

Conference on Xenophobia and Racism committed through
Computer Systems,
Strasbourg, 30-31 January 2023:

Guidance to the implementation of the protocol
on Xenophobia and Racism

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Norway's ratification on the First Additional Protocol, with reservations:

- *In accordance with Article 3, paragraph 3 of the Protocol, Norway reserves the right not to apply paragraph 1 to those cases of discrimination for which, due to established principles in its national legal system concerning freedom of expression, it cannot provide for effective remedies as referred to in the said paragraph 2.*
- *In accordance with Article 5, paragraph 2 b of the Protocol, Norway reserves the right not to apply paragraph 1 of this Article, except for hatred offences.*
- *In accordance with Article 6, paragraph 2 b of the Protocol, Norway reserves the right not to apply paragraph 1 of this Article, except for hatred offences.*

Relevant criminal law, reviewed when Norway implemented the protocol

- The General Civil Penal Code Section 185 (no specific mention of online statements, but these are considered to be covered):

Section 185. Hate speech (Last amended in 2020):

- *A penalty of a fine or imprisonment for a term not exceeding three years shall be applied to any person who with intent or gross negligence publicly makes a discriminatory or hateful statement. «Statement» includes the use of symbols. Any person who in the presence of others, with intent or gross negligence, makes such a statement to a person affected by it, see the second paragraph, is liable to a penalty of a fine or imprisonment for a term not exceeding one year.*
- *«Discriminatory or hateful statement» means threatening or insulting a person or promoting hate of, persecution of or contempt for another person based on his or her*
 - a. skin colour or national or ethnic origin,*
 - b. religion or belief,*
 - c. sexual orientation,*
 - d. gender identity or gender expression, or*
 - e. disability.*

- These groups are also protected by Section 186 (Discrimination)
- Other possible violations of the Civil Penal Code, including threats and harassment. Again, no specific provisions for online crimes.
- Racist motivation could be considered aggravating circumstance.

How and when to address possible racism and xenophobia?

- Leave it to the public debate – freedom of expression?
- Leave it to the private sector?
 - Terms and conditions for using online platforms?
 - Complaints to the Norwegian Press Complaints Commission?

- Leave it to other public institutions, including LDO, The Equality and Anti-Discrimination Ombud? <https://ldo.no/en/ldo-english-page/>

Link to relevant LDO reports (in Norwegian): <https://ldo.no/ombudet-og-samfunnet/rapporter/hatefulle-ytringer2/>

Main scope for LDO: possible discrimination regarding employment, education, access to goods and services etc. The LDO mandate may also extend to inter alia cases regarding racist motivated crime.

- Criminal investigations and prosecutions?

Two examples from the Norwegian Supreme Court:

<https://lovdata.no/pro/#document/HRENG/avgjorelse/hr-2022-1843-a-fulltekst>

<https://lovdata.no/pro/#document/HRENG/avgjorelse/hr-2020-184-a-fulltekst>

Who handles these cases?

- The local police
- A specialised unit at the Oslo Police District: The National Competence Centre on Hate Crime
- NCIS Norway

- The Government Action Plan against Radicalisation, <https://www.regjeringen.no/no/dokumenter/handlingsplan-mot-radikalisering-og-voldelig-ekstremisme/id2711314/>
- Action plan for the work of the police (2022-2025): *Diversity, dialogue and trust, Mangfold, dialog og tillitt Engelsk.indd (politiet.no)*
 - *The National Police Directorate has developed a new action plan to strengthen the work of the police with diversity, dialogue and trust (2022-2025). National minorities are among the groups given priority in the action plan.*
 - *One of the measures in the action plan is to build competence and knowledge about hate crime in Norway. A new National Competence Centre on Hate Crime is established to contribute to raising the competence of the police districts and providing guidance in specific cases.*

Specialised competence

- *The National Competence Centre on Hate Crime was established in 2021 and is organizationally attached to the Oslo Police District.*
- *The centre shall contribute to raising the competence of the police districts and can provide guidance in specific cases. The competence must include various parts of police work; prevention, intelligence, dialogue and trust-building work, investigation and prosecution. There is a particular need to strengthen competence related to hate crime that occurs online. Special consideration shall also be given to the Sami perspective.*
- *The centre will have regular contact with nationwide organizations that work for groups that have special protection.*
- A related measure is to further develop statistics and analysis of reported hate crimes. **The National Police Directorate** publishes statistics on reported hate crime in the annual report on reported crime and the police's criminal proceedings. The national statistics are to be further developed to provide more knowledge about how hate crime affects different groups.
- **NCIS Norway** could assist on electronic evidence, SPOC with international providers etc.

Procedural law

- Relevant procedural law, and cooperation with providers: includes the general provisions in and practices based on the Budapest Convention, if and when needed in specific cases.
- Case law: The «Tidal» Supreme Court case, March 28, 2019

Summary

- Will national law be in compliance with the Protocol?
 - If not; change laws or take reservations?
 - A need for cyber-specific laws, or are general provisions sufficient?
 - Provisions for blocking/removing content?
- Consider practical implication: who does what, when and how?
- Consider specialisation
- Consider responsibilities for other public institutions, NGOs, private sector (including providers), academia...
- Jurisdiction issues
- Media strategies?

Some final comments

- Cases regarding racism and xenophobia are more often than not (in Norway) based on complaints from individuals
- More cases (in Norway) are based on publicly available services (Facebook, Twitter, comment fields in online newspapers...)
- Resources and priorities
- Will a good process be considered sufficient in individual cases, even if the case/the problem is not solved?

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