

Children in Lockdown: Children's Rights, Covid-19 and the Case of Norway

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Abstract

Using Norway as a case study, this blog articulates a constitutional law critique of the impact of Covid-19 interventions and lockdown measures on children.

Introduction

“The lost generation of the Covid-19 pandemic is not those at risk over 65, but our children and youth, particularly at present here in Larvik municipality. We communicate with children subjected to violence by siblings, threats, mothers who cry all day, children with mentally ill parents, parents with drug and substance abuse problems, parents in violent conflict with each other, parents under enormous psychological strain due to lay-offs and financial problems and children with parents subjecting them to physical and mental violence, neglect and sexual abuse... why should we be in a care home nursing old people when the children are screaming for our help?” ([letter from 19 school health nurses to Larvik Municipality April 13, 2020](#), the authors translation)

Medically (while [more scientific studies are necessary](#)), COVID-19 largely seems to have [little impact](#) on children. However, children have been deeply affected by the lockdowns implemented to protect everyone else's vulnerability. There is one issue which has so far received scant attention in the Covid-19 English-language constitutional law [analysis](#), namely that of the ramifications of domestic lockdowns for children's constitutional protections (but [here](#)). Using Norway as a case study, we identify a set of issues and propose how a critique could have been articulated.

The 1989 Convention on the Rights of the Child (CRC), article 3, lays down that ‘in all actions concerning children [...] the best interests of the child shall be a primary consideration’. States are accordingly obliged to ensure the children's necessary protection as well as to control the institutions responsible for the execution.

While relatively few countries have explicit constitutional protection guarantees for children, the almost universal ratification of the CRC has [influenced states](#) to transform some of their obligations into constitutional recognition and protection of children's rights on a domestic level.

CRC is a binding part of Norwegian law and its influence is reflected in the 2014 amendments of [the Norwegian Constitution of 1814](#). According to Article 104, Children have the right to respect for their human dignity and the right to be heard. Their best interest is deemed a ‘fundamental’ consideration. Moreover, children shall have the right to receive basic education and a guarantee by the government to safeguard their individual abilities and needs (Article 109).

However, even where there are specific constitutional protections for children, such as in Norway, we are concerned that the academic community and civil society have made insufficient efforts at addressing issues through a constitutional lens. This amounts to a doubly missed opportunity, in terms of taking children’s rights seriously and in terms of getting concerns about the impact of Covid-19 lockdowns on children taken seriously.

Norway: A Covid-19 ‘success story’

So far, Norway is a COVID-19 ‘success story.’ It closed schools, businesses and international travel in mid-March, and significantly restricted freedom of movement within the country. Despite being ‘unprepared’ for a (predicted) pandemic, the health sector has coped. By the first week of April – amidst concerns about the [skewed impact](#) on immigrant populations – the outbreak was declared to be ‘[under control](#).’ The subsequent impact has been comparatively mild. By [July 1st](#) there were 8,887 confirmed cases, 251 deaths and a total of 338,860 individuals tested. While this forceful response had immediate and severe implications for the Norwegian economy, the impact is widely expected to be [partly mediated](#) through use of the country’s sovereign wealth fund.

In the domestic Norwegian context, legal scholars have asked questions about [the rule of law](#) and [human rights](#) for example with respect to [the right to health information and minorities](#) or [tracing apps and data protection](#). But so far, there has been no discussion of the rule of law and children.

As almost everywhere else, children were required to acquiesce to a radical reorganization not only of their home situation, social life and daily routines, but also to their education, safety and security and access to healthcare in order to protect the adult population. From the start of the lockdown on [March 12](#), there were concerns about the heavy burden carried by children, ranging from near-abandonment by local health services and schools to being left alone with abusive or drugged adults with no recourse to assistance or escape. As feared, the effects on vulnerable children and adolescents were disproportionate and serious. A government [report](#) from April 20 found that major actors had overreacted in focusing on infection prevention to the detriment of services for vulnerable children and adolescents.

Five reports from [National coordination group for services to youth and children during Covid-19](#) forcefully criticize unwarranted use of home office, re-assignment for child protection staff and a drastic reduction of child welfare services. However, in these reports, there is no systematic reflection on risk, vulnerability and impact

assessments with respect to children's human rights and no mention of children's constitutional rights at all. The Norwegian Children's ombudsperson has been [highly engaged](#), but with [limited](#) emphasis on constitutional rights. We must do better.

1. Right to health

The children's right to health is enshrined in the Norwegian constitution as well as in Art 24 of the CRC. States are obliged to work for the full realization of this right and to ensure the provision of necessary medical assistance and health care to all children especially the development of primary health care.

The central Norwegian governmental infrastructure for children's health and social services is based on municipalities' legislation, such as the Act on Health and Social Care, the Education Act and the Act on Child Welfare Services. In case a child needs more specialized health or social services, state run facilities are responsible for fulfilling the child's rights.

The lockdown entailed a [reduction of capacity](#) to carry out or even a halt of health care services for children because of health personnel being reassigned to other tasks in municipalities. Children in need of *and* with the right to treatment for their mental health problems had to wait longer for receive necessary health care. Health care services for children with the need *and* right to compound services ceased. According to Norwegian law, municipalities are obliged to provide certain health care services to its citizens, regardless of age. Being a statutory obligation, municipalities have no discretionary power to postpone or cease those type of services, and no exemption was adopted by the government during the lockdown. Ceasing or reducing these services with no references to or consideration of children's rights led to an absence of necessity and proportionality test, which might lead to unnecessary continuation of the violation of children's right to health.

Moreover, migrant children's vulnerability due to lack of measures by the authorities to lessen the impact of inequality became conspicuously visible when [migrant communities where overrepresented](#) as carriers of the COVID-19 virus in Norway in the beginning of April 2020. Children's right to health must not be undermined as a result of [discrimination](#). A vital part to realize children's right to health without discrimination is the child's access to appropriate information on [health issues](#), closely related to children's [right to participation](#). Yet, at the start of the outbreak, the information provided by the government was [insufficiently](#) available, targeted and timely, in sum also jeopardizing the right to health of migrant children.

2. Right to education

Article 109 of the Norwegian Constitution states children's right to education, reinforced by reference to international [human rights documents](#) with [similar wording](#). The main features of state obligation in international and national law is to make primary education compulsory for children and available free to all. While this does not necessarily seem to be required considering the wording of international

law and Norwegian national law, the UN Committee on Economic, Social and Cultural Rights states explicitly that primary education is a school system for the [basic education of children outside the family](#). To educate children in [available and accessible schools that provide acceptable quality and adaptable form and substance](#) of education is an effective tool to ensure that the right to education is realized in a non-discriminatory way.

The lockdown of primary and secondary schools in mid-March resulted in an unprecedented national home schooling experiment – [against the advice of public health experts](#) – with teachers educating their pupils with the assistance of digital solutions and parents. While this appears to have worked for the majority of children, not all children experienced available, interested and capable school owners, teachers and parents, when assistance was needed. To access education became dependent on adequate connectivity, data equipment, and digital competence. Nationally, the quality and amount of teacher-pupil interaction appear to have varied to an astonishing degree. Children with special needs and children living in socio-economically marginalized households faced [additional barriers](#) – including invisibilisation in government recommendations on education – and became disproportionately vulnerable to the priorities of local governments.

3. Right to safety and security

Children have the right to personal integrity according to Article 104 of the Norwegian Constitution. CRC Article 6 requires [states to work](#) in a comprehensive manner so that children are enabled to grow up in a healthy and protected manner, free from fear and want. CRC Article 19 emphasizes that State Parties must implement proper laws as well as administrative, social and educational measures to protect children from all forms of violence, both physical and mental, including in the private realm of the family, and in care homes and other institutions. According to [the CRC Committee](#), the primary prevention of all forms of violence through public health, education, social services and other approaches is of paramount importance. A general lockdown of these services is therefore alarming with respect to the protection of children against violence.

On a national level, [several professions](#) were defined as [critical to society](#), enabling parents working in these professions to still send their children to childcare and school. The fact, that professionals working in child welfare services were [not initially included](#) in this definition exemplifies the lack of awareness for children's rights and state obligations.

The child welfare system reports [fewer requests](#) for help from children and youth living with violence and abuse. Children with minority and immigrant background again seem to have been [disproportionately affected](#). [The child welfare services experienced](#) that parents started to refuse assistance because of their concerns for infection. More than half of the meetings with and follow-ups of families were cancelled particularly by families that previously had *not* been positive to interact with the Child welfare services before the outbreak.

Concluding observations

Empirically, the issue is the disproportionate impact on children and the burden they have been required to carry. Politically this concerns the legitimacy of tradeoffs between the safety, health and well-being of the majority population of non-children and the 'minority population' of children, and how far Norway can go in prioritizing the former. Legally, the problem is the failure to calibrate interventions and frame impact through the prism of constitutional law guarantees — and by that opening up for considerations of necessity and proportionality.

In the event of a second lockdown this fall, starting from its constitutional obligations, the government should:

- **Mandate risk, vulnerability and impact assessments using CRC and the Constitution as points of departure.** This means framing problem definitions and interventions with due concern for, but also awareness of children's human rights and constitutional protections.
- **Make economic investments in child sensitive** testing and contact tracing strategies.
- **Include jurists with children's rights competence** in all expert groups to mainstream children's rights perspectives in all assessments of government interventions, policies and 'Covid-19 law'.
- **Include assessments of short, medium- and long-term consequences** of interventions for children. In a [life-course perspective](#) a child's experiences has large impact on its adult life. In an ethical and moral perspective, children being heavily dependent on society, their well-being must be prioritized in the struggle against Covid-19.

