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FOR HUMAN RIGHTS**

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AUX DROITS DE L'HOMME**



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## **FOLLOW-UP REPORT ON NORWAY (2001 – 2005)**

**Assessment of the progress made  
in implementing the recommendations of  
the Council of Europe Commissioner for Human Rights**

**For the attention of the Committee of Ministers  
and the Parliamentary Assembly**

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## Introduction

1. The Commissioner for Human Rights, Mr. Alvaro Gil-Robles, visited Norway on 2–4 April 2001 on the invitation of the Norwegian Government. In his report of the visit<sup>1</sup>, the Commissioner identified a number of concerns regarding law and practice in Norway with respect to human rights and made recommendations in order to assist the Norwegian authorities in their pursuit of remedying the shortcomings. The issues addressed in the original report include the rights of detainees and persons in custody, the situation of asylum-seekers and national minorities, and racism and non-discrimination. In October 2003, following a request by the Commissioner, the Norwegian government provided information on progress made in implementing the Commissioner's recommendations until that time. Information was also received from several non-governmental organisations.
2. A follow-up visit to assess further developments was carried out by members of the Commissioner's Office<sup>2</sup> on 5–7 September 2005. The follow-up visit also gathered information on two topics not directly covered by the Commissioner's original visit, namely, responses to violence against women as well as trafficking in human beings. The purpose of this report is to assess the extent the Norwegian authorities have implemented the recommendations made by the Commissioner in his 2001 report as well as to take note of the Norwegian responses to violence against women and trafficking in human beings.
3. The report is based on information gathered during the follow-up visit<sup>3</sup>, written submissions from the Norwegian authorities, reports by human rights experts, local and international non-governmental organisations and inter-governmental organisations and other public sources. The members of the Commissioner's Office would like to express their gratitude for the assistance and openness of the representatives of the Norwegian authorities and civil society.

### 1. The rights of detainees

4. In his report, the Commissioner noted that the restrictions on the rights of persons detained on remand remained problematic. Despite the progress made since the visits of the CPT in 1997 and 1999, concerns remained particularly in relation to placement in isolation. The Commissioner also noted with concern that juveniles were held together with adults in some prisons. He encouraged the implementation of plans to create a special section for juveniles in Oslo prison.

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<sup>1</sup> Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to Norway, 2-4 April 2001, for the Committee of Minister and the Parliamentary Assembly, (CommDH(2001)4). The report was presented to the Committee of Ministers on 19 September 2001, and can be found on the Commissioner's website at [www.commissioner.coe.int](http://www.commissioner.coe.int).

<sup>2</sup> Ms Sirpa Rautio and Mr Lauri Sivenon.

<sup>3</sup> The follow-up visit included contacts – in the order of the visit - with the Centre for Combating Ethnic Discrimination (SMED), Contact Committee for Immigrants (KIM), Forum for contact between national minorities and the authorities, the Parliamentary Ombudsman, representatives of the Ministry of Justice and the Police, Ministry of Local Government and Regional Development and the Ministry of Foreign Affairs. The members of the Commissioner's Office also visited the Oslo prison and met with the prison authorities. Meetings were also organised with non-governmental organisations working in the field of human rights and the Norwegian Centre for Human Rights.

### *Development of the situation and measures taken*

5. Since the Commissioner's visit to Norway in 2001, legislation relating to the placement of persons in isolation has been amended. In October 2002, amendments to the Criminal Procedure Act (Section 186a) entered into force, the main purpose of which was to reduce the overall use of isolation, to strengthen judicial supervision and to allow less discretion to the police than previously.
6. According to the previous Criminal Procedure Act, the court could decide by order that a person in custody should not receive visits or send or receive letters or other consignments, or that visits or exchange of letters could only take place under police control. Based on such orders, the police were at liberty to decide whether the prisoner was to be held in isolation or not. The procedure has been changed so that the use of isolation is only possible following an explicit authorisation by a court in cases, where there is an immediate risk of the prisoner interfering with evidence if not isolated. In order to ensure that isolation will not be used unless strictly necessary, the legislation contains a general provision stating that isolation should not be disproportionate in view of the nature of the case and other circumstances.
7. When deciding on isolation, the court must fix a set time limit for the restriction, which must be as short as possible and may not exceed two weeks. It may be extended by court order for two weeks at a time. Furthermore, maximum time limits for the use of isolation have been introduced based on the maximum sentences for the suspected crime in question. However, the detainee may, on the authority of a judge, be held in isolation for more than the maximum time of 12 weeks if necessitated by special circumstances.
8. During the follow-up visit, the members of the Commissioner's Office were informed by the Ministry of Justice that there was a detectable trend of decreasing use of detention and isolation as a result of the changes introduced, in particular the strict time limits imposed by the law.<sup>4</sup> Due to the lack of statistics available on isolation, however, the authorities considered it to be premature to draw more far reaching conclusions on the success of the reforms, which is still an ongoing process.
9. As regards the placement in custody of juveniles, there is still no separate section for juveniles in Oslo prison. During their visit to the prison, the members of the Commissioner's Office were able to observe, however, that efforts have been made to offer juveniles a possibility to be separated from adults during the day time. The Norwegian authorities stressed that they try to avoid the detention of juveniles for as long as possible, which is evidenced by the low number of juveniles in detention. Although full statistics are not available after 2002, it appears that the number of juveniles held in custody has been decreasing.<sup>5</sup>
10. During their visit to Oslo prison, members of the Commissioner's Office were informed about an ongoing project to improve the conditions of pre-trial detention in the prison. Based on a survey conducted with pre-trial detainees<sup>6</sup>, some changes had already been

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<sup>4</sup> According to the Ministry of Justice and Police, 3,198 persons were held in remand custody in 2004 for an average of 65 days. The number of persons in remand custody was reduced by 7,6 % compared to 2003.

<sup>5</sup> In 2002, 111 persons in the age group between 15-17 years were held in custody. Statistics Norway, 2005. In 2004, 48 persons in the age group 15-17 years were held in custody according to the information received during the follow-up visit to Norway in September 2005.

<sup>6</sup> The survey was done in 2001 and focused on the following areas: information, human contacts, activities, contribution from other services and individual needs.

introduced to the regime of pre-trial detention. The detainees were provided with more information upon their arrival than before and an information booklet in 10 languages was made available for the inmates with no Norwegian language skills. Each pre-trial detainee was assigned a personal officer, which in the past was only the case with convicted prisoners. In general, more focus has been placed on human contact and activities for pre-trial detainees. A handbook on quality in pre-trial detention was being developed by Correctional Service of Norway Staff Academy in co-operation with the Oslo Prison. According to the Director of the prison, the early results of the project were positive, both for the detainees and the prison staff. There had been a detectable decrease in the use of security cells and staff absence on sick leave had been reduced, a possible indication of increased job satisfaction and reduction in work-related stress.

### ***Conclusions***

11. The Commissioner welcomes the October 2002 amendments to the Criminal Procedure Code, which constitute an important shift. The 12 week maximum time-limit, which may even be extended, is still long, however, and it is to be hoped that it will be used with the appropriate restraint. More information and statistics are needed before making final conclusions on the difference made in practice by the amendments.
12. The number of juveniles in remand custody appears to be decreasing due to the commendable efforts of the authorities. The efforts of the prison authorities to separate juveniles from adults during the day and to provide for special activities, such as the possibility to attend school, organised for them while in custody are commendable. However, possibilities to create a special section for juveniles in Oslo prison should be further explored. The Commissioner welcomes the efforts to improve the quality of pre-trial detention in Oslo prison.

## **2. The rights of refugees and asylum-seekers**

13. In his report, the Commissioner noted that Norway has in recent years granted large numbers of residence permits to asylum-seekers based on protection and humanitarian grounds, although relatively few have received refugee status. Norway is one of the few countries that accept quota refugees proposed by UNHCR from refugee camps in third countries. Regarding the processing of asylum applications, the Commissioner noted that the procedures took a very long time and that applicants were frequently deprived of their liberty, especially in cases where there were some doubt as to their identity. The treatment of minors seeking asylum – whether accompanied or not – was of concern to the Commissioner, as they were treated in the same way as adults and often ended up spending long periods in reception centres.

### ***Development of the situation and measures taken***

14. Since the Commissioner's 2001 visit, there have been major reforms relating to asylum procedures and the reception of asylum-seekers in Norway. Between 2001-2003, Norway experienced a considerable influx of asylum-seekers, especially from Eastern European and CIS countries, which put the asylum system under severe strain.<sup>7</sup> In the autumn 2001, the Directorate for Immigration (UDI) introduced a new differentiated procedure for

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<sup>7</sup> In 1996, 1,778, in 1997 2,273, in 1998 8,543, in 1999 10,160, in 2000 10,843, in 2001 14,782, in 2002 17,480 and in 2003, 15,613 asylum-seekers arrived in Norway. In 2004, Norway received some 7,900 applications for asylum, which represented a decline of almost 7,700 applications and the lowest number since 1997.

manifestly grounded applications and focused on the rapid processing of these applications. In 2005, UDI again introduced new procedures and changes were made to the reception system for asylum-seekers. In addition to special procedures for unaccompanied minors and cases covered by Dublin convention, the Norwegian authorities are processing applications for asylum according to three different procedures; 48-hour procedure, 3-week procedure and 7-week procedure.

15. Since 2004, applications which are assumed manifestly ill-founded are dealt with by way of an accelerated procedure, taking at the most 48-hours, during which the applicants are kept in separate reception centres. Applications subject to such proceedings include those of individuals from countries regarded as safe.<sup>8</sup> The interview in these cases follows a simplified format, although the authorities stress that all applications also from these countries are examined individually on its merits.<sup>9</sup> After an examination, those applications that are not assumed to be manifestly unfounded will be taken out of the 48-hour procedure. The Office of the Commissioner was informed that there had been some 50 such cases in 2005. The procedure is dependent on whether additional information is needed to reach a decision. It is worth noting that also in Norway, in a significant percentage of asylum applications (26 % in 2004 and 20 % in 2003), it is decided that the application should be processed in another country party to the Dublin Convention.
16. In mid-2005, in addition to the 48-hour procedure, a 3-week procedure was introduced for applicants arriving from certain countries. Within this procedure, the authorities process cases where they have thorough knowledge of the security and human rights situation and applications usually do not require further investigation after the interview. In these cases, the outcome can be either negative or positive. According to the UDI, some 10 % of cases are currently dealt with in this procedure. For the rest of the applicants, whose cases require more investigations, the procedure normally takes 7 weeks. During the follow-up visit, the members of the Commissioner's Office were informed by the UDI that there was no backlog of cases at first instance and internal deadlines are being kept. There are, however, some delays experienced at the appeal stage.
17. As regards recognition rates, the percentage of those applicants granted refugee status has been rising in recent years. While in year 2000, only 97 applicants received refugee status, in year 2003, the number of recognized refugees was already 588 and in 2004 some 460. Of the examined cases in 2004, the proportion of applicants granted refugee status was five per cent, the same as in year 2003. Norway has also continued to grant residence permits on both protection and humanitarian grounds. In 2004, a total of 1,300 persons were granted residence on protection grounds and more than 1,700 persons were granted residence on humanitarian grounds. The proportion of examined asylum applications granted residence on humanitarian grounds increased from six per cent in 2003 to 20 per cent in 2004. Of all the asylum applications processed, the percentage of granted permits increased from 29 per cent to 40 per cent in 2004.<sup>10</sup>

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<sup>8</sup> UDI has developed lists of countries for the various procedures, but stress that these are not lists of safe countries as such. The list of countries for 48-hour procedure consists of countries where the Directorate has sufficient information about the general security and human rights situation and in their experience the applications mainly turn out to be manifestly unfounded.

<sup>9</sup> According to UDI, the purpose of this procedure is to protect the institution of asylum by preventing extensive resources from being tied up in the processing of assumed groundless applications for asylum. In 2004, almost 200 decisions were reached pursuant to these procedures. All the applications were rejected. A total of 30 applicants were transferred from this procedure and processed in accordance with the normal processing procedure. The proportion of asylum applications from countries deemed safe has dropped from seven per cent in 2003 to three per cent in 2004. UDI Facts and Figures 2004.

<sup>10</sup> The total number of persons granted protection in Norway, which includes the resettlement refugees, in 2000-2003:

18. NGOs informed the Commissioner's Office that the 48-hour procedure in practice only takes 20-22 hours on average, as the interviews are conducted on the day of arrival and the decision is delivered the next day. Although applicants have the right to lodge an appeal and have access to a lawyer, the lawyers only have 2 hours to lodge an appeal. According to the authorities, the suspensive effect of an appeal is decided in each case individually. However, NGOs voiced their concerns about the very short time-frame of the 48-hour procedure and the inclusion of certain countries on the list of safe countries of asylum. In general, however, NGOs evaluated positively the quality of the assessments made by case workers responsible for status determination decisions, but were concerned about the impact of time pressures on the quality of decision-making.
19. Since 2001, negative decisions issued by UDI have been appealed to the Norwegian Immigration Appeals Board, which is a quasi-judicial body under the Ministry of Local Government and Regional Development. The mandate of the Appeals Board is not limited to asylum issues, but pursuant to the Immigration Act, it receives appeals against decisions on family reunifications, residence, work and settlement permits, rejections of entry, expulsions and visas. The Appeals Board has instituted various internal procedures of decision making, both in asylum cases and other immigration cases. The Dublin-cases are mostly decided by the legal secretariat of the Appeals Board. The majority of the cases are dealt with by the Board Chairman and only some 10 % of cases are referred to the full Appeals Board, composed of laymen and the Board Chairman. According to article 38b(2) of the Immigration Act, cases without questions of substantial doubt may be decided by a Board Chairman alone or by the legal secretariat.<sup>11</sup> In the autumn of 2005, a new procedure was instituted for cases concerning questions of principle matters, cases with great social and economical consequences and cases where the results often differ. These cases can be heard before a Grand Board composed of three Board leaders and four board lay members.
20. NGOs have been critical of the Immigration Appeals Board and have claimed that it does not fulfil the requirements of due process of law. In particular, NGOs have complained that only 10 % of cases are referred to the Appeals Board in its full composition, although in their view, there are more cases that would merit the attention of the Appeals Board due to their complexity and the seriousness of the claim. Regarding additional legal safeguards, NGOs have stated that although in theory there exist a possibility to appeal asylum decisions to the normal courts, in practise this is extremely difficult and expensive. The appeal to the court does not automatically have a suspensive effect. Due to these circumstances, only a very limited number of asylum cases are heard in the normal courts.
21. The government commissioned an independent evaluation of the Appeals Board, focused on legal safeguards, which was finalised in March 2003. The report concluded that "in the course of the review, we have found no evidence that gives grounds for serious criticism of the Appeals Board" and states that "there is no reason to believe that cases which should have been decided by the Board are decided by a lower level of decision making."

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In 2000, 6,800, in 2001, 5,906, in 2002, 4,981 and in 2003, 4,938. In 2004, more than 4,300 persons received protection in Norway. This figure includes some 850 resettlement refugees that arrived in Norway in 2004.

<sup>11</sup> In 2001, the Appeals Board granted asylum in 4 cases, gave 265 residence permits and refused 4,145 cases. In 2002, the corresponding figures were: 10, 326 and 7,859 and in 2003, 21, 219, 9,429. UDI. Key figures, 2003.

However, humanitarian organisations nominating members to the board also communicated their experiences to the evaluation team, and a number of critical remarks were made.<sup>12</sup>

22. A new policy on reception of asylum-seekers was put in place from 1 January 2004, according to which persons who have received a final rejection of their asylum application are no longer entitled to stay at refugee reception centres as they are no longer considered asylum-seekers, but as persons staying illegally in Norway. The unsuccessful asylum-seekers are obliged to leave Norway by a deadline set by the authorities. This policy was accepted by the Supreme Court<sup>13</sup> on the condition that forcing the applicant to leave a refugee centre would not lead to a violation of article 3 of the European Convention on Human Rights (prohibition of torture and other inhuman and degrading treatment). This policy affected some 600 persons by early 2005. It has been severely criticized by NGOs<sup>14</sup> and the Centre against Ethnic Discrimination.<sup>15</sup> Following a policy change in October 2005 unsuccessful asylum-seekers, who can not for various reasons be returned to their country of origin are now allowed to stay in reception centres as a temporary solution pending the establishment of a centre for rejected asylum-seekers. As of 31 December 2005, 158 unsuccessful asylum applicants had been offered accommodation in reception centres.
23. In 2003, the Norwegian authorities increased their efforts to facilitate voluntary return of those asylum-seekers, who had been rejected or who had withdrawn their application, in collaboration with the International Organization for Migration. In 2004, close to 1100 persons accepted such an offer of assistance. Information campaigns on Norwegian refugee policies have been organised in the countries producing the largest numbers of unsuccessful applicants.
24. According to authorities special attention is given to unaccompanied minors in the asylum system. UDI has employed a person with special qualifications in child welfare to assist in the interviews of children. There are also reception centres specifically adapted to the needs of unaccompanied minors staffed with personnel experienced in child welfare. Unaccompanied minors continue to be treated as a priority when processing the applications. Yet, the authorities acknowledge that the difficulties in recruiting guardians continues and that further efforts are still needed with regard to guaranteeing the rights of the unaccompanied minors. Special care and protection is particularly important taking into account the risk of children being trafficked or being otherwise abused or disappearing.
25. NGOs have also reported some cases of trafficking in human beings in their contacts with asylum-seekers. Regarding unaccompanied minors, NGOs expressed their concern that very few unaccompanied minors are given refugee status.<sup>16</sup> Instead, they are granted a residence permit on humanitarian grounds, which does not give them the right to family

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<sup>12</sup> Information from 17<sup>th</sup>/18<sup>th</sup> periodic report submitted by Norway under article 9 of the International Convention on the Elimination of all forms of Racial Discrimination, September 2005.

<sup>13</sup> Interlocutory Appeals Committee of the Supreme Court, decision on 10 January 2005.

<sup>14</sup> IHF Focus 2005.

<sup>15</sup> Food, Shelter, and Health Services – the State’s Responsibilities Regarding persons Without Legal Residence, Centre against Ethnic Discrimination, April 2005.

<sup>16</sup> According to a study on asylum decisions on child applicants, the decisions in Norway on separated children follow the same trend as adults – a low rate of recognition as refugees, but relatively much higher rate of recognition on humanitarian grounds. Asylum Decisions on Child Applicants, Report on 4-country Pilot Project, Kate Halvorsen, June 2004.



reunification. Some NGOs advocate that the responsibility for unaccompanied minors asking for asylum should be transferred from UDI to authorities responsible for child-care to make sure that there is no conflict of interest in decision-making. The authorities have informed the Commissioner that the government is currently preparing the transfer of responsibility for unaccompanied minors to the child welfare services.

26. With regard to the detention of asylum-seekers, the Norwegian authorities have emphasised that detention should only be used exceptionally and in specific situations. According to the legislation, there are two circumstances in which asylum-seekers may be detained; where the foreign national refuses to state his identity or there are reasonable grounds for suspicion that the person has given false identity, and where detention is necessary in order to ensure the implementation of a decision of removal. The authorities informed the Commissioner that there has not been any change of practise in detaining asylum-seekers. 4373 persons were detained at the Police Aliens Camp at Trandum in 2004. Average stay was 2,6 days. In 2005, 2844 persons were detained with an average stay of 3,1 days. In 2004, 1262 persons signed a declaration of consent to stay at Trandum until a certain date, while in 2005 the corresponding number of persons was only 651. The number of persons remanded in custody in 2005, according to the detention rules of the Immigration Act, was 343 persons, which represents an increase from 2004.
27. The authorities informed the members of the Commissioner's Office about additional measures they have taken to ensure the quality and fairness of the status determination procedures. A specialized and independent Unit has been established within UDI to collect and analyse country information for the use of UDI and the Immigration Appeals Board. Both UDI and the Immigration Appeals Board have also recently developed an internal human rights strategy. The Appeals Board established posts for five human rights advisors in 2004 and a post of a human rights co-ordinator was established in UDI in 2005. Regular meetings are held to discuss cases and human rights courses are provided for the staff.

### ***Conclusions***

28. The reforms implemented in recent years have clearly had the desired effect of both shortening the time it takes to process asylum-applications and reducing the number of applications that have no chances of being accepted. This is clearly a legitimate goal, also from the point of view of the asylum-seekers. While many restrictions have been introduced in the asylum-system, the Norwegian authorities have taken additional measures to ensure that the asylum procedures are fair and that decisions are based on accurate information. Such measures include the emphasis given to human rights training for the officials dealing with asylum-seekers, providing free legal counselling and free legal aid for all asylum-seekers and the recent creation of a new Unit tasked with collecting reliable information about countries of origin to assist the decision-making bodies. The Norwegian authorities have continued to invest in the asylum-system and overall, it seems to be working quite well in practice.
29. Some concern may, however, be expressed over the categorization of countries, some of which are regarded as safe. This can compromise the objectivity and accuracy of the asylum process, and may in some cases lead to erroneous decision. Even in generally safe democratic countries, there may well be situations where not all individuals or groups of individuals are protected. Individual circumstances must always be taken into account. It is difficult to see how this can consistently be guaranteed in the fastest 48-hour procedures based on simplified interviews, even if in Norway certain flexibility does appear to be applied.

30. To ensure a thorough examination of claims in the second instance, the Commissioner encourages the Appeals Board to interpret the language in the Article 38b(2) of the Immigration Act covering “*cases without questions of substantial doubt*” in such a manner as to ensure that deserving appeals are heard by the Appeals Board in its full composition.
31. The Commissioner welcomes the partial reversal of the policy to deprive finally rejected asylum-seekers of any social assistance after the date on which they have been ordered to leave the country. The new policy, which takes into account the real prospects for return of the rejected asylum-seekers is an improvement. The policy of facilitating voluntary returns is commendable and should be further encouraged.
32. The best interests of the child must guide all decisions taken by the authorities concerning minors. The Commissioner welcomes the 2004 recommendations of the Guardianship Committee to enact a new law on guardianship, which proposed special rules for unaccompanied minors who are asylum seekers or refugees. The decisions on the right to family reunification for the unaccompanied minors should be guided by what is in the best interest of the child, rather than the type of residence permit granted for the minor.

### **3. Action against racism and xenophobia and non-discrimination**

33. In his visit report, the Commissioner expressed concern at certain manifestations of racism and discrimination particularly in relation to immigrants and refugees and took note of the government’s Plan of Action against Racism and Discrimination (1998-2001). He expressed his hope that the protection against discrimination would be effectively reinforced by the enactment of a new law on ethnic discrimination, which was under consideration.

#### ***Development of the situation and measures taken***

34. A number of measures have been taken by the Government in order to overcome racism and discrimination.<sup>17</sup> As a continuum to the previous Plan of Action against Racism and Discrimination, the Norwegian Government adopted a National Plan of Action to Combat Racism and Discrimination covering the period of 2002-2006. This Plan applies to the immigrant population, national minorities and indigenous people of Norway. The Government also recognized that some groups are particularly affected due to discrimination on several different grounds at the same time.
35. The Plan of Action described some of the main challenges facing the above mentioned groups and set concrete measures to respond to these challenges. One of them was the high level of unemployment among immigrants from non-Western countries, which was considerably higher than among Norwegian-born individuals and immigrants from Western countries. It referred to the fact that most of the cases dealt with by the Centre for Combating Ethnic Discrimination (SMED) were about discrimination in working life. Moreover, instances of discrimination within the police and the judicial system were reported, and that expertise was sometimes lacking in bodies dealing with cases of racism and discrimination. It was also noted that ethnic discrimination in the housing market was a significant problem.

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<sup>17</sup> These measures are described in detail in the 17<sup>th</sup>/18<sup>th</sup> periodic report submitted by Norway under article 9 of the International Convention on the Elimination of all forms of Racial Discrimination, September 2005.

36. The Plan of Action contains a number of concrete measures to respond to these challenges. By way of example, one of the measures in the field of employment, is a requirement for all governmental agencies to encourage applications from persons with an immigrant background when they advertise job vacancies and to call at least one applicant with an immigrant background for an interview in connection with the vacancy, provided that the applicant is qualified for the position. This measure was introduced on a regular basis from 2004 after a two year pilot project. This was viewed by SMED as a positive example of how the Plan of Action has brought about some concrete results.
37. A follow-up mechanism to the Plan of Action, a committee with broad participation, including NGOs, had been established to review the implementation of the agreed measures. The status of implementation is made public on the website of the responsible Ministry, now the Ministry of Labour and Social Inclusion. During the follow-up visit, the authorities informed the Commissioner's Office that most of the measures in the Plan of Action have already been implemented or are currently being implemented.
38. Since the Commissioner's visit in 2001, the institutional framework and legislation in the field of non-discrimination and the fight against racism have been strengthened. This was also one of the measures foreseen in the government's Plan of Action. A new Act on prohibiting discrimination based on ethnic origin and religion and belief (The Anti-Discrimination Act) entered into force on 1 January 2006.<sup>18</sup> Norway has also signed Protocol 12 to the European Convention on Human Rights on non-discrimination, but has yet to ratify it.
39. The Act prohibits discrimination on the basis of ethnicity, national origin, descent, skin colour, language and religion or belief. It applies in all areas of society except for family life and personal relationships. The Act prohibits both direct and indirect discrimination, harassment and instructions to discriminate against a person. Positive special treatment (positive action) that contributes to the achievement of the purpose of the Act is not considered to be discrimination. The Act states that such differential treatment will have to cease once its purpose has been achieved. A provision regarding the shared burden of proof has been included in the Act. The Act includes both civil law sanctions for breaches of the prohibition, in the form of redress and damages, and a special enforcement mechanism, reference is made to section 40, to supervise and assist in implementing the Act. In the interest of due process of law, decisions regarding redress and damages are made by courts of law.
40. The institution of the Equality and Anti-discrimination Ombud<sup>19</sup> was established by a separate Act and started functioning on 1 January 2006. It has a mandate to encourage and monitor compliance with the new Anti-Discrimination Act as well as discrimination based on gender. The Gender Equality Ombud, the Gender Equality Centre and the Centre for Combating Discrimination (SMED) became part of the new Ombud institution. The new Equality and Anti-discrimination Ombud can issue a statement, based on a complaint

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<sup>18</sup> The purpose of the new Anti-Discrimination Act is to promote gender equality, ensure equal opportunities and rights and prevent discrimination based on ethnicity, national origin, descent, skin colour, language, religion or belief.

<sup>19</sup> According to the unofficial translation of the Act on prohibition of discrimination based on ethnicity, religion, etc (the Anti-Discrimination Act) the new enforcement mechanism is called The Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal.

alleging discrimination, as to whether the prohibition laid down in the Act has been breached. While it can not provide legal aid services, which were in the past offered by SMED, it has a duty to provide guidance to ensure that victims of discrimination receive the best possible assistance.

41. In case the parties do not reach an agreement, after the case has been dealt with by the Ombud, the complainant may bring the case to the new Anti-Discrimination Tribunal, empowered to order measures to prevent discriminatory practice. If discriminatory circumstances are of a lasting nature, it is also possible for the Equality and Anti-Discrimination Tribunal to issue an injunction in order to terminate or correct such circumstances, or to take other measures that are necessary in order to bring about compliance with law. The new Equality and Anti-Discrimination Ombud may issue a statement, based on a compliant alleging discrimination. The Tribunal is empowered to order coercive fines, if its decisions are not complied with.
42. Amendments into the Penal Code (section 135a), which entered into force on 1 January 2006, have further strengthened the penal protection against expressions of racial hatred and discrimination. The maximum penalty for violating section 135a of the Penal Code has been increased from two years to three years imprisonment. Gross negligence is now sufficient to satisfy the criterion of guilt and the scope of section 135a has been widened. Section 135a will apply to statements made on radio or TV, on open Internet-pages or on posters, regardless of whether the statement actually reaches the public or not, which was a requirement in the past.

### ***Conclusions***

43. The Commissioner welcomes the excellent progress made in implementing the National Plan of Action to Combat Racism and Discrimination as well as the transparent and inclusive monitoring of its implementation conducted in co-operation with NGOs and the groups it is aiming to assist. This serious approach clearly demonstrates the importance the Norwegian authorities are attaching to the fight against racism, xenophobia and discrimination. As stated in the Action Plan, there will always be new challenges to be confronted, and the fight against racism and discrimination demands a continuous, focused and long-term effort.
44. The Commissioner welcomes the strengthening of the legislative and institutional framework in the field of non-discrimination and the creation of low-threshold equality bodies entrusted to enforce legislation prohibiting ethnic and gender based discrimination. The Commissioner trusts that the strong message put forward by the legislator through the new Act on ethnic discrimination reinforced by the amendments to the Penal Code on expressions of racial hatred, will also have a preventive effect in increasing the understanding that discrimination and racist acts and expressions are illegal, and in many cases, constitute crimes.

## **4. National minorities and indigenous people**

45. In his report, the Commissioner noted that national minorities were generally well protected by the existing legislation in Norway. Further progress was still needed, however, in protecting the language and cultural rights of minorities<sup>20</sup>. As regards the

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<sup>20</sup> The groups considered to be national minorities in Norway are Jews, Kvens, Roma/Gypsies, Romani/Travellers and Skogfinns.

Sámi, the Commissioner noted in his report that the legal status of the Sámi people had improved considerably since the 1988 changes to the Norwegian constitution and the adoption of a law establishing the general framework of the Sámi parliament in 1987.

*Development of the situation and measures taken*

46. Since the Commissioner's visit in 2001, a number of measures have been taken with a view to strengthening the dialogue between minorities and the authorities. In 2003, a "Forum for contact between the national minorities and the authorities" was established and an increasing number of bilateral meetings have been held. The Norwegian authorities have also taken a number of steps to improve the legal and practical situation of minorities as regards their right to language, culture and education<sup>21</sup>.
47. During the follow-up visit, the members of the Commissioner's Office met with representatives of national minorities to hear their views on recent developments. The representatives of minorities acknowledged the increased support they were receiving, which had already improved their situation in many respects. They also recognized the efforts made on both sides to improve dialogue and the benefits it can bring. The establishment of the "Forum for contact between the national minorities and the authorities" has improved the information flow, although more bilateral meetings were needed for specific discussions on the situation of each minority group. There was a general feeling that much had been achieved in the last few years, even if some issues remained to be addressed and more funding for specific activities was still required to restore and preserve the cultures, language and cultural heritage of the minorities. Minority education was particularly important in this regard. The progress made in addressing past injustices suffered by some minorities was also recognized.<sup>22</sup>
48. The issue of religious education in schools was mentioned and reference was made to a recent decision by the UN Committee on Human Rights<sup>23</sup>. The Norwegian authorities informed the Commissioner's Office of their efforts to reform the teaching of religious and ethical education to meet the standards of objectivity and neutrality.
49. The legal status of the Sámi people has improved considerably over the last decades. The decision-making competence of the Sámi Parliament has been reinforced. The right to receive tuition in the Sámi language has increased, as has the use of the Sámi language in various official relations and in public media. Norway remains the only country with a Sámi population which has ratified, already in 1990, the ILO Convention No 169 relating to the rights of indigenous peoples.

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<sup>21</sup> For detailed information provided by Norway, see the Second report submitted by Norway pursuant to Article 25, paragraph 1 of the Framework Convention for the protection of national minorities, October 2005, ACFC/SR/II(2005)005. See also Norway's Third Periodical Report presented to the Secretary General of the Council of Europe in accordance with Article 15 of the European Charter for Regional or Minority Languages, May 2005.

<sup>22</sup> In April 2005, the Storting adopted a compensation scheme, based on a Government Report No. 44 (2003-2004): A Compensation Scheme for War Children and Compensation Schemes for Romani people/Travellers and Elderly Saami and Kvens Who Have Received Deficient Education.

<sup>23</sup> UN Committee on Human Rights presented its views on religious education in Norway in its decision of 3 November 2004. It considered that the partial exemption from the CREE subject (Christianity and General Religious and Ethical Education) is in contravention of Article 18 No. 4 of the International Covenant on Civil and Political rights, which concerns parents' freedom to provide for the religious and moral upbringing of their children. Public education that includes tuition in a specific religion or belief will be in contravention of Article 18 unless provision is made for non-discriminatory opportunities for exemption or other alternatives that conform to the wishes of parents. The Committee concludes that education in the CREE subject cannot be said to be neutral or objective unless the exemption system actually ensures that the education that is offered to these children is neutral and objective.

50. The questions relating to the right to ownership of land and water resources have, however, remained subject to difficult discussions and broad consultations. The passing of the Finnmark Act in 2005 is thus an important milestone in the process of enhancement of the Sámi people's right to participate in the decision-making processes regarding management of land and natural resources in the areas they occupy. The fact that the Sámi people has acquired legal rights to the lands which they have used collectively over a long period of time, is expressly recognized in the Finnmark Act. The Act is, however, ethnically neutral, in the sense that it does not distinguish between rights acquired in this manner by the Sámi population, and rights acquired by members of other ethnic groups, e.g. Norwegians or Kvens.
51. The Act establishes a new, independent body called Finnmark Estate to which the right of ownership of the state-owned land in Finnmark County will be transferred. The Finnmark Estate will be a legal entity independent of the central government, which will have no authority to issue instructions regarding its activities. It will have a board with an equal number of members elected by the Sámi Parliament and by the Finnmark County Council. In addition to its influence on the composition of the board, the Sámi Parliament is empowered to issue guidelines for considering the effect of changes in the use of uncultivated land on Sámi culture, reindeer husbandry, commercial activity and social life.
52. In May 2005, agreement was signed on the procedural guidelines ("the Procedures for Consultations between Central Government authorities and the Sámi Parliament"), which formalize and provide detailed guidance as to the way in which the Sámi, as an indigenous people, have to be consulted in matters that may affect them directly.

### ***Conclusions***

53. The Commissioner welcomes the increased dialogue between the minorities and the Norwegian authorities and the financial support provided by the Government for the practical realization of the linguistic and cultural rights of minorities. It is within this co-operative framework that solutions to outstanding issues and problems will have to be found. The general strengthening of the anti-discrimination legislation and institutional framework referred to above will also offer greater protection to individual members of minorities.
54. The significant progress made on difficult questions relating to the rights of Sámi is particularly laudable. The Finnmark Act will provide a good legal framework for decision-making and management of land and natural resources in the county of Finnmark. The May 2005 agreement on procedures for consultations is also a positive development, further demonstrating the genuine commitment of the Norwegian authorities to respecting the rights of the Sámi as an indigenous people.

## **5. Responses to violence against women**

53. Although the issue of violence against women was not examined in the Commissioner's original report on Norway in 2001, it has featured prominently in subsequent reports on other countries. In the interest of completeness, the issue was raised during the Office's follow up visit in order to reflect recent developments in the country.

54. The main focus of this report, and still the most problematic area, is violence against women in close relationships. It is worth noting, however, that the Government has launched a number of initiatives to combat forced marriages, female genital mutilation and the sexual and physical abuse of children.
55. The Norwegian government recognizes that violence against women in close relationships continues to be a serious societal and human rights problem in Norway.<sup>24</sup> Although, the scope of the problem is not known exactly, the authorities acknowledge that it is more widespread than generally presumed. In the first national survey that the Ministry of Justice and Police conducted, 27 % of women surveyed had experienced violence and almost 10 % had experienced serious violence in their close relationship. A recent survey conducted by the Ministry of Justice and Police in summer 2005 confirms the seriousness of the problem.<sup>25</sup> According to the survey, some 85 % of the victims of violence were women and some 85 % of perpetrators were men. In 70 % of cases registered, perpetrators were partners or former partners.
56. In order to have a better knowledge of the problem, a national resource centre on violence and traumatic stress, with a special section on violence, family violence and sexual abuse, was established on 1 January 2004. The purpose of the new centre is to strengthen research and education on violence and trauma and to provide guidance for public services.
57. There is no specific legislation concerning domestic violence and the general provisions of the Penal Code are applied in these cases. The issue of whether the current criminal regulations are sufficient to comprehend the complexity of cases of violence against women and children in close relationships has been considered recently by a working group. Restraining orders against perpetrators of violence became possible in 1995 and some 500 orders are made annually. In addition to restraining orders, violence alarms, which provide immediate access to police and emergency services are available for victims in situations where special protection against the perpetrator is needed.
58. The Government has taken a number of measures to address violence against women. The first National Action Plan entitled "Violence against Women" was submitted by the Government in 1999. According to the Norwegian authorities, it produced several results: domestic violence became more visible; support services were improved; expertise was built up in the police service, legal system, in the health and social welfare services and in the women's shelters and other services.
59. Building on the experiences gained, the second Action Plan on Domestic violence was developed (2004-2007). The approach of the new Action Plan is to ensure that victims of violence are taken seriously. It also pays increasing attention to the perpetrator and their responsibility to change their behavior. The Action Plan has four general objectives: to improve the level of co-operation and knowledge of support services; to increase awareness of domestic violence and prevent it through changes in attitude; to give victims of domestic violence adequate help, protection and support and; to break down the spiral

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<sup>24</sup> Comprehensive descriptions of the scope, causes and consequences of violence against women and children in close relationships can be found in a Report No. 29 to the Storting (2002-2003) "The Obligations of Family life and Parenthood" in NOU 2003:31 Retten til et liv uten vold (Official Norwegian Report "The Right to a Life without Violence"), and in "Couple Violence – different perspectives. Results from the first national survey in Norway" NIBR Report: 2005:3.

<sup>25</sup> Survey by Ministry of Justice, July 2005.

of violence by strengthening treatment programs for perpetrators. It is recognized that a great majority of the services that are relevant to the victims of violence are provided at municipal level and thus, many of the measures of the Action Plan aim at improving the capacities at the local level. It is also recognized in the Action Plan that services provided by NGOs, self-help groups and others, which can be described as low-threshold, are an important supplement to the public services. In the Action Plan, particular attention is paid to the needs of immigrant women who are victims of violence.<sup>26</sup>

60. Civil society representatives have criticized the Government's past efforts for lacking in practical assistance and support for the victims and have highlighted the shortcomings in responding to violence against women at the local level. It would appear that better local level co-ordination and implementation of the Action Plan might be hoped for.<sup>27</sup> NGOs have also raised their concerns about the vulnerable position of immigrant women in cases where their marriage has broken due to domestic violence before they have lived in Norway for three years, as they risk losing their residence rights.

### ***Conclusions***

60. The Commissioner welcomes the comprehensive efforts of the Government to respond to violence against women in close relationships. The measures foreseen in the Action Plan to develop local capacities to respond to violence against women and to ensure better co-ordination at all levels already responds to some of the criticism expressed by civil society. The authorities must persist in their efforts and pay particular attention to the needs of immigrant women.

## **6. Responses to trafficking in human beings**

61. The issue of trafficking in human beings was also not treated in the Commissioner's original report on Norway. Subsequent country reports have, however, paid particular attention to legislation criminalizing trafficking and the provision of services and protection to victims. For the sake of completeness it is perhaps worth assessing the developments in Norway in these areas.
62. Norway is primarily a country of destination for trafficked human beings, mainly for the purposes of prostitution and sexual exploitation. Although the exact nature and scope of the problem is not well-known, cases of trafficking do exist. The number of cases being investigated and prosecuted remains low. The first major case on trafficking in human beings was pending in the court during the follow-up visit. The victims are mainly women, sometimes minors, the majority of whom are foreign women. The amendments to the Penal Code (section 224) in April 2003 is based on the definitions found in the UN Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol). Norway has signed but not ratified the Council of Europe Convention on Action against Trafficking in Human Beings.
63. Norway implemented its first Plan of Action for Combating Trafficking in Women and Children in 2003-2005. Based on the experiences gained, a second Action Plan against Trafficking in Human Beings was developed for 2005-2008. The Norwegian authorities

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<sup>26</sup> According to shelter statistics, 48 % of the victims in the shelters for women came from immigrant background.

<sup>27</sup> Amnesty International Norway, Report on Norwegian municipalities' actions towards violence against women , August 2005.



acknowledge that there have been problems with the identification of victims in the past and that the reflection period of 45 days, prior to expulsion, provided for victims has rarely been used, perhaps indicating that the criteria and the procedures were too strict. However, a few victims of human trafficking have been issued asylum or residence permits on humanitarian reasons in recent years.<sup>28</sup> A number of practical measures are foreseen in the new Action Plan to improve the assistance and protection provided to the victims. The Action Plan also includes measures on prevention, improved co-ordination and international co-operation and it has a budget of 100 million kroner<sup>29</sup> earmarked for the implementation over the three years period.

### ***Conclusions***

64. The comprehensive measures included in the new Action Plan against Trafficking in Human Beings and the efforts to ensure the availability of services to all victims are welcome. Further investigation and remedial measures are to be encouraged in respect of the infrequent resort to reflection periods prior to expulsions. The Commissioner welcomes the information received from the Norwegian authorities that the government is currently considering the clarification of the conditions for obtaining reflection period with a view of making them less strict. The efforts of the Norwegian government to combat trafficking in human beings at both the national and the international level, through co-operation and assistance programmes, are commendable. The early ratification of the Council of Europe Convention on Action against Trafficking in Human Beings ought not, therefore, to be difficult and is strongly to be encouraged.

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<sup>28</sup> In 2005, 2 victims of trafficking in human beings had been granted asylum, 3 had been given residence permits on humanitarian grounds and one case had been rejected. In total, at the time of the follow-up visit, 4 women had been granted asylum, 2 humanitarian residence permits, 1 temporary residence permit and 6 cases had been rejected.

<sup>29</sup> 100 million kroner is approximately 12,3 million EURO.