

# ECRI REPORT ON NORWAY

(sixth monitoring cycle)



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## FOREWORD

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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 the fight against racism, discrimination (on grounds of “race”, ethnic/national origin, colour, citizenship, religion, language, sexual orientation and gender identity), xenophobia, antisemitism 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, antisemitism and intolerance.

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

ECRI’s country monitoring deals with all member States on an equal footing. The work takes place in 5-year cycles. The reports of the first round were completed at the end of 1998, those of the second round at the end of 2002, those of the third round at the end of 2007, those of the fourth round in the beginning of 2014, and those of the fifth round at the end of 2019. Work on the sixth round reports started at the end of 2018.

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 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 sixth round country reports focus on three topics common to all member States: (1) Effective equality and access to rights, (2) Hate speech and hate-motivated violence, and (3) Integration and inclusion, as well as a number of topics specific to each one of them.

In the framework of the sixth 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. Unless otherwise indicated, it covers the situation up to 1 October 2020; as a rule, 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 fifth report on Norway on 10 December 2014, progress has been made and good practices have been developed in a number of fields.**

The distribution of tasks between the Equality and Anti-Discrimination Ombud (LDO) and the Anti-Discrimination Tribunal (ADT) has been improved and in 2015 the Norwegian National Human Rights Institution has been established. As of 2020, all authorities and employers have a duty to make active efforts to promote equality and prevent discrimination. A project on dealing with racism in schools and related teaching material were prepared and ombudspersons against bullying were established.

There is a societal and political consensus in Norway to promote LGBTI rights and the biggest church conducts same-sex marriages. The authorities collect and publish extensive equality data on LGBTI issues and base their policies on it. Sound information on the Internet, annual summer camps and the health nurses in schools help young LGBTI persons during their coming out. Norway enacted new legislation on the change of gender which relies in exemplary fashion on the principle of self-determination of transgender persons. New guidelines for the provision of health care to transgender persons have been finalised and units providing such health care are established in all four health regions. The authorities have commissioned two detailed studies on the life situation of intersex persons and related legal matters.

The police and prosecution have further improved their hate crime statistics. Political leaders have signed a political declaration and developed a strategy against hate speech and repeatedly spoken out against hatred. The Supreme Court has made clear that the limits to freedom of speech also apply on the Internet and the government has set up a commission which is mandated to recommend measures for preventing and combating online hate speech. The police have established a website for the reporting of hate speech and introduced an online patrol.

A specialised hate crime unit has been set up within the Oslo police and diversity contacts have been designated in the other police districts. Guidelines on the registration of hate crimes were published in 2018 and several thousand police officers were trained on hate crime in 2019.

In the field of inclusive integration the authorities put a specific focus on early education. The Child Welfare Services have adopted an action plan for increasing mutual trust with minority groups. Employment programmes that combine subsidized employment with targeted training and language learning help migrants to find jobs. In the public sector, the employment of migrants "with a severe gap in their CV" is promoted.

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

Access to justice remains difficult for victims of discrimination. The LDO has initiated only two strategic litigation cases and the ADT dismisses most of its cases without a hearing.

The level of bullying in schools remains high and the impact of education on equality and human rights is limited. The firewalls to protect irregularly present migrants in the fields of health care and education are set at a low level. The discrimination grounds of gender identity and sex characteristics are missing in some pieces of legislation. The life situation of transgender and intersex persons remains difficult and their treatment by the health services needs improvement.

Many hate speech cases are not reported to the police or other competent authorities. The public debate is often driven by xenophobic and anti-migration discourse and the intensifying waves of hate speech increased prejudice in particular against Muslims.

Numerous hateful comments are published even in the moderated parts of the Internet and on the Facebook-accounts of several members of the government. People with a minority background feel increasingly excluded and refrain from participating in the public debate. The continued public hate speech also triggers serious health problems among them. There is no effective mechanism in place for consistently removing hate speech from the Internet. The police have no explicit mandate to work on online hatred and no specific resources have been allocated to this task.

On 10 August 2019, a racially motivated perpetrator murdered his Chinese-born stepsister and subsequently attacked and attempted to kill worshippers in a Mosque near Oslo. During the

same year, another 249 cases of violent hate crime were recorded.

Many labour migrants, who barely speak Norwegian, are at risk of labour exploitation and have difficulties to become part of the Norwegian society. Furthermore, the investigation of thousands of “old” migration cases is highly detrimental to the global integration process. Children with a migration background lag behind in reading and mathematics, are overrepresented among those who receive special needs education and have higher drop-out rates in secondary education. There are many alarming reports about high levels of fear and distrust of parents with a minority background towards the Norwegian Child Welfare Services (CWS), which are triggered in particular by very harsh restrictions to the visiting rights of parents, whose children were placed in foster-care.

Romani people/Tater and Roma still suffer from inherited distrust, persisting social distance and a very low level of education, which result in low labour market participation. The authorities have taken away from the Romani people/Tater community the administration of the funds for their collective compensation. The objectives of the action plan for improving the living conditions for the Roma in Oslo have, to a great extent, not been achieved.

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

The LDO should put more resources into supporting victims of discrimination. The authorities should improve the impact of the education on human rights and intensify the related teacher training. Irregularly present migrants should be given access to all necessary health care and the access of unreturnable migrants to stay and work permits should be facilitated. The authorities should furthermore develop a new action plan on LGBTI issues with a particular focus on transgender and intersex persons.\*

The parliament and the government should enact rules that comprehensively prohibit the use of hate speech by their members. The authorities should furthermore ensure that Internet and social media providers swiftly remove hate speech from the Internet and forward related evidence to the police. The police should set up a network of specialised units that ensure effective investigation of hate crime; the investigation of online hate speech should be concentrated in specialised units. The police should systematically detect and remove racist and extremist content from the Internet, prevent, detect and counter radicalisation and enact legislation for cutting the funding of and disbanding racist organisations.

The authorities should reinforce the inclusive element of their integration policies and promote the further opening-up of the majority population to diversity. They should furthermore introduce measures that motivate all labour migrants and newly arriving family members to learn Norwegian and abandon their policy of reviewing the residence status of migrants who are unlikely to be obliged to quit the country.

The authorities should map the language level of children with a migration background at an early age, ensure that they receive targeted support for learning Norwegian and acquiring other skills before entering primary school and take measures to decrease their performance gaps in school. The CWS should focus even more on assisting families and early intervention to avoid the placement of children with a minority background in foster care. In cases of foster care, the CWS should generally work towards maintaining intense contact with the biological parents and preparing family reunification.\*

The authorities should work on the empowerment of Romani people/Tater and Roma communities and help them improving the educational outcomes of the adolescent generation. The Taters/Romani should be given decisive influence on the use of the funds for their collective compensation.

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\* The recommendations in this paragraph 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

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### I. EFFECTIVE EQUALITY AND ACCESS TO RIGHTS

#### A. Equality bodies<sup>1</sup>

1. ECRI is pleased to note that the Norwegian authorities have, as recommended in § 20 of ECRI's 5<sup>th</sup> report, reconfigured the mandates and the distribution of tasks between the Equality and Anti-Discrimination Ombud (LDO) and the Anti-Discrimination Tribunal (ADT).<sup>2</sup> The outcome was that the LDO was attributed the two functions of the three functions that Equality Bodies should have (cf. § 10 of ECRI's General Policy Recommendation (GPR) No. 2 on Equality Bodies): the function to promote equality and prevent discrimination (Section 5.1 of the Equality and Anti-Discrimination Ombud Act (EADOA)) and to a certain extent the function to support people exposed to discrimination and intolerance and to pursue litigation on their behalf (Sections 5.2 and 8.1 EADOA). Thus, the LDO can now focus on supporting victims of discrimination, whereas the ADT is the impartial institution that takes decisions on discrimination cases. The ADT has been attributed the third of these functions, which is to take decisions on complaints (Section 11 EADOA), to issue fines, make a decision concerning redress in the field of employment and to award compensation for material damage in clear cases (Section 12 EADOA).
2. While the LDO gives guidance to about 2 000 people per year, ECRI regrets to note that she has only initiated two strategic litigation cases up to now, none of which concerned the discrimination grounds falling under ECRI's mandate. According to civil society representatives consulted by ECRI, access to justice and redress remains difficult for victims of discrimination. In many cases, discrimination victims do not have the financial means to go before the judiciary, or they lack the digital abilities, which are often necessary to conduct legal proceedings successfully. As proceedings often end without a tangible result such as the payment of compensation, many victims do not even lodge any complaint.
3. Regarding the ADT, civil society representatives deplored that it dismisses most of its cases in application of section 10 EADOA. According to this provision, the chairperson can decide alone if the complaint is "trivial in nature", if the subject matter of the complaint obviously not conflicts with the anti-discrimination legislation, or if the submitted evidence fails to elucidate the case in a sufficient way. Indeed, only 99 cases were brought before the chambers in 2019, while 138 cases were closed in application of Section 10 EADOA. The ADT explained to ECRI that it aims, through this practice, to avoid allocating too many resources on unsuccessful cases and to concentrate on substantial and complex cases. ECRI regrets that the ADT has made use of its competence to adjudicate compensation only in a very limited number of cases and that neither the LDO nor the ADT have explicitly been given the competence to carry through conciliation procedures (§ 14b and 17a of ECRI's GPR No. 2). To sum up, ECRI considers that this reform has not yet unfolded the full potential to better protect and enforce the rights of victims of discrimination.
4. Against this background, ECRI considers that the LDO should further expand her work on the implementation of the support and litigation function and help more victims to enforce their rights with tangible results including compensation. In this context, it welcomes the efforts of the LDO to reach out to different communities including the Sami, Muslims, Romani people/Tater and Roma and to intensify her contact with these communities. The recent launch of an Internet page in the most

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<sup>1</sup> The term "national specialised bodies" was updated to "equality bodies" in the revised version of GPR No. 2 which was published on 27 February 2018.

<sup>2</sup> See the Equality and Anti-Discrimination Ombud Act (EADOA) no. 50 of 16 June 2017.

widely spoken Sami language for reporting discrimination cases is a further important step to help victims of discrimination to enforce their rights. At the same time, ECRI encourages the LDO to establish a permanent contact point in the North of Norway, for example together with the Norwegian National Human Rights Institution (NHRI), which has a relatively big office in Kautokeino. ECRI furthermore takes positive note of measure 28 of the new Action Plan against Racism and Discrimination on the Grounds of Ethnicity and Religion, according to which the Ministry of Culture will carry out an information campaign on how to file complaints for discrimination.<sup>3</sup>

5. Moreover, the authorities should allocate more resources to the LDO and the LDO should mobilise more of its existing resources for helping victims of discrimination to enforce their rights before the ADT and the ordinary courts<sup>4</sup>, which remain exclusively competent for complex compensation cases and allocating compensation for immaterial damage. In this context, ECRI recalls that the LDO has, according to the explanatory memorandum to the EADOA, the competence to act as a “party helper” and as a “friend of the court” (§ 15-7 and § 15-8 of the Dispute Law (tvisteloven)).<sup>5</sup> While ECRI considers that the LDO should make extensive use of these competences to bring discrimination cases before the ADT and the ordinary courts free of charge for the victim, it regrets that the authorities have not fully implemented ECRI’s interim follow-up recommendation to give the LDO and the ADT the power to “recommend cases to court free of charge”.<sup>6</sup>
6. The ADT should, for its part, reconsider its strategy to dismiss as many cases as possible without a hearing, as this can discourage other victims to lodge complaints. The ADT should furthermore publish its statistics and verify the possibility to set up an online complaint-form in other languages, such as Sami and English, in order to lower the threshold for victims.
7. In §§ 2 and 22 et seq. of its GPR No. 2, ECRI recommends that equality bodies should have de jure and de facto independence; that they should function without any interference of the State; that the persons leading the equality body should be selected through transparent, competency based and participatory procedures, not receive instructions, and be protected against threats, coercion and arbitrary dismissal; and that the executive should not have a decisive influence in any stage of the selection process for the persons holding leadership positions.
8. ECRI notes that the LDO and the ADT are independent public administrative agencies that are administratively subordinate to the King and the Ministry (of Culture). While neither the King nor the Ministry may issue instructions to the LDO or the ADT regarding their professional activities (Sections 4.2 and 6.1 EADOA), the LDO and the members and deputy members of the ADT are appointed by the King (Sections 4.1 and 6.4 EADOA) and the head of the ADT’s secretariat is employed by the Ministry (Section 6.6 EADOA). Whereas the Public Administration Act applies to the activities of the LDO and the ADT (section 2.1 EADOA), the Ministry may issue regulations on the organisation, tasks and case processing of the LDO and the ADT (section 22 EADOA). While acknowledging that there are strong signs for de-facto independence of the LDO and the ADT, ECRI encourages the authorities to review this legislation in the light of §§ 22 and seq. of ECRI’s GPR No. 2.

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<sup>3</sup> Norwegian Government 2020: 30.

<sup>4</sup> While the LDO states that 74% of its budget is bound-up with staff, the authorities informed ECRI that this allocation is not imposed by the government.

<sup>5</sup> See ECRI’s conclusions on the implementation of the recommendations from its 5<sup>th</sup> report, ECRI 2017: 5.

<sup>6</sup> § 19 of ECRI’s 5<sup>th</sup> report on Norway.

9. ECRI welcomes the establishment of the NHRI on 1 July 2015 as an independent institution affiliated with the Parliament. The NHRI was granted A-status recognising its full compliance with the UN Paris Principles.<sup>7</sup> It has a broad mandate to promote and protect human rights in Norway and to monitor whether the authorities respect their international human rights obligations. ECRI is pleased to note that the NHRI has engaged in several topics of structural and institutional discrimination and encourages it to get involved even more in issues such as the treatment of children from minority groups by the child welfare services (see §§ 83 et seq.) or allegations of racial profiling by the police (§ 24).
10. ECRI recommends that the Norwegian Equality and Anti-Discrimination Ombud further adapts to its changed role by intensifying and putting more resources into its function to support people exposed to discrimination and intolerance and to pursue litigation on their behalf.
11. ECRI furthermore recommends that the Anti-Discrimination Ombud and the Anti-Discrimination Tribunal are explicitly given the competence to have recourse to conciliation procedures.

## **B. Inclusive education**

12. This part of the report looks into the measures taken to ensure inclusive education for all; the specific measures for helping children belonging to minority groups are dealt with below in §§ 70 et seq.
13. According to the Kindergarten Act and the Framework Plan for the Content and Tasks of Kindergartens, kindergartens must promote democracy and equality, counteract all forms of discrimination and take account of children's ethnic and cultural background. Schools must meet pupils with respect, combat all forms of discrimination (Section 1-1.7 of the Education Act (EA)) and pursue a zero-tolerance approach for bullying, discrimination, harassment and violence (Section 9a-3.2 EA and section 13.6 of the Equality and Anti-Discrimination Act (EADA)). Teaching on equality takes place in different school subjects, for example within the items "Health and life skills" and "Religion and Ethics"; new curricula will soon be implemented. According to Article 24.1 EADA, all public authorities, including the education authorities, have, as of 1 January 2020, a duty to make active, targeted and systematic efforts to promote equality and prevent discrimination, and document these efforts. Teaching material must promote equality and non-discrimination (Article 27 EADA).
14. Within the project Preparedness against Racism, Antisemitism and Undemocratic Attitudes (DEMBRA), the authorities have furthermore initiated a programme of professional development for the staff of schools. This programme was developed by the Norwegian Centre for Holocaust and Minority Studies and has so far been implemented in 52 schools across the country, including primary schools.<sup>8</sup> Its first step consists of an assessment of the school's specific challenges in the field of racism. In a second step, the school staff develops a work plan on strengthening participation and critical thinking, which aims to prevent "group-based hostility".
15. Specific action to prevent bullying in kindergartens and schools encompasses training for educators and teachers; the establishment of an Ombud in each county in 2018 who helps pupils and parents in case of bullying; cooperation of schools with civil society; and anti-bullying programmes that also cover the issue of bullying on social media. Teaching material on hate speech, Islamophobia, antisemitism, racism, conspiracy theories and discrimination against minorities was made available in autumn 2020 as part of the teaching and reflection material that has been developed in reaction to the terrorist attacks of 22 July 2011 in Oslo and on

<sup>7</sup> GANHRI 2019: 8.

<sup>8</sup> For details see the Project-Homepage <https://dembra.no/en/om-dembra/>, accessed on 18.05.2020.

Utøya (see §§ 38 and seq. of ECRI's 5<sup>th</sup> report). The Action Plan against Discrimination of and Hatred against Muslims 2020-2023 comprises a project on dialogue-based dissemination of knowledge about Muslim identity among young people.<sup>9</sup>

16. Despite these efforts, surveys and research show that the level of bullying remains elevated and that the impact of human rights education is limited. According to the annual student surveys, approximately 6% of the participants are subject to bullying. While 16% responded that the school knew about the bullying but that it did nothing, 36% responded that no adult in the school was aware of their bullying-case.<sup>10</sup> In neighbourhoods with a high proportion of children with a migration background, the share of pupils becoming victims of bullying reaches more than 20%.<sup>11</sup> According to another study, more than half of the persons with a strong and visible Sami identity experience discrimination, most often during their schooling, and such discrimination negatively affects their health.<sup>12</sup> According to a survey among gay pupils, 37% had been bullied by other pupils and 24% by teachers. Youth who had been called gay-related names had higher rates of depression syndromes.<sup>13</sup> According to civil society, Jewish, Roma and Muslim children are also among the victims of bullying.
17. Recent research concludes that human rights are only included in a fragmented and haphazard manner in the current curricula. Pupils seem to learn little about ethnic minorities such as Sami, Romani people/Tater and Roma people and how to develop respect for their rights.<sup>14</sup> Others point out that Norwegian education is centred on Norwegian culture as a model, that pupils with a different ethnic background are perceived as people "with an almost incurable flaw" and that teachers, the curriculum and manuals express a therapeutic attitude.<sup>15</sup> Civil society representatives informed ECRI that Muslim pupils have increasing tensions with teachers, do not feel being considered as part of the society, that micro-aggressions sum-up and can contribute to radicalisation, and that society and schools have an overly narrow understanding of racism that does not encompass indirect and structural forms of racism.
18. Given the shortcomings that are documented in this research, ECRI considers that the authorities should monitor to what extent the legal framework on inclusive education and bullying is actually implemented and take measures to further improve the results in these fields, in particular in the area of teacher training.
19. ECRI recommends that the Norwegian authorities continue monitoring and evaluating to what extent pupils learn about diversity, different cultures and the history of minorities and to what extent teachers promote intercultural understanding and intervene in cases of bullying. The authorities should furthermore take measures to improve the results in these areas and include into initial and further teacher training the topics of teaching in diverse classrooms, organising an open intercultural dialogue, promoting respect including on digital media and preventing and countering bullying.

<sup>9</sup> Ministry of Culture 2020: 33b, measure no. 3.

<sup>10</sup> Utdanningsdirektoratet 2020.

<sup>11</sup> Vårt Oslo 2018. See also Ombudsman for Children in Norway 2017: 44 et seq.at

<sup>12</sup> 50.8% of respondents with a strong Sami affiliation reported that they had been discriminated against, compared with 14.3% of the non-Sami respondents, :46; see also Friberg, O., Sørli, T. and Hansen, K. 2017: 1019 and Hansen, K. 2015: 7 et seq. These studies point out that Sami pupils are particularly affected by bullying.

<sup>13</sup> [https://bufdir.no/Statistikk\\_og\\_analyse/lhbtq/Skole\\_og\\_utdanning/](https://bufdir.no/Statistikk_og_analyse/lhbtq/Skole_og_utdanning/), accessed on 29.05.2020.

<sup>14</sup> Lile, H.S. 2019: 426.

<sup>15</sup> Sheikh, M. 2019.

### C. Irregularly present migrants

20. In its GPR No. 16, ECRI recommends that governments establish “firewalls” that prevent social services providers such as schools and hospitals from sharing the personal data of irregularly present migrants with the immigration control and enforcement authorities. These firewalls serve to protect fundamental human rights of those migrants by guaranteeing that they can access key state services such as health care and schooling without fear of being deported.
21. According to the authorities, the latest estimates of the number of irregularly present migrants date from 2011 and range from 20 900 to 62 800 with an average of 35 400; today, the number is probably significantly lower.<sup>16</sup> Irregularly present migrants are offered shelter in reception centres, a minimum of financial allowances and access to emergency health-care. The authorities annually fix objectives for the number of migrants to be deported from Norway.
22. Civil society points out that the situation of irregularly present migrants has deteriorated due to several rounds of tightening of the migration legislation, which started in 2011 with regulation 1255. Under the assumption that irregularly present migrants would not stay for long in the country, the firewalls in the fields of health care and schooling have been set at a low level.<sup>17</sup> This means that, apart from necessary health care before and after birth, abortion and infection control care, this group of migrants is only entitled to medical assistance if an intervention cannot wait without risk of imminent death, permanent severe disability, serious injury or acute pain.<sup>18</sup> In principle, they have to pay for this treatment and their children do not have access to general practitioners who function in Norway as a gateway to all further treatment. The right to attend school ends already at the age of 16. ECRI’s delegation met one person who had no access to insulin through the public health system and a mother who had to hide from the Norwegian police out of fear of being deported, even though her life partner and father of their common child is Norwegian. Pregnant women must pay up to 5 200 Euros for giving birth.<sup>19</sup>
23. ECRI shares the concerns of the UN Committee on Economic, Social and Cultural Rights (CESCR) about this limited access to healthcare, which has led to a serious deterioration in the health conditions and deaths of irregular present migrants with chronic diseases.<sup>20</sup> The highly insecure living and working conditions of irregularly present migrants furthermore have a strong negative impact on their mental health; but again, they are entitled to mental healthcare only once a mental disease has exacerbated to a severe form.<sup>21</sup> The CESCR therefore recommends that the Norwegian authorities withdraw the regressive measures taken in 2011.<sup>22</sup> ECRI considers that the authorities should ensure that all migrants have access not only to emergency health care but also to other forms of necessary healthcare, including irregularly present migrants and those among them who are destitute (§ 21 of GPR No. 16).
24. Due to the tightening of the legislation, many migrants also lost their work permits, and only very few unreturnable migrants<sup>23</sup> have been granted a status of subsidiary protection. In addition, there is no dedicated procedure for the recognition of

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<sup>16</sup> Onarheim K. H. et al. 2018 give an estimate of 15 000, while others consider there are more than 18 000, ESPN 2018: 7.

<sup>17</sup> For details see The Church City Mission, Norwegian People’s Aid et al. 2020.

<sup>18</sup> For details see the Patient Rights Act and Royal Decree 1255, Haddeland, H. 2019: 335.

<sup>19</sup> For a detailed description see The Oslo Church City Mission 2013.

<sup>20</sup> UN Committee on Economic, Social and Cultural Rights 2020: § 38.

<sup>21</sup> Onarheim K. H. et al. 2018.

<sup>22</sup> UN CESCR 2020: § 39.

<sup>23</sup> “Unreturnable” refers to migrants who are subject to a deportation measure that cannot be enforced for legal or practical reasons.

statelessness.<sup>24</sup> A former Bishop of Oslo was for example handed a 45-day suspended prison sentence for having continued to employ a 55-year-old Eritrean housekeeper whose status had been withdrawn in 2008 and who had been living in Norway for more than 19 years.<sup>25</sup> While some migrants have, after having lost their work permits, stayed for long periods in migration detention, others are exploited in the informal economy or become victims of human trafficking. It depends on the discretionary decision of the police to bring the case to the court, whether they get victim status. Furthermore, the targets set for the police to deport high numbers of irregularly present migrants from the country have, according to civil society, triggered a high number of identity checks by the police among migrants that belong to visible ethnic minorities. This policy can be detrimental to their integration and bears the risk of racial profiling.<sup>26</sup>

25. ECRI recommends that the authorities give irregularly present migrants access to all necessary health care, including those who are destitute. They should furthermore ensure through the revision or enactment of legislation on subsidiary protection and statelessness that unreturnable migrants have effective access to stay and work permits.

#### D. LGBTI equality<sup>27</sup>

26. According to the extensive data that the Norwegian Directorate for Children, Youth and Family Affairs (Bufdir) collects and publishes on its website, between 1,2% and 10% of the Norwegian population identify as LGB persons; ECRI considers this data collection as a **good practice**.<sup>28</sup> LGBTI issues have recently been integrated in the Life Quality Survey of Statistics Norway and a second study on the living conditions of LGBTI persons will be published in autumn 2020.<sup>29</sup>
27. Norway is often referred to as one of the world's most LGBTI-friendly nations<sup>30</sup>, with high societal acceptance and tolerance for LGBTI persons. There is a societal and political consensus to promote the rights of LGBTI persons including through the improvement of their living conditions and school education on sexual diversity. According to a recent opinion poll, 72% of the general population support same-sex marriage<sup>31</sup> and on a Gay Happiness Index Norway was ranked second.<sup>32</sup> On 30 January 2017, the democratically organised Lutheran Church, to which about three quarters of all Norwegians belong, voted in favour of new ceremonial language that allows its pastors to conduct same-sex marriages.<sup>33</sup> One government minister and about 10 MPs are openly gay. Lately, groups with a strong focus on family, tradition and values tended however to oppose this development and to promote so-called "conversion therapy".
28. In the field of legislation, the new EADA prohibits discrimination on an open ended list of grounds including gender, sexual orientation, gender identity and gender expression, but does not explicitly mention sex characteristics and the discrimination of intersex persons.<sup>34</sup> The new Criminal Code, the last parts of which entered into force on 1 December 2015, explicitly mentions the ground of

<sup>24</sup> European Network on Statelessness 2020.

<sup>25</sup> The Local 2019; Info Migrants 2019.

<sup>26</sup> See in this respect also Solhjell R., Saarikkomäki E., Haller M. et al. 2018.

<sup>27</sup> For terminology, see the definitions set out in CoE Commissioner for Human Rights 2011.

<sup>28</sup> Norwegian Directorate for Children, Youth and Family Affairs 2020, [https://bufdir.no/Statistikk\\_og\\_analyse/lhbtqi/](https://bufdir.no/Statistikk_og_analyse/lhbtqi/).

<sup>29</sup> The first study was published by Anderssen N. et Malterud K. 2013.

<sup>30</sup> On the 2020 ILGA Europe Rainbow-Map, Norway, was ranked 3<sup>rd</sup>, ILGA Europe 2020.

<sup>31</sup> PEW Research Centre 2018: 29.

<sup>32</sup> Planet Romeo 2015.

<sup>33</sup> Reuters 2017.

<sup>34</sup> The LDO covers the ground of sex characteristics under the ground of gender.

“homosexual orientation”; only Section 77i on aggravating circumstances covers “other circumstances relating to groups with a particular need for protection”; an initiative is under way to introduce the grounds of gender identity and sex characteristics in a comprehensive way in the Criminal Code.<sup>35</sup> The repeated initiatives to introduce a third gender option into Norwegian legislation have curiously missed a majority.

29. The latest national Action Plan on LGBTI issues was launched in 2016.<sup>36</sup> It aims to secure LGBTI rights, combat discrimination, change attitudes and combat hate speech and hate crime. Its 40 measures focus on (i) ensuring a safe social environment and safe public spaces, (ii) guaranteeing equal access to public services and (iii) improving the life quality of LGBTI persons. Eight Ministries are responsible for its implementation and an evaluation has been launched in 2020. Civil society informed ECRI that implementation was slow and that there have been only a few concrete initiatives with little funding. For young LGBTI persons the information on LGBTI issues that is available on the Internet and the annual summer camps of the NGO Queer Youth are of great importance in the phase of their coming out. With regard to LGB persons, ECRI considers that it would be helpful if there was more research about topics such as the coming out phase or adoption by homosexual couples.
30. Regarding transgender persons, ECRI strongly welcomes the entry into force on 1 July 2016 of Act no. 46 on the change of gender, which relies in exemplary fashion on the principle of self-determination of transgender persons, as recommended in § 6.2.1 of Resolution No. 2048 (2015) of the Council of Europe’s Parliamentary Assembly. ECRI considers this legislation as a **good practice**. According to the act, persons aged 16 or older have the right to change their legal gender in the National Population Register without having to undergo medical diagnosis or treatment. It is sufficient to fill in the relevant form and to send it to the tax office. Children between the age of 6 and 16 years have the right to change their legal gender with their parent’s consent, which is approved by the County Governor of Oslo and Akershus if it is in the best interest of the child. Children under 6 years can have their legal gender changed if the child is born with a disorder of sex development.
31. According to the latest figures, 1 560 applications for change of the legal gender have been registered between 1 July 2016 and 31 March 2019. About one quarter of these applications were retracted. Among the remaining applicants, 57% changed their gender from female to male and 43% from male to female. The youngest person was aged seven and the oldest 63. According to the authorities, the new regulation works in practice and there is no indication of any misuse. The authorities are not aware that a single person would have used the possibility to change their gender back to the initial one. This shows that the decision to apply for a change of one’s legal gender is such a fundamental one that the applicants very thoroughly inform themselves and reflect before taking this step and that therefore there is no reason to restrict the right of transgender persons to self-determination of their gender any further.
32. The life situation of transgender persons in Norway remains nonetheless difficult. While there are a couple of openly transgender politicians in Norway, research highlights a lack of knowledge and little understanding of gender identity issues in many areas including school, workplace, family, health care and other public institutions. This has serious consequences such as intolerance and transphobic attitudes, and triggers discrimination, exclusion, stigma and harassment. Many transgender persons therefore choose never to come out, with negative effects on

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<sup>35</sup> See also Sections 174.1.c, 185, 186, 264, 272, 274 and 352.

<sup>36</sup> Norwegian ministry of Children and Equality 2017. Six municipalities have also adopted LGBTI action plans, Stubberud, E., Prøitz L., Hamidiasl H. 2018: 2.

their living conditions and quality of life. Transgender persons state that their lives are characterised by shame, guilt and fear of being "revealed", which often trigger mental health problems and suicidality. Even though coming out has a high cost, such as being rejected by family, losing their job or even their parental rights, many transgender persons perceive the burden of hiding their gender identity as being worse. Quality of life significantly improves when there is a match between gender expression and gender identity, and recognition and respect for who a transgender person is.<sup>37</sup> Another study highlights the crucial role of nurses in school to help transgender children and the need to better train them on LGBTI issues.<sup>38</sup>

33. In a survey that the Norwegian Patient Organisation for Gender Incongruence (PKI) published in 2019, 71% of the respondents reported that they had been treated in a demeaning, irresponsible or offensive way by the National Treatment Centre for Transsexualism (NBTS).<sup>39</sup> According to civil society, conservative health practitioners do not yet provide the necessary health care that can vary from guidance on gender identity issues to different types of gender-affirming treatment, such as surgical procedures and hormone therapy; many transgender persons do not want to undergo extensive intervention, but rather satisfy gender affirming health needs such as dentures, hair removal and voice training. Relatively small grips can significantly improve the quality of life.<sup>40</sup> Against this background, ECRI welcomes the efforts of the authorities to improve the access of transgender persons to health care that is tailored to their specific needs. New guidelines for the provision of health care to transgender persons have been finalised in 2020<sup>41</sup> and all four regions that are responsible for health care will have to provide treatment based on these guidelines.
34. The situation of intersex persons remains difficult too. Knowledge among the general population about their situation is very limited, there are no open intersex persons in Norway and no NGO exists that specialises exclusively on intersex persons. Thus, parents of new-born intersex babies have difficulties in receiving balanced information on different options for raising their children and some doctors still advise parents to resort to cosmetic surgery at a very young age in order to fit intersex babies into the binary system and make them resemble to a boy or a girl. Against this background, ECRI notes with satisfaction that the discussion is moving from focusing on the parents' needs to focusing on the children's needs and to postpone deferrable surgery to an age at which the child can take part in the decision.
35. ECRI furthermore takes positive note of two studies on intersex persons that the government commissioned. According to the first one on the life situation of intersex persons, many participants described a good quality of life, even though intersex persons are generally psychologically vulnerable. This is particularly true during the time of diagnosis and puberty, when they are in great need of assistance.<sup>42</sup> The second study focuses on legal matters and recommends deferring non-therapeutic medical interventions on intersex children until they are old enough to participate in the decision and to embed this into the law and medical and ethical guidelines. The authors further recommend incorporating the protection of intersex persons and the ground of sex characteristics in the anti-discrimination, hate speech and hate crime legislation. The process of registration of a gender at birth should be made more flexible by providing for the possibility to delay and

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<sup>37</sup> For this and the following paragraph see most of all Van der Ros 2013: 6 et seq.

<sup>38</sup> Stubberud, E., Prøitz L., Hamdiasl H. 2018: 1 et seq.

<sup>39</sup> <https://www.facebook.com/kjonnsinkongruens/photos/rpp.180992982581370/394279447919388/?type=3&theater>, accessed on 10.06.2020.

<sup>40</sup> Van der Ros 2013: 6 et seq.; Elgvin, O., Bue, K. and Grønningsæter, A.B. 2014: 10 et seq.

<sup>41</sup> For details see Helsedirektoratet 2020.

<sup>42</sup> Feragen, K. B., Heggeli, C. and Wæhre, A. 2019: 7 et seq.



change this registration and to remove the gender marker from social security numbers. A third gender category should not necessarily be introduced. The study also highlights the need to establish organisations of intersex persons in Norway, to reform education on intersex issues, to continue research and to consult intersex persons on any modification of the relevant legislation and medical guidelines.<sup>43</sup> ECRI welcomes this ground laying research and these recommendations.

36. Overall, ECRI considers that the authorities should continue focusing on the improvement of the legal framework and the living conditions for LGBTI persons. The grounds of gender identity and sex characteristics should be comprehensively introduced into the legislation on hate crime, hate speech and anti-discrimination and the registration of the gender of intersex persons and its subsequent change should be made more flexible as suggested in the previous paragraph. ECRI furthermore considers that a new action plan on LGBTI issues is needed, which should have a strong focus on raising awareness about the existence and empathy for the situation of transgender and intersex persons and contain measures to open up in the society the space they need to live comfortably and in accordance with their specific situations.
37. ECRI recommends that the Norwegian authorities develop a new action plan for LGBTI persons with a particularly strong focus on transgender and intersex persons. It should contain measures to (i) raise awareness and empathy among the general population with regard to the situation of LGBTI persons and their families, (ii) train the health nurses in schools on LGBTI issues, (iii) build up counselling services and self-help groups for intersex persons and their parents as well as other measures to provide parents with sound information about options available and dangers of surgical and hormonal treatment at a very young age, (iv) legally defer non-therapeutic medical treatment of intersex persons to an age at which they can participate in the decision and (v) introduce the grounds of gender identity and sex characteristics comprehensively in the anti-discrimination, hate speech and hate crime legislation.

## II. HATE SPEECH AND MOTIVATED VIOLENCE

### A. Hate speech<sup>44 45</sup>

#### Data and public discourse

38. ECRI welcomes the fact that the police and prosecution have further improved their statistics on hate speech, which are an important tool to measure its extent and improve the responses to it. While the police recorded 308 such offences in 2019 (2018: 281; 2017: 245; 2016: 225; 2015: 120; 2014: 51), research still shows that the actual amount of hate speech is much higher and that many hate speech cases are not reported to the police or other competent bodies. In a survey from 2019 among LGBT persons, 23% of the respondents reported having been victims of hate speech during the past year (compared to 10% in the general population) and 15% that they had been exposed to concrete threats (4% among the general population). Young people are far more often exposed than older people. Hate speech is most common on the Internet, but also present in traditional media. Victims of hate speech feel unsafe and become more careful about expressing

<sup>43</sup> Garland, F., Samuelsen N.L. and Travis, M. 2018: 6 et seq.

<sup>44</sup> According to ECRI's GPR No. 15 on combating Hate Speech, "hate speech" shall mean the advocacy, promotion or incitement, in any form, of the denigration, hatred or vilification of a person or group of persons, as well as any harassment, insult, negative stereotyping, stigmatization or threat in respect of such a person or group of persons and the justification of all the preceding types of expression, on the ground of "race", colour, descent, national or ethnic origin, age, disability, language, religion or belief, sex, gender, gender identity, sexual orientation and other personal characteristics or status.

<sup>45</sup> In the present report, hate crime should be understood as any criminal offence motivated by hate or prejudice on grounds such as "race", colour, language, religion, citizenship, national or ethnic origin, sexual orientation or gender identity, whether real or presumed. For further information about the notion of hate crime, see <http://hatecrime.osce.org/what-hate-crime>.

themselves in public. According to the same study, other groups including people with a minority religion, people with a migration background and Sami people are also exposed to hate speech.<sup>46</sup> In another survey, 14% of Muslim and 11% of Jewish respondents indicated having been directly subjected to harassment. 64% of Jews and 26% of Muslims reported that they avoid displaying their religious affiliation to avoid negative reactions.<sup>47</sup>

39. A series of analyses of attitudes within the population from 1993 to 2016 shows a general trend to more positive attitudes towards immigrants and immigration<sup>48</sup> and that the proportion of the Norwegian population with marked prejudices against Jews decreased from 12.1% to 8.3%. However, the polarisation within society increased and almost half of the population mistrust Muslims. Over half would not want to have a Muslim son- or daughter-in-law, 34% have marked prejudices against Muslims and 28% dislike Muslims. About 30% believe that Muslims would like to take over Europe and 42% that Muslims do not want to integrate. Anti-Muslim attitudes are more pronounced among men, older respondents and respondents with a low level of education.<sup>49</sup>
40. ECRI regrets to note that in Norway the public debate about immigration got increasingly polarised in recent years and in particular after the arrival of a high number of asylum seekers in 2015.<sup>50</sup> Whereas people used to perceive Norway as a peaceful and harmonious society and diversity as an enrichment, migrants are, according to civil society, increasingly depicted as a burden for society, which has become increasingly cold and rejecting. This shift in the public debate has mainly been driven by anti-migration discourse from the far right and its dissemination through many media. Such xenophobic discourse, which also emanated from government members, has a chilling effect on minorities and in particular Muslims, who do not anymore feel being part of the society and have the impression that the migration-friendly politicians left the arena to the far right.
41. In October 2016, hateful comments were posted on the Facebook pages of two government ministers from the Progress Party. While the then Minister of Immigration and Integration deleted these comments, the then Minister of Fisheries has neither deleted nor replied to them.<sup>51</sup> A former Minister of Justice from the same party was driven out of her office by the parliament in 2018 after having published a photo stating that the Labour Party would give more importance to the rights of terrorists than to the security of the nation.<sup>52</sup> Muslim representatives are of the opinion that such hate speech paved the way to the terrible attack by Philip Manshaus on a Mosque in 2019, which is dealt with in § 62. While Norway's Prime Minister called this hate crime a "direct attack on Norwegian Muslims", civil society representatives deplore that the subsequent debate did not focus on how to counter such islamophobia but rather got dominated by comments of the Finance Minister and leader of the Progress Party, who reused the expression of a "creeping Islamisation" of Norway when commenting on the fact that three Muslim women did not shake hands with the Norwegian Crown-prince, when he visited the mosque after the attack. ECRI notes with satisfaction that the Finance Minister was

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<sup>46</sup> Fladmoe A., Nadim M. and Birkvad S.R. 2019: 9.

<sup>47</sup> HL-Senteret 2017: 4.

<sup>48</sup> Negative attitudes fell by around 20% to reach 20 to 30%.

<sup>49</sup> HL Senteret 2017: 2; LDO 2018a: 7; there have however been cases of antisemitic hate speech, such as the rapper Kaveh Kholardi using the expression "f\*cking Jews" during a concert at a family festival organised by the city of Oslo, which was intended to celebrate diversity, European Jewish Congress 2019.

<sup>50</sup> LDO 2018a: 14.

<sup>51</sup> The Local 2016. Immigrants were called "monkeys" and Africans "birthing machines" who "should all be forcibly sterilised".

<sup>52</sup> Aftenposten 2018a and b. At other occasions, she named people supporting migration as "imam-lickers" and "tyrants of goodness" and expressed that migrants couldn't expect to be "carried in golden chairs", Antirasistisk Senter 2018.

heavily criticised for these comments by other government members.<sup>53</sup> According to minority representatives, hate speech also occurs at local level.

42. In 2018, the LDO published a study analysing the comments on the moderated and editorial-controlled Facebook pages of the Norwegian Broadcasting Corporation (NRK) and TV 2. It concluded that 7% of the examined comments (284 out of 4 002 comments) constituted hate speech even though they had been checked before their publication. Many of them were triggered by news items related to refugees, migrants and equality and linked to the expression of political views. In the user survey, which formed the second part of the study, more than half of the respondents said that they refrain from commenting on Facebook due to the harsh tone of the debate. Ethnic minorities, Muslims and politically active persons are most at risk of becoming targets of hatred. Most of the authors of hateful content were men while women form the majority among those who refrain from participating in the debates. Only a few users are familiar with Facebook's guidelines that prohibit hate speech and very few cases are brought before the judiciary, even though the police introduced an online patrol. The study recommends that Facebook and other media should be more active to ensure that their guidelines and the prohibition of hate speech are respected.<sup>54</sup> Another report of the LDO from 2018 underlines a lack of systematic and effective prevention and combating of hate speech and hate crime.<sup>55</sup> Media representatives informed ECRI that journalists are equally exposed to hate speech, sometimes also in connection with their ethnic background or gender.
43. In 2020, the Norwegian Supreme Court issued two important decisions on hate speech. In the first case, a 70-year-old woman from Bergen had posted on the Facebook group "We Support Sylvi Listhaug" insulting comments about Sumaya Jirde Ali, an award-winning writer and poet of Somali origin. The offender was finally sentenced under Section 185 of the Criminal Code for hate speech to a conditional sentence and a fine of 25 000 NKR (about 2 500 Euros).<sup>56</sup> The second insulting statement was made in the Facebook group "Fedrelandet viktigst"<sup>57</sup>; the Supreme Court upheld the sentence for hate speech and the fine of 12 000 NKR. Observers state that these judgments contained the important message that the general limitations to liberty of expression also apply to the Internet.<sup>58</sup>
44. The first case also confirms that hate speech poses a serious threat to public debate and democracy. The victim, Sumaya Jirde Ali, was about to annul public interventions after having suffered from additional hate speech in 2018 in particular on the website "Resett"<sup>59</sup>; she changed her mind only after many supporting interventions, including through the Prime Minister.<sup>60</sup> A second example of the devastating effects of hate speech on the political debate is the case of a youth party leader with a migration background who was exposed to hatred and threats during the 2017 campaign for the general elections; the Police Security Service

<sup>53</sup> NRK 2019 ; VG 2019

<sup>54</sup> LDO 2018b: 39 et seq.

<sup>55</sup> LDO 2018a: 5.

<sup>56</sup> Supreme Court of Norway no. HR-2020-184-A, judgment of 29 January 2020; NRK 2020. The post reads: "Devil's black offspring, go back to Somalia and stay there you corrupt cockroach".

<sup>57</sup> The name of this group can be translated as "The fatherland is most important".

<sup>58</sup> The post in question reads: "It is better that we remove these abominable rats from the surface of the earth ourselves I think !!!" and "Yes they will disappear the day these steppe baboons travel where they belong!", Supreme Court no. HR-2020-185-A, judgment of 29 January 2020; see also VG 2020; Aftenposten 2020.

<sup>59</sup> <https://resett.no/2018/02/24/la-oss-snakke-om-sumaya-jirde-ali-og-stemmene-som-haner-oss/>, accessed on 12.06.2020. Civil society informed ECRI that pre-moderated comments called her a "hooded gull", "fat cow on welfare benefits" and incited to hatred: "surround her, poor gas over her and light the torches", Antirasistisk Senter 2018: 17. Concerning hate speech after the attack on mosques in New Zealand in 2019 and the reaction of the Minister of Education when reading these pre-moderated comments see Aftenposten 2019.

<sup>60</sup> Dagbladet 2018.

(PST) advised him to keep a lower profile during the final stages of the campaign. A third case concerns a young female politician with a visible migration background. After having been steadily exposed to hatred due to her ethnicity and gender, she had to be put under police protection.<sup>61</sup>

45. Extremist organisations, in particular the Nordic Resistance Movement, also contributed to the spreading of hate speech. Several interlocutors of ECRI's delegation also pointed out that the foundation "Human Rights Service", which receives state funding of about 180 000 Euros a year, contributes to fuelling anti-Muslim hatred. After the first Supreme Court judgment referred to in § 43, it published a poster showing Sumaya Jirde Ali and a cockroach.<sup>62</sup>
46. ECRI is furthermore concerned about reports of constant hate speech against Sami in Norway. According to researchers, whom ECRI's delegation met during its country visit, the intensity of hate speech sharply increased in 2011 when the municipality of Tromsø applied to become part of the Sami-speaking area of Norway. Many hate messages are connected to controversies about reindeer-herding and disseminated by a small number of anti-Sami activists through local newspapers and on the Internet.<sup>63</sup> Together with bullying and "humour" about Sami, which is still present in society and perpetuates stereotypes and negative prejudices, this constant hate speech creates an oppressive atmosphere with one-sided reporting on Sami, always from a negative angle. According to medical research, this daunting and degrading hate speech triggers anxiety, depression, abdominal pain, self-loathing, sleep problems, concentration problems and suicidal thoughts. Many young Sami stop participating in discussions as they are afraid of becoming the targets of hate speech.<sup>64</sup> ECRI received information only about a single case of a criminal conviction; even though the perpetrator was sentenced to a fine of 15 000 NOK for hate speech, he again published his offensive statements shortly after the verdict.

### Responses to hate speech

47. As pointed out in its GPR No. 15 on combating hate speech, ECRI considers that, to effectively prevent and combat hate speech, action is required in a number of areas, including awareness-raising, prevention and counter-speech, victim support, self-regulation, the use of regulatory powers and, as a last resort, criminal investigations and punishment.
48. ECRI is highly concerned about the intensifying waves of hate speech that Norway saw over the last years and the serious harmful and divisive effects it produced within the Norwegian society. After the Breivik attacks in 2011, the constant xenophobic and anti-Muslim hate speech has again triggered extremely dangerous and deadly racist attacks in 2019. Such repeated outbreaks of racist violence show that persisting public hate speech must set the alarm bells ringing, as experience shows that it can lead to terrible racist attacks and violence.
49. Against this background, ECRI takes positive note of the fact that the general public and key institutions of the Norwegian state have become aware of the dangers of hate speech, of the need to put appropriate limits to freedom of expression and the necessity to protect the victims from hate speech. On 27 November 2015, the Norwegian Government signed and published a political declaration against hate speech and subsequently developed a strategy against hate speech, which was adopted in 2016.<sup>65</sup> An action plan against discrimination and hatred towards

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<sup>61</sup> LDO 2018a: 17.

<sup>62</sup> Journalisten 2020.

<sup>63</sup> For examples see NRK 2018.

<sup>64</sup> Hansen K.L. 2019.

<sup>65</sup> Norwegian Government 2015b; Norwegian Ministry of Children and Equality 2016: 2.

Muslims and an overarching action plan against racism and discrimination on the grounds of ethnicity and religion (2020-2023) were adopted in 2020<sup>66</sup>; a new action plan on antisemitism was under preparation in 2020. Furthermore, political parties sign, according to the authorities, a code of conduct with basic ethic rules before each election. The strategy against hate speech 2016-2020 contains 36 measures in the six areas Forums for Discussion, Children and Youth, Legal System, Employment, Media Sector and Knowledge and Research. ECRI takes in particular positive note of the measures aiming at the prevention of hate speech<sup>67</sup> through the DEMBRA project (see above in § 14), the continued support for the No Hate Speech Campaign and of the development of teaching resources on racism and information material for children and youth. In 2020, the impact of the strategy was under evaluation.

50. According to the authorities, there are no specific rules for the parliament and the government that prohibit the use of hate speech by their members. While the presidents of the parliament apply the general rules of conduct rather strictly and thus prevent the use of hate speech within the debates, some MPs resort, as described above, to hate speech in their activities outside the parliament. The fact, that former government ministers published and refused to delete hateful comments points to the need that also the government adopts a clear prohibition of hate speech also for its members.
51. ECRI recommends that the Norwegian Parliament and Government develop and enact rules that prohibit the use of hate speech by their members in their activities in- and outside of state institutions, and in particular on the Internet and in their interaction with other media. These rules should provide for suspension and other sanctions for breach of their provisions, as well as for effective reporting channels, as recommended in § 6a of ECRI's General Policy Recommendation No. 15.
52. With regard to hate speech in the media, the Norwegian Press Complaints Commission (PFU) is mandated to hear and decide on complaints for violations of the Ethical Code of Practice for the Press (ECPP). Given that Sami representatives informed ECRI about a great amount of hate speech against them in the printed press, ECRI considers that the PFU should verify whether it is sufficiently accessible for vulnerable groups, actively reach out to these groups and inform them about the possibility to seize it with complaints for hate speech. Also, initial and continuous training for journalists on avoiding hate speech and its dissemination, the hiring of journalists with a minority background and letting people with a migration background express themselves in the media are appropriate measures to prevent and counter hate speech and its dissemination through the media.<sup>68</sup>
53. With regard to online hate speech, ECRI recommends in §§ 6 and 7 of its GPR No. 15 to push in the first place for self-regulation and to resort to external regulation only if it turns out that self-regulation fails to have a sufficient impact. While representatives of journalists are of the opinion that the self-regulatory application of sections 4.3 and 4.17 of the ECPP works well on the online platforms of edited media, the LDO concluded in the study cited in § 42 that there is a big amount of hate speech on the Internet, even after moderation on the basis of the ECPP. Regarding other parts of the Internet and in particular social media, a media representative drastically expressed that there is "chaos on the Internet" and other media representatives that external regulation is needed. It does indeed not seem that social media platforms such as Facebook enforce their code of ethics properly. According to the study of the LDO, most Facebook users do not even know these

<sup>66</sup> Norwegian Government 2020; Ministry of Culture 2020b, see already above §§ 4 and 15.

<sup>67</sup> See in this respect also the reward that the Norwegian Museum of Science and Technology received for its exhibition FOLK: From Racial Types to DNA, British Society for the History of Science (BSHS) 2018.

<sup>68</sup> According to Retriever 2018, only 2% of those interviewed in the field of culture are people with a migration background.

guidelines.<sup>69</sup> In sum, it appears that there is no efficient self-regulatory or regulatory mechanism in place that would push social media platforms to remove hate speech consistently. Promising experiments to send automated messages to the authors of comments that contain key words pointing to a hateful content are alone insufficient to prevent and combat online hate speech effectively.

54. Against this background, ECRI welcomes the fact that the government has foreseen to carry out a study into online hate speech<sup>70</sup> and that it has instituted a Commission on Freedom of speech, which is mandated to recommend measures for preventing the spread of illegal and harmful content on electronic platforms and social networks, to avoid that members of vulnerable groups are excluded from public debate, to clarify the role of Internet platforms in combating hate speech and to consider the need for international cooperation and possibly regulation. The mandate underlines that hateful statements are not protected under the European Convention on Human Rights<sup>71</sup> and that Article 8, which protects the right to privacy including honour and reputation, enjoys protection similar to freedom of expression.<sup>72</sup> ECRI considers that the authorities should swiftly adopt measures that reliably ensure the removal of hate speech from the Internet by means of self- or external regulation.
55. In this connection, ECRI notes that editors are held responsible for user-generated content also on the Internet if they act intentionally or with gross negligence; on the other hand, they are exempt from liability if they take the necessary steps to delete or block access to illegal comments (section 13 of Law No. 59 on the Responsibility of Media of 29 May 2020). Regarding Internet providers and social media platforms, no similar rules exist. ECRI encourages the authorities to embark into negotiations with social media regarding such responsibility as it was done in other European countries and to consider in the framework of their work on improving the response to online hate speech the enactment of comparable rules to section 13 of Law No. 59 also for these actors.
56. ECRI recommends that the Norwegian authorities ensure that Internet service providers and social network operators swiftly and systematically remove hate speech, which is in breach of the law or their code of ethics, from their systems and forward related evidence to the police.
57. With regard to the criminal prosecution of hate speech, ECRI welcomes the two judgments referred to in § 43, through which the Supreme Court has amplified the important message that freedom of expression is not limitless and cannot be invoked to justify criminal forms of hate speech and the resulting violation of the victims' rights under Article 8 of the European Convention on Human Rights.
58. The police have established a website for the reporting of hate speech<sup>73</sup> and transmits the incoming reports to the local police units for investigation. Furthermore, an online patrol has been established, which also deals with hate speech. However, the number of complaints on online hate speech is very low and it would seem that it is very difficult for local police units to deal with such cases in an effective way, as investigating online hate speech requires very specific equipment and IT-knowledge. In addition, Internet platforms do not sufficiently cooperate with the police, which have problems in obtaining from the providers the data that is necessary to determine the identity of the perpetrators. Against this background, ECRI considers that the investigation of online hate speech should be concentrated in specialised units such as the Oslo unit for hate crime. These

<sup>69</sup> Regarding problems of reporting hate speech on Facebook see also ECRI's 6<sup>th</sup> report on Germany, § 53.

<sup>70</sup> Norwegian Government 2020: 27, measure no. 17.

<sup>71</sup> See its Article 17 and the related case-law of the ECtHR.

<sup>72</sup> Government 2019.

<sup>73</sup> <https://www.politiet.no/tjenester/tips-politiet/hatefulle-ytringer-pa-internet/>.

services should be equipped with the necessary human, technical and financial resources to raise awareness about the possibility to lodge complaints for (online) hate speech, proactively identify instances of online hate speech and develop the knowledge, procedures and relations with Internet providers to effectively investigate cases of online hate speech in accordance with the Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, which Norway ratified in 2008.

59. ECRI recommends that the police concentrate the investigation of online hate speech in specialised units and that they equip these units with the necessary human, technical and financial resources to effectively combat online hate speech.

## **B. Hate-motivated violence**

60. In 2019, the Norwegian police recorded a total of 761 hate crime offences, which constitutes an increase of 22% compared with 2018 (624 cases). Among them were 250 cases of violence (2 cases of homicide or attempted homicide, 13 cases of serious bodily harm and 131 cases of bodily harm), 101 cases of “reckless behaviour”, 50 cases of threats and 32 of damage to property. 62% of them were registered on the grounds of racism and xenophobia, 17% on religion, 2% on antisemitism and 14% on LGBT-phobia.<sup>74</sup> A considerable number of these offences was directed against Muslims and in particular Muslim women wearing a headscarf.<sup>75</sup> According to the authorities, 744 of these cases were investigated and in 322 cases (47%) a perpetrator was identified. In 44 cases, there was a court sentence, in 15 cases a fine has been pronounced, 8 cases have been transferred to a mediation service and in 8 cases the perpetrator was acquitted. One third of all these cases have been registered by the Oslo Police District.<sup>76</sup>
61. The authorities consider that the growing number of registered hate crime cases is a result of increased knowledge in the local police districts on hate crime and more efficient registration. According to the police, there is at the same time good reason to believe that there is still a considerable degree of underreporting and the Oslo police expected in 2018 an increase of hate crime “in a time when nationalistic, far-right, extremist Christian and anti-immigrant, homophobic and misogynist attitudes are being expressed increasingly strongly”.<sup>77</sup> During the same year, the UN Human Rights Council expressed concerns about this underreporting and the low rates of conviction that result from lack of evidence.<sup>78</sup>
62. On 10 August 2019, Norway was shaken by the racist hate crimes committed by Philip Manshaus who has been sentenced to 21 years of imprisonment for the racially motivated murder of his 17-year-old Chinese-born stepsister and attempting to kill worshippers in the Al-Noor Islamic Centre near Oslo. Prior to the attacks, he had expressed strong anti-immigrant and anti-Muslim views in online forums.<sup>79</sup> In June 2019, he had applied for membership in the neo-Nazi Nordic Resistance Movement (NRM) and met with some of their members. After the murder of his step-sister, he drove to the nearby Islamic Centre, entered the building, fired several shots that luckily hit no one and was then overpowered by a member of the congregation who wrestled away his guns. The judge in charge declared that the perpetrator went there with the purpose of killing as many Muslims as possible and that he believed that “Europe is under attack from people of ethnic origin other than his own” and that “the white race is on the brink of

<sup>74</sup> Norwegian Police 2020: 8 et seq.

<sup>75</sup> Oslo Politidistrikt 2020: 4.

<sup>76</sup> Norwegian Police 2020 : 8 et seq. OSCE, ODIHR 2020. These statistics are based on data provided by the Norwegian authorities.

<sup>77</sup> Oslo Politidistrikt 2018: 94; LDO 2018a: 19.

<sup>78</sup> UN Human Rights Committee 2018 : § 16.

<sup>79</sup> The Guardian 2019.

extinction". During his trial Manshaus furthermore expressed the view that the adopted daughter of his father's spouse posed a risk to the family because of her Asian origin. He was sentenced to 21 years of imprisonment, which is the maximum penalty available for the first-degree murder and breach of anti-terrorism law. The sentence also provides that his release can be put off indefinitely should he still be considered a threat to society.<sup>80</sup>

63. As already expressed earlier in this report, ECRI is particularly concerned about the violence that the increasing Islamophobia has produced in Norway. For the second time, a violent perpetrator has radicalised including on the Internet and started an attack that could have had a much higher death-toll if he would not have been neutralised in time. To prevent further attacks of this kind, ECRI considers that - in addition to measures recommended above for fighting hate speech - the prevention and investigation of hate crime need to be further improved.
64. In this context, ECRI welcomes the establishment of a Hate Crime Unit by the police of Oslo, which de facto serves as a nationwide competence centre for hate crime and hate speech. In addition, diversity contacts were established in other police districts with the task of establishing regular contact and exchange with minority groups. ECRI furthermore notes the creation of 12 support centres for victims of crime in all police district in 2017 and that their staff were trained on hate speech and hate crime. ECRI also takes positive note of the publication of guidelines on the registration of hate crimes including hate speech in 2018 that – in line with § 14 of ECRI's GPR No. 11 – provide that an offence must also be recorded as racist if only the victim is of the opinion that it was motivated by racism. In autumn 2019, several thousand police officers were trained on the registration of hate crime and hate speech. All these efforts seem to pay off given the significant increase of recorded hate crimes.
65. However, the Oslo Hate Crime Unit is only composed of two to three police officers and its survival has been threatened in the past. ECRI considers that this unit must be strengthened and that the police should build, together with the diversity contacts and crime support centres a solid network that sustainably ensures expertise on and effective investigation of hate crime and hate speech throughout the country.
66. ECRI recommends that the authorities build a solid network of one or more central services and contact points that ensure expertise on and effective investigation of hate crime and hate speech throughout the country.
67. The effective prevention of radicalisation and determined and effective action against racist and extremist individuals and groups and their propaganda on the Internet should be a second priority in the fight against hate crime in Norway. In its threat assessment for 2018 the Norwegian Police Security Service (PST) specifically mentioned the NRM, which has clearly become more organised and more publicly visible. According to the PST, the NRM is antisemitic and homophobic and aims to fight for what it calls the "pure Nordic race".<sup>81</sup>
68. In this connection, ECRI takes positive note of the action plan against radicalisation and violent extremism that the authorities launched in 2014. Its measures are intended to prevent that people are drawn towards radicalised environments and extremists. The authorities are planning to revise this plan. In ECRI's view, it is important that the police take more systematic action against racist and extremist content on the Internet including hate speech. Detecting such content proactively will help the police to identify the potentially relatively small number of extremist authors of racist material and hate speech on the Internet, allow for more targeted action against potential perpetrators of hate crimes and remove content that

<sup>80</sup> Reuters 2020; Euronews 2020; Aljazeera 2020.

<sup>81</sup> Norwegian Police Security Service (PST) 2018; LDO 2018a: 15.



contributes to the radicalisation of others. In addition, the authorities should create the legal framework for cutting the funding of and disbanding racist organisations and political parties and criminalise the participation in racist organisations, as recommended in §§ 7, 8, 12 and 13 of ECRI's 5<sup>th</sup> report on Norway.

69. ECRI recommends that the Norwegian authorities continue focusing on preventing and detecting radicalisation and implement measures to systematically detect and remove illegal racist and extremist content from the Internet. They should furthermore enact a legal framework for cutting the funding of and disbanding racist organisations including political parties as recommended in §§ 16, 17 and 18g of ECRI's General Policy Recommendation No. 7.

### III. INTEGRATION AND INCLUSION

#### A. Migrants

70. At the beginning of 2020, 979 254 first- and second-generation migrants lived in Norway (18.2% of the population). The biggest numbers of foreign-born migrants originate from Poland (101 153), Lithuania (40 632), Sweden (35 568), Syria (31 952), Somalia (28 554), Germany (24 953), the Philippines (23 280), Iraq (23 260), Eritrea (23 075), Pakistan (21 097) and Thailand (21 097).<sup>82</sup>
71. According to Sections 2 et seq. of the Introduction Act from 2003 (IA), refugees and their family members have the right and the obligation to attend 550 hours of Norwegian language training free of charge. The same applies to family members of Norwegians and newly arriving family members of persons who have a permanent residence permit in Norway. Foreigners arriving from the EEA or Nordic countries are exempted from these provisions. Asylum seekers receive on their part 175 hours of free Norwegian training. Refugees and their family members between the age of 18 and 55 who have been granted a residence permit are furthermore entitled and required to participate in an introductory programme that is organised by the municipality and can last for up to two years.<sup>83</sup> The authorities are in the process of replacing this legislation by a new Integration Act, which aims at early activation of newcomers and contains more precise integration obligations for municipalities. The draft also focuses on language-learning and requires a minimum of successful teacher training for persons who intervene in integration programmes (30 credit points).
72. Building on a White Paper from 2016<sup>84</sup>, Norway has furthermore adopted a new integration strategy for the years 2019 to 2022 with the main goal of bringing more migrants into work. The strategy emphasises that integration is a two-way process in which the authorities provide good opportunities for integration and each immigrant makes their own contribution to their integration. It further stipulates that the introductory programme and other qualification measures shall be designed in a way to provide migrants with the necessary education and formal qualifications to allow them to join the labour force and help meet important social needs in the future. In its four priority areas Education and Qualification, Employment, Everyday Integration and the Right to Live a Free Life, the strategy contains about 50 measures.<sup>85</sup>
73. While these integration policies are directed at asylum seekers and refugees, labour migrants from outside the European Economic Area (EEA) have the obligation to complete a total of 300 hours of tuition, including 50 hours of civics (Section 17 IA). Regarding migrants from EEA and Nordic countries, tuition in Norwegian and civics is neither mandatory nor free of charge. To be granted

<sup>82</sup> Statistics Norway 2020a.

<sup>83</sup> EU EC 2019.

<sup>84</sup> Norwegian Ministry of Justice and Public Security 2016.

<sup>85</sup> Norwegian Ministry of Education and Research 2019.

permanent residence, migrants need to document oral Norwegian language skills at a minimum level of A1 of the Common European Framework of Reference for Languages (CEFR) and pass a test in civic education; to obtain citizenship, oral language skills at A2 level and passing the citizenship test are required.<sup>86</sup>

74. During the country visit, various interlocutors informed ECRI that many labour migrants from inside and outside the EEA do barely speak any Norwegian. Due to this lack of language skills, many of them are not aware of their labour rights, at risk of exploitation by their employers and unable to read, understand and respect safety regulations. At the same time, they have difficulties to build up contact with Norwegians and integrate into society. A considerable number of women who arrived in Norway as spouses of Norwegian nationals or for family reunification have only very restricted opportunities to practice Norwegian and to build up an independent life, in particular if their families break up or if they become victims of domestic violence. ECRI is concerned about this lack of integration opportunities for these two groups and considers that the authorities should develop measures that motivate them to acquire a good command of Norwegian, for example by providing for language courses that are paid for by the employers or the authorities. In particular for Muslim women, the authorities should further develop suitable settings where they can learn and practice Norwegian and build up contacts, such as for example the Stella Women's Centre<sup>87</sup>, which ECRI's delegation visited during its country visit in Oslo and considers as a **good practice**.
75. Regarding the general approach to integration, ECRI encourages the Norwegian authorities to go a step further and introduce into their integration policies an element of inclusiveness, whereby the majority population opens up even more to different cultures and embarks in an intercultural approach to embrace the richness of cultural diversity that migrants have brought to Norway. In this context, they could for example run an awareness-raising campaign for the promotion and valuing of diversity.
76. ECRI recommends that the Norwegian authorities introduce into their integration policies (i) specific measures that motivate all labour migrants and newly arriving family members to acquire a good command of the Norwegian language, (ii) the further development of protected settings for the inclusive integration of migrant women and (iii) an element of inclusiveness in order to help the majority population to open up and embrace the richness of cultural diversity.
77. ECRI was informed that the authorities started in 2015 to investigate thousands of "old" migration cases. Due to this policy, migrants can, even after five to 10 years of legal residence, receive a letter notifying them that the authorities consider revoking their residence permit. According to a recent study, the limbo produced by such proceedings, which on average last 15 months, causes existential stress and serious health problems not only for the persons concerned, but also for their family members. This policy even affects the motivation of migrants who have not themselves received such letters, as they become uncertain whether it is worth to further invest into their future, learn the language, get diplomas, work or send their children to kindergarten. The described negative effects are all the more regrettable as, according to the study, most of the affected migrants are eventually allowed to stay.<sup>88</sup> ECRI is highly concerned about the negative consequences of this practice, which is highly detrimental to the integration of migrants, many of whom contribute through their work to the prosperity of the Norwegian society. At the same time, it recalls Article 6.3 of the Council of Europe's European Convention on Nationality that Norway ratified in 2009, which follows an opposite approach

<sup>86</sup> EU EC 2019.

<sup>87</sup> <https://www.rodekors.no/lokalforeninger/oslo/aktiviteter/kvinner/stella-i-oslo/>, accessed on 22.09.20.

<sup>88</sup> Scienenorway 2019; Institutt for Samfunnsforskning 2019.

and stipulates that migrants should, at the latest after 10 years of legal residence, be given the possibility to apply for naturalisation.

78. ECRI recommends that the Norwegian authorities abandon their policy of reviewing the residence status of migrants that have legally resided in the country for several years and who are unlikely to be obliged to quit the country after completion of the review process.

#### - Education

79. ECRI takes positive note of the fact that the Norwegian authorities put a specific focus on early education of children with a migration background and acknowledge that it is socially and economically profitable to do so.<sup>89</sup> All children are entitled to a place in kindergarten as of the age of one and 20 hours of kindergarten per week are free of charge in a number of neighbourhoods with a high share of children with a migration background. The first evaluation of this programme in 2016 showed clear positive results for children with a migration background, and the second evaluation in 2018 displayed positive results for all children from low-income families. In 2018, the kindergarten attendance rate ranged from 73.2% for one-year old to 97.6% for five-year old children. Among the children from “linguistic and cultural minorities”, the attendance rate seems to be slightly lower with 66% for one- and two-year old children and 94% for three- to five-year old children.<sup>90</sup>
80. When it comes to primary schooling, ECRI was informed that a considerable number of pupils with a migration background receive special needs education and that this could be linked to missing language skills. While the authorities informed ECRI that there is a study under way on how to avoid this overrepresentation, ECRI supports the recommendation made in a White Paper to map the language skills of all children at the age of 4 years. This testing could be the basis for more targeted linguistic support for children that have not yet acquired sufficient knowledge of Norwegian and to ensure that all children enter primary school with an appropriate command of the language of instruction.
81. The national tests that are carried out at the 5<sup>th</sup> grade, show that children with a migration background considerably lag behind in reading and mathematics: 39.8% of the children born abroad were in the lowest performance level with regard to reading in 2019 (compared to 20.6% among the majority population) and 39.3% with regard to mathematics (compared to 21.4%). At the eighth grade, 25.3% were in the lowest performance level with regard to reading (compared to 7.0%) and 20.5% with regard to mathematics (compared to 7.0%).<sup>91</sup> In upper secondary education, the drop-out rate of foreign-born migrant children was of 24.1% in 2018 compared to 12.2% among the majority population; among foreign born boys, this share was even 29.9%.
82. ECRI recommends that the Norwegian authorities (i) further increase early enrolment of children with a migration background into kindergarten, (ii) introduce a method of mapping the language level of those children at an early age, (iii) ensure targeted support for the acquisition of language and other skills in kindergarten and (iv) further improve the support during primary and secondary education in order to decrease the performance gaps and school drop-out rates of children with a migration background.

<sup>89</sup> See the integration strategy Norwegian Ministry of Education and Research 2019: 10. According to calculations cited in the strategy, five years of schooling in order to provide secondary education to a refugee will produce up to four times as much yield as the investment costs.

<sup>90</sup> Norwegian Ministry of Education and Research 2020: 4.

<sup>91</sup> Statistics Norway 2020b, 2020c and 2020d.

### - Child Welfare

83. Already in its previous report on Norway (§ 60), ECRI addressed the high levels of mistrust among parents with a migration background in the Norwegian Child Welfare Services (CWS), which are composed of 295 municipal or intra-municipal agencies. Against this background, ECRI welcomes the establishment by the Directorate for Children, Youth and Family Affairs of an advisory competence group in 2013 and the adoption of a strategy and an action plan for increasing trust between ethnic minority groups and child welfare workers in 2016.<sup>92</sup>
84. However, ECRI's delegation received even more alarming reports about high levels of such fear and distrust during its 2020 country visit.<sup>93</sup> They came not only from parents with a migration background, but also from Roma and Romani people/Tater representatives, according to which about 40 children belonging to the Romani people/Tater and Roma minorities are in foster care with very limited access to the Roma culture (see also § 97). It would seem that this fear and distrust is triggered by very harsh measures taken by the CWS, such as the placement of children in foster families without or with worryingly restricted visiting rights, deprivation of parents from custody and even adoption against the will of the parents.<sup>94</sup> In particular, the harsh restrictions on visiting rights, which are often limited to a couple of hours once to four times a year<sup>95</sup>, quickly lead to an alienation of the children from their parents and make a reunification with their parents unlikely.
85. Parents have the feeling of being at the mercy of the CWS, and that it is not possible to successfully challenge their decisions. Free legal aid is only available once the case is brought before the Social Welfare Board.<sup>96</sup> All this leads to feelings of discrimination and prejudice.<sup>97</sup> One such case, in which the five children were taken away from a Romanian-Norwegian family and placed in three separate foster homes around the country, shocked the global Romanian community and led to a resolution by the Council of Europe's Parliamentary Assembly (PACE) on this topic. After heavy protests and the intervention of the Romanian Government, the CWS gave the children back in the care of their parents, who left the country out of continued fear of the CWS. From 2003 to 2016, in Norway the total number of children in foster care increased from 7 863 to 12 591. On the other hand, in 2019 the number of cases in which the CWS helped children and their families by counselling, strengthening the child's development and/or the parents' ability to cater for the child increased to 71 104.<sup>98</sup>
86. The above-mentioned distrust not only affects parents' interactions with the CWS, but also with kindergarten, schools and health services, which are under the obligation to report situations they consider problematic to the CWS. According to a study, the threshold for this reporting obligation is low and kindergartens are the institutions that transmit the biggest numbers of concern notes to the CWS. The same study very visually describes how Somali parents meticulously prepare their children and adapt their own behaviour vis-à-vis teachers in order to portray a Norwegian middle-class identity.<sup>99</sup> According to civil society, the CWS does not

<sup>92</sup> Barne-, ungdoms- og familiedirektoratet 2016.

<sup>93</sup> Erdal 2015.

<sup>94</sup> See in this context also CoE, Group of Experts on Action Against Trafficking in Human Beings 2017: §§ 108 et seq.

<sup>95</sup> See ECtHR A.S. v. Norway, no. 60371/15, 17 December 2019: § 6. IN the case Pederson et al v. Norway, no. 39710/15, 10 March 2020, the contacts visits were fixed two hours, two times early, in Hembult v. Norway four times a year for one and a half hours each time. On the same line CoE PACE 2018a: § 33.

<sup>96</sup> There are 12 such boards across the country, CoE PACE 2018a: § 21.

<sup>97</sup> Handulle A. and Vassenden A. 2020.

<sup>98</sup> CoE PACE 2018 b: §§ 12 et seq. ; PACE 2018a. This means that 1.1% of all children lived in foster care. In other countries, this ratio ranges from 0.5% to 2.3%, PACE 2018b: footnote 6.

<sup>99</sup> Handulle A. and Vassenden A. 2020.

show appropriate cultural and religious knowledge when interacting with families with a migration background<sup>100</sup> and children, who are placed in foster homes, are too drastically cut from their parents, their culture and religion; the retention rate of employees with a migration background in the CWS is low.

87. Research on the work of the CWS concludes that a surprisingly large proportion (40%) of children were not heard during the proceedings, and very little use was made of family councils, network meetings and expert investigations; a home visit was carried out only in half of the cases. In families with a migration background, reports more often concerned physical violence and the CWS had more often a risk-oriented and investigative approach. The authors of the study recommend putting more attention on the needs of the children and families, the challenges and difficulties they face including children's mental health problems, and on their living conditions and other stress and marginalising factors. A more systematic approach for the clarification of the facts should be implemented.<sup>101</sup> According to a report concerning Roma children, observers have the impression that in some cases the CWS intervenes too late and then with heavy emergency measures.<sup>102</sup>
88. In recent years, the ECtHR has repeatedly found that Norway had violated Article 8 ECHR in childcare cases. Several of these cases concern families with a migration background<sup>103</sup> and one a Roma family;<sup>104</sup> in the case of Hernehult, the authorities had ordered that the contact sessions had to take place in a Scandinavian language and not in the mother tongue of the children, and in the case Abdi Ibrahim, the child was placed in a Christian family. In its decisions the ECtHR refers to Article 9 § 1 of the United Nations Convention on the Rights of the Child, according to which a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. The Court highlights that generally the best interests of the child dictate that the child's ties with its family must be maintained and that family ties may only be severed in very exceptional circumstances. Everything must be done to preserve personal relations and, if and when appropriate, to "rebuild" the family. In the case of imposition of public care restricting family life, a positive duty lies on the authorities to take measures to facilitate family reunification as soon as reasonably feasible. A care order should be regarded as a temporary measure, to be discontinued as soon as circumstances permit, and any measures implementing temporary care should be consistent with the ultimate aim of reuniting the natural parents and the child. The authorities' decision-making process must be conducted such as to secure that the views and interests of the natural parents are made known to and duly taken into account by the authorities.<sup>105</sup>
89. Against this background, the authorities are working on a full revision of the 1992 Child Welfare Act. As a first step, new requirements of documentation were introduced on 1 July 2018 with the purpose of strengthening the legal safeguards of the child; the amendments also put emphasis on considering foster homes within the child's family and close network in order to ensure continuity in the child's upbringing and consistency with the child's religious, cultural and linguistic

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<sup>100</sup> An example given was that the CWS expected from parents that they did not show strong emotions during contact sessions, even though they had been separated from their children for weeks and months.

<sup>101</sup> Christiansen Ø., Skaale Havnen K., Iversen A. et al. 2019: 3 et seq..

<sup>102</sup> FAFO 2014: 65.

<sup>103</sup> A.S. v. Norway, no. 60371/15, 17 December 2019 (Polish applicant); Abdi Ibrahim v. Norway, no. 15379/16, 17 December 2019 (Somali applicant), Referral to the Grand Chamber; Pederson et al v. Norway, no. 39710/15, 10 March 2020, applicants born in the Philippines; Hernhult v. Norway, no. 14652/16, 10 March 2020 (Romanian applicant).

<sup>104</sup> Jansen v. Norway, no. 2822/16, 6 September 2018.

<sup>105</sup> Strand Lobben and others v. Norway [GC], no. 37283/13, 10 September 2019, §§ 204 et seq.

background (Section 4-15 of the Child Welfare Act).<sup>106</sup> The authorities have furthermore launched a competence strategy for the municipal child welfare services for the years from 2018 to 2024.<sup>107</sup>

90. ECRI takes positive note of these efforts of the authorities to improve the child welfare services for migrant and Roma children in Norway. However, in the light of the above-mentioned jurisprudence of the ECtHR, it considers that additional efforts are needed. The CWS should strengthen their focus on assisting families and intervening early in order to avoid as much as possible the severe measures of placing children in foster families and adoption without consent of the parents, which should be used only as a means of last resort. In addition, the CWS should improve transparency through publishing rules and guidance about the different tools for intervention, systematically hear children and family members before taking decisions, better document the fact checking done and reason their decisions. Free legal aid should be available as soon as a placement in a foster family is being taken into consideration.
91. In case of the placement of a child in a foster home, it is essential to provide, on the basis of a transparent procedure and having regard to the circumstances of the individual case, for more frequent contact in order to avoid any alienation of the child from its family. As it follows from the above-mentioned case-law that the CWS bears an obligation to work towards making family reunification possible, children should also be placed in foster families with a similar cultural background. The CWS should furthermore reach out much more intensively to representatives of the different communities and build up closer and more regular exchange and interaction with them. In parallel they should build up a more inclusive approach to cultural differences including the emotional involvement of parents in different cultures, and require more qualifications and invest in further training for all staff of the CWS.
92. ECRI recommends that all Norwegian child welfare services further develop their intercultural competence and sensitivity, reach out more intensively to minority groups, build up a regular and sustainable exchange with them and continue to promote mutual understanding and trust with minority groups. The child welfare services should furthermore strengthen their focus on assisting families, early intervention and maintaining contact between parents and children in order to avoid severe measures such as placing children in foster care, limiting or even cutting contact between children and their biological parents, and adoption without the consent of the biological parents.

#### - Employment

93. According to the authorities, the unemployment among migrants is relatively low (5.5% in the first quarter of 2020; 9.3% among people originating from Africa), but still higher than among the rest of the population (1.7%).<sup>108</sup> Unemployment is highest among women and first-generation young men. The main reasons for unemployment are lacking knowledge of Norwegian and a low level of education, skills and diploma. According to civil society, the recognition of foreign diplomas takes very long. The demand for low-skilled labour is shrinking and low-skilled workers are at risk of exploitation, in particular if they lack knowledge of Norwegian. Against this background, ECRI takes note with interest of the Norwegian Strategy for Skills Policy 2017-2021, which has been developed together with the OECD and aims to ensure an inclusive labour market.<sup>109</sup>

<sup>106</sup> Ministry of Children and Families 2019: 5.

<sup>107</sup> Ministry of Culture 2020.

<sup>108</sup> Statistics Norway 2020e.

<sup>109</sup> EU EC 2019.

94. Statistics show that unemployment rates of people with a migration background significantly vary between the different municipalities. According to the authorities, municipalities have better results, when they invest into formal education and work training measures, have full-time employment programmes and certified teachers. Municipalities that only offer a minimal approach consisting of language and civics courses, have poorer outcomes. The most effective measure to bring people with a migration background into work are cost-intensive programmes that consist in a combination of subsidising employment and targeted training including language learning. Such programmes, which ECRI considers as a **good practice**, are particularly successful if they start early after the arrival of newcomers, include a thorough analysis of the needs of the employer and then focus on developing skills and the knowledge of Norwegian. At the time of ECRI's country visit, the authorities funded such combined programmes in total for 9 400 people; 5% of these places were allocated to people with a migration background who have "severe gaps in their CV" such as for example a lack of school diploma. In 2018, 27% of the unemployed first-generation migrants participated in labour market measures (compared to 20% in the general population). As of 1 January 2020, the persons enrolled in such programmes have an obligation to participate; otherwise their social benefits can be withdrawn.
95. ECRI furthermore takes positive note of the introduction of a new activity and reporting duty for employers, which aim at preventing discrimination on the labour market (sections 24 to 26c of the EADA). To fulfil these duties, employers need to analyse the equality situation in their organisation, develop a strategy and concrete activities for improvement including in the field of recruitment, and report on these efforts. ECRI will follow with interest the work of the LDO who has been given the competence to monitor this activity and reporting duty (Section 5.4 EADOA). ECRI encourages the LDO, the authorities and scientists to help employers to make this new mechanism a success.
96. ECRI welcomes another **good practice** that consists in inviting during each recruitment procedure in the public sector at least one candidate from "disadvantaged countries of origin" to a job interview; this practice showed good results for example in the Directorate for Immigration (IMDI). The authorities have furthermore set the goal that 5% of all new employees in the public sector are people "with a severe gap in their CV" or people with a disability. Anonymous job application procedures and the blackening of CVs are further **promising practices**. The award "Diversity Company" should also be mentioned as a positive approach to promoting diversity in the workplace.

### **B. Romani people/Tater and Roma**

97. According to the Advisory Committee on the Framework Convention for the Protection of National Minorities, about 5 000 to 30 000 persons belonged to the national minority of Romani people/Tater and 500 to 1 000 to the one of Norwegian Roma.<sup>110</sup> In 2015, an independent committee appointed by the Government published an extensive report on the situation of the Romani people/Tater<sup>111</sup>, which underlines that they still suffer from inherited distrust and fear and that a social distance persists between the Norwegian society and authorities on the one side and the Romani people/Tater on the other side. As a result, Romani people/Tater often do not contact public authorities when they face difficult situations and need help. While there is little representative data on their socio-economic situation, qualitative research shows a three times higher mortality rate and a very low level of education, which results in low labour market participation. According to the

<sup>110</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities 2016: footnote 3. ECRI will look into the social situation of both groups, whereas issues related to their cultural identity are covered by the Advisory Committee of the Framework Convention for the Protection of National Minorities.

<sup>111</sup> Norwegian Government 2015. This source is given also for the remainder of this paragraph.

report, about 20% have completed high school or graduated in higher education. While schooling is seen as increasingly important in the community, Romani people/Tater children suffer from prejudice, bullying and abuse in school, and absenteeism continues to be a problem. Due to this situation, a good number of highly educated Romani people/Tater hide their ethnic affiliation outside their families. Separation of children from their parents by the CWS has made relations between these children and their parents difficult and continues to be an issue.

98. The report recommends that the authorities support the Romani people/Tater community in strengthening their own capacities in order to enable them to create better opportunities for the adolescent generation in the fields of education and employment. At the same time, the authorities should build a relation of confidence with the Romani people/Tater and intensify the dissemination of knowledge and teaching about the history of assimilation of Romani people/Tater and its harmful effects with the aim of combating prejudice and discrimination towards them. The LDO and school authorities should actively use their tools to contribute to combating discrimination and bullying especially towards children belonging to the Romani people/Tater. Schools should furthermore use electronic distance learning tools during the travelling period. Romani people/Tater should have access to legal advice to be able to clarify their legal positions and get access to public welfare schemes for example in the fields of adult education or debt cancellation.<sup>112</sup>
99. ECRI takes positive note of this combination of empowerment for the community of Romani people/Tater and targeted measures for improving their situation and encourages the authorities to apply this approach. Experience has shown that sustainable improvement of the situation of vulnerable communities is most likely to be achieved when their representatives are closely involved in the development and implementation of strategies and measures. The same approach of empowerment and assistance should also be used to solve the highly contentious issue of the administration of the funds for the collective compensation of the Romani people/Tater<sup>113</sup>, which were recently transferred from a self-governed organ of the Romani people/Tater to a state body, the Arts Council. As a consequence of this transfer, the Romani people/Tater had also to discontinue their legal aid service, which was supported by these funds and seen as an efficient means for helping the community to enforce their rights. At the time of the discontinuation of its funding, this service had dealt with about 150 cases. ECRI considers it important that the administration of these funds is given to a body, where representatives of the Romani people/Tater have decisive influence and a very wide margin of manoeuvre, and where the allocation of funds is limited by a minimum of (legal) restrictions.
100. Regarding the situation of Roma, the impact of the 2009 action plan for improving their living conditions in Oslo was evaluated in 2014. The evaluation report concluded that to a great extent the objectives of the plan had not been achieved and identified four main challenges: inherited marginalisation due to a lack of basic schooling, fear of contact between civil servants and Roma, the use of violence by some community members and the position of women, and weak cultural identity and self-esteem.<sup>114</sup> Since then, the authorities focus on a school-guidance programme and school mediators. ECRI welcomes this focus, as improving the educational outcomes of vulnerable communities is often the most effective way for improving their overall situation; better education is a key for finding paid work, accessing decent housing and improving one's health condition.

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<sup>112</sup> Norwegian Government 2015: 131 et seq.

<sup>113</sup> For more information about this issue see Norwegian Government 2015.

<sup>114</sup> Fafo 2014: 57 and seq. for more details.



101. ECRI recommends that the authorities empower the representative organisations of the Romani people/Tater and Roma and continue and intensify targeted measures to help both communities to improve the educational outcomes of the adolescent generation. The funds for the collective compensation of Taters/Romani should be given to a body where representatives of the Romani people/Tater have decisive influence and a very wide margin of manoeuvre, and where the allocation of funds is only limited by legal and other restrictions that are strictly necessary.

#### IV. TOPICS SPECIFIC TO NORWAY

##### A. Interim follow-up recommendations

102. The first interim follow-up recommendation that ECRI addressed to Norway in its previous monitoring report was to give the LDO and the ADT 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. The implementation of this recommendation is dealt with in § 5 of this report and ECRI regrets to note that no additional progress has been made with its implementation since the adoption of its conclusions on the implementation of its interim follow-up recommendations.<sup>115</sup>
103. The second interim follow-up recommendation was to set up an IT-based system for the recording and monitoring racist and homo/transphobic incidents and their processing through the judicial system. In its Conclusions, ECRI considered that this recommendation was partly implemented, but that the hate crime statistics did not yet contain data on the processing of the registered hate crime cases through the judicial system. ECRI is satisfied to note that the latest annual hate crime report contains figures on the outcomes of the investigated hate crime cases in the judicial system (see § 60 above) and therefore considers that this recommendation has now been fully implemented.

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<sup>115</sup> ECRI 2017.



## INTERIM FOLLOW-UP RECOMMENDATIONS

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

- (§ 37) ECRI recommends that the Norwegian authorities develop a new action plan for LGBTI persons with a particularly strong focus on transgender and intersex persons. It should contain measures to (i) raise awareness and empathy among the general population with regard to the situation of LGBTI persons and their families, (ii) train the health nurses in schools on LGBTI issues, (iii) build up counselling services and self-help groups for intersex persons and their parents as well as other measures to provide parents with sound information about options available and dangers of surgical and hormonal treatment at a very young age, (iv) legally defer non-therapeutic medical treatment of intersex persons to an age at which they can participate in the decision and (v) introduce the grounds of gender identity and sex characteristics comprehensively in the anti-discrimination, hate speech and hate crime legislation.
- (§ 92) ECRI recommends that all Norwegian child welfare services further develop their intercultural sensitiveness and knowledge, reach out more intensively to minority groups, build up a regular and sustainable exchange with them and continue to promote mutual understanding and trust with minority groups. The child welfare services should furthermore strengthen their focus on assisting families, early intervention and maintaining contact between parents and children in order to avoid the severe measures of placing children in foster care, limiting or even cutting contact between children and their biological parents and adoption without the consent of the biological parents.

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

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

1. (§ 10) ECRI recommends that the Norwegian Equality and Anti-Discrimination Ombud further adapts to its changed role by intensifying and putting more resources into its function to support people exposed to discrimination and intolerance and to pursue litigation on their behalf.
2. (§ 11) ECRI furthermore recommends that the Anti-Discrimination Ombud and the Anti-Discrimination Tribunal are explicitly given the competence to have recourse to conciliation procedures.
3. (§ 19) ECRI recommends that the Norwegian authorities continue monitoring and evaluating to what extent pupils learn about diversity, different cultures and the history of minorities and to what extent teachers promote intercultural understanding and intervene in cases of bullying. The authorities should furthermore take measures to improve the results in these areas and include into initial and further teacher training the topics of teaching in diverse classrooms, organising an open intercultural dialogue, promoting respect including on digital media and preventing and countering bullying.
4. (§ 25) ECRI recommends that the authorities give irregularly present migrants access to all necessary health care, including those who are destitute. They should furthermore ensure through the revision or enactment of legislation on subsidiary protection and statelessness that unreturnable migrants have effective access to stay and work permits.
5. (§ 37) ECRI recommends that the Norwegian authorities develop a new action plan for LGBTI persons with a particularly strong focus on transgender and intersex persons. It should contain measures to (i) raise awareness and empathy among the general population with regard to the situation of LGBTI persons and their families, (ii) train the health nurses in schools on LGBTI issues, (iii) build up counselling services and self-help groups for intersex persons and their parents as well as other measures to provide parents with sound information about options available and dangers of surgical and hormonal treatment at a very young age, (iv) legally defer non-therapeutic medical treatment of intersex persons to an age at which they can participate in the decision and (v) introduce the grounds of gender identity and sex characteristics comprehensively in the anti-discrimination, hate speech and hate crime legislation.
6. (§ 51) ECRI recommends that the Norwegian Parliament and Government develop and enact rules that prohibit the use of hate speech by their members in their activities in- and outside of state institutions, and in particular on the Internet and in their interaction with other media. These rules should provide for suspension and other sanctions for breach of their provisions, as well as for effective reporting channels, as recommended in § 6a of ECRI's General Policy Recommendation No. 15.
7. (§ 56) ECRI recommends that the Norwegian authorities ensure that Internet service providers and social network operators swiftly and systematically remove hate speech, which is in breach of the law or their code of ethics, from their systems and forward related evidence to the police.
8. (§ 59) ECRI recommends that the police concentrate the investigation of online hate speech in specialised units and that they equip these units with the necessary human, technical and financial resources to effectively combat online hate speech.

9. (§ 66) ECRI recommends that the authorities build a solid network of one or more central services and contact points that ensure expertise on and effective investigation of hate crime and hate speech throughout the country.
10. (§ 69) ECRI recommends that the Norwegian authorities continue focusing on preventing and detecting radicalisation and implement measures to systematically detect and remove illegal racist and extremist content from the Internet. They should furthermore enact a legal framework for cutting the funding of and disbanding racist organisations including political parties as recommended in §§ 16, 17 and 18g of ECRI's General Policy Recommendation No. 7.
11. (§ 76) ECRI recommends that the Norwegian authorities introduce into their integration policies (i) specific measures that motivate all labour migrants and newly arriving family members to acquire a good command of the Norwegian language, (ii) the further development of protected settings for the inclusive integration of migrant women and (iii) an element of inclusiveness in order to help the majority population to open up and embrace the richness of cultural diversity.
12. (§ 78) ECRI recommends that the Norwegian authorities abandon their policy of reviewing the residence status of migrants that have legally resided in the country for several years and who are unlikely to be obliged to quit the country after completion of the review process.
13. (§ 82) ECRI recommends that the Norwegian authorities (i) further increase early enrolment of children with a migration background into kindergarten, (ii) introduce a method of mapping the language level of those children at an early age, (iii) ensure targeted support for the acquisition of language and other skills in kindergarten and (iv) further improve the support during primary and secondary education in order to decrease the performance gaps and school drop-out rates of children with a migration background.
14. (§ 92) ECRI recommends that all Norwegian child welfare services further develop their intercultural competence and sensitivity, reach out more intensively to minority groups, build up a regular and sustainable exchange with them and continue to promote mutual understanding and trust with minority groups. The child welfare services should furthermore strengthen their focus on assisting families, early intervention and maintaining contact between parents and children in order to avoid severe measures such as placing children in foster care, limiting or even cutting contact between children and their biological parents, and adoption without the consent of the biological parents.
15. (§ 101) ECRI recommends that the authorities empower the representative organisations of the Romani people/Tater and Roma and continue and intensify targeted measures to help both communities to improve the educational outcomes of the adolescent generation. The funds for the collective compensation of Taters/Romani should be given to a body where representatives of the Romani people/Tater have decisive influence and a very wide margin of manoeuvre, and where the allocation of funds is only limited by legal and other restrictions that are strictly necessary.

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## APPENDIX: GOVERNMENT'S VIEWPOINT

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**The following appendix does not form part of ECRI's analysis and proposals concerning the situation in Norway**

ECRI, in accordance with its country-by-country procedure, engaged into confidential dialogue with the authorities of Norway on a first draft of the report. A number of the authorities' comments were taken on board and integrated into the report's final version (which, in line with ECRI's standard practice, could only take into account developments up until 1 October 2020, date of the examination of the first draft).

The authorities also requested that the following viewpoint be reproduced as an appendix to the report.



## ECRI's report on Norway - viewpoint to be set out in an appendix

Under paragraph 28 ECRI writes "In the field of legislation, the new EADA prohibits discrimination on an open ended list of grounds including gender, sexual orientation, gender identity and gender expression, but does not explicitly mention sex characteristics and the discrimination of intersex persons."

EADA section 6, which regulates the prohibition of discrimination, does not have an open ended list of discrimination grounds. Section 6 prohibits discrimination on the basis of gender, pregnancy, leave in connection with childbirth or adoption, care responsibilities, ethnicity, religion, belief, disability, sexual orientation, gender identity, gender expression, age or combinations of these factors. «Ethnicity» includes inter alia national origin, descent, skin colour and language.

However, the open ended list of discrimination grounds is to be found in EADA section 1 (the purpose of the act). According to section 1 the purpose of the Act is to promote equality and prevent discrimination on the basis of gender, pregnancy, leave in connection with childbirth or adoption, care responsibilities, ethnicity, religion, belief, disability, sexual orientation, gender identity, gender expression, age *or other significant characteristics of a person*.

EADA Section 27, which says that teaching aids and teaching provided by day care facilities, schools and other educational institutions that provide training authorised by law shall reflect the purpose of this Act, is the only provision in EADA that directly refers the open ended list of discrimination grounds in EADA section 1.

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The European Commission against Racism and Intolerance (ECRI) is a unique human rights monitoring body which specialises in questions relating to the fight against racism, discrimination (on grounds of “race”, ethnic/national origin, colour, citizenship, religion, language, sexual orientation and gender identity), xenophobia, antisemitism and intolerance in Europe; it prepares reports and issues recommendations to member States.

European Commission  
against Racism and Intolerance

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