated in connection with the change of the Ministry’s name and the change in the grant amount.

#### *Sporting activities*

*“Sport and physical activity for all” is the primary purpose of the Norwegian sports policy. The Ministry of Culture takes specific measures to ensure that persons with disabilities*

*have the opportunity to participate in sporting activities. In order to receive financial support from the Ministry when building sports facilities, the facilities have to be accessible to persons with disabilities.*

*Through the funding of the Norwegian Olympic and Paralympic Committee and Confederation of Sports (NOC), the Ministry supports NOC in its effort to integrate persons with disabilities. The sports federations are responsible for ensuring that the disabled may participate actively in Norwegian sports.*

*Furthermore, the Ministry of Culture gives an annual grant to sports activities specifically directed towards the disabled. In 2011 the Ministry allocated NOK 1 million to this purpose, and the recipients of the grant are both nongovernmental organizations and municipalities. The purpose of this funding is to give persons with disabilities the opportunity to participate in sport and physical activity in their local environment*

**ARTICLE 20** - *The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex*

The Gender Equality Act provides protection against discrimination on grounds of sex. We refer to previous reports.

In 2010, a prohibition against asking about pregnancy, adoption or plans of having a family during hiring processes was established by law.

The Gender Equality Act was also amended so that the right of exception for religious communities is now associated with the discrimination prohibition of the Act in the form of a “just cause” provision instead of a specific exception from the scope of the Act. While upholding religious freedom, the Act establishes more clearly that women may not be discriminated against on a general basis in religious communities.

#### Other measures

Report No. 6 (2010–2011) to the Storting *Gender Equality for Equal Pay*

In 2010, the Government submitted Norway’s first Report to the Storting (white paper) on equal pay. Gender-related pay differentials have remained stable despite women’s major focus on education and employment. In its report of 2008, the Equal Pay Commission showed that pay differentials largely correspond with the gendered labour market. An additional factor is that mothers’ long absence from working life in connection with childbirth and care of small children affects their wage growth.

The Report to the Storting set out a number of specific proposals, which were adopted by the Storting. The Government wishes to ensure effective follow-up and enforcement of the right to equal pay through transparency concerning pay and pay conditions at the workplace. This will be carried out by means of gender pay statistics and an obligation on the part of employers to disclose information concerning pay on suspicion of discrimination. The Government will strengthen family policy to enable parents to share parental leave more equally. This will be achieved by increasing the leave taken by fathers by means of a clearer three-way division of parental leave, by the right of nursing mothers to time off with pay for breastfeeding and by preventing weakened wage growth owing to parental leave.

The Government has appointed an Equality Committee which, in autumn 2012, is due to present its recommendations regarding future equality policy viewed in relation to ethnicity, life cycle and social class. An interim report on equality policy instruments will be submitted in autumn 2011. Other reports that provide an improved knowledge base for developing equality and social inclusion policy in the years ahead include the green papers NOU 2011:7 *Velferd og migrasjon* [Welfare and Migration] and NOU 2011:14 *Bedre integrering* [Better Integration].

In November 2011, the Government is due to submit a new cross-sectoral action plan on gender equality.

#### **ARTICLE 24 - *Right of workers to protection in cases of termination of employment\****

The Working Environment Act is mainly concerned with providing legal safeguards for employees. An employment relationship is terminated by the provision of written notice by

the employer or employee. With the exception of time-limited employment, e.g. work as temporary substitutes, employment relationships do not expire by themselves. In section 14-9 of the Act a clear general rule is laid down that employees are to be appointed permanently. Permanent employment entails that the employer cannot terminate the employment contract unless objectively justified on the basis of circumstances relating to the undertaking, the employer or the employee, cf. section 15-7.

Specific formal requirements for notice, both by the employee and by the employer, are laid down in chapter 15, section 15-4 of the Working Environment Act. Notice shall be given in writing, and shall be delivered to the employee in person or be forwarded by registered mail. The notice shall be deemed to have been given when it is received by the employee. The notice shall inform of the employee's right to demand negotiations and to institute legal proceedings, the time limits applicable for requesting negotiations and instituting legal proceedings, the name of the appropriate defendant in the event of legal proceedings and the right to remain in the post for the duration of negotiations or legal proceedings. If the dismissal is due to staff reduction or other circumstances relating to the undertaking, information shall also be given concerning the employee's preferential right to a new appointment, cf. section 14-2 of the Act. Employees may also demand a written statement of the reason for the dismissal. A consequence of formal errors in connection with a notice may be that it is ruled invalid, cf. section 15-5, if the employee institutes legal proceedings within four months from the date that the notice is given unless special circumstances make this clearly unreasonable.

Section 15-7 of the Act establishes the invalidity of unfair dismissal. Dismissal must be objectively justified on the basis of circumstances relating to the undertaking, the employer or the employee. If the dismissal is due to circumstances relating to the undertaking, curtailed operations or rationalisation measures, the dismissal is not deemed to be objectively justified if the employer has other suitable work in the undertaking to offer the employee.

Pursuant to section 15-8 of the Act, sickness is not a ground for dismissal during the first 12 months of sick leave. If an employee has been absent owing to sickness for longer than one year, the normal rules regarding objective grounds for dismissal apply. Sickness may then under special circumstances be an objective ground for dismissal. The employer must in such case produce evidence that adaptation, relocation and other measures have been considered, cf. section 4-6 of the Act.

Nor are pregnancy or parental leave during the child's first year objective grounds for dismissal, cf. section 15-9 of the Act. When dismissing a pregnant employee, the employer must show other grounds for the dismissal than the pregnancy to be highly probable. There may nevertheless be a basis for dismissing an employee during the first year of sick leave or during pregnancy or parental leave if the employer has an objective ground, for example, necessary staff reduction.

Disputes regarding the objectivity of a dismissal must be brought before the courts for final decision. Section 17-1 of the Working Environment Act provides that the Civil Procedure Act and the Courts of Justice Act shall apply to such legal proceedings in addition to the special provisions laid down in chapter 17 of the Act. Section 17-4 regulates the time limits for initiating the specific legal proceedings. In disputes concerning dismissal with notice or summary dismissal, the time limit for instituting legal proceedings is eight weeks, but if an employee claims compensation only, the time limit is six months. The parties may however

agree upon a longer time limit for initiating legal proceedings. Where the formal requirements with regard to notice of dismissal, cf. section 15-4, are not present, no time limit for instituting legal proceedings applies.

The fairness requirement is for the most part strictly complied with. If the court finds a dismissal to be unfair, it may rule that the employee shall be able to continue in the post and/or claim compensation from the employer for financial loss as well as compensation based on circumstances relating to the parties and other facts of the case (non-financial loss), cf. section 15-12, second paragraph. If the employee has not remained in the post while the case was in progress, a ruling of invalidity entails that the employer is obliged to reinstate the employee.

The Supreme Court has recently ruled on cases of lawful/fair dismissal associated with the question of unlawful age discrimination. In a ruling of 5 May 2005, the case concerned the validity of the dismissals of ten pilots by SAS Norge AS. The principal question of the case was whether the dismissals of the pilots, who had reached the age of 60, were invalid owing to unlawful age discrimination. The Supreme Court found that selection of the dismissed pilots was based on objective considerations pursuant to section 15-7 of the Working Environment Act. In the situation in question, the decision to base the selection on criteria other than seniority did not in itself constitute a ground for deeming the dismissals unfair. Nor was the age-related discrimination unlawful within the framework of section 13-3, second paragraph, of the Working Environment Act in accordance with interpretation of the provision on the basis of the EU Council Directive 2000/78/EC and ECJ case law.

In another case, the ruling of 3 June 2009 (Norwegian Supreme Court Reports Rt. 2009, page 685), the question concerned whether it was lawful of a county authority to dismiss an employee on the ground that he had been convicted of a sexual offence. The Supreme Court found that the employee had provided his superiors with sufficient information concerning the case, and that the county authority had spent too much time on considering the matter before dismissing the man, and concluded that the dismissal was therefore invalid. Neither the long period of suspension nor colleagues' lack of confidence made it clearly unreasonable for the employment relationship to continue, cf. section 15-12, first paragraph, of the Working Environment Act. The county authority was large employer that was thoroughly capable of finding suitable responsibilities for the man. The employee was reinstated, and was also awarded compensation for his loss of earnings during the period from his dismissal to his reinstatement.

### **The Committee's request for a description of the rights of workers in cases of unilateral amendment by the employer to the substantive conditions of the employment contract**

In all employment contracts, regardless of whether the employee's appointment is permanent or temporary, a written employment contract shall be entered into. This follows from section 14-5 of the Working Environment Act. The contract shall minimally contain information concerning factors of major significance for the employment relationship, cf. section 14-6 of the Act. The same provision sets out a number of minimum requirements; the identity of the parties, the place of work, a description of the work, the expected duration, duration and disposition of working hours, among other factors.

In the event of changes to the employment relationship, section 14-8 of the Act provides that the changes shall be included in the employment contract as early as possible and not later than one month after entry into force of the change concerned. This shall nevertheless not apply if the changes in the employment relationship are due to amendments to Acts, regulations or collective agreements.

In the event of changes in the employment contract, the employee shall be entitled to engage the assistance of an elected representative or other representative, cf. section 14-5, first paragraph. The Supreme Court has found that the lack of a written contract does not invalidate the contract, but may result in its being interpreted in the employer's disfavour, cf. Norwegian Supreme Court Reports Rt. 2004, page 53. No major or substantive changes may be made unless the parties agree to enter into a new contract or the employer gives formal notice of constructive dismissal.

The employer may make some changes by virtue of his managerial prerogative. The main principle is that the basic character of the post shall not be changed substantively, and that the change shall be within the framework of the employment relationship that has been entered into. An inherent non-statutory principle of objectivity limits the employer's freedom of action. Unilateral and substantive changes by the employer may not be implemented unless the employer has objective grounds. Such changes must be objectively justified on the basis of circumstances relating to the undertaking, the employer or the employee.

In many cases, a unilateral and substantive change in terms of employment in practice involves a constructive dismissal. In such cases, the employee, if he or she does not accept the change, may demand negotiations, and may institute legal proceedings on the basis that the change is wrongful.

In Norwegian law, considerable practical importance is attached to the rule that the employee has a right to remain in his or her post as long as negotiations are in progress. The right of the employee to remain in his or her post is laid down in section 15-11 of the Act.

**ARTICLE 25** - *The right of workers to the protection of their claims in the event of the insolvency of their employer*

#### **Description of the general legal framework:**

There have been no changes in the rules of the State Wage Guarantee Scheme since the previous National Report. Current legislation is listed under item 2, below.

The Norwegian State Wage Guarantee Scheme covers employment relationships where employers' National Insurance contributions are paid. It is not a condition that such contributions have actually been paid. In cross-border cases, claims may also be covered although no employer's contributions have been paid to Norway. This may apply in cases where workers have performed work in another EEA country for an employer who can only be declared bankrupt in Norway to the extent that such workers are not covered in the country where they are insured or where they have performed work. This may also apply to workers who have performed work in Norway for an insolvent employer located in another EEA country.



Self-employed persons and contractors are excepted from the scheme. Shareholders with a minimum holding of 20% in an undertaking are also excepted unless they can show that they have not had any substantial influence over operations.

The scheme covers outstanding wage claims, etc. on the bankruptcy of the employer. Insolvent estates of deceased persons under public administration, compulsory winding-up and public administration of insurance companies and banks are treated in the same way as bankruptcies. In cross-border cases, insolvency covered by Council Directive 2008/94/EC (codified, formerly 2002/74/EC) is also treated in the same way as bankruptcy.

The types of claim covered are claims for wages and other remuneration of labour, pension benefits and compensation for loss of earnings. The period covered for such claims is limited to a maximum of six months, and the claims must as a general rule not have fallen due earlier than four months prior to the closing date. The closing date is normally the date on which the bankruptcy petition is filed at the District Court. Further to this, holiday pay is covered for a maximum of 30 months. Holiday pay must normally have been earned during the 24 months immediately prior to the closing date. Claims earned/with due dates prior to the above time limits may nevertheless be covered if the claimant without undue delay has attempted to recover the claim prior to the bankruptcy. If a claimant has had other income during the application period in the place of income from the previous employer, deduction shall be made for this. Finally, interest (from the due date to the closing date), recovery costs and costs associated with serving the bankruptcy petition are also covered. Claims during the period of notice are limited to the statutory period of notice or the period of notice subject to the collective agreement. Claims relating to individually agreed longer periods of notice are only entitled to cover to the extent that the claimant has actually performed work.

The types of claims covered generally correspond to the claims that have first priority status in a bankrupt estate. Claims submitted by the managing director and members of the board of directors are also subject to cover from the State Wage Guarantee Scheme although such claims do not have priority pursuant to bankruptcy legislation.

Maximum cover is limited to a gross amount corresponding to twice the basic amount under the National Insurance Scheme. The amount is regulated annually (see item 3, below). In addition to this are the costs associated with serving the bankruptcy petition.

A link to further information (including English information) can be found at [www.nav.no/lonnsgaranti](http://www.nav.no/lonnsgaranti) language or language form of your choice and look under *Related information*.

### **Implementation**

The State Wage Guarantee Scheme is regulated by the Wage Guarantee Scheme Act of 14 December 1973, No. 61. Other relevant legislation includes the Creditors Recovery Act of 8 June 1984, No. 59, the Bankruptcy Act of 8 June 1984, No. 58) and Council Directive 2008/94/EC on the Protection of Employees in the Event of the Insolvency of their Employer.

A link to relevant legislation can be found at [www.nav.no/lonnsgaranti](http://www.nav.no/lonnsgaranti) under *Regelverk*. Unfortunately, none of the current legislation is available in English.

The State Wage Guarantee Scheme was established in 1974 and, until 1 January 2007, was administered by the Directorate of Labour Inspection. In 2007, the scheme was placed under

the Norwegian Labour and Welfare Administration. The scheme is financed via the fiscal budget. Financing and cover is dependent on whether the individual insolvent employer has fulfilled his obligations regarding payment of employer's contributions.

The State Wage Guarantee Scheme is administered by means of cooperation between *NAV Lønnsgaranti* and the administrators of the bankrupt estate concerned. The claimants must register their claims on the bankrupt estate. The administrator of the estate considers and checks each claim before sending his recommendations regarding the claims to the State Wage Guarantee Scheme in the form of lists collating the claims submitted by a number of employees. The various cases are registered in the name of the employer's bankrupt estate, and not in the name of the individual claimant. Disbursements in respect of claims approved by the State Wage Guarantee Scheme are made to the administrator of the estate in the form of a gross amount, and the administrator of the estate is then responsible for deducting tax and any other deductions before making payments to the various claimants. The Ministry of Labour is the appeal body for rejected claims.

On payment via the State Wage Guarantee Scheme, the state takes over the employees' claims against the employer, and has right of recovery from the bankrupt estate.

#### **Relevant statistics**

The ECSR has enquired about the number of claims and their size and the proportion of claims submitted by employees of insolvent employers who are covered by the State Wage Guarantee Scheme. *NAV Lønnsgaranti* has limited statistics concerning some of these areas, and has therefore calculated averages based on the available figures for the reference period.

On the basis of figures from Statistics Norway, an average of 11 100 persons per year have been employed by undertakings where bankruptcy proceedings have been instituted. The proportion of these employees with outstanding claims who apply for Wage Guarantee coverage is assumed to have been relatively stable during the reference period. Separate figures for 2010 indicate that we receive claims from approximately 70% of those employed by bankrupt undertakings. Total disbursements from the State Wage Guarantee Scheme averaged approximately NOK 572 million per year. Earlier estimates assume that an average claimant has amounts outstanding corresponding to six weeks' wages and earned holiday pay for one year. Calculated on the basis of Statistics Norway's information concerning average pay, this indicates an average claim of approximately NOK 80 000.

Payments from the State Wage Guarantee Scheme are subject to a ceiling of twice the basic amount under the National Insurance Scheme, which is regulated annually. At the end of 2007, this was equal to NOK 125 784 and, at the end of 2010, to NOK 151 282.

During the reference period, three surveys were made of case processing time. The average processing time was found to be approximately six weeks from receipt of an application to payment.

#### **Questions from the ECSR's conclusions of 2008:**

In its conclusions, the ECSR asks about the right to coverage regarding paid absence other than holiday, re. the appendix to Article 25 (c). Wage guarantee coverage is also provided in cases where the employer is obliged to pay wages in connection with absence, e.g. during sickness or lay-off. Where an individual or collective agreement has been concluded whereby the employer shall cover the difference between sick pay, care allowance or other national

insurance benefits and normal agreed wages, this is also subject to cover. The same applies to other agreed paid leave, such as study leave and leave for the purpose of compulsory military service. Claims of this type are regarded as claims for remuneration for work and are covered within the same framework as other claims for wages and holiday pay (see item 1, above).