



Norwegian Society for
Psychological Science

Complaint sent to ESA

Date: 06.05.2021

To the extent possible, please specify the provisions of EEA law (EEA Agreement, Protocols, Acts referred to in Annexes to the Agreement) considered to have been infringed by the EFTA State concerned:

The Norwegian Society of Psychological Science is of the opinion that Norway is in breach of article 9(1) of Directive 2006/123/EC by making exercise of non-health related psychological activities subject to an authorisation scheme, without satisfying the necessary conditions outlined in article 9(1)(a), (b) and (c). In the alternative that Directive 2006/123/EC does not apply, the same facts constitutes a violation of Directive 2013/55/EU, article 59(3).

For the sake of clarity, we will refer to professional titles with their Norwegian name. The titles referred to and its English translation follows below:

- Psykolog = Psychologist
- Organisasjonspsykolog = Organisational psychologist
- Idrettspsykolog = Sports psychologist
- Sosialpsykolog = Social psychologist
- Klinisk psykolog = Clinical psychologist

1. Relevant national law

1.1. The Health Personnel Act

In Norway, the profession of psychologist is regulated by protection of the title "psykolog"¹. Section 48 of the Health Personnel Act lists health professions

¹ Lov om helsepersonell m.v. (helsepersonelloven), LOV-1999-07-02-64.

subject to an authorisation scheme and includes "psykolog" under Section 48 litra (t). The activities of psykolog are not reserved.²

Section 74 of the Health Personnel Act prohibits the use of titles which characterizes one of the health professions, including psykolog. According to the first paragraph, only those who have a Norwegian authorization, license or specialist approval, have the right to use a professional designation which characterizes the group of health personnel in question.

Pursuant to Section 74, fourth paragraph, no one may incorrectly use titles or advertise their business in a way which gives the impression that the person in question has an authorization, license or specialist approval.

Anyone who intentionally or with gross negligence violates the provisions of the law, may according to Section 67 be punished by fines or imprisonment for up to three months.

2. Relevant EEA law

2.1. Directive 2006/123/EC

Pursuant to article 9 of Directive 2006/123/EC, member states shall refrain from making access to a service activity or the exercise thereof subject to an authorisation scheme unless the following conditions are met:

- (a) the authorisation scheme does not discriminate against the provider in question;
- (b) the need for an authorisation scheme is justified by an overriding reason relating to the public interest;
- (c) the objective pursued cannot be attained by means of a less restrictive measure, in particular because a posteriori inspection would take place too late to be genuinely effective.

Under article 15 and 39, the member states are obliged to notify ESA of measures and their compatibility with the conditions related to non-discrimination, necessity and proportionality mentioned above.

² https://ec.europa.eu/growth/tools-databases/regprof/index.cfm?action=regprof&id_regprof=599&id_profession=1580&tab=countries&quid=2&mode=asc&pagenum=1

According to article 2(2)(f), the services directive does not apply to healthcare services. However, recital 22 holds that the exclusion of healthcare services covers services provided by health professionals to patients to assess, maintain or restore their state of health, only where such activities are reserved to a regulated health profession.

2.2 Directive 2013/55/EU

Directive 2005/36/EC was revised by Directive 2013/55/EU. Article 59 of the revised Professional Qualifications Directive required member states to evaluate all regulated professions. In particular, article 59(3) requires member states to examine whether requirements under their legal system restricting the access to a profession or its pursuit to the holders of a specific professional qualification, including the use of professional titles and the professional activities allowed under such title, referred to in this Article as 'requirements' are compatible with the following principles:

- (a) requirements must be neither directly nor indirectly discriminatory on the basis of nationality or residence;
- (b) requirements must be justified by overriding reasons of general interest;
- (c) requirements must be suitable for securing the attainment of the objective pursued and must not go beyond what is necessary to attain that objective.

3. Background

Psychology is a scientific study of human thoughts, feelings and behaviour. Psychology is a broad and diverse field which includes several different branches and specializations³. Psychology as a science is diverse, and a single educational program does not provide expert competence in all areas of psychology. Psychology borders on the one hand to the cultural and social sciences, and on the other on biology, medicine and health sciences. The term psychologist is a universal term for all disciplines within psychology.

3.1. Psychology in Norway

Those who want to study psychology in Norway can choose between a six year long professional program in psychology and a 3+2 yearlong bachelor and

³ <https://www.apa.org/action/science>

master degree with specializations in different branches of psychology, following the bologna system.

3.1.1. The professional program in psychology

In order to obtain the right to use the title of "psykolog", applicants have to complete a 6 year long professional study of psychology and then apply for an authorisation from the Norwegian Directorate of Health.

Traditionally, the professional program in psychology has been considered a broad and general education in psychology. During the previous decades however, the professional program has changed from being general, with a choice of a quite diverse domain of specializations, to becoming more specialized in the direction of the health sector. The main focus of the professional program is therefore on clinical psychology. Except for the general foundation laid during the first years, the professional program does not offer knowledge and expertise in branches of psychology other than clinical psychology. The last year of the six-year program is dedicated to practice in working life. In reality, the professional program is therefore largely the same as a bachelor's degree in general psychology and a master's degree in clinical psychology with a subsequent year's practice.

After having obtained an authorisation as psykolog, the holder has the right to use the title of "psykolog" and all other variations of it, such as for instance "organisasjonspsykolog", "idrettspsykolog" or "klinisk psykolog".

3.1.2. Bachelor and master degree in psychology

The Bologna process and the introduction of the qualifications framework for higher education greatly influenced psychology education in Norway after the 2000s. Perhaps the most important change coming with the Bologna process was that the EU countries agreed on the division of higher education into three cycles: bachelor's degree, master's degree and doctoral degree.

After completing a bachelor degree in general psychology, students can pursue master's degrees in several branches of psychology, including work- and organizational psychology, sports psychology, cognitive neuroscience, cultural and community psychology, health psychology, climate and environmental psychology, developmental psychology and social psychology.

After having completed a master's degree or doctoral degree (PhD) in psychology, professionals do not, however, qualify for an authorisation as psykolog. They are not allowed to use the title of psykolog. Furthermore, they are not allowed to use the title psykolog in combination with their field of study. This means that a graduate who has obtained a master's degree (or a PhD for that matter) in organizational psychology is prohibited from using the title "organisasjonspsykolog". The same is true for other branches of psychology.

3.2 Correspondence with the Norwegian Government

By letter dated the 2nd of September 2019⁴ addressed to the Norwegian Ministry of Health and Care Services, the Norwegian Society of Psychological Science proposed to change the title protected under the Health Personnel Act from "psykolog" to "klinisk psykolog". Furthermore, we requested a clarification from the Ministry regarding the legality of using the title "psykolog" combined with the name of the psychology branch that professionals are specialized in, such as "organisasjonspsykolog".

The Ministry replied to our letter on the 18th of November 2019⁵. Our translation of the relevant part of their reply follows below:

"It appears from the Health Personnel Act § 74 first paragraph that only those who have Norwegian authorization, license or specialist approval according to the Health Personnel Act § 53, have the right to use such a professional designation which characterizes the relevant group of health personnel. Any breach of the rules is enforced by the county governor / the Norwegian Board of Health Supervision.

"Psykolog" is a protected title that can not be used by anyone other than those who have authorization or license. The title cannot be used in such a way that it can give the impression that one has such professional competence as the authorization or license requires.

Combined titles where the word "psykolog" is included are in most cases prohibited under the Health Personnel Act § 74 fourth paragraph because they can give the impression that the person has such competence as authorization or license requires, ie clinical psychologist competence. Nevertheless, some very special combined titles may exceptionally be

⁴ See Annex 1

⁵ See Annex 2

accepted based on the context in which they are used, for example because it is obvious that the combined title has nothing to do with the person in question having clinical psychologist competence. As mentioned, it is the supervisory authorities who assess whether the use of a title is contrary to the Health Personnel Act § 74."

Based on their reply, one could argue that titles such as "organisasjonspsykolog" are permitted for people other than those who have a license or authorisation, because it is obvious that the professional using such a title is not a clinical psychologist offering health care services to patients, but rather that he or she works with organisations, clients and customers.

Nonetheless, in October 2019, the Norwegian Directorate of Health answered questions from the Journal of the Norwegian Psychological Association⁶ regarding the possibilities to use combined psychologist titles without an authorisation. According to the Directorate, it is prohibited for those with a master's degree in psychology to use the titles organisasjonspsykolog⁷, sosialpsykolog⁸ and samfunnspsykolog⁹.

In a mail dated 6th of November 2020¹⁰ from the Norwegian Directorate of Health to NION, a small Norwegian counselling business with master graduates offering non-clinical psychology services, the Directorate explained that the business *"may not be mentioned in a way that can be perceived as services which characterize those services which can be offered by authorized psychologists (clinical psychologists), and furthermore, that they must not offer, or give the impression that they can offer, services which coincides with what characterizes the services offered by authorized psychologists"* (emphasis added).

In other words, the Health Directorate does not only prohibit combined titles which are somewhat similar to the protected title of psykolog. It also prohibits offering services which coincides with what characterizes the services offered by authorized psychologists, despite the fact that those activities are not reserved for psykolog. It is clear that Norway would have to reserve activities for psykolog in order to prohibit other professionals from offering services which includes such activities.

⁶ <https://psykologtidsskriftet.no/nyheter/2019/10/helsedirektoratet-gjor-endringer-i-bruk-av-psykologtittelen>

⁷ Organizational psychologist, <https://www.apa.org/action/science/organizational/education-training>

⁸ Social psychologist, <https://www.apa.org/action/science/social>

⁹ Community psychologist, <https://dictionary.apa.org/community-psychology>

¹⁰ See Annex 3

3.3 Consequences

Both Norwegian and foreign professionals with a master's degree or PhD in other branches of psychology than clinical psychology suffer a competitive disadvantage on the labour market, even within the field of their specialization, due to the inability to use a title which correctly corresponds to their field of expertise. It limits the scope of jobs that they can apply for and their real employment opportunities outside of health care, as they are competing with clinical psychologists who can freely use any combination of titles, despite only having expertise in clinical psychology. The system also allows individuals in the professional psychology program with a specialized training in clinical psychology, to present themselves as competent in all other fields of non-clinical psychology, where there is no form of specialized training in the graduate part of their program.

To our knowledge, the Norwegian peculiar protection of the psychologist title is unique in Europe and we are not aware of any other countries who protects the general title of psychologist, while reserving the use of it only to those who are specialized in one of the many psychology branches, e.g. clinical psychology. It often comes as a great surprise for foreign professors of psychology who comes to Norway to teach at the undergraduate programs in non-clinical psychology at Norwegian universities, when they learn that they are strictly not allowed to call themselves any form of psychologist, not even the ones that corresponds to their specialization, such as cognitive, personality, developmental psychologist and the like.

Thus, Norwegian and foreign professionals with a master's or doctoral degree in other branches of psychology than clinical psychology clearly suffer a competitive disadvantage on the labour market due to the fact that they cannot market or promote their services in an effective manner without being allowed to use a title describing their competence. This is being enforced when from time to time, some service providers with a master's degree or a PhD in organisational psychology or sports psychology are described as "organisasjonspsykolog" or "idrettspsykolog" by the media. What normally happens, is that people associated with the trade union for clinical psychologist contacts the media outlet and claim illegal use of titles, and consequently the media outlets will edit the titles used. Because the law is very unclear regarding what titles are acceptable, the media outlets will rather not take any chances.

The same is the case for service providers. Many members of our organization would of course like to use titles such as organisasjonspsykolog or

idrettspsykolog when promoting their services on their website or in the media. However, since the law is unclear, and the answers provided to us by the Norwegian Authorities are either vague or negative, such service providers refrain from using such combined titles in fear of potential repercussions or penalties imposed by the authorities. In our view, the unclear law and the vague answers from the authorities regarding legal and illegal use of these combined titles is also problematic from a perspective of legal certainty. It is a general principle of EU law that the law should be clear and precise, and its legal implications foreseeable. It is a common understanding among professionals in Norway today that combined psychology titles are illegal without an authorization. For that reason, professionals refrain from using them, and as a consequence, the issue is never dealt with in the national courts either.

In an analogy, it would be absurd to refuse anyone with a general degree in biology to call themselves a biologist if they did not have a clinical biological training, and that the title of biologist would be reserved for those who study clinical biology, while it would be illegal for those who study marine biology to call themselves marine biologist.

Biology and psychology are not primarily health sciences. However, certain branches of these sciences are applied in health care. Reserving titles with names that includes any variation of the science therefore seems unreasonable and unproportionate to reach the goal.

A common argument against allowing combined titles deals with avoiding confusion among patients. Patients in health care should be able to expect holders of a specific title to have certain qualifications. The Government is afraid that patients would be offered health care treatment by professionals using combined titles without being a clinical psychologist. To this argument, we have two comments.

First of all, we think that the Government is underestimating the ability of patients to make a distinction between different titles. Most people would understand that an organisational psychologist or a sports psychologist do not treat patients and do not offer health care services. They do not work with patients, but provide behavioural services to customers or clients. Furthermore, we believe that it is not decisive whether or not every single member of the public can tell the exact difference between certain titles. We note that ESA has

previously taken a similar position in another case at the EFTA Court regarding dentists¹¹.

Second, professionals with a master's degree in other non-clinical areas of psychology do not wish to offer health care services to patients. If a professional is approached by a patient who incorrectly believes that he or she offers health care services, the professional would of course refer the patient to the right place instead of offering health care services that they are not qualified for. In the unlikely event that the professional would offer health care services to a patient in need, it would in any case be unlawful according to § 4 of the Health Personnel Act which states that *"health care personnel shall carry out their work in accordance with the requirements for professional soundness and care which can be expected based on the health personnel's qualifications, the nature of the work and the situation in general"*.

4. Possible breaches of EEA law

By requiring professionals to obtain an authorisation as a clinical psychologist in order to use titles such as organisasjonspsykolog, idrettspsykolog, sosialpsykolog or other words combined with the word "psykolog", the Norwegian practice does not comply with Directive 2006/123/EC, article 9(1), or in the alternative that the services directive does not apply, it does not comply with article 59(3) of Directive 2013/55/EU.

4.1 Directive 2006/123/EC

Although health care services are exempt from the scope of Directive 2006/123/EC, it is clear that this exemption does not apply to the case at hand for two reasons. First of all, the services of organizational psychologists, social psychologists and other non-clinical psychological services are not health care services. Only the services offered by clinical psychologists can be considered health care services because only clinical psychologists are considered health care personnel who assess, maintain and restores health of patients, cf., recital 22. Furthermore, the exemption of health care services only applies where the activities related to such services are reserved to the regulated health profession. In this case, it is undisputed that Norway has not reserved the activities of psykolog.

¹¹ Case E-17/14 EFTA Surveillance Authority v. The Principality of Liechtenstein [2015], para. 27.

In order to make access to the service activity or exercise thereof subject to an authorisation scheme, Norway must satisfy the conditions laid out in article 9(1):

- (a) the authorisation scheme does not discriminate against the provider in question;
- (b) the need for an authorisation scheme is justified by an overriding reason relating to the public interest;
- (c) the objective pursued cannot be attained by means of a less restrictive measure, in particular because a posteriori inspection would take place too late to be genuinely effective.

4.1.1. (a) the authorisation scheme does not discriminate against the provider in question

To our knowledge, the same restrictions related to use of title for Norwegian master graduates in psychology, applies similarly to master graduates from other EEA countries. If a professional from another EEA state has a master's degree in any other branch of psychology than clinical psychology, then the person would be denied the right to use a title which describes his or her competence as long as it includes the word psykolog. The person would have to obtain an authorisation as a clinical psychologist in order to use a combined title.

An example of this can be seen in Annex 4. A forensic psychologist from the UK applied for authorisation in Norway¹². In the UK, there are several protected psychologist titles, including clinical psychologist, occupational psychologist and forensic psychologist¹³. The UK-citizen was a registered forensic psychologist in the UK, but was denied authorisation as "psykolog" in Norway. In Norway's view, his education prepared him for another profession, since he was a forensic psychologist and not a clinical psychologist. It is clear that the application should have been dealt with in a different manner. Either by providing compensation measures in accordance with article 14 of Directive 2005/36/EC, or by providing partial access in accordance with article 4f of Directive 2013/55/EU, so that he could offer the services of forensic psychologists in Norway, under the title of "forensic psychologist" or a Norwegian equivalent.

4.1.2. (b) the need for an authorisation scheme is justified by an overriding reason relating to the public interest

¹² See Annex 4

¹³ <https://www.hcpc-uk.org/about-us/who-we-regulate/the-professions/>

The Norwegian Government justifies the authorisation scheme and the need to protect the title of psykolog by overriding reasons related to public interest and health. The authorisation scheme is meant to guarantee that everyone who uses the title of psykolog has a common educational background and are qualified to deliver health care services to patients.

We acknowledge the need to protect the title of health professionals. However, we believe that the title protection in its current form stretches far beyond what is necessary and what could be considered proportional.

Restricting the use of titles such as organisasjonspsykolog, sosialpsykolog or idrettspsykolog cannot be justified by reason relating to public interest. The activities associated with these titles are not health care activities and do not fall within Norway's justification.

4.1.3. (c) the objective pursued cannot be attained by means of a less restrictive measure, in particular because a posteriori inspection would take place too late to be genuinely effective.

The objective pursued is to protect patients and to ensure that they receive treatment from qualified health care professionals. Because the protected title is "psykolog", it does not only cover the branch of psychology which deals with health care (clinical psychology), it also covers all other branches of psychology and prohibits professionals who does not work with patients or in health care to use a title which describes their competence. We therefore believe that the restriction is not proportional and that the goal of protecting patients can be attained by means of less restrictive measures. For instance, Norway could protect the title "klinisk psykolog" (clinical psychologist) only, and allow professionals of other psychology branches to use a title which describes their competence, such as organisasjonspsykolog or idrettspsykolog.

4.2 Directive 2013/55/EU

In the alternative that the Services Directive does not apply, we believe that article 59(3) of Directive 2013/55/EU should apply to this case. This article contains the same requirements regarding the restriction of access to a profession or restricting pursuit of a profession to specific professional qualifications. The article also mentions the use of professional titles as a means of restriction, specifically.

In our view, Norway is restricting the pursuit of non-clinical psychological

activities through the use of a protected professional title in a way which is not justified by overriding reasons of general interests, and which goes beyond what is necessary to attain the objective of protecting patients.