

# **ECRI REPORT ON NORWAY**

**(fifth monitoring cycle)**

Adopted on 10 December 2014

Published on 24 February 2015

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## FOREWORD

The European Commission against Racism and Intolerance (ECRI), established by the Council of Europe, is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members appointed on the basis of their moral authority and recognised expertise in dealing with racism, xenophobia, anti-Semitism and intolerance.

In the framework of its statutory activities, ECRI conducts country-by-country monitoring work, which analyses the situation in each of the member States regarding racism and intolerance and draws up suggestions and proposals for dealing with the problems identified.

ECRI's country-by-country monitoring deals with all member States of the Council of Europe on an equal footing. The work takes place in 5-year cycles, covering 9-10 countries per year. The reports of the first round were completed at the end of 1998, those of the second round at the end of 2002 and those of the third round at the end of 2007, and those of the fourth round will be completed at the beginning of 2014. Work on the fifth round reports started in November 2012.

The working methods for the preparation of the reports involve documentary analyses, a visit to the country concerned, and then a confidential dialogue with the national authorities.

ECRI's reports are not the result of inquiries or testimonial evidence. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on a large number of national and international written sources. The in situ visit provides the opportunity to meet with the parties directly concerned (both governmental and non-governmental) with a view to gathering detailed information. The process of confidential dialogue with the national authorities allows the latter to provide, if they consider it necessary, comments on the draft report, with a view to correcting any possible factual errors which the report might contain. At the end of the dialogue, the national authorities may request, if they so wish, that their viewpoints be appended to the final ECRI report.

The fifth round country-by-country reports focus on four topics common to all member States: (1) Legislative issues, (2) Hate speech, (3) Violence, (4) Integration policies and a number of topics specific to each one of them. The fourth-cycle interim recommendations not implemented or partially implemented during the fourth monitoring cycle will be followed up in this connection.

In the framework of the fifth cycle, priority implementation is requested again for two specific recommendations chosen from those made in the report. A process of interim follow-up for these two recommendations will be conducted by ECRI no later than two years following the publication of this report.

**The following report was drawn up by ECRI under its own responsibility. It covers the situation up to 19 June 2014. Developments since that date are neither covered in the following analysis nor taken into account in the conclusions and proposals therein.**





## SUMMARY

**Since the adoption of ECRI's fourth report on Norway on 20 June 2008, progress has been made in a number of fields.**

In May 2014, Norway included the human right to equal treatment in its Constitution. Four new Anti-Discrimination Acts entered into force on 1 January 2014. The criminal provisions against hate speech on the Internet have also been strengthened. Moreover, the Norwegian authorities have embarked on a process of rethinking how to redefine the powers of the Equality Ombudsman (LDO) and the Equality Tribunal (LDN) in order to improve the protection against discrimination.

The Supreme Court made it easier to punish hate speech. In addition, the director of public prosecutions issued instructions to the law enforcement agencies to give special attention to hate crime. In February 2014 the Oslo police decided to set up a special hate-crime unit. They also involve NGOs in police-officer training and have a regular dialogue with civil society. The number of racist extremists is small; this might be due to a highly developed system to prevent radicalisation.

Politicians and journalists reflected on their anti-immigrant rhetoric and how it may have influenced Breivik's hate-motivated attacks in July 2011. The media agreed on the need to intensify the monitoring of their Internet forums.

Since 2009 all children are entitled to a place in kindergarten. In some neighbourhoods with a high share of children with migration backgrounds kindergarten is heavily subsidised. The gap in the performance between pupils with migration backgrounds and others has diminished. A new action plan on increasing employment among immigrants was adopted in 2013.

The 2008 action plan for improving the quality of life among lesbian, gay, bisexual and transgender (LGBT) persons is perceived as a historical milestone. The LGBT Knowledge Centre has been set up and a series of studies on LGBT persons have been published; they show that today many LGB persons live ordinary lives with few or no special burdens related to their sexual orientation. Same-sex couples have the right to marry under the Marriage Act; they then have the same rights as heterosexual ones. An expert group was set up to review the issue of legal recognition of a person's preferred gender.

**ECRI welcomes these positive developments in Norway. However, despite the progress achieved, some issues give rise to concern.**

Norway has not ratified Protocol No. 12 to the European Convention on Human Rights. Its Criminal Code does not criminalise the public denial of genocide or the creation of or participation in groups that promote racism. Norwegian law does not provide expressly that discriminatory provisions in individual or collective contracts or agreements are invalid. Victims of discrimination do not receive enough assistance from independent bodies to secure their rights before authorities and the law courts.

Police statistics do not provide a clear picture of the extent of hate speech and racist and homo/transphobic violence. Many such incidents are not reported to the police. The attacks of July 2011 notwithstanding, the police do not systematically monitor racist content and the activity of racist groups on the Internet.

Studies show that many migrants have experienced discrimination in areas such as recruitment, housing and health care. Parents with migration backgrounds have limited understanding of Norwegian pedagogy and have difficulties in assisting their children at school. Adult migrants have limited access to free education.

The gap in unemployment rates between migrants and those born in Norway has slightly increased; in 2013, unemployment among migrants was 3.6 times higher than among those born in Norway. Migrants with a low level of education continue having big problems in accessing the labour market. The number of recently arrived migrants,

who found a job at the end of their introduction programme, varies considerably from one municipality to the next.

LGBT persons have a higher risk than the general population of suffering from psychological problems, suicide attempts, substance abuse and sexually transmitted diseases. There is a general lack of knowledge about transgender issues. Transgender persons face intolerance and transphobia, but gender identity is not mentioned in the hate-crime provisions. Only one hospital provides specific trans-related public health-care.

**In this report, ECRI requests that the authorities take action in a number of areas; in this context, it makes a series of recommendations, including the following.**

Norway should ratify Protocol No. 12 to the European Convention on Human Rights. The authorities should bring the criminal, civil and administrative law in line with ECRI's General Policy Recommendation No. 7 on national legislation to combat racism. The LDO and the LDN should be given the power to "recommend cases to court free of charge", so that victims do not have to pay court fees and get legal representation for free. \* Both bodies should have the competence to seek friendly settlements. The LDN should focus on providing legal assistance to victims.

The police should set up specialised units or appoint specialised officers in each police district to deal with racist and homo-/transphobic incidents. An IT-based system should be set up for recording and monitoring these incidents.\* One or more police units should be given responsibility for combating hate speech on the Internet and initiate preventive and repressive action throughout the country. The Police Directorate should resume its cooperation with civil society and make sure that good practices are shared among local police units.

The authorities should adopt a new comprehensive action plan on integration. Moreover, they should systematically introduce measurable objectives and indicators to monitor progress in the field of integration. Young asylum-seekers should have better access to education. Schools should involve parents with migration backgrounds more. Good practices in preparing low educated and illiterate migrants for the labour market should be identified and disseminated among the municipalities. Asylum seekers should receive work permits even if they cannot present valid travel documents. The contribution of people with migrant backgrounds to Norwegian society and economy should be stressed in the public debate.

The authorities should develop a new comprehensive action plan for LGBT persons. It should place particular emphasis on improving knowledge and openness in connection with transgender persons. Moreover, the authorities should include gender identity into the hate crime provisions. They should also develop legislation on gender recognition and gender reassignment. Gender reassignment and other specific treatment for transgender persons should be available in several medical facilities.

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\* This recommendation will be subject to a process of interim follow-up by ECRI no later than two years after the publication of this report.

## FINDINGS AND RECOMMENDATIONS

### I. Common topics

#### 1. Legislation against racism and racial discrimination<sup>1</sup>

##### - Protocol No. 12 to the European Convention on Human Rights

1. On 15 January 2003 Norway signed Protocol No. 12 which provides for a general prohibition of discrimination. The government-appointed Committee that worked on the antidiscrimination legislation currently in force (§ 9) did not reach consensus on whether the protocol should be ratified; a small majority was against it. The government itself has not taken a stance yet; it has announced that this is one of the issues to be considered in connection with another reform of the anti-discrimination legislation.<sup>2</sup>
2. ECRI considers it encouraging that, in their cooperation agreement for the new government, the Liberal, the Christian Democrat, the Progress and the Conservative parties have pledged to “strengthen equality and create better protection against discrimination for all”.<sup>3</sup> Furthermore, in May 2014 Norway included in its Constitution the human right to equal treatment; new Article 98 states that all people are equal under the law and that no person must be exposed to discrimination.<sup>4</sup> ECRI considers that ratification of Protocol No. 12 would give additional impetus to the implementation of this human right.
3. ECRI reiterates its recommendation that Norway ratify Protocol No. 12 to the European Convention on Human Rights as soon as possible.

##### - Criminal law

4. ECRI has already examined on four occasions whether Norwegian legislation is in line with its General Policy Recommendation (GPR) No. 7 on national legislation against racism and racial discrimination. Therefore, in this fifth report it will only address persistent shortcomings. The new criminal code, whose different parts were adopted in 2005 and 2009 (CC 2005), has not yet entered into force. The reason given is that the police need a new computer system to be able to work with it. The authorities have informed ECRI that they plan to introduce the new computer system and to put the new criminal code into force by the end of 2015. Since 2005, the Criminal Code from 1902 (CC 1902) has been amended several times and its core provisions are mostly identical with the ones of the new code.
5. Section 135a CC 1902<sup>5</sup> criminalises the uttering of discriminatory or hateful statements which are defined as “threatening or insulting anyone, or inciting hatred or persecution of or contempt for anyone because of his/her skin colour, national or ethnic origin, religion or life stance or homosexuality, lifestyle or orientation”. This provision is not fully in line with § 18 of GPR No. 7. Incitement to violence and discrimination and the public expression of an ideology which claims the superiority of a grouping of persons on the grounds of their race

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<sup>1</sup> According to ECRI’s General Policy Recommendation (GPR) No.7, “racism” shall mean the belief that a ground such as race, colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons. “Racial discrimination” shall mean any differential treatment based on a ground such as “race”, colour, language, religion, nationality or national or ethnic origin, which has no objective and reasonable justification.

<sup>2</sup> Government 2009a: 298 et seq.; information transmitted on 13.11.13, p. 4. Cf. below at § 9.

<sup>3</sup> Liberal Party et al. 2013: 11.

<sup>4</sup> Human Rights Commission of the Storting (the Norwegian Parliament) 2011: 6.

<sup>5</sup> Cf. section 185 CC 2005.

(§ 18a, b, d of GPR No. 7) are not explicitly covered.<sup>6</sup> The criteria of race, language and citizenship are missing. Racist and homophobic threats are only punishable when they are publicly uttered (cf. § 18d of GPR No. 7).<sup>7</sup> Section 135a CC 1902 only criminalises the use of discriminatory or hateful symbols, while § 18f of GPR No. 7 recommends also criminalising the production and storage of written, pictorial or other material containing manifestations of racism.

6. ECRI welcomes a recent amendment to section 7.2 CC 1902 which has criminalised hate speech on the Internet.<sup>8</sup> Some of the ruling parties' political platforms expressed scepticism on the need to maintain section 135a CC 1902 in the statute book. However, the cooperation agreement for the new government is silent on this point. ECRI wishes to stress in this connection that Norway is bound by the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Paragraph 5 of the new Ethnicity Anti-Discrimination Act (EADA – see § 9) provides that ICERD shall apply as part of Norwegian law. Article 4(a) ICERD stipulates that States Parties “shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement”. It is well established that such restrictions to freedom of expression are necessary in a democratic society even though this freedom is one of its essential foundations (Article 10.2 ECHR). This is also the reason why ECRI regrets that the public denial, trivialisation, justification or condoning, with a racist aim, of crimes of genocide, crimes against humanity or war crimes is still not punishable in Norway (§ 18e of GPR No. 7).
7. Section 147d CC 1902, adopted in 2013, criminalises participating in a terrorist organisation, while section 26 EADA criminalises gross breaches of the prohibition of discrimination (which is contained in sections 6 to 12 EADA) when committed jointly by several persons.<sup>9</sup> These provisions fall short of what is recommended in § 18g of GPR No. 7. As shown - once again - by a recent report<sup>10</sup>, it is crucial to be able to take early action against racist groups. According to GPR No. 7, the creation of such groups needs to be punished, as such (as well as participating in or leading such groups).
8. ECRI recommends that the Norwegian authorities bring their criminal law into line with its General Policy Recommendation No. 7; in particular they should include the grounds of race, language and citizenship in the relevant provisions and criminalise (i) the production and storage of written, pictorial or other material containing manifestations of racism (ii) the public denial, trivialisation, justification or condoning, with a racist aim, of crimes of genocide, crimes against humanity or war crimes and (iii) the creation and leadership of a group which promotes racism and participation in its activities.

- **Civil and administrative law**

9. On 1 January 2014 EADA and three other acts against discrimination on the grounds of gender, disability and sexual orientation entered into force. The authorities have informed ECRI that the new government plans to bundle these four acts into a general anti-discrimination act. ECRI is pleased to note that EADA is mostly in line with its GPR No. 7. This part of the report will concentrate on few remaining problems. ECRI encourages the Norwegian authorities to

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<sup>6</sup> According to the case law, statements encouraging harm to physical integrity may be considered as incitement to hatred, Supreme Court, 30.3.2012, No. HR-2012-00689-A, § 28.

<sup>7</sup> Cf. also section 227 CC 1902 concerning threats to commit a serious criminal act.

<sup>8</sup> Government, information transmitted on 13.11.13, p. 3.

<sup>9</sup> The penalty is increased if the breach forms part of the activities of an organised criminal group.

<sup>10</sup> Politihøgskolen 2013: 7 et seq.

include, in the planned general anti-discrimination act, the elements that have been identified as missing in the following paragraphs.

10. Race and citizenship do not figure among the EADA grounds of discrimination. However, the Equality and Anti-Discrimination Tribunal (LDN) considered a housing advertisement stating “only Norwegian citizens need apply” as indirect discrimination based on ethnicity.<sup>11</sup> Segregation, discrimination by association and announced intention to discriminate are not expressly mentioned in the act (§ 6 of GPR No. 7). There are no provisions on promoting equality through public procurement (§ 9 of GPR No. 7).<sup>12</sup> During ECRI’s contact visit to Norway in March 2014 the authorities informed the delegation that there was general consensus that the public procurement legislation was already complex; careful consideration should, therefore, be given to the question of whether it could also be used as a tool for combating racism and discrimination. ECRI understands the difficulties; however, it considers that they are outweighed by the benefits that having another tool to combat racism and discrimination would bring to society in general.
11. Section 4 EADA states that no derogation of its provisions by agreement is possible. Moreover, in a case brought under the old legislation, the EDN had decided that any contractual provision to restrict the protection against discrimination would be null and void.<sup>13</sup> Besides, discrimination cases related to collective wage agreements can be brought before the Labour Disputes Court.<sup>14</sup> However, ECRI considers that the effectiveness of Norwegian anti-discrimination legislation would be enhanced if it provided expressly that discriminatory provisions in individual or collective contracts or agreements were invalid (§ 14 of GPR No. 7).
12. Finally, ECRI notes, as it did in § 36 of its 4<sup>th</sup> report, that the authorities have not adopted provisions on the dissolution of racist organisations (§ 17 of GPR No. 7).<sup>15</sup> Neither does the Political Parties Act contain any provisions suppressing public financing of political parties which promote racism (§ 16 of GPR No. 7).
13. ECRI recommends that the Norwegian authorities bring their anti-discrimination legislation in line with its General Policy Recommendation No. 7; in particular the law should (i) prohibit discrimination on the ground of citizenship (ii) expressly prohibit segregation, discrimination by association and announced intention to discriminate (iii) promote equality through public procurement (iv) provide that discriminatory provisions in individual or collective contracts or agreements are invalid and (v) provide for the dissolution of racist organisations and the suppression of their public financing.

- **Independent authorities**

14. ECRI recalls that the Centre for Combating Ethnic Discrimination (SMED) was closed on 1 January 2006. Since then, the Equality and Anti-Discrimination Ombud (LDO) and the LDN “monitor and contribute to EADA’s implementation”. The LDO also promotes genuine equality (sections 1 and 3.1 of the Anti-Discrimination Ombud Act (ADOA)).<sup>16</sup> The two bodies’ mandates include most of

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<sup>11</sup> LDN, case no. 18/2006, decision of 18.10.2006.

<sup>12</sup> [http://europa.eu/youreurope/business/public-tenders/tools-database/index\\_en.htm#norway\\_en\\_benefiting-from-public-contracts](http://europa.eu/youreurope/business/public-tenders/tools-database/index_en.htm#norway_en_benefiting-from-public-contracts), accessed on 16.5.2014. The Ministry of Children and Equality had stated in 2007 that it would investigate how much scope of action public procurers had under the legislation then in force to stipulate ethical and social requirements in calls for tenders, Ministry of the Environment et al. 2007.

<sup>13</sup> LDN, case no. 26/2009, decision of 25.9.2009 on an individual agreement.

<sup>14</sup> Cf. European network of legal experts in the non-discrimination field 2013: 97-98.

<sup>15</sup> This paragraph of the GPR is meant to provide additional protection to § 18g on the criminalisation of participation in racist organisations, see § 7.

<sup>16</sup> Both institutions used to work only on gender discrimination.

the competencies in Principle 3 of ECRI's GPR No. 2 on specialised bodies to combat racism at national level. Whereas the LDO can provide guidance to victims of discrimination (section 3.6 ADOA), s/he lacks the power to represent them in proceedings before administrative authorities or courts of law.<sup>17</sup> S/he may issue opinions and, in some cases, decide on complaints (sections 3.3, 4.1 and 7 ADOA) which can be appealed to the LDN. The LDO may also on his/her own initiative bring a case before the LDN (sections 4.3 and 3.3 ADOA).

15. Three concerns relating to these bodies' mandate have been brought to ECRI's attention. Firstly, civil society regrets that, since the disbanding of SMED, neither the LDO nor any other public body provides easily accessible assistance to victims of discrimination.<sup>18</sup> Indeed, the guidance given by the LDO is limited to information, whereas SMED used to assist victims of discrimination in enforcing their rights. Secondly, victims consider that the procedure before the LDO is difficult to access as it is mostly written, rather formal and as many have another mother tongue than Norwegian. The outcome of proceedings could be unsatisfactory, as neither the LDO nor the LDN can award compensation (section 23 EADA) and hardly any victim of racial discrimination has managed to obtain compensation before the law-courts. Only in two or three cases has the LDO made use of its power to intervene as *amicus curiae* in court trials and the LDN has never made use of its power to impose a fine (section 8 ADOA).<sup>19</sup> Thirdly, neither institution has the competence to seek a friendly settlement as recommended in Principle 3f of GPR No. 2.
16. ECRI welcomes the fact that the Norwegian authorities are considering the need to redistribute the competencies of these specialised bodies and encourages them to redefine the division of work between them when redrafting the anti-discrimination legislation. ECRI considers the LDN to be the body that would be best suited for hearing complaints, seeking a friendly settlement and making binding and enforceable decisions (Principle 3f of GPR No. 2). ECRI notes with interest that the authorities will examine the possibility of giving the LDN the power also to award compensation after a revision of its procedural rules.
17. At the same time ECRI points out that it is also important to make sure that victims of discrimination can obtain legal assistance including representation in proceedings before administrative authorities, the LDN and law-courts.<sup>20</sup> This is why ECRI encourages the Norwegian authorities to focus the LDO's competence on providing such assistance with a view to securing victims' rights before administrative authorities, the LDN and law-courts, instead of having the LDO make decisions like the LDN.
18. Independently of whether the mandates of the two bodies are reconfigured or not, ECRI considers that the LDO and LDN should have the same power as the Parliamentary Ombudsman has under §§ 16.3 and 14 of the Law on Free Legal Aid to "recommend cases to court free of charge".<sup>21</sup> When this happens, the victim does not have to pay court fees and gets his legal representation for free.
19. ECRI recommends that the authorities give the Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal the power to "recommend cases to court free of charge", so that victims do not have to pay court fees and get their legal representation for free.

<sup>17</sup> I.e. general-jurisdiction courts; cf. principle 3c of GPR No. 2 and § 51 of GPR No. 7.

<sup>18</sup> McClimans 2013: 10; 90; cf. § 23 of ECRI's 3<sup>rd</sup> and § 24 of ECRI's 4<sup>th</sup> report on Norway and Ministry of Children, Equality and Social Inclusion 2011b: 23 et seq.

<sup>19</sup> McClimans 2013: 81 et seq.; she cites few cases in which compensation was granted for discrimination on the grounds of gender, age and political affiliation.

<sup>20</sup> § 51 of the Explanatory Memorandum to GPR No. 7; see also Article 13.2 of EU Council Directive 2000/43/EC (on its applicability to Norway cf. McClimans 2013: 9).

<sup>21</sup> cf. Ministry of Children, Equality and Social Inclusion 2011b: 39.

20. ECRI recommends the authorities to reconfigure the mandates of the Anti-Discrimination Ombud and the Equality Tribunal; both bodies should be given the competence to seek friendly settlements and the Ombud should focus on providing legal assistance to victims instead of decision-making.

21. ECRI notes with interest the plans to set up a new national institution for human rights. One of its functions would be to follow up recommendations made by international human rights organs like ECRI.<sup>22</sup>

## 2. Hate speech<sup>23</sup>

### - Public debate

22. In its fourth report on Norway which was adopted in June 2008, ECRI noted that the expression of anti-immigrant views in public debate, including politics, had become more common in Norway in recent years; in particular, Muslims were increasingly associated with terrorism and violence. In 2009, the Progress Party, a right wing party, gained 22.9% of the votes at the national elections. Media, academics and political parties continued to appeal to the public in an increasingly populist fashion and spread fear about immigration, migrants and integration.<sup>24</sup> Hate speech was targeted at Muslims and migrants, Jews and Roma. In March 2011 CERD expressed concern about “racist views expressed by extremist groups, some representatives of political parties and in the media, which might lead to acts of hostility against certain minority groups”.<sup>25</sup>

23. After the hate motivated attacks on 22 July 2011 in Oslo and Utøya by Anders Behring Breivik<sup>26</sup>, politicians and journalists reflected about their own anti-immigrant rhetoric and how it may have influenced the attacks. Breivik used to be a member of the Progress Party for about a decade.<sup>27</sup> Politicians and journalists distanced themselves from views that might be construed as similar to Breivik's. In an address to Parliament, the Prime Minister apologised for failings in the authorities' response to the attacks. There was general agreement on the need to change the language used in the immigration debate and stop using inflammatory language.<sup>28</sup> However, this consensus was not maintained for a long time. During the summer of 2012, public debate and media concentrated on Roma beggars and criminal gangs and lack of hygiene among Roma.<sup>29</sup> Islam-related issues like forced marriage, genital mutilation and protection against terrorism were again in the focus of public debate. In September 2013 the Progress Party<sup>30</sup> gained 16.3% of the votes at the national elections and became a partner in the government coalition. Several ministries are headed by politicians from the Progress Party. In September 2013, a mosque in Oslo received a letter signed by a group of men threatening to burn all mosques in Norway before the end of the year; its authors claimed that the act had been under preparation for seven years. Recently, the head of a pig was placed in front of the entrance of

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<sup>22</sup> The Ministry of Foreign Affairs' team for the review of the existing national institution (2011): 110.

<sup>23</sup> This section covers racist and homo/transphobic speech. For a definition of “hate speech” see Council of Europe (CoE), Committee of Ministers 1997.

<sup>24</sup> Wiggen 2012: 587 et seq.; cf. Directorate of Integration and Diversity (IMDi) 2009: 3 et seq.; Racism charges triggered debate, [www.mewsinenglish.no](http://www.mewsinenglish.no) (2013, December 27).

<sup>25</sup> Committee on the Elimination of Racial Discrimination (CERD) (2011), Concluding observations, § 21.

<sup>26</sup> Concerning Breivik's ideology and motivation cf. Politihøgskolen 2013: 114 et seq.

<sup>27</sup> The Nordic page 2013.

<sup>28</sup> Wiggen 2012: 585. Cf. research from Figenschou and Beyer, summarised by Kvittingen 2014; Ritter 2011.

<sup>29</sup> Progress Party chief Jensen was calling for the Roma to be “deported”, Reimann 2012; a former member of the same party stated that Roma should be sectioned into small pieces and served to dogs, National Centre for Human Rights (NCHR) 2012: 33; Wiggen 2012, 588.

<sup>30</sup> Politicians of the Progress Party again referred to the “creeping Islamisation” of Norway, Orange 2014.

the biggest mosque in Norway.<sup>31</sup> Anti-immigration rhetoric is also directed against migrants from central and eastern European countries. In May 2013 the third largest newspaper, *Dagbladet*, published a cartoon showing bearded men stabbing and mutilating a baby covered by blood. The Simon Wiesenthal Centre has called on Norway's leaders to denounce this incitement to hatred which denigrated circumcision, a core Jewish rite.<sup>32</sup>

24. In July 2013, a Norwegian Muslim author of Somali origin received approximately 150 threatening messages after having come out as a lesbian and taken part in the Oslo Pride Parade. In September 2013, TV2 broadcast a report on several other women who suffered from hate speech, harassment and threats. One of them with a migration background was attacked and seriously injured. Several of these have chosen not to take part in public debates any more.<sup>33</sup>
25. In June 2012, a survey of verbal and physical assaults against Jewish students was released. About half of the 1 522 participants responded that they had experienced antisemitism at school, at work or in other contexts. Children were most affected. Another study confirmed the existence of stereotypical notions of Jews in Norwegian society and that overall, 12.5% of the population can be considered being significantly prejudiced against Jews. The research shows that even more people are prejudiced against Muslims, Somalis and Roma: while 3% of the respondents would strongly dislike to have Jews as neighbours, this figure was 12% for Muslims, 19% for Somalis and 27% for Roma.<sup>34</sup>
26. Another survey from 2009 concludes that Norwegian media coverage about migration and integration has a tendency to overdramatise, is sensationalist and focuses on conflict, drama and crime. Journalism's fascination with such issues and the many "stories" that result therefrom create a problematic image for migrants and have negative effects on their integration. The impact of this reporting is considerable, as many people do not have personal contacts with migrants but experience them primarily through the media. Reports about immigration and integration were often about Islam and Muslims, but other groups, such as Sami and Jews, had previously been in the media's spotlight. Somali immigrants were used to illustrate how integration was failing and got three times more coverage than the twice larger Polish community. Interestingly, the groups receiving most negative media attention are the same ones that claim to be subject to discrimination in Norway.<sup>35</sup>
27. Hate speech is also present on the Internet. A recent study shows the devastating effects of hate speech and hate crime on entire population groups.<sup>36</sup> It also contains empirical evidence on the contribution of online hate speech to the radicalisation of xenophobic extremists. It highlights that these extremists make extensive use of Internet and recalls that Breivik was quite active in the virtual world of extremists prior to his attacks.<sup>37</sup> Indeed, one of Breivik's main sources of ideological inspiration was the islamophobic blogger Peder Nøstvold Jensen.<sup>38</sup> The police investigation after the attacks contributed to increase

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<sup>31</sup> See Islametinfo 2013.

<sup>32</sup> The *algemeiner* 2013.

<sup>33</sup> Törnkvist 2013; Eide 2013.

<sup>34</sup> Center for Studies of the Holocaust and Religious Minorities 2012: 6 et seq.

<sup>35</sup> IMDi 2009; Wiggen 2012: 598. See in this connection § 90 of ECRI's 4<sup>th</sup> report.

<sup>36</sup> Emblematic events as the firing of shots on a synagogue in 2006 continue to generate hate speech, cf. footnote 46. As a result, the Jewish community continues living in fear of similar or even worse attacks.

<sup>37</sup> *Politihøgskolen* 2013: 7 et seq.

<sup>38</sup> The following quote published by Jensen under his pseudonym Fjordman became a focal point in Breivik's 1 500-page manifesto as well as in his defence speech during his 2012 trial: "Our most important task ahead is to deconstruct the majority, and we must deconstruct them so thoroughly that they will never be able to call themselves the majority again".



Jensen's notoriety and the large media coverage of his and other racist blogs. Jensen continues to post comments and articles on islamophobic websites elsewhere in Europe, with repeated calls for right-wing violence against Muslims in Norway.<sup>39</sup> Extreme right-wing circles all over Western Europe consider him now a leading voice.<sup>40</sup> In addition to the broad media coverage, Jensen was granted 75 000 NOK (about 9 000 Euro) from a private foundation in 2013 for his project to write a book about Breivik and his islamophobic attacks.<sup>41</sup>

- **Responses to hate speech**

28. As already noted in previous ECRI reports, Norwegian society traditionally gives high priority to freedom of expression. Some Norwegians are of the opinion that, instead of keeping intolerant views in the private domain, it is better to express them publicly so that they can be effectively responded to with more speech.<sup>42</sup> ECRI believes that some forms of hate speech should be punished (§ 18 of GPR No. 7); it notes in this connection that some progress has been made in prosecuting hate speech in Norway. The Supreme Court stated in a landmark decision of 30 March 2012 that the legislature had intended, when amending section 135a CC 1902 in 2005, to make it easier to punish hate speech.<sup>43</sup> In November 2012, the director of public prosecutions held a seminar on hate crime and racism; in 2013 he issued a circular to the effect that hate crime should be given special attention.<sup>44</sup> Police recently arrested a Twitter user for having posted an image of Breivik in a suit of armour shooting immigrants, including children, under the caption: "Non-whites are overpopulating the planet!"<sup>45</sup> On the other hand, there is evidence that most cases of hate speech are still not reported to the police. A report highlights that none of the 14 cases of verbal abuse, threatening behaviour and assaults committed against people with migration backgrounds after the terrorist attacks on 22 July 2011 was reported to the police. In 2012, a survey showed that almost 8% of migrants from non-western countries had experienced hate speech and other hate crime. However, in the last 10 years only five hate-speech-indictments were filed.<sup>46</sup>
29. Given the results of the study cited in § 27 on online hate speech, ECRI is very concerned about the fact that, the attacks of July 2011 notwithstanding, the police do not systematically monitor racist content and the activity of racist groups on the Internet. ECRI was informed that, on the contrary, the police focus on Islamic fundamentalists (as they had done before Breivik's attacks) rather than extremists motivated by racism.
30. ECRI considers that the police and the prosecution authorities need to increase and systematise their efforts to monitor and investigate hate speech on the Internet. Having taken stock of all such speech that falls under Norwegian criminal law, they should launch investigations against those responsible for

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<sup>39</sup> Politihøgskolen 2013: 123; Bangstad 2011; Fangen et al. 2013: 331; [http://en.wikipedia.org/wiki/Fjordman#2011\\_Norway\\_attacks](http://en.wikipedia.org/wiki/Fjordman#2011_Norway_attacks), accessed on 07.04.2014.

<sup>40</sup> Boréus et al. 2012.

<sup>41</sup> The grant was made by the private foundation "Fritt Ord" (Free Word).

<sup>42</sup> NCHR 2012: 34 et seq.

<sup>43</sup> HR-2012-689-A, case no. 2012/143. The case concerned statements related to a doorman's skin colour.

<sup>44</sup> Riksadvokate 2013: 10.

<sup>45</sup> This user's Twitter account also featured messages of support for Breivik, Globalpost 2013.

<sup>46</sup> Cf. e.g. the conviction of the former spokesman of a radical Islamist group by Oslo District Court, No. 13-193789MED-OTIR/07, 07.2.14, who had stated that it was "too bad" that a "brother" who in 2006 fired shots at the synagogue in Oslo "didn't hit anyone". The same person was acquitted concerning another statement after an assault on a lesbian writer: "They should have stoned her to death, since practising homosexuality shall be punished with death." The domestic court invoked freedom of religion.

breaches of section 135a CC 1902. This should include persons living abroad.<sup>47</sup> At the same time, police should make use of the prevention system described below (§ 47); they should have empowerment conversations with all users of racist sites, who are at risk of committing their own hate motivated offences.<sup>48</sup> Police should continue systematically monitoring online hate speech after the campaign. As hate speech on the Internet is not a local phenomenon and as a broad prevention campaign and the continuous monitoring of Internet needs coordination, special know-how and technical equipment, ECRI encourages the Norwegian authorities to designate a police unit that would specialise in combating this form of cybercrime. A suitable unit for this purpose might be the point of contact designated under Article 35 of the Convention on Cybercrime.

31. ECRI strongly recommends the Norwegian police and prosecution authorities to take stock of hate speech present on the Internet, open investigations whenever section 135a of the Criminal Code has been breached, have empowerment conversations with extremists using such Internet sites and close down those that operate within Norwegian jurisdiction.
32. ECRI also strongly recommends the authorities to give one or more police units responsibility for combating hate speech on the Internet along with appropriate technical and human resources.
33. In so far as non-criminal-law responses to hate speech are concerned, ECRI would like to draw attention to the principles and recommendations laid down in the Charter of European Political Parties for a Non-Racist Society and in ECRI's Declaration on the Use of Racist, Antisemitic and Xenophobic Elements in Political Discourse.
34. ECRI also notes that some progress has been made concerning the public debate about immigration and Islam (see § 23). ECRI welcomes the fact that the former Prime Minister and other members of the government spoke out against racist comments<sup>49</sup> and that persons with a migrant background can now express their views more frequently in the media. At the same time, ECRI encourages the authorities to shift the focus of the immigration debate so that it would also stress the contribution of immigrants and the need of the aging Norwegian society and its prosperous economy for immigration and integration.
35. ECRI recommends the Norwegian authorities to stress in the public debate the positive aspects of immigration and the contribution of people with migrant backgrounds to Norwegian society and economy.
36. ECRI considers that media need to be aware of the dangers highlighted in the study on media coverage cited in § 26. Therefore, it welcomes the fact that media agreed, after the hate-motivated attacks in July 2011, on the need for greater editorial responsibility and monitoring of their Internet forums. As a result, most media have suppressed the possibility to put anonymous comments on their web-forums and decided to monitor their content.<sup>50</sup> Another good practice is to close down online forums during night-time when the number of offensive comments increases. In section 4.3 of the Code of Ethics of the Norwegian Press the word "race" was replaced by "ethnicity". It now reads: "Always respect a person's character and identity, privacy, ethnicity, nationality and belief. Be careful when using terms that might be stigmatising." ECRI considers however that not all

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<sup>47</sup> Since 2013, section 135a CC 1902 is included in the list of offences in section 12.3.a CC 1902 which are punishable when committed abroad by a Norwegian citizen or a person domiciled in Norway.

<sup>48</sup> Police could gather inspiration from the so-called Vigrid-offensive carried out in 2003, when around 100 individual preventive talks were held with young members of this right-wing group, MJP 2011.

<sup>49</sup> Online comments addressed referred to Roma as "subhuman" and "rats", US Department of State: 16.

<sup>50</sup> The application of some general rules – full-name policy, an out-of-subject-rule, no unreasonable attack on the author - leads to the deletion of up to 95% of racist comments.

media comply with such standards yet; for example, the cartoon described in § 23 respects neither the identity, nor the beliefs of the groups practicing circumcision.<sup>51</sup> ECRI will follow with interest the way in which the amended rule will be applied.

37. As bullying is often connected to racism and discrimination, ECRI welcomes the fact that the Norwegian authorities have continued their measures against bullying at school.<sup>52</sup> To measure its extent, questions on this issue are included in the annual national pupil surveys.<sup>53</sup> A new anti-bullying manifesto 2011-2014 was signed in January 2011 focusing on the promotion of local anti-bullying efforts.<sup>54</sup> The programme Democratic Readiness against Antisemitism and Racism (DEMBRA) was launched in 2013 to enhance teaching skills, to improve teachers' and school administrators' ability to resolve conflicts between different groups of pupils and to prevent racism and undemocratic attitudes. ECRI encourages the authorities to evaluate the outcome of the anti-bullying measures and to extend the DEMBRA project further.

### **3. Racist and homo/transphobic violence**

38. On 22 July 2011, Norway was shaken by the terrible attacks of Anders Behring Breivik which caused 77 deaths. Most of them were young persons. Oslo District Court found that Breivik was sane and sentenced him to 21 years of containment, a special form of prison sentence that can be extended indefinitely. ECRI considers that this case raises important questions about racist motivation; while it is not disputed that Breivik committed these offences out of hatred, the victims did not belong to a vulnerable group. It is clear that the Oslo court devoted to the motivation issue as much attention as it could in a case involving personal criminal responsibility. However, ECRI regrets that some of the broader questions – for example the possible influence of hate speech and Islamophobia in the public debate on Breivik's motivation - were not addressed in the report of the commission discussed in § 45.
39. Breivik's attacks were not the only hate motivated attacks in Norway. In 2011 the police flagged 139 of the recorded hate crime cases (64%) as violence, in 2012 154 (71%) and in 2013 156 (66%). In these figures cases of homicide and physical assault are bundled together with cases of damage to property, desecration of graves, attacks on places of worship, vandalism, threats and threatening behaviour.<sup>55</sup> The police believe that the brutal murder of Mahmed Shirwac Jamal, a Norwegian of Somali origin on 27 August 2008 in Trondheim was racially motivated.<sup>56</sup> The perpetrator, who had written racist online postings and possessed several firearms, was sentenced to compulsory psychiatric care.<sup>57</sup> In October 2012, a Sami woman was attacked by a gang of men who tried to set her coat on fire.<sup>58</sup> A search conducted on 16 July 2013 at the home of the Norwegian neo-Nazi Kristian Vikernes in France resulted in the seizure of five firearms. The French authorities considered that he was capable of preparing a major terrorist act. Even though Vikernes had published hate motivated statements while serving a prison sentence for murder in Oslo, he was indicted

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<sup>51</sup> The Press Complaints Commission (PFU), which deals with complaints against press, radio and television, has rejected a complaint against the publication of this cartoon, case No. 162/13, 24.9.2013.

<sup>52</sup> Ministry of Children and Equality 2009: 21 et seq.

<sup>53</sup> <http://www.udir.no/Laringsmiljo/Elevundersokelsen/Om-brukerundersokelsene1/Elevundersokelsen/Nye-indeksjer-og-indikatorer-i-Skoleporten/>, accessed on 02.04.2014.

<sup>54</sup> Ministry of Children and Equality 2011.

<sup>55</sup> Politdirektoratet 2014 : 17 et seq. ; Politdirektoratet 2013: 18 et seq.

<sup>56</sup> Psykotisk drapsmann på rømmen i Trondheim – nyheter (Dagbladet, 2010, 21 July).

<sup>57</sup> Skogen, 2009; Drapssiktet skrev rasistiske nett-nnlegg (Dagbladet Nyheter 2008).

<sup>58</sup> <http://www.galdu.org/web/?odas=5881&qiella1=eng>, accessed on 9.4.14.

for incitement to hatred only in France.<sup>59</sup> On 15 February 2014, a man of Liberian origin was attacked by five young persons, one of them using a shovel. LGBT persons are also attacked. On 25 February 2014 the court trial began of 11 youngsters who had trapped and beaten a homosexual man with a bat.<sup>60</sup> The Action Plan for LGBT states that LGBT teenagers are subject to homo/transphobic violence from peers and close family members.<sup>61</sup>

40. The Police Security Service (PST) stated, in its 2013 annual threat assessment on politically motivated violence, that the most serious threat still came from individuals and groups having an al-Qaida inspired outlook on the world. However, Breivik would continue being an inspiration. As several islamophobic groups excluded members supporting violence, the threat from right-wing extremism would first and foremost be connected to individuals and small groups operating independently. Others would get inspiration from conspiracy theories or believe being among the chosen few. They might quit the organisations they might be belonging to, arm themselves and secretly prepare violent attacks. While Internet would be their most important forum, they would, as Breivik had done prior to his attacks<sup>62</sup>, *take care to not disclose their violent intentions*.<sup>63</sup>

- **The authorities' response**

41. As already stated in § 28, police statistics do not provide a clear picture about the extent of racist and homo/transphobic<sup>64</sup> violence, as there is considerable under-reporting. In addition, the statistics do not contain information about the number of incidents brought before the prosecutors, nor about the outcome of court trials. According to a detailed report on hate crime issued by the Oslo police in 2013<sup>65</sup>, there are several possible reasons for the under-reporting mentioned above: victim's lack of confidence in the police<sup>66</sup>; police officers' reluctance to record cases; in some reported cases the racist or homo/transphobic motivation might not be perceived or identified by the police.<sup>67</sup> The report points out the need to investigate hate crime thoroughly; beyond the effects it has on the individual victim, it creates fear and insecurity among all those with the same background.<sup>68</sup> The report concludes that there is room for improvement. ECRI notes in this connection that in February 2014 the Oslo police decided to set up a special hate-crime unit staffed with three agents. Other measures taken to improve the response to hate crime are police-officer training involving NGOs and regular round-tables with civil society to establish dialogue and cooperation.

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<sup>59</sup> Sourdès 2013; Le monde 2014. Vikernes published online-statements like: "... the Christians allow the Jews to enter through our back doors and spread their foul Hebrew poison into our minds and wells...". It is also reported that Vikernes was in contact with Breivik, Jackson 2013.

<sup>60</sup> [www.adressa.no](http://www.adressa.no) 2014; [www.nrk.no](http://www.nrk.no) 2014.

<sup>61</sup> Ministry of Children and Equality 2008: 14. Civil society reports that a considerable number of young gay first-generation immigrants have been subjected to serious violence from close family members, Flere homofile innvandrere søker hjelp ([www.utrop.no](http://www.utrop.no), 2010, December 1).

<sup>62</sup> Breivik had deleted from his Internet accounts some of the most extremist content in order not to be detected, Politihøgskolen 2013: 113 et seq.

<sup>63</sup> Politiets sikkerhetstjeneste 2013a and b.

<sup>64</sup> The NGO LLH received funding for improving the recording of homophobic crime, Questionnaire CoE CM Rec 2010/5, Norway, pp. 5-6.

<sup>65</sup> Oslo politidistrikt 2013: 37. - Out of the 47 cases registered in 2012, by 12 February 2013 only seven had been prosecuted. Seven cases were dismissed because of "lack of processing capacity". 15 out of the 47 cases were linked to sexual orientation, 0 to gender identity and 22 to ethnic origin (in 18 of them the alleged victims were of African or Asian origin). Four cases were registered under section 135a CC 1902.

<sup>66</sup> Cf. the National Police Directorate 2008; Ministry of Justice and the Police (MJP) 2011: 17.

<sup>67</sup> Oslo politidistrikt 2013: 28 et seq; LLH and ILGA Europe 2013: 2; 31; Anti-rasistisk senter Oslo 2012; Hate crimes not reported to police ([www.newsinenglish.no](http://www.newsinenglish.no), 2012, March 21).

<sup>68</sup> See e.g. footnotes 36 and 46 concerning the Jewish community.

42. ECRI considers that the Ministry of Justice and the Police (MJP) and the National Police Directorate should ensure that the Oslo best-practice example is replicated throughout the country, so that all 27 Norwegian police districts improve the way in which hate-crime victims are received and complaints are recorded and processed. ECRI has, moreover, been informed of a parallel development, the police authorities' plan to improve their recording system in general.<sup>69</sup> ECRI encourages the authorities in question to seek inspiration from other countries where it is possible to conduct an electronic search into the police files for words that would indicate that a case might be motivated by hatred.<sup>70</sup> As the Norwegian police are in the process of setting up a new computer system, it would seem that such a search tool can be easily installed. ECRI also considers that there should be a general criminal-statistics system with data from the police the prosecution and the courts, capable of providing detailed results on the type of the offence and the kind of hatred-motivation.<sup>71</sup>

43. ECRI recommends that the authorities set up specialised units or appoint specialised officers in each police district to deal with racist and homo-/transphobic incidents; these should also liaise with the vulnerable groups.

44. ECRI also recommends that the authorities set up an IT-based system for recording and monitoring racist and homo-/transphobic incidents and their processing through the judicial system (§ 12 of ECRI's General Policy Recommendation No. 11 on Combating racism and racial discrimination in policing).

#### - **Prevention**

45. Concerning the prevention of racist motivated violent attacks, ECRI recommended in its 4<sup>th</sup> report that the authorities keep the situation concerning racist organisations closely under review. Norwegian police considered only a few months before the hate motivated massacres of 22 July 2011 that the right-wing extremist scene could be classified as a minor problem, as it had considerably declined. The Commission that was charged by the Government to review and draw lessons from the attacks found that there were signals that Breivik was preparing attacks, which the authorities did not notice. It also found that the PST had, prior to the terror attacks, focused too much on threats from Islamist groups. However, the commission did not attribute any responsibility to the PST for having failed to detect Breivik's preparation activities.<sup>72</sup>

46. The Norwegian authorities have a highly developed prevention system, which was used at least twice against right-wing extremists; the small number of such extremists could be attributed to the prevention system's success.<sup>73</sup> The system involves municipal units, local police, political parties and their youth branches as well as civil society. Police Councils and services for the coordination of local crime-prevention (SLT) have been set up in more than 300 municipalities. These may seek assistance from a pool of MJP-appointed experts.

47. The prevention system includes mapping and analysing of extremism by all the authorities involved, trying to build personal relationships with members of extremist groups, encouraging wavering young people to disengage from extremist groups, organising parents' groups and building sustainable dialogue forums with groups at risk of radicalisation. An important tool used by the police is the so-called empowerment conversation. If the police are informed that a young

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<sup>69</sup> Justis- og beredskapsdepartementet 2013: 37; Government 2013: § 53.

<sup>70</sup> This possibility is already discussed in Oslo politidistrikt 2013: 36.

<sup>71</sup> Data should, for example, be broken down by articles of the CC and the motives listed in section 135a CC 1902. For details cf. §§ 12 and 68 et seq. of ECRI's GPR No. 11 and Oslo politidistrikt 2013.

<sup>72</sup> Government 2012a: 362 et seq.

<sup>73</sup> For this and the following paragraph cf. MJP 2011 and Fangen K. et al. 2013: 332 et seq.

person gets involved with a problematic group or criminal gang, they have the power to convene him/her and his/her parents to the police station for a meeting. Its purpose would be to provide a warning to the youngster and his/her parents, to discuss what can be done to prevent further involvement and to organise some form of assistance by the competent municipal services. It goes without saying that criminal proceedings will be instituted against such groups' leaders. In 2011 an action plan on preventing radicalisation and violent extremism was built on the various pre-existing prevention tools. Following Breivik's hate motivated attacks, a White Paper to prevent terrorism was issued in 2013. It focuses more on control and surveillance, but also discusses successful exit methods and the use of dialogue. A new action was published in June 2014.

48. Given the persisting threats from racist extremists, ECRI strongly encourages the authorities to use this prevention system to carry out a campaign targeting racist extremists and refers to the recommendations already made in §§ 31 and 32.

#### **4. Integration policies**

49. In the field of integration policies, a series of action plans have been adopted and carried out during the last two decades. The last one, the Action Plan to promote equality and prevent ethnic discrimination (2009-2012) was addressed to people with migration backgrounds<sup>74</sup>, the Sami and "national minorities".<sup>75</sup> In 2012, the action plan was extended to 2013 and the government of the time outlined proposals on future integration policies in the White Paper "A Comprehensive Integration Policy". Subsequently, an action plan on increasing employment among immigrants (2013 to 2016) and the National Strategy for immigrants' health 2013-2017 were adopted<sup>76</sup>; but the new government has not taken any initiative to develop a new general action plan. This is needed, as shown in §§ 53 to 74.

50. ECRI recommends that the Norwegian authorities adopt a new comprehensive Action Plan on integration including the promotion of equality and the prevention of discrimination.

51. As a matter of principle, all public sector agencies are supposed to contribute to the implementation of integration policies and to ensure that their services reach migrants. The Directorate of Integration and Diversity (IMDi) has a central role in coordinating integration efforts.<sup>77</sup> Under the Introduction Act, newly arrived refugees, persons who were granted family reunification and migrants with certain renewable residence permits have the right and obligation to participate in a full-time introduction programme, if they need basic qualifications.<sup>78</sup> It lasts up to two years and comprises Norwegian language tuition (550 hours), civic education (50 hours) and measures to prepare the participant for access to the labour market or further education. Up to another 2 400 hours of training can be added, adapted to the needs of the person. The tuition is provided by the municipalities. Participants are remunerated; their remuneration can be reduced in cases of failure to participate without a valid reason. As of September 2013 it has become obligatory to take a test at the end of the language training. In 2012, about 83% of all candidates passed the oral and 58% the written part of the test.

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<sup>74</sup> In 2012 migrants and their children constituted more than 13% of the population. 27% of them had arrived during the previous five years. The Muslim population was estimated at 112 000, Ministry of Foreign Affairs 2013.

<sup>75</sup> Five groups are defined as national minorities: Kvens/Norwegian Finns, Jews, Forest Finns, Roma and Romani people/Taters.

<sup>76</sup> Ministry of Children, Equality and Social Inclusion 2013b. Ministry of Health and Care Services 2013.

<sup>77</sup> Ministry of Education and Research et al. 2013: 39 et seq.

<sup>78</sup> For details cf. section 2a to e of the Introduction Act, section 62 of the Immigration Act and <http://www.regjeringen.no/en/dep/bld/topics/integration-and-diversity/norwegian-language-tuition-and-introduct.html?id=670151>.

Tuition is not compulsory and not free of charge for nationals of EEA and Nordic countries. ECRI was informed that a considerable number of migrants from EEA and Nordic countries are reluctant to pay for training even though they lack language skills and knowledge about Norway.

52. According to the 2012 white paper the main goal of the Government's integration policy is to ensure that all people living in Norway can participate in the community effectively, making full use of their potential. It focuses on the objectives to integrate more immigrants, especially women, into the labour market, to create the right conditions for the early development of all children and equal opportunities for them, to create an inclusive society and to make people fully aware that they live in a diverse society. The white paper was criticised for lacking concrete measures.

- **Effects of integration policies**

53. In 2005, Parliament introduced a set of 17 goals with progress indicators in order to monitor actively and readjust integration policies. The indicators mainly cover the areas of employment and education.<sup>79</sup> The authorities informed ECRI that the purpose would not be to evaluate integration policies but to help coordinate the efforts of the ministries working on their implementation. The indicators show a stable situation over the last five years with a slight improvement in the percentage of migrants at risk of poverty and a slight worsening of their unemployment rate. Critics point out that, despite 20 years of integration policies, the gap between the unemployment rate of migrants and that of the whole population is increasing slightly.<sup>80</sup> A study from 2009 showed that more than half of the migrants in Norway had experienced discrimination in one or more areas such as recruitment, housing and health care during the last five years. Migrants from Somalia, Iraq and Iran were most affected.<sup>81</sup>

54. ECRI considers that the impact of Norwegian integration policies and integration measures would improve if the authorities used systematically objectives and indicators to evaluate their impact. It therefore encourages the authorities to insert, in action plans and strategies, measurable objectives and indicators to monitor progress. Such objectives and indicators should also be defined for public services in charge of developing and implementing integration activities.

55. ECRI recommends that the Norwegian authorities introduce measurable objectives into their integration policies and determine integration indicators to monitor progress. Public services in charge of integration should also be given measurable objectives to achieve and indicators to measure progress.

- **Education**

56. Education and employment are focal areas of the integration policy outlined in the 2012 White Paper. The assessment made in the framework of the Migrant Integration Policy Index (MIPEX) of Norway's education policy related to integration is rather positive. Multicultural education has been strengthened in

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<sup>79</sup> Cf. Ministry of Children, Equality and Social Inclusion 2013a: 206 et seq. and Agency for Public Management and e-Government 2011.

<sup>80</sup> NCHR 2013b: 1 et seq. According to the authorities, in 2001 the unemployment rate of all immigrants was 3.1 times higher than that of the rest of the population. This ratio rose to 3.6 in 2007, fell back to 3.2 in 2009 and increased in 2014 to 3.7; in times of economic crisis the unemployment rate of immigrants grows faster than that of the rest of the population. Variations concerning the origin of migrants would also affect the figures.

<sup>81</sup> Norway Statistics 2009: 3 et seq. 24% of immigrant men and 16% of immigrant women reported having suffered discrimination in recruitment. Somalis and Iraqis, who frequently report having experienced discrimination, usually are recent arrivals, do not have a high level of education and have a high unemployment rate.

curricula. The authorities are providing for more teacher training and are increasing the recruitment of teachers with migration backgrounds.<sup>82</sup>

57. Since 2009 all children are entitled to a place in kindergarten. As from 2007 kindergarten is heavily subsidised for four- and five-year-old children in several districts of Oslo, Bergen and Drammen with a high share of children with migration backgrounds. ECRI welcomes the fact that the percentage of one- to five-year-old minority-language children attending kindergarten reached 75% in 2012. As this is still significantly below the average of 90% for all children<sup>83</sup>, ECRI encourages the authorities to continue their efforts to increase it further.
58. Asylum seeking children living in reception centres are guaranteed a place in a kindergarten only if there is such an institution in the reception centre; they can attend the municipalities' kindergartens only if there are places left.<sup>84</sup> ECRI welcomes the new government's efforts to accelerate the resettlement of refugees from reception centres to municipalities. However, it considers that children living in reception centres should have access to kindergarten like every other child; the legal right to attend kindergarten should, therefore, be extended to these children as well.<sup>85</sup>
59. The gap in the performance between pupils with migration backgrounds and others has decreased. Children with a migration background born in Norway do better than migrant children born abroad.<sup>86</sup> The percentage of pupils belonging to both groups who completed upper secondary school remained in 2011 at 52%.<sup>87</sup> The government informed ECRI that the fact of both parents being employed has a positive impact on the educational outcome of children with a migration background. Since 2008 pupils having a mother tongue other than Norwegian or Sami are entitled to additional lessons in Norwegian adapted to their needs until they are sufficiently proficient to follow regular instruction. In primary and secondary school and during professional training, such pupils are also entitled to mother tongue instruction, bilingual instruction, or both. Since 2012, local authorities may organise education in separate groups, classes or schools for recently arrived pupils. Participation is limited to a maximum of two years and requires the consent of the child or his/her parents.
60. However, children and in particular boys born abroad still suffer from a higher dropout rate. Civil society reports that these children find it difficult to catch up if they encounter school problems; moreover, certain schools lack the resources to follow pupils with extra needs. Research also shows that parents have difficulties in assisting their children, as they only have limited understanding of Norwegian pedagogy. Due to language and cultural barriers they feel quite distant from the school. Some parents fear that their children do not learn enough about Islamic culture and values, as there are no Muslim schools in Norway. When a pupil does not attend school for a long period of time, some schools prefer to report this to the child welfare services rather than to contact his/her parents. The Minister of Education urged schools to report such incidents to the child-welfare services, even though research concludes that migrant families do not trust the latter.

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<sup>82</sup> British Council, Migration Policy Group, MIPEX III – Norway, <http://www.mipex.eu/norway>". The share of teachers with a minority background is increasing. In 2012 it reached 6.3% among those studying to become teachers.

<sup>83</sup> In 2007, these shares were 63% vs. 84%, and in 2000 44% vs. 62%. For this paragraph cf. also Ministry of Education and Research et al. (2013), 51.

<sup>84</sup> Sandelson, M. (2013; NCHR 2013: § 27 et seq.

<sup>85</sup> See also Departementenes servicesenter Informasjonsforvaltning 2010: 7.

<sup>86</sup> Ministry of Education and Research 2013: 54 et seq.

<sup>87</sup> 65 % of second generation pupils born in Norway complete upper secondary school within five years, but only 34 % of migrant pupils achieve this.



Several hundred children with migration backgrounds are sent to attend school in their countries of origin.<sup>88</sup>

61. ECRI appreciates the activities by the authorities to prepare children with migration backgrounds to follow regular teaching. However, it draws the authorities' attention to § 3 of its GPR No. 10 on education, as a system of prolonged education in separate groups, classes and establishments might increase segregation in schools. ECRI also encourages schools and child-welfare services to draw inspiration from best practice examples in other countries and to involve parents with migration backgrounds in schooling; this will lower the language and cultural barriers and will enable parents to help their children succeed at school.<sup>89</sup> ECRI welcomes in this connection the pilot project at an Oslo primary school, Mortensrud, with a high proportion of children with migration backgrounds which involves providing additional free tuition in the afternoon.
62. ECRI recommends the Norwegian authorities to design projects to promote the involvement of parents of children with migration backgrounds into school life and the education of their children.
63. ECRI welcomes that, following recent amendments to the Education Act, all migrants under the age of 18 applying for a residence permit have the right to primary and secondary education.<sup>90</sup> Concerning adult migrants, however, a recent report shows that their access to education varies considerably from one county to another and that, for example in Oslo, only one in ten migrants needing primary and secondary education is offered it.<sup>91</sup> ECRI considers that the authorities should take positive action in this field and stresses that such gaps in access to education affect the very same persons who will later on face problems in accessing the labour market and who are subject to hate speech and discrimination. Providing early<sup>92</sup> and continued access to education prevents irreparable damage to their personal development and improves their integration. ECRI also wishes to stress that education contributes to the prevention of migrants' radicalisation; it improves their public image and prevents hate speech and discrimination.
64. ECRI recommends that the Norwegian authorities guarantee a legal right to preschool education including kindergarten for asylum seeking children. They also should improve the access of adult migrants to education (§ 7a of General Policy Recommendation No. 14 on combating racism and racial discrimination in employment).

- **Employment**

65. In Norway, 63% of the foreign-born population are employed (68% of men and 58% of women), which is higher than the OECD average.<sup>93</sup> However, the gap in unemployment rates between migrants and those born in Norway increased in 2013; unemployment among migrants was 3.6 times higher than among those born in Norway. Research indicates that migrants are subject to considerable discrimination in recruitment procedures; many employees with migration backgrounds are overqualified for their job. Migrants' children do better on the labour market than first generation migrants.<sup>94</sup> Even though migrants from non-

<sup>88</sup> Open Society Foundations 2013: 15 et seq.; The Norway Post 2013 and 2014; on the plans to open a Muslim primary school at Oslo cf. thelocal.no, 2014.

<sup>89</sup> See e.g. l'Ecole des Mamans de Pâquis-Centre at Geneva or the project "neighbourhood mothers" at Berlin-Neukölln.

<sup>90</sup> Cf. Articles 3-1.12, 4A-1.3 and 4A-3.8 of the Education Act as amended by Law No. 2014-06-20-54.

<sup>91</sup> FaFo 2014b, English summary by Theforeigner.no 2014.

<sup>92</sup> Cf. § 57 on access of asylum seekers to kindergarten.

<sup>93</sup> For this paragraph cf. Ministry of Children, Equality and Social Inclusion 2012b and 2013a: 206 et seq.

<sup>94</sup> Ministry of Education and Research et al. 2013: 47 et seq.

European countries are those mostly affected by unemployment, migrants from African countries like Eritrea with higher educational level do significantly better than the ones from other African countries. The results of the introduction programmes (see § 51) vary considerably from one municipality to the next.<sup>95</sup>

66. ECRI was informed of a number of problems hindering the access of asylum seekers to the labour market: Asylum seekers have to apply for a temporary work permit which is only granted to those having valid travel documents. Since many do not possess such documents, and as it is often impossible to obtain them from their country of origin, they are not able to work for years. Others are convicted for illegal entry in the country even though the director of public prosecutions has issued guidelines clarifying that no such criminal proceedings should be instituted against persons seeking protection.<sup>96</sup> Their criminal records discourage potential employers. ECRI recalls that many refugees are not to be blamed for being unable to present valid travel documents and encourages the Norwegian authorities not to penalise them by impeding their access to the labour market.
  67. ECRI recommends the Norwegian authorities to abolish the rules requiring asylum seekers to present valid travel documents in order to obtain work permits. They should also ensure that the prosecution services comply with the guidelines not to institute criminal proceedings for illegal entry in the country against persons seeking protection.
  68. ECRI welcomes the fact that Norwegian labour market policy focuses on migrants from non-EEA countries and unemployed women with migration backgrounds.<sup>97</sup> However, migrants with a low level of education continue having big problems in accessing the labour market. ECRI therefore considers that the Norwegian authorities should carefully analyse the reasons why some municipalities succeed better in integrating such migrants into the labour market. Other municipalities should use these good practices as an example. ECRI also encourages the authorities to fix measurable objectives in this field (see § 55). Particular attention should be paid to the practical barriers faced by migrant women with young children. The introduction programmes should provide for childcare and the possibility for parents to follow part time tuition.
  69. ECRI recommends the Norwegian authorities to identify and disseminate good practices in preparing low educated and illiterate migrants for the labour market, to adapt the introduction programmes accordingly and to define with the municipalities measurable objectives in this area.
  70. ECRI welcomes the fact that the action plan on employment (see § 52) contains eight “actions” concerning the recognition of prior competences of migrants. ECRI refers once more to the recommendation in § 55 according to which measurable objectives and integration indicators to monitor progress should be introduced in such action plans.
- **“National minorities” and indigenous people**
71. ECRI’s attention has been drawn to the fact that that in Norway it is difficult to talk about integration policies in connection with “national minorities” and indigenous people, since both groups were subject to assimilation policies in the past. However, as already mentioned in § 49, both groups were among the

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<sup>95</sup> Serie: Integreringspolitikk gjennom 20 år (Aftenposten). Seven out of 10 Ethiopian migrants, eight out of 10 Eritrean male migrants, but only four out of 10 Somali migrants work or study one year after having completed the introductory program. Many of them had little schooling. While in Bærum nine out of 10 refugees worked or studied one year after the end of the introductory program, in Fredrikstad only four out of 10 did so.

<sup>96</sup> Norwegian Association for Asylum Seekers 2014: 28 et seq. Director of Public Prosecutions 2008. Cf. Article 41 of the Geneva Convention relating to the Status of Refugees.

<sup>97</sup> Ministry of Children, Equality and Social Inclusion 2013: 207.

beneficiaries of the Action plan to promote equality and prevent ethnic discrimination. Moreover, in 2009 an action plan was adopted for the improvement of the living conditions of Roma in Oslo. It aims at helping Roma to draw the benefit of existing services and social benefits in various areas, including education, employment, health, housing and others. The action plans notwithstanding, the 4 000 to 10 000 Romani people/Taters and the approximately 700 Roma continue suffering from negative media reporting, hate speech and discrimination. Moreover, they have problems accessing education, housing and employment.<sup>98</sup> Representatives of these minorities and the LDO consider that their cooperation should be intensified.

72. State help for the approximately 40 000 Norwegian Sami takes the form of measures to preserve their traditional way of life. The authorities' record of consulting the Sami Parliament before taking decisions affecting this community (as they are obliged to by law) has improved. There has also been progress in the field of rights of use and ownership of land under the Finnmark Act. However, ECRI has been informed that the Sami continue to suffer from stereotypes: e.g. jokes implying that they are primitive persons, not able to speak proper Norwegian.
73. ECRI encourages the authorities to continue promoting equality for and combat discrimination against "national minorities" and indigenous people. Moreover, the LDO should actively involve these groups' representatives in the efforts s/he in making to achieve these goals.

## **II. Topics specific to Norway**

### **1. 4<sup>th</sup> cycle interim follow-up recommendations**

74. On 9 December 2011 ECRI concluded that the first interim follow-up recommendation which it had addressed to the Norwegian authorities in its 4<sup>th</sup> report - to render more specific the general duty of public authorities and private employers to promote equality and to empower the LDO to enforce it - had not been implemented. ECRI welcomes the progress that has since been made in this field. For instance, the obligation for public agencies to invite at least one applicant with a migration background to interviews, if s/he is qualified, has contributed to an increase in the number of civil servants with migration backgrounds. A survey showed that 33% of such applicants had been hired. The authorities also informed ECRI that 30% of employers responded in 2010 that the duty to promote equality had had a positive effect on their efforts in this field. Given the persisting discrimination in the labour market, ECRI considers that the efforts to implement this duty need to be continued.
75. In November 2011, the government-appointed Equality Commission found that the duty to promote equality needed to be concretised and its monitoring to be reinforced; to the latter effect, it recommended the setting up of a tripartite forum composed of the competent authorities and representatives of employers and employees.<sup>99</sup> Further progress has been made through the enactment of EADA in 2014. According to its section 20, this "duty shall encompass matters such as recruitment, pay and working conditions, promotion, development opportunities and protection against harassment". In addition, the LDO and the LDN shall enforce the private employers' and the authorities' duty to report on their efforts to comply with the duty in their annual reports or budgets (as opposed to reporting on the results, see sections 20 to 23 EADA). ECRI refers to the recommendation made in § 20 and concludes that its 4<sup>th</sup>-report recommendation continues to be partly implemented. ECRI encourages the authorities to make the LDN

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<sup>98</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities 2011; Ad Hoc Committee of Experts on Roma Issues 2013a and b.

<sup>99</sup> Ministry of Children, Equality and Social Inclusion 2011b: 25 et seq.

responsible for enforcing the duty itself (as opposed to being responsible for enforcing the obligation to report on efforts).

76. In its second interim follow-up recommendation, ECRI urged the Norwegian authorities to increase the availability and use of professional interpretation in the health sector and the legal system. In 2011 it concluded that this recommendation had not yet been fully implemented as the systematic use of qualified interpreters was not guaranteed.<sup>100</sup> ECRI has in the meantime been informed that the Ministry of Justice and Public Security has made a survey on the needs and use of interpretation in the legal system. A number of other authorities, including the Directorate of Health, have issued guidelines in this field. Several hospitals in Oslo consider setting up a central interpretation unit. In September 2014 a government-appointed panel will make recommendations for the use of interpreters and the establishment of interpretation units in the public sector in general. ECRI considers that the authorities should complete this process by adopting binding rules on the use of interpreters and by ensuring that enough qualified interpreters are available for all relevant languages.
77. The third interim follow-up recommendation was that the authorities take steps to address racial profiling by carrying out in-depth research and monitoring police activities. During its country visit, ECRI received various reports on misbehaviour of police towards Roma. It was also informed that persons with migrant backgrounds have little trust in the police. Asylum seekers and Black persons report being subjected to frequent police controls. As no research has been done, ECRI is not able to assess whether these controls are excessive or not. ECRI notes that the lack of research in the field of racial profiling is a quasi-pan-European problem (as recalled in the explanatory memorandum to GPR No. 11 on combating racism and racial discrimination in policing). As Norway has made a valuable contribution to fill research gaps in other areas, ECRI regrets it did not follow up this recommendation.
78. When it comes to monitoring of racial profiling, ECRI again highlights the positive outreach activity of the Oslo police including training for police agents together with NGOs. At the same time, ECRI regrets that the Police Directorate stopped its regular meetings with civil society in 2010. ECRI also considers that the Police Directorate could ensure that good practices are shared throughout the country.<sup>101</sup>
79. ECRI recommends the Police Directorate to resume its cooperation with civil society and to make sure that good practices in building sustainable relations with members of vulnerable groups are shared throughout the country (§§ 15 to 20 of ECRI's General Policy Recommendation on combating racism in policing).

## 2. LGBT<sup>102</sup>

80. In 2010 the Norwegian Institute of Public Statistics conducted a living-conditions survey on lesbian, gay and bisexual persons; 1,5% of the respondents defined themselves as LGB and 0,3% were unsure how to define themselves. However, the authorities tend to rely on a higher estimate given by researchers: 3 to 5% of the population. Little quantitative research has been done on transgender persons. In 2012, the authorities estimated their number to be at least 19 000; for approximately 700 persons the diagnosis of transsexualism had been made.<sup>103</sup> Moreover, according to the authorities, every year 10 to 12 children are born with

<sup>100</sup> For a recent case cf. the decision of the LDO no. 10/1742, 17 February 2012.

<sup>101</sup> See on this paragraph Norwegian Government 2009b: Chapter 10.

<sup>102</sup> For terminology, see the definitions set out in CoE Commissioner for Human Rights 2011: 129 et seq.

<sup>103</sup> According to AI 2014: 73, each year up to 200 persons apply for gender reassignment treatment; up to half of them get access to it. LGBT NGOs consider that about 500 persons have changed their legal gender and about 500 others have received gender-reassignment treatment abroad.

ambiguous genitalia and about 300 with atypical genitalia. ECRI welcomes the research done so far on LGB; it encourages the authorities to collect data on them on a more regular basis, for example when gathering statistics on the general population.<sup>104</sup> ECRI also encourages the authorities to fill the obvious gap that exists in so far as data on transgender persons is concerned.

81. ECRI recommends that the Norwegian authorities collect data on LGBT persons systematically.

- **Legislation**

82. ECRI notes that the protection of LGBT persons has been strengthened by the recent inclusion in the Constitution of the human right to equal treatment and of the general prohibition of discrimination (cf. § 2). However, gender identity is not mentioned in the hate-crime provisions of the CC 1902.

83. ECRI recommends that the Norwegian authorities include gender identity in all articles of the Criminal Code concerning hate motivated offences.

84. Article 155 CC 1902 makes it an offence to infect or expose another person wilfully or negligently to the risk of infection with a contagious disease such as HIV. If the victim is the offender's next-of-kin, criminal proceedings can in principle only be instituted at the victim's request; the prosecutor may, however, decide that prosecution is required in the public interest. ECRI has received information from civil society that there have been proprio motu prosecutions against persons who allegedly infected or exposed to risk their stable same-sex partners. Such practices can have serious impact on the private life of HIV-positive persons in stable same-sex relationships. As a result, some even fear having safe sex, although – according to the legislator and the case law – it is not a criminal offence for HIV-positive persons to engage in sexual activity if using a condom properly.<sup>105</sup> ECRI considers that prosecutors should exercise their power to institute proprio motu criminal proceedings against persons who allegedly infected or exposed to risk their stable same-sex partners with extreme restraint.

85. ECRI welcomes the fact that the new Sexual Orientation Anti-Discrimination Act, which entered into force on 1 January 2014, covers all fields of social life with the exception of family life and purely personal relationships. Same-sex couples have the right to marry under the Marriage Act; they then have the same rights as heterosexual ones including joint and second parent adoption. Married lesbian couples have access to medically assisted reproduction.<sup>106</sup>

- **Policies**

86. In 2008, the Action Plan for Improving the Quality of Life among LGBT (2009-2012) was adopted.<sup>107</sup> School, education and health were focal areas of the action plan, which also covered the fields of research, child and family policy, working life, police and prosecution, immigration as well as “national minorities”. Combating discrimination of sexual minorities internationally was also one of its goals. In 2011 a LGBT Knowledge Centre was set up as part of the plan, with the aim to increase knowledge about the lives of LGBT persons. According to the action plan, equal opportunities and gender issues were part of the university curriculum for those studying to become teachers. Sexual orientation was to be one of the topics for grades 1 to 4; by grade 4 at the latest, pupils were to be exposed to the concept of families with same-gender parents. Terminology was changed and new teaching material on sexual relationships was prepared. The national initiative against bullying, which had started about a decade before, was

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<sup>104</sup> This has been already suggested in Ministry of Children, Equality and Social Inclusion 2013d.

<sup>105</sup> Government 2012b: Chapter 3.4.

<sup>106</sup> Government 2013b; LLH and ILGA Europe 2013.

<sup>107</sup> Ministry of Children and Equality 2008.

continued and a book and exhibition project named “Gay Kids” aimed at raising awareness and disseminating knowledge about same-sex relations among children and adolescents. The city of Oslo established a special health centre for LGBT persons between the age of 13 and 30. Other cities integrated such services in their general-care health centres.

87. In 2013 the action plan was evaluated. The following conclusions were reached: It was perceived as a historical milestone. It seemed that its objectives would be reached in the area of research. However, more needed to be done in the field of developing adapted public services for LGBT persons. Further efforts were also necessary to increase LGBT-related knowledge and expertise among public authorities’ managers. A new action plan should focus on the municipal sector and define criteria for assessing whether goals were achieved.<sup>108</sup>
88. In 2013, a large study<sup>109</sup> concluded that the living conditions of lesbian, gay and bisexual persons had improved. On the one hand, a substantial proportion of lesbian and gay persons live ordinary lives with few or no special burdens related to their sexual orientation. The proportion of people with negative attitudes against LGBT persons has also decreased and there is less fear regarding the situation of children with lesbian and gay parents. On the other hand, as negative views persist among a share of the population, it is still not uncommon for LGBT persons not to disclose their sexual orientation. The risk of psychological problems, of suicide attempts, of substance abuse and of sexually transmitted diseases persisted affecting the LGBT community more than the rest of the population. However, it is less pronounced than previously thought. Another study highlights that LGBT persons with migration backgrounds are confronted with a high degree of intolerance in their own communities.<sup>110</sup> The first study on Norwegian transgender people was conducted in 2013.<sup>111</sup> It concluded that there was a general lack of knowledge about transgender issues; this was felt in a particularly acute manner in the field of public health care and education. As a result, transgender persons suffered from intolerance and transphobia. Many did not dare to come out.
89. ECRI welcomes the fact that in spring 2014 the Directorate of Health adopted a national action plan against suicide and self-harm which identifies LGBT persons as one of the risk groups. At the same time it encourages the authorities to develop a new comprehensive action plan in order to address the remaining problems of LGBT persons, to secure their rights and to contribute to more openness.<sup>112</sup>
90. ECRI recommends that the authorities develop and adopt a new comprehensive action plan for LGBT persons focusing particularly on improving knowledge and openness in connection with transgender persons and their situation.
91. According to civil society and research, in practice only persons diagnosed with transsexualism have full access to specific trans-related public health-care, including gender reassignment treatment. Other transgender persons do not receive adequate public health-care.<sup>113</sup> In addition, transsexualism can be diagnosed in only one hospital, the Oslo University Hospital (OUH). This is also the only hospital providing gender reassignment treatment that is reimbursed by public health-insurance schemes. ECRI encourages the authorities to ensure that transgender persons (a broader category than transsexuals) can receive free

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<sup>108</sup> Ministry of Children, Equality and Social Inclusion 2013d: 2.

<sup>109</sup> Uni Helse 2013: v et seq.

<sup>110</sup> FaFo 2014a.

<sup>111</sup> Likestillingscenteret 2013: 6.

<sup>112</sup> As already envisaged in the cooperation agreement for the new government (see p. 14).

<sup>113</sup> Cf. Likestillingscenteret 2013: 6 with concrete examples; FaFo 2014a: 13; LLH 2012.

treatment – which is crucial for their condition - in at least two or three specialised medical facilities.<sup>114</sup>

92. ECRI recommends that the authorities ensure that gender reassignment and other specific treatment for transgender persons is made available to them in several medical facilities and that their cost is reimbursed by public health-insurance schemes.
93. The legal recognition of gender change is based on administrative practice established in the 1970s. The tax authorities change the gender marker in the national identification number after certification by the OUH that the person in question has undergone a “real sex conversion” which includes irreversible sterilisation. As the OUS is the only institution which provides for such treatment, it makes key decisions in three crucial areas: fulfilment of the diagnostic criteria, provision of health treatment and determination whether the above-mentioned condition for legal recognition of change of gender is fulfilled. ECRI welcomes the fact that the authorities have set up an expert group (with the involvement of civil society) to review the issue of legal recognition of a person’s preferred gender and that they are in the process of establishing a complaints mechanism to which transgender people can turn when they are denied health care from the OUS.<sup>115</sup> ECRI encourages the authorities to establish a proper legal framework, which would also spell out the procedure for gender recognition and gender reassignment. They can seek inspiration from international standards and draw on internationally available expertise.<sup>116</sup>
94. ECRI recommends that the authorities develop legislation on gender recognition and gender reassignment, in line with international standards and expertise.

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<sup>114</sup> See also Likestillingscenteret 2013: 6.

<sup>115</sup> Concerning §§ 91 et seq. see AI 2014: 70 et seq.

<sup>116</sup> Cf. e.g. CoE Commissioner for Human Rights 2011: 14 et seq., European Court of Human Rights 2013, the 2006 Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity and the case law of the German Constitutional Court cited in § 103 of ECRI’s 5th report on Germany.





## INTERIM FOLLOW-UP RECOMMENDATIONS

The two specific recommendations for which ECRI requests priority implementation from the authorities of Norway are the following:

- ECRI recommends that the authorities give the Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal the power to “recommend cases to court free of charge”, so that victims do not have to pay court fees and get their legal representation for free.
- ECRI recommends that the authorities set up an IT-based system for recording and monitoring racist and homo/transphobic incidents and their processing through the judicial system (§ 12 of ECRI’s General Policy Recommendation No. 11 on Combating racism and racial discrimination in policing).

A process of interim follow-up for these two recommendations will be conducted by ECRI no later than two years following the publication of this report.



## LIST OF RECOMMENDATIONS

The position of the recommendations in the text of the report is shown in parentheses.

1. (§ 3) ECRI reiterates its recommendation that Norway ratify Protocol No. 12 to the European Convention on Human Rights as soon as possible.
2. (§ 8) ECRI recommends that the Norwegian authorities bring their criminal law into line with its General Policy Recommendation No. 7; in particular they should include the grounds of race, language and citizenship in the relevant provisions and criminalise (i) the production and storage of written, pictorial or other material containing manifestations of racism (ii) the public denial, trivialisation, justification or condoning, with a racist aim, of crimes of genocide, crimes against humanity or war crimes and (iii) the creation and leadership of a group which promotes racism and participation in its activities.
3. (§ 13) ECRI recommends that the Norwegian authorities bring their anti-discrimination legislation in line with its General Policy Recommendation No. 7; in particular the law should (i) prohibit discrimination on the ground of citizenship (ii) expressly prohibit segregation, discrimination by association and announced intention to discriminate (iii) promote equality through public procurement (iv) provide that discriminatory provisions in individual or collective contracts or agreements are invalid and (v) provide for the dissolution of racist organisations and the suppression of their public financing.
4. (§ 19) ECRI recommends that the authorities give the Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal the power to “recommend cases to court free of charge”, so that victims do not have to pay court fees and get their legal representation for free.
5. (§ 20) ECRI recommends the authorities to reconfigure the mandates of the Anti-Discrimination Ombud and the Equality Tribunal; both bodies should be given the competence to seek friendly settlements and the Ombud should focus on providing legal assistance to victims instead of decision-making.
6. (§ 31) ECRI strongly recommends the Norwegian police and prosecution authorities to take stock of hate speech present on the Internet, open investigations whenever section 135a of the Criminal Code has been breached, have empowerment conversations with extremists using such Internet sites and close down those that operate within Norwegian jurisdiction.
7. (§ 32) ECRI also strongly recommends the authorities to give one or more police units responsibility for combating hate speech on the Internet along with appropriate technical and human resources.
8. (§ 35) ECRI recommends the Norwegian authorities to stress in the public debate the positive aspects of immigration and the contribution of people with migrant backgrounds to Norwegian society and economy.
9. (§ 43) ECRI recommends that the authorities set up specialised units or appoint specialised officers in each police district to deal with racist and homo-/transphobic incidents; these should also liaise with the vulnerable groups.
10. (§ 44) ECRI also recommends that the authorities set up an IT-based system for recording and monitoring racist and homo-/transphobic incidents and their processing through the judicial system (§ 12 of ECRI’s General Policy Recommendation No. 11 on Combating racism and racial discrimination in policing).

11. (§ 50) ECRI recommends that the Norwegian authorities adopt a new comprehensive Action Plan on integration including the promotion of equality and the prevention of discrimination.
12. (§ 55) ECRI recommends that the Norwegian authorities introduce measurable objectives into their integration policies and determine integration indicators to monitor progress. Public services in charge of integration should also be given measurable objectives to achieve and indicators to measure progress.
13. (§ 62) ECRI recommends the Norwegian authorities to design projects to promote the involvement of parents of children with migration backgrounds into school life and the education of their children.
14. (§ 64) ECRI recommends that the Norwegian authorities guarantee a legal right to preschool education including kindergarten for asylum seeking children. They also should improve the access of adult migrants to education (§ 7a of General Policy Recommendation No. 14 on combating racism and racial discrimination in employment).
15. (§ 67) ECRI recommends the Norwegian authorities to abolish the rules requiring asylum seekers to present valid travel documents in order to obtain work permits. They should also ensure that the prosecution services comply with the guidelines not to institute criminal proceedings for illegal entry in the country against persons seeking protection.
16. (§ 69) ECRI recommends the Norwegian authorities to identify and disseminate good practices in preparing low educated and illiterate migrants for the labour market, to adapt the introduction programmes accordingly and to define with the municipalities measurable objectives in this area.
17. (§ 79) ECRI recommends the Police Directorate to resume its cooperation with civil society and to make sure that good practices in building sustainable relations with members of vulnerable groups are shared throughout the country (§§ 15 to 20 of ECRI's General Policy Recommendation on combating racism in policing).
18. (§ 81) ECRI recommends that the Norwegian authorities collect data on LGBT persons systematically.
19. (§ 83) ECRI recommends that the Norwegian authorities include gender identity in all articles of the Criminal Code concerning hate motivated offences.
20. (§ 90) ECRI recommends that the authorities develop and adopt a new comprehensive action plan for LGBT persons focusing particularly on improving knowledge and openness in connection with transgender persons and their situation.
21. (§ 92) ECRI recommends that the authorities ensure that gender reassignment and other specific treatment for transgender persons is made available to them in several medical facilities and that their cost is reimbursed by public health-insurance schemes.
22. (§ 94) ECRI recommends that the authorities develop legislation on gender recognition and gender reassignment, in line with international standards and expertise.

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