



European network of legal experts in gender equality and non-discrimination

FLASH REPORT

Country:	Norway
Title:	The rights of Norwegian residents to export three types of social benefits to other EEA countries has been wrongfully applied in Norway since 2012, possibly from 1994
Date:	13 November 2019
Expert:	Lene Løvdal
<u>Context</u>	
Issue at stake:	The rights of Norwegian residents to export three types of social benefits i.e. sickness benefit, work assessment allowance and care allowance to other EEA countries has been wrongfully applied in Norway since 2012, when the Regulation 883/2004 was implemented into Norwegian law, possibly since the entry into the EEC agreement in 1994
Grounds of discrimination:	Disability, Racial or ethnic origin
Field of application:	Social protection, Statutory social security, Social advantages
Source:	National court decision, Policy development, Legislation
Applicable law:	<ul style="list-style-type: none">- REGULATION (EC) No 883/2004- the Norwegian National Insurance Act (folketrygdloven) of 28 February 1997 (in Norwegian only, available at https://lovdata.no/dokument/NL/lov/1997-02-28-19)- The Norwegian Anti-Discrimination Law (GEADA)

Content

Law development: On 28 October 2019, Anniken Hauglie, the Norwegian Minister for Labour and Social Affairs, informed the public that the rights of Norwegian residents to export three types of social benefits i.e. sickness benefit (*sykepengen*), work assessment allowance (*arbeidsavklaringspenger*) and care allowance (*pleiepengen*) to other EEA countries had been wrongfully applied in Norway since 2012. The Minister also stated that, to date, they had become aware of some 2400 decisions concerning Norwegian residents which had been made without taking due account of EEA law. Moreover, there had been 48 cases which resulted in criminal convictions, including 36 cases of imprisonment, the longest being eight months, because of prosecutions regarding social security fraud and reimbursement claims from the Norwegian Labour and Welfare Administration (Nav). This means that sick or injured persons, or persons with care responsibilities for such persons, have had their freedom of movement impeded without any consideration of what is reasonable and proportionate.

An investigation committee was announced by the Minister for Labour and Social Affairs on 8 November, led by professor of EU/EEA law Finn Arnesen. The committee has already been criticized for being biased, as several members have been outspoken in favour of limiting free movement as much as possible. It has also been criticized for lacking independence, because it has been created by the Ministry and Minister who must be some

of the objects of the investigation, and not by the Parliament. There are no persons with good knowledge of anti-discrimination law in the committee.

It was the National Insurance Court (Trygderetten) that was the driving force for discovering the wrongful interpretation of Norwegian law, during a number of decisions in 2017 and 2018, i.e. TRR-2016-2619, TRR-2016-2634, TRR 2017-1058, TRR-2017-2308, and TRR-2018-567.

Key points of analysis: A lot of things have gone wrong for this to happen, which have been pointed out by a number of legal experts in national media: 1) When implementing EU Regulation 883/2004 in 2012, the Government did not propose any changes in the text of the Norwegian National Insurance Act (NIA), but left it to those applying the law to handle any conflicts with EU regulations and directives. 2) The case workers, as well as many other legal practitioners, have little experience of applying EU law directly. 3) There appears to have been a widespread confusion between the political will of limiting free movement with regard to recipients of social benefits, and the actual legal situation among all relevant institutions. This may explain why it took two years from the first judgment by the National Insurance Court which pointed out the error, until the National Welfare Authorities acted upon this information. 4) Too much trust from national courts regarding the practices of the various bureaucratic institutions, is seen as a contributing factor to why this error was not discovered by national courts earlier, both in penal and civil court cases. 5) Another contributing factor which has been pointed out, especially in the cases handled by the civil courts, is a lack of access to adequate legal aid.

Norwegian law protects all the persons concerned against discrimination on the basis of disability or by association to disabled persons, ref the preparatory works to the GEADA, Prop 81 L (2016-2017) Lov om likestilling og forbud mot diskriminering (likestillings-og diskrimineringsloven) Chapter 11.2.4.

Internet link sources:

- <http://www.eftasurv.int/da/DocumentDirectAction/outputDocument?docId=5058>
Letter from EFTA Surveillance Authority to the Norwegian Ministry of Labour and Social Affairs of 4 November 2019.
- https://www.trygderetten.no/Content/108986/cache=1572276178000/Brev_ASD_28_10_19.pdf Letter from the National Insurance Court (Trygderetten) to the Ministry for Labour and Social Affairs 28 October 2019.
- <https://www.regjeringen.no/no/aktuelt/granskingsutvalget-i-eos-saken-er-klart/id2677280/> (in Norwegian), press release from the Government on the investigation committee of 8 November 2019.