

[NO] Proposed Amendments to Article 100 of the Norwegian Constitution (Freedom of Expression)

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Article 100 of the Norwegian Constitution of 1814 enshrines the principle of freedom of expression.

In 1999, the Commission on Freedom of Expression presented its final report. The report includes a broad discussion of freedom of speech and a proposal regarding several amendments to Article 100. Based on this report, the Norwegian Government earlier this year released a Green Paper (Stortingsmelding), in which it presents its own proposal for amendments to Article 100. In some aspects, the Government proposal coincides with that of the Commission, in other aspects it differs. The Green Paper also includes proposals for amendments to freedom of speech legislation on the non-constitutional level.

The Government's proposal has been criticized by several commentators. This criticism has been directed partly towards the amendment process itself, allegedly undermining the public debate around this important question, partly towards the content of the proposal. Despite this, there seems to be a sufficient majority within the Parliament in favour of the Government proposal. Parliament is due to deal with the matter on 30 September this year. A summary of the contents of the Government proposal is given below.

The Government proposes to abolish the existing statutory ban on political commercials on TV. Such commercials shall, however, still be subject to statutory limitations.

On the other hand, the Government does not propose to include commercial expression under the constitutional protection of freedom of expression. This has been criticized, both because the protection of freedom of expression under the European Convention on Human Rights goes further, and because such a delimitation of the scope of Article 100 will result in considerable practical challenges (namely drawing the line between commercial and non-commercial expressions).

The Green Paper supports a strengthening of the protection of employees' freedom of expression, including rules protecting "whistle blowing" etc. However, for the present, no concrete proposals are offered in this regard.

The Government further proposes a strengthened constitutional protection against being held liable for defamatory expressions. This is not expressly stated in the proposed wording of Article 100, but a revision of the criminal defamation law is announced in the Green Paper. When it comes to racist expressions, on the other hand, the Government supports a limitation of the freedom of expression. It is argued in the Green Paper that the proposed new Article 100 should give room for a strengthening of the criminal law protection against racist and hateful expression.

The Green Paper states that the Government is willing to abolish prior censorship of films meant for adult audiences (but not of films meant for child audiences). However, the proposed wording of Article 100 does not prohibit prior censorship, except when it comes to written expression. Apart from written expression, prior censorship shall be consistent with the Constitution, provided that "weighty grounds render such censorship necessary, weighed against the rationales behind freedom of expression".

The Government further proposes to include in Article 100 that the authorities have a constitutional obligation to enhance the opportunities of individuals and groups to express themselves.

The Green Paper further states that the proposed Article 100 will open up the possibility for a statutory adoption of the principle of editorial independence. The Government also proposes that the administrative law principle of public access to government acts and information be included in the Constitution.

Green Paper on amendments to article 100 of the Norwegian Constitution

