

# **ECRI REPORT ON NORWAY**

**(fourth monitoring cycle)**

Adopted on 20 June 2008

Published on 24 February 2009





## FOREWORD

The European Commission against Racism and Intolerance (ECRI) was established by the Council of Europe. It is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members, who are 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-by-country monitoring work, which analyses the situation in each of the member States regarding racism and intolerance and draws up suggestions and proposals for dealing with the problems identified.

ECRI's country-by-country monitoring deals with all member States of the Council of Europe on an equal footing. The work is taking place in 5 year cycles, covering 9-10 countries per year. The reports of the first round were completed at the end of 1998, those of the second round at the end of 2002, and those of the third round at the end of the year 2007. Work on the fourth round reports started in January 2008.

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

ECRI's reports are not the result of inquiries or testimonial evidences. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on an important number of national and international written sources. The in situ visit allows for meeting directly the concerned circles (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 report of ECRI.

The fourth round country-by-country reports focus on implementation and evaluation. They examine the extent to which ECRI's main recommendations from previous reports have been followed and include an evaluation of policies adopted and measures taken. These reports also contain an analysis of new developments in the country in question.

Priority implementation is requested for a number of specific recommendations chosen from those made in the new report of the fourth round. No later than two years following the publication of this report, ECRI will implement a process of interim follow-up concerning these specific recommendations.

**The following report was drawn up by ECRI under its own and full responsibility. It covers the situation as of 20 June 2008 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposal made by ECRI.**



## SUMMARY

**Since the publication of ECRI's third report on Norway on 27 January 2004, progress has been made in a number of fields covered by that report.**

The Norwegian authorities have taken a number of important steps to improve the legal framework against racism and racial discrimination and its implementation. Thus, the Anti-Discrimination Act, which prohibits discrimination on grounds of ethnicity, national origin, descent, skin colour, language, religion or belief, has been in force in Norway since January 2006. The Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal have been established to support the implementation of this act and other anti-discrimination legislation, including on grounds not covered by ECRI's mandate. A Law Commission established to propose consolidated legislation against discrimination on all grounds currently protected under Norwegian law is currently examining the question of the ratification of Protocol No. 12 to the European Convention on Human Rights (ECHR) and the need for additional safeguards against discrimination in the Norwegian Constitution.

Following the Supreme Court decision of December 2002, in which openly antisemitic and anti-immigrant speech uttered in the context of an illegal demonstration held in memory of Rudolph Hess and Adolf Hitler were deemed to be protected by freedom of speech, considerable work has been carried out to improve protection against racist speech, resulting in an amendment to the Constitution and changes to the Criminal Code.

The prosecuting authorities and the police, who are reported to be among the Norwegian institutions that have made issues of combating racism and racial discrimination and promoting diversity more central to their work since ECRI's last report, have initiated work to both improve the response of the criminal justice system to manifestations of racism and racial discrimination and to monitor the incidence of these phenomena, although this is still very much work in progress. Commendable efforts have been made by these institutions to counter extreme right-wing groups, which are reported to have lost some strength as a result. Welcome initiatives have also been taken to increase the representation of persons of immigrant background in the police with some signs of success, at least at the level of initial recruitment.

The vast majority of the measures foreseen in the National Plan of Action to Combat Racism and Discrimination (2002-2006) have been implemented. Following an incident in which the emergency services failed to assist a 37 year-old man of immigrant background in August 2007, the Norwegian authorities have launched a survey on discrimination in the public sector, whose results will be fed into the new Plan of Action against Racism and Discrimination (2009-2013) that is currently being prepared. Action Plans for Integration and Social Inclusion of the Immigrant Population were adopted in 2007 and 2008, accompanied by Goals for Social Inclusion, which are used as indicators. As part of this, the Norwegian authorities are piloting a project in twelve government Ministries and agencies, whereby applicants of immigrant background will be preferred for recruitment if they have qualifications corresponding to the best qualified applicant for a particular post.

A Directorate of Integration and Diversity (IMDi) was established in January 2006 with the goal, inter-alia, of promoting employment-based integration through a number of tools, including introductory courses for immigrants. Partly at the initiative of IMDi, some progress has been made in monitoring racial discrimination, particularly through perception-based data. A study on living conditions among non-Western immigrants (2005-2006) was published in 2008 to increase knowledge about the perception of discrimination among this group of persons, their language skills and practices, social contacts, family situations and specific challenges they might face in the labour and housing markets.

Persons of immigrant background are increasingly present in the media profession and as employees in the public sector.

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

Persons of immigrant background are still lagging behind in vital areas. The unemployment rate among young people of immigrant background is reported to be twice that registered among the rest of the same age group, and a disproportionately high drop-out rate from secondary education is registered among students of immigrant background. Imbalances, although being slowly reduced, are furthermore to be found in the housing sector, with rates of homelessness six times higher among persons of immigrant background than in the population as a whole. Disadvantage, notably linked to lack of professional interpretation and failure to take diversity into account is reported in the health sector and the legal system.

Racial discrimination is reported to be a central cause of these imbalances. However, its exact role remains to be more clearly defined, as consistently advocated by civil society actors. More efforts are needed to generate data on actual manifestations of racial discrimination and on the position of minority groups in a number of areas that could help identify patterns of direct and indirect racial discrimination. Furthermore, the lack of adequate information on the extent to which measures taken to combat racial discrimination have met with success limits the possibility of making fully informed decisions on whether these measures should be continued or replaced.

While welcome efforts are underway to improve the situation, the public sector's approach to combating racial discrimination and promoting equal opportunities needs to move more decidedly from piecemeal to an approach whereby these issues are mainstreamed across all of the areas of work of Ministries and agencies. A key step in this process appears to be better awareness and acknowledgement among the public sector of the different forms of racial discrimination. In this connection, there is a need to examine the extent to which unwitting prejudice, ignorance, thoughtlessness and racist stereotyping result in processes, attitudes and behaviour that prevent persons belonging to minority groups from receiving services equal to those received by others.

Political speech has sometimes taken on racist and xenophobic overtones, especially in connection with security concerns. As a result, the association of Muslims on the one hand, and terrorism and violence on the other, and generalisations and stereotypes concerning persons of Muslim background have been on the rise in public debate. Media portrayal of persons of immigrant background has also not always been conducive to challenging stereotypes and generalisations concerning this group of persons. On the Internet, where the exponents of racist extreme right-wing groups organise their activities, racist material targeting among others Jews, Muslims and Sami is commonly found.

Little progress has been made towards combating discrimination and improving the situation of members of Romani/Tater and Roma communities, whose position of disadvantage and marginalisation continues to be a cause for concern.

The possibilities for persons of immigrant background to benefit from family reunification are still limited for many, including those who are granted residence permits on humanitarian grounds. A viable solution to the situation of non-citizens who cannot be returned to their country of origin for practical reasons, a number of whom have now lived in Norway for many years, also remains to be found.

In spite of efforts made in the fields of combating racism and racial discrimination and promoting diversity, key challenges lying ahead for the police include addressing racial profiling practices and the related question of improving the confidence of the population of immigrant background in the police, especially following an incident in

which a 48-year-old man of Nigerian origin died in a police intervention in September 2006.

**In this report, ECRI recommends that the Norwegian authorities take further action in a number of areas.**

As concerns the legal framework against racism and racial discrimination and its implementation, ECRI recommends that the Norwegian authorities ratify Protocol No. 12 to the ECHR, introduce constitutional safeguards against racial discrimination and empower the Equality and Anti-Discrimination Tribunal to award redress to victims of racial discrimination.

Alongside general reporting obligations, the duty on public authorities and private employers to promote equality and prevent discrimination in carrying out their functions should include specific duties, notably in the field of monitoring, and the adoption and implementation of equality programmes. Furthermore, in addition to monitoring the implementation of this duty and providing assistance and guidance to those subject to it, the Equality and Anti-Discrimination Ombud should be empowered to legally enforce the duty. ECRI requests priority implementation for these recommendations in the next two years.

ECRI recommends that the Norwegian authorities promote awareness among judges of international standards concerning racist expression, and that they remain open to the possibility of fine-tuning legislation in this field. The Norwegian authorities should also strengthen their efforts to counter instances of racist expression committed through the Internet, including by bringing those responsible for any offences to justice.

ECRI recommends that as part of their plans to adopt the new Plan of Action against Racism and Discrimination, the Norwegian authorities set clear targets and indicators for progress achieved and thoroughly involve civil society stakeholders in the setting of these targets and indicators.

ECRI also makes a series of recommendations covering the different areas of discrimination. These recommendations include: as concerns employment, measures to improve the participation of persons of immigrant background, especially young people, in the labour market; as concerns education, monitoring the new system of Norwegian language instruction and promoting kindergarten attendance among children of immigrant background; as concerns housing, the introduction of a comprehensive set of measures to tackle racial discrimination in this field in the new Plan of Action. As concerns the health sector and the legal system, ECRI recommends that the Norwegian authorities increase the availability and use of professional interpretation in these two areas and requests priority implementation for this recommendation in the next two years.

The Norwegian authorities should improve the monitoring of racist incidents and the investigation of racist offences, including through the adoption of a broad definition of a "racist incident". Particular attention should be devoted to monitoring violent incidents and offences. To these ends, the Norwegian authorities should work in close co-operation with immigrants' organisations so as to break down barriers that may still prevent victims of racist offences from reporting these offences.

ECRI recommends that the Norwegian authorities take steps to address racial profiling, notably in stop and search operations carried out by police and customs and immigration officials. In particular, ECRI recommends that the Norwegian authorities carry out in-depth research on racial profiling and monitor police activities in order to identify racial profiling practices. ECRI requests priority implementation for this recommendation in the next two years.

ECRI recommends that the Norwegian authorities ensure that refugees and persons who are granted residence on other protection or humanitarian grounds are not kept away from their families for unduly long periods of time. It also recommends that the Norwegian authorities facilitate access to residence permits for non-citizens who cannot be returned to their country of origin for practical reasons.

ECRI recommends that the Norwegian authorities include commitments in the field of combating discrimination against members of Romani/Tater and Roma communities and improving the situation of members of these communities across all fields of life in the Plan of Action against Racism and Discrimination (2009-2013).

Finally, the Norwegian authorities should monitor the situation and address all manifestations of Islamophobia, antisemitism and racism and discrimination against members of the indigenous Sami population.



## FINDINGS AND RECOMMENDATIONS

### I. Existence and Implementation of Legal Provisions

#### International legal instruments

1. In its third report, ECRI recommended that Norway ratify Protocol No. 12 to the European Convention on Human Rights (ECHR), which provides for a general prohibition of discrimination. ECRI notes that in the National Action Plan to Combat Racism and Discrimination 2002-2006<sup>1</sup>, the Norwegian authorities stated that they were in favour of Norway's ratification of the Protocol. At the time of writing however, the Protocol has not yet been ratified. A Law Commission appointed on 1 June 2007 (*Diskrimineringslovutvalget*) by the Norwegian Government to propose consolidated legislation against discrimination on all grounds currently protected under Norwegian law, has been mandated to examine a number of other questions<sup>2</sup>, including the ratification of Protocol No. 12. ECRI notes that the Law Commission is expected to submit its recommendations before 1 July 2009.
2. *ECRI recommends that Norway ratify Protocol No. 12 to the European Convention on Human Rights.*
3. In its third report, ECRI recommended that Norway ratify the Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems. ECRI is pleased to note that, following its ratification by Norway on 29 April 2008, the Additional Protocol will enter into force in the country on 1 August 2008.
4. In its third report, ECRI noted that through their incorporation into the Norwegian domestic legal order by way of an addition to the Human Rights Act of 1999, a certain number of human rights instruments had been afforded prevailing status over any conflicting statutory provisions. In that report, ECRI therefore recommended that the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) be afforded the same prevailing status in the Norwegian domestic legal order. The Norwegian authorities have stressed that they have incorporated ICERD into Norwegian domestic legislation through the Anti-Discrimination Act of 3 June 2005 No. 33<sup>3</sup> and CEDAW through the Gender Equality Act of 9 June 1978 No. 45. ECRI welcomes this step. ECRI also notes however, that in its Declaration issued in autumn 2005, the current Norwegian government pledged to incorporate CEDAW through an addition to the Human Rights Act, thereby giving the provisions of this convention precedence over any other conflicting statutory provisions. The Norwegian authorities have stated that this question is still under consideration.
5. Since the publication of ECRI's third report on Norway, the International Convention for the Protection of the Rights of All Migrant Workers and Members of their Families has entered into force. Norway has not yet signed this instrument.

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<sup>1</sup> See below, Discrimination in Various Fields.

<sup>2</sup> See below, Provisions covering racial discrimination.

<sup>3</sup> See below, Provisions covering racial discrimination.

6. *ECRI recommends that the Norwegian authorities strengthen the position of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in the domestic legal order, by incorporating these instruments through an addition to the Human Rights Act of 1999.*
7. ECRI recommends that Norway ratify the International Convention for the Protection of the Rights of All Migrant Workers and Members of their Families.

### **Provisions covering racist expression**

8. In its third report, ECRI dealt at length with the issue of ensuring protection against racist expression in Norway. It strongly recommended that the Norwegian authorities strengthen such protection by reforming both Article 100 of the Norwegian Constitution, which guarantees freedom of expression, and Section 135a of the Criminal Code, which prohibits the uttering of discriminatory or hateful expressions. Part of the background to these recommendations was the Norwegian Supreme Court's judgment of 17 December 2002, in which the Court held that strongly antisemitic and anti-immigrant speech uttered in the context of an illegal demonstration held in memory of Rudolf Hess and Adolf Hitler were protected by freedom of expression<sup>4</sup>. In that report, ECRI deeply regretted that statements such as those uttered in the circumstances and in the case in question could go unpunished. ECRI notes that since then, the Committee for the Elimination of Racial Discrimination concluded that the Norwegian Supreme Court judgment violated article 4 and Article 6 of ICERD<sup>5</sup>, which concern respectively the prohibition of racist propaganda and the right to effective protection and remedies.
9. ECRI is pleased to note that considerable work has been carried out in Norway on the issue of ensuring protection against racist expression. This work has resulted in amendments to both the Constitution and the Criminal Code. The Norwegian authorities have stated that the new formulation of Article 100 of the Constitution, which entered into force on 30 September 2004, allows for the punishment of racist expressions to a greater extent than before<sup>6</sup>. Since ECRI's third report, Section 135a of the Criminal Code was also amended twice and has been in force in its current formulation since 1 January 2006<sup>7</sup>. Three main changes were introduced. Firstly, the maximum penalty provided for in case of breach was raised from two to three years' imprisonment. Secondly, gross negligence on the part of the perpetrator is now sufficient for the offence to occur. Thirdly, it is no longer necessary for the expression to have been made in public

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<sup>4</sup> Rt-2002-1618.

<sup>5</sup> CERD/C/67/D/30/2003, Opinion of the Committee on the Elimination of Racial Discrimination under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, Communication No. 30/2003: Norway (Jurisprudence) 22 August 2005.

<sup>6</sup> The first two sections of Article 100, as amended, stipulate that: "(1) There shall be freedom of expression; (2) No one may be held liable at law, except on the basis of contract or other private legal basis, for having conveyed or received information, ideas or messages unless such liability can be justified in consideration of the reasons for the right to freedom of expression namely the search of truth, democracy and the individual's free formation of opinions. Such legal responsibility must be clearly prescribed by law."

<sup>7</sup> "Any person who wilfully or through gross negligence publicly utters a discriminatory or hateful expression shall be liable to fines or imprisonment for a term not exceeding three years. An expression that is uttered in such a way that it is likely to reach a large number of persons shall be deemed equivalent to a publicly uttered expression, cf. section 7, No. 2. The use of symbols shall also be deemed to be an expression. Any person who aids and abets such an offence shall be liable to the same penalty. A discriminatory or hateful expression here means threatening or insulting anyone, or inciting hatred or persecution of or contempt for anyone because of his or her a) skin colour or national or ethnic origin, b) religion or life stance, or c) homosexuality, lifestyle or orientation.

or otherwise disseminated to the public. It is sufficient for such expression to have been made in a way that makes it fit for public dissemination, irrespective of whether it actually reaches the public or not.

10. The Norwegian authorities have stated that they consider that with these changes, statements such as those that were examined by the Supreme Court in December 2002 would be found to be in breach of Norwegian legislation. While they welcome the fact that the legal framework around racist expression has been reformed, civil society organisations have underlined the need for cases to be tried and tested in order to assess the extent to which protection against racist expression has actually improved in practice in Norway.
11. Against this background, ECRI notes with interest the Supreme Court judgment of 21 December 2007 relating to virulent antisemitic statements made by the spokesman of an extreme right-wing group during an interview with one of Norway's largest newspapers in July 2003. The accused had, among other things, stated that Jews were "the main enemy", that they had "killed our people" and were "vicious murderers". He had also stated that Jews were "not humans" but "parasites" that were to be "cleaned out". He furthermore stated that the organisation for which he was the spokesman conducted weapons and combat training, and that he did not care whether anything happened to people he did not want in the country. The accused was convicted by unanimous decision of the district court. However, he was unanimously found not guilty by the court of appeal, which held that his statements were protected by freedom of expression. Following an appeal by the Director of Public Prosecutions, the Supreme Court unanimously set aside the court of appeal's acquittal on the basis of an error in law and concluded that the statements were punishable under Section 135a, as they contained a call or support for clear acts of physical injury to Jews, and moreover involved a gross disparagement of Jews' human worth.
12. ECRI notes that the judgment of the Supreme Court is based on Section 135a as it stood before the amendments that entered into force on 1 January 2006. However, it also notes that the Supreme Court refers to the parliamentary debates that led to the current formulation of Article 100 of the Constitution and that the Norwegian authorities consider that the Supreme Court judgment considerably contributes to the clarification of the law as regards the scope of Section 135a as it currently stands. In particular, they stress that the emphasis put by the Supreme Court on the existence of a call or support for clear acts of physical injury and of gross disparagement of a group of people's human worth will be helpful in developing a consistent prosecution practice in racist expression cases in the future. ECRI notes that the development of such practice is among the areas to be covered by ongoing efforts of the Office of the Director of Public Prosecutions to raise awareness and competence among police and public prosecutors on issues of racism and racial discrimination<sup>8</sup>.
13. ECRI welcomes these developments. It also notes, however, that there are instances of racist expression that still appear to fall beyond the reach of the legal provisions in force against racist expression. For instance, ECRI notes that in 2007 the Equality and Anti-Discrimination Ombud (LDO)<sup>9</sup> brought charges under Section 135a of the Criminal Code against the publisher of a website for posting offensive racist material in the form of jokes. ECRI understands that the prosecuting authorities dismissed the case as they considered that it would fall outside the scope of Section 135a as interpreted in the light of the recent Supreme Court judgment.

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<sup>8</sup> See below, Provisions covering racially motivated offences.

<sup>9</sup> See below, Provisions covering racial discrimination.

14. More generally, it has been pointed out that racist expression is still widely present on the Internet. ECRI notes that the LDO has contacted website publishers to warn them that they might be in breach of criminal legislation and that there are police units specialised in monitoring illegal content on the Internet. However, ECRI understands that so far there have been no convictions for breaches of Section 135a committed through the Internet.
15. *ECRI encourages the Norwegian authorities to continue with their efforts to improve the protection provided by Norwegian legislation against racist expression and raise awareness among the police and public prosecutors of the changes in the legal framework against racist expression and their implications.*
16. *ECRI encourages the Norwegian authorities to promote awareness among judges of international standards against racist expression and of the need to take all instances of racist expression seriously.*
17. *ECRI recommends that the Norwegian authorities keep the adequacy of the criminal law provisions against racist expression under review. In particular, it draws the attention of the Norwegian authorities to the fact that in its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, ECRI recommends that member States penalise not only incitement to violence, hatred and discrimination, but also the expression of an ideology which claims the superiority of, or which depreciates or denigrates, a grouping of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin<sup>10</sup>.*
18. *ECRI recommends that the Norwegian authorities strengthen their efforts to counter instances of racist expression committed through the Internet, including by bringing those responsible for any offences to justice.*

#### **Provisions covering racial discrimination**

19. In its third report, ECRI recommended that the Norwegian authorities strengthen the protection provided by the Norwegian Constitution against racial discrimination. It also recommended that a comprehensive body of civil and administrative law provisions against racial discrimination be introduced.
20. ECRI notes that the Law Commission appointed by the Norwegian Government on 1 June 2007<sup>11</sup> will examine the need for antidiscrimination provisions in the Constitution (unless a commission appointed by Parliament receives a specific mandate to consider this question). As concerns the adoption of civil and administrative law provisions against racial discrimination, ECRI welcomes the adoption by Parliament on 3 June 2005 of the Anti-Discrimination Act, which has been in force since January 2006. The Act prohibits, *inter alia*, direct and indirect discrimination, harassment and instructions to discriminate on grounds of ethnicity, national origin, descent, skin colour, language, religion or belief.
21. ECRI is pleased to note that a number of elements included in its General Policy Recommendation No.7 on national legislation to combat racism and racial discrimination are reflected in the Anti-Discrimination Act. For instance, the Act applies to all areas of life, including important public authority functions such as the activities of the police, border control officials and immigration authorities. It also includes provisions for a shared burden of proof and allowing for temporary special measures to be taken. However, other aspects of General Policy Recommendation No. 7 have not been included. For instance, the Act does not

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<sup>10</sup> ECRI General Policy Recommendation No.7, paragraph 18d (and paragraphs 38-39 of the Explanatory Memorandum).

<sup>11</sup> See above, International legal instruments.

place public authorities under a duty to ensure that those parties to whom they award contracts or other benefits respect and promote a policy of non-discrimination. Nor have public authorities been placed under a duty to promote equality and prevent discrimination in carrying out their functions. With respect to this last aspect, however, ECRI is pleased to note that in June 2008 the Parliament adopted an amendment to the Anti-Discrimination Act that places public authorities and employers with more than 50 employees under such a duty; ECRI notes however, that this duty does not include obligations other than general reporting obligations.

22. The implementation of the Anti-Discrimination Act is supported by two institutions also established since ECRI's third report: the Equality and Anti-discrimination Ombud (LDO) and the Equality and Anti-Discrimination Tribunal<sup>12</sup>. In addition to the Anti-Discrimination Act, these institutions help with the implementation of the Gender Equality Act, the regulations concerning equal treatment contained in the Working Environment Act and the anti-discrimination provisions contained in different pieces of housing legislation<sup>13</sup>. Accordingly, in addition to discrimination on grounds covered by ECRI's mandate, these institutions also deal with discrimination on other grounds, including gender, age, sexual orientation, political views and, from 1 January 2009, disability.
23. ECRI notes that since these institutions started to function in January 2006, complaints of discrimination filed with the LDO on grounds covered by ECRI's mandate have made up around one third of the total amount of complaints (80 or 27,1% in 2006; 50 or 33,1% in 2007; and 13 or 31,7% in the first quarter of 2008). Most of these complaints have concerned the areas of employment and public administration. The LDO found for a violation of the Anti-Discrimination Act in approximately half of these cases. Over the same period, the Tribunal, to which parties who are dissatisfied with the decision of the LDO can turn, has dealt with 12 cases of discrimination on grounds covered by ECRI's mandate, which represent approximately 21% of the total amount of cases dealt with by this institution.
24. Among the factors that may be at the origin of the relatively small number of complaints filed with the LDO on grounds covered by ECRI's mandate, the still limited knowledge of the possibility of filing a case with the LDO among victims of racial discrimination and shortcomings in the system of sanctions have been highlighted<sup>14</sup>. An additional factor that has been stressed is that although the LDO provides legal guidance and orientation to applicants, it does not provide legal representation in individual cases, as its role is precisely to adjudicate these cases. Civil society organisations have stressed that, as a result of the discontinuation of the Centre for Combating Ethnic Discrimination (SMED), which prior to the establishment of the LDO provided individual legal assistance and representation in cases of racial discrimination before the courts, victims of this type of discrimination may feel less encouraged to bring their cases to the institutions. A need for free specialised legal assistance for victims of racial discrimination has consistently been stressed. ECRI notes that these developments run counter to the recommendation it made in its third report to the effect that specialised legal assistance should remain available to victims of racial discrimination after the discontinuation of SMED. On the other hand, ECRI also notes that since January 2008, the Civil Litigation Act enables the LDO to play the role of *amicus curiae* ("friend of the court") and take part in proceedings in order to increase awareness with regard to issues related to discrimination.

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<sup>12</sup> See below, Anti-discrimination bodies and other institutions.

<sup>13</sup> The Tenancy Act, the Owner-Tenant Act, the Housing Co-operative Act and the Home Building Association Act.

<sup>14</sup> On these points, see below, Anti-discrimination bodies and other institutions.

25. In its third report, ECRI also recommended that the Norwegian authorities pursue their efforts to improve the implementation of Article 349a of the Criminal Code, which prohibits refusal of goods and services in a commercial or similar activity on grounds, *inter alia*, of religion, skin colour or national or ethnic origin and refusal of admission to a public performance or exhibition or other public gathering on the same grounds. As mentioned below<sup>15</sup>, the police and prosecuting authorities have carried out work in the field of combating racism and racial discrimination since ECRI's third report and ECRI notes that this work has also covered the improvement of police investigations and prosecuting authorities' decisions on alleged breaches of Section 349a. ECRI notes however, that convictions under Section 349a remain extremely rare. For instance, although charges were brought in a number of cases in 2006 and 2007, none of these led to a conviction.
26. *ECRI recommends that the Norwegian authorities strengthen the constitutional protection against racial discrimination. ECRI draws the attention of the Norwegian authorities to its General Policy Recommendation No.7 on national legislation to combat racism and racial discrimination, where it recommends that constitutions enshrine the principle of equal treatment, the commitment of the State to promoting equality as well as the right of individuals to be free from discrimination on grounds such as race, colour, language, religion, nationality or national or ethnic origin*<sup>16</sup>.
27. *ECRI recommends that the Norwegian authorities ensure that the general duty on public authorities and private employers to promote equality and prevent discrimination in carrying out their functions includes specific duties, notably in the field of monitoring, and the adoption and implementation of equality programmes as recommended in its General Policy Recommendation No.7 on national legislation to combat racism and racial discrimination*<sup>17</sup>.
28. *ECRI recommends that the Norwegian authorities introduce provisions subjecting public procurement to contractors' compliance with non-discrimination standards, in accordance with its General Policy Recommendation No.7 on national legislation to combat racism and racial discrimination*<sup>18</sup>.
29. *ECRI recommends that the Norwegian authorities take steps to improve the access of victims of racial discrimination to free legal assistance.*
30. *ECRI recommends that the Norwegian authorities pursue their efforts to improve the implementation of Article 349a of the Criminal Code.*

### **Provisions covering racially motivated offences**

31. In its third report, ECRI recommended that the Norwegian authorities explicitly provide in law that racist motivation constitutes a specific aggravating circumstance in respect of all offences. ECRI is pleased to note that legislation to this effect was adopted in March 2008<sup>19</sup>. Thus, Section 77 of the Criminal Code now provides that such an aggravating circumstance occurs when the background of an offence is *inter alia*, another person's religion or belief, skin

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<sup>15</sup> Provisions covering racially motivated offences.

<sup>16</sup> ECRI General Policy Recommendation No.7, paragraph 2 (and paragraph 10 of the Explanatory Memorandum).

<sup>17</sup> ECRI General Policy Recommendation No.7, paragraph 8 (and paragraph 27 of the Explanatory Memorandum).

<sup>18</sup> ECRI General Policy Recommendation No.7, paragraph 9.

<sup>19</sup> Law of 7 March 2008 No.4.

colour, national or ethnic origin or other circumstances concerning groups who are in special need of protection.

32. In its third report, ECRI also recommended that the Norwegian authorities pursue efforts to improve the investigations of the police and decisions of prosecuting authorities relating to racially motivated offences. ECRI is pleased to note that work has been carried out since then by the prosecuting authorities and the police in order to tackle racism and racial discrimination, including racially motivated offences. In addition to the appointment of a prosecutor with special responsibility for cases of racism and racial discrimination in each regional office of the public prosecutors (a measure which had already been taken at the time of ECRI's third report), one police prosecutor with similar responsibilities has been appointed in each of Norway's twenty-seven police districts since July 2004. The Office of the Director of Public Prosecutions has also required the regional offices of the public prosecutors and police districts to provide training and set compulsory training requirements. The priority given to tackling racism and racial discrimination, including racially motivated offences, has been reflected in repeated public statements by the Director of Public Prosecutions. In the circulars on targets and priorities for the police and prosecuting authorities issued by the Director of Public Prosecutions in recent years, offences that appear to be racially motivated have also been included among those that are given precedence.
33. While these efforts are welcome, ECRI notes that their impact is not yet immediately clear. One of the reasons for this is that there is still no comprehensive and easily retrievable data on incidents that may constitute racist offences (racist incidents) and on the way in which the criminal justice system responds to these. In this connection, ECRI notes however that the Office of the Director of Public Prosecutions has been working on the establishment of a reporting system from the different police districts which would make it possible to gain an overview of the number of reports received, processing time and other case history. Although this is still work in progress, ECRI understands that initial reviews indicate that the number of reports of racially motivated offences is very low. The Norwegian authorities have indicated that it is difficult to establish whether this is due to a low incidence of this type of criminality or to few cases being reported. ECRI sees here an opportunity for the prosecuting authorities to work with civil society organisations that are active in the field of combating racism and racial discrimination to identify and break down barriers that may still prevent victims of racist offences from reporting these offences.
34. *ECRI encourages the Norwegian authorities to continue with their efforts to improve the response of the criminal justice system, and notably the police and the prosecuting authorities, to racially motivated offences.*
35. *ECRI recommends that in addition to measures aimed at improving the investigation of racially motivated offences, the Norwegian authorities pay particular attention to monitoring racist incidents. ECRI strongly recommends that the Norwegian authorities draw inspiration from its General Policy Recommendation No. 11 on combating racism and racial discrimination in policing, which provides detailed guidance on both areas, including the adoption of a broad definition of "racist incident"<sup>20</sup>.*

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<sup>20</sup> ECRI General Policy Recommendation No.11, paragraphs 11-14 (and paragraphs 62-75 of the Explanatory Memorandum).

## Provisions covering racist organisations

36. As already noted in ECRI's third report, since racist groups in Norway are generally not formally organised, the Norwegian authorities have not considered it necessary to adopt provisions on the dissolution of racist organisations. However, in that report, ECRI recommended that the Norwegian authorities strengthen legislation to counter racist organisations, including by providing for the possibility of dissolving such organisations. Although no such provisions have been enacted, ECRI notes that Section 15 of the Anti-Discrimination Act introduces new penalties for persons who commit serious discrimination or harassment in loose-knit groups. ECRI understands that so far there have been no cases of the application of Section 15.
37. *ECRI recommends that the Norwegian authorities monitor the implementation of the provisions introduced by Section 15 of the Anti-Discrimination Act.*
38. *ECRI recommends that the Norwegian authorities keep the situation concerning racist organisations and the legal framework to counter them, closely under review. As part of this review, ECRI draws once more the attention of the Norwegian authorities to its General Policy Recommendation No.7 on national legislation to combat racism and racial discrimination, where it recommends that the law provide for the possibility of dissolution of organisations which promote racism<sup>21</sup>.*

## Anti-discrimination bodies and other institutions

39. As mentioned above<sup>22</sup>, since ECRI's third report the Equality and Anti-Discrimination Ombud (LDO) and the Equality and Anti-Discrimination Tribunal were established to assist with the implementation of anti-discrimination legislation, including on grounds covered by ECRI's mandate. The LDO has been empowered to issue non-binding opinions concerning breaches of anti-discrimination legislation, including the Anti-Discrimination Act. ECRI understands that in practice, most of the opinions of the LDO are complied with by those found to be in breach. However, the opinions of the LDO can also be appealed before the Tribunal by the parties involved in the case. In respect of private parties, the Tribunal can issue administrative decisions, including orders that an act be stopped or other measures taken to prevent the repetition of discrimination. The Tribunal can also impose administrative fines for non-compliance with its decisions. With respect to acts of the municipal and state institutions the Tribunal can only issue non-binding recommendations and opinions. ECRI notes however, that neither the LDO nor the Tribunal can award compensation for damages. In order to claim these, victims of discrimination must therefore file a claim before the Courts. It has been highlighted that this may reduce the discrimination victims' willingness to bring cases before the LDO in the first place.
40. Apart from the functions already referred to, which consist essentially in adjudicating complaints and providing legal guidance as necessary, the LDO carries out a considerable number of other tasks, including providing guidance to different stakeholders on how to prevent discrimination, monitoring manifestations of discrimination and carrying out awareness raising and information activities. These activities are carried out with respect to twelve grounds of discrimination, including grounds covered by ECRI's mandate. It has been reported to ECRI that with the human and financial resources currently available to this institution (a staff of thirty-six and a budget of 30 million NOK or

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<sup>21</sup> ECRI General Policy Recommendation No.7, paragraph 17 (and paragraph 37 of the Explanatory Memorandum).

<sup>22</sup> Provisions covering racial discrimination.



approximately 3.8 million €), it is not always possible for the LDO to carry out all these tasks effectively. For instance, the LDO considers that greater outreach work would be key to raising awareness of potential victims of racial discrimination and therefore increase the use made of this institution by those who might need it. More extensive work on monitoring the follow-up given to the decisions of the LDO by those found in breach of anti-discrimination legislation would also be desirable. Furthermore, ECRI is pleased to note that following the establishment of a duty for public authorities and employers to promote equality and eliminate discrimination<sup>23</sup>, the LDO is now responsible for monitoring and assisting with the implementation of this duty. In accordance with its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, ECRI considers that the LDO should also be given a key role and the corresponding powers in legally enforcing the duty. In view of the considerable workload that these functions entail, ECRI considers the question of the adequacy of the resources available to the LDO to be even more pressing.

41. *ECRI recommends that the Equality and Anti-Discrimination Tribunal be made competent to award redress to victims of racial discrimination.*
42. *ECRI recommends that the Norwegian authorities empower the Equality and Anti-Discrimination Ombud to legally enforce the duty for public authorities and employers to promote equality and eliminate racial discrimination in carrying out their functions. ECRI draws the attention of the Norwegian authorities to its General Policy Recommendation No.7 on national legislation to combat racism and racial discrimination, where it provides additional guidance on this issue<sup>24</sup>.*
43. *ECRI recommends that the Norwegian authorities ensure that the Equality and Anti-Discrimination Ombud has enough human and financial resources available to carry out its tasks effectively.*

## **II. Discrimination in Various Fields**

### **Overarching strategies**

44. In its third report, ECRI recommended that the Norwegian authorities implement the various measures contained in the National Plan of Action to Combat Racism and Discrimination (2002-2006). ECRI is pleased to note that the evaluation made at the end of the implementation period, in which a follow-up mechanism that included representatives of civil society organisations participated, indicated that most measures had been successfully implemented. However, the evaluation also highlighted difficulties in assessing the impact of the various measures taken.
45. ECRI notes that, following an incident involving the emergency services in August 2007<sup>25</sup>, the Ministry of Labour and Social Inclusion requested all Ministries to obtain from all agencies under them information on the extent to which the latter are aware of and work against racial discrimination. ECRI notes that according to the LDO, which is responsible for examining the responses to this survey and formulating recommendations for government action, there is still very little awareness among most agencies in the public sector of the way in which racial discrimination manifests itself. Furthermore, when it is carried out at all, anti-discrimination work is generally not mainstreamed across the different aspects of the work of these agencies, but typically takes the form of one-off measures.

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<sup>23</sup> See above, Provisions covering racial discrimination.

<sup>24</sup> ECRI General Policy Recommendation No.7, paragraph 8 (and paragraph 27 of the Explanatory Memorandum).

<sup>25</sup> See below, Health.

ECRI considers that placing public authorities and employers under a duty to promote equality and eliminate discrimination as is currently envisaged<sup>26</sup>, can be a very powerful tool to address these shortcomings, especially if, as recommended above<sup>27</sup>, specific obligations are laid down and adequate mechanisms for monitoring and enforcement are provided for. The Norwegian authorities have indicated that the Ministry of Health and Care Services has stated in the annual steering document to the Regional health authorities that the services shall be of a high quality. The goal is equal health services of good quality and the provision to reach out to everyone regardless of their financial situation, social status, age, gender and ethnic background.

46. ECRI is pleased to note that the results of the evaluation of the Plan of Action to Combat Racism and Discrimination (2002-2006) and the recommendations resulting from the LDO's analysis of the survey on discrimination in the public sector will be reflected in the new Plan of Action against Racism and Discrimination (2009-2013), which the Government plans to adopt at the beginning of 2009. Under the co-ordinating responsibility of the Ministry of Children and Equality, the new plan will address the situation of both the immigrant population and national minorities such as Romani/Tatars and Roma, and include measures to combat discrimination based on ethnicity, national origin, descent, colour, language, religion or belief. It will cover four main areas: employment, housing, public sector (both State and local authorities) and discrimination in access to places of entertainment. The main focus of the new plan will be on measures by the central authorities, although it will also try to bring about greater local involvement by seeking the co-operation of local authorities, non-governmental organisations and social partners. ECRI notes with interest that the Norwegian authorities have stated that while the previous plan concentrated mainly on legal protection, in the new plan there will be a stronger focus on positive action.
47. In addition to the plans of action against racism and discrimination, ECRI notes that an Action Plan for Integration and Social Inclusion of the Immigrant Population was adopted under the co-ordinating responsibility of the Ministry of Labour and Social Inclusion in 2007. This was accompanied by the setting of Goals for Social Inclusion, which are used as indicators of the degree of social inclusion of the immigrant population. The plan, which was adopted in essentially the same form in 2008 and has a value of NOK 400 million, contains a number of measures in the field of employment, education and language, gender equality and participation, some of which are addressed below.
48. *ECRI encourages the Norwegian authorities to keep to their plans in adopting a new plan of action against racism and discrimination. It recommends that the plan include clear targets and indicators for progress achieved. ECRI also recommends that the Norwegian authorities thoroughly involve civil society stakeholders in the designing, implementation and evaluation of the plan, including the setting of targets and indicators.*
49. *ECRI recommends that the new plan of action against racism include measures to improve awareness of the different manifestations of discrimination, including indirect and institutional discrimination, among public sector agencies and measures aimed at mainstreaming the fight against discrimination in all aspects of their work.*

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<sup>26</sup> See above, Existence and Implementation of Legal Provisions - Provisions covering racial discrimination.

<sup>27</sup> See Existence and Implementation of Legal Provisions - Provisions covering racial discrimination and Anti-discrimination bodies and other institutions.

## Employment

50. In its third report, ECRI recommended that the Norwegian authorities take further steps to combat the discrimination of persons of immigrant background in the labour market and to ensure that these persons enjoy genuinely equal opportunities in employment. As already noted<sup>28</sup>, legal protection against discrimination in employment has since been strengthened. ECRI also notes that a number of measures included in the Action Plan for Integration and Social Inclusion of the Immigrant Population concern employment. In this connection, the Norwegian authorities have stressed that, together with other groups, persons of immigrant background are a priority target for labour market schemes. Thus for instance, by November 2007, persons of immigrant background accounted for 40% of the beneficiaries of such schemes. ECRI also notes the establishment in December 2004 of the Directorate of Integration and Diversity (IMDi), whose goal is to promote employment-based integration through a number of tools, including introductory courses for immigrants<sup>29</sup>.
51. However, in spite of a marked improvement in employment rates among the population of Norway as a whole in recent years, the gap between the employment rates of persons of immigrant background and those of the rest of the population is reported to still be considerable and to remain essentially unchanged. For instance, the unemployment rate among young people of immigrant background is reported to be twice that registered among the rest of the same age group. These figures point to a general need for further efforts to be deployed to improve the participation of persons of immigrant background in the labour market. However, civil society organisations have consistently stressed that greater knowledge is needed about the effectiveness of measures already taken to this end, in order to enable a more informed decision on whether these measures should be continued or replaced by other measures.
52. In its third report, ECRI encouraged the Norwegian authorities to pursue their efforts to improve the representation of persons of immigrant background in the public sector. The Norwegian authorities have reported that representation of persons of immigrant background (and within these, persons of non-Western immigrant background) in public administration is slowly increasing. Persons of immigrant background made up 4.7% of all civil servants in 2003, 4.9% in 2004, 5.3% in 2005 and 5.9% in 2006. The overall percentage of non-Western immigrants was 2.8 in October 2006, although their representation within the different Ministries was reportedly uneven. ECRI notes that as part of the Plan of Action to Combat Racism and Discrimination (2002-2006), the Norwegian authorities have implemented a measure consisting in interviewing at least one suitably qualified person of immigrant background when making new appointments. Although this measure is reported to have been implemented with some success, in that interviews did indeed take place in many cases, ECRI is not aware of the actual outcomes in terms of recruitment. ECRI is pleased to note that the Norwegian authorities have now started implementing a temporary pilot project in twelve government Ministries and agencies, whereby applicants of immigrant background will be preferred for recruitment if they have qualifications corresponding to the best qualified applicant for a particular post. This project, which ECRI understands will take account of its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, is being carried out under the responsibility of the Ministry of Government Administration and Reform, will last for two years, 2008 and 2009, and will subsequently be evaluated.

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<sup>28</sup> Existence and Implementation of Legal Provisions - Provisions covering racial discrimination.

<sup>29</sup> See below, Reception and Status of Non-Citizens.

53. *ECRI recommends that the Norwegian authorities intensify their efforts to improve the participation of persons of immigrant background, and especially young people, in the labour market.*
54. *ECRI strongly recommends that the Norwegian authorities improve their systems for measuring the impact of the different initiatives they take in this field.*

## **Education**

55. In its third report, ECRI recommended that the Norwegian authorities monitor and address shortcomings in the system for assigning school children to NOM (Norwegian as a mother tongue) and NOA (Norwegian as a second language) classes. Part of the background to this recommendation was that in practice, children who were deemed to present a number of differences, including ethnic minority background, were often automatically assigned to NOA classes and in many cases never made a transition to NOM classes. ECRI notes with interest that this system was discontinued in autumn 2007 and that Norwegian language instruction is now standardised for all pupils, with special assistance being offered on the basis of individual needs.
56. In its third report, ECRI examined the compulsory subject entitled “Christianity, Religions and Philosophy” and the system of exemptions from the corresponding course. It recommended that the religious education provided in schools reflect the religious diversity of Norwegian society and stressed that the predominance of one particular religion as a compulsory area of study be avoided. ECRI notes that since then, the European Court of Human Rights has found that the refusal to grant parents full exemption from the course resulted in a violation of Article 2 of Protocol No.1 (Right to Education) to the European Convention on Human Rights<sup>30</sup>. The Norwegian authorities have reported that a number of changes have been made or proposed since ECRI’s third report and the Court’s judgment. These include proposals for change to the object clause of the Education Act. Furthermore, amendments have been adopted in the Education Act and in the curriculum of the subject (which is renamed Religion, Philosophies of life and Ethics), decreasing the relative weight of the teaching of Christianity and expanding the system of exemptions. ECRI also notes reports according to which pupils exempted from the course are not always offered alternative instruction of equal value during school time.
57. More generally, ECRI notes that figures indicate that pupils of immigrant background are falling behind other children in education. This includes disproportionately high drop out rates from secondary education. The Norwegian authorities have highlighted a number of measures they have initiated to address this situation, although they have also stressed that when the educational levels of the parents are taken into account, the gap between students of immigrant background and other students tends to reduce considerably. Measures taken have included the provision of vocational training and, as part of the Action Plan for Integration and Social Inclusion of the Immigrant Population, provision of free core time in kindergartens for all four- and five-year-olds in neighbourhoods with a high proportion of children of immigrant background. Once again, civil society organisations have welcomed these initiatives although they have stressed that due to the wide autonomy that municipalities enjoy in matters relating to education it is difficult to ensure that any good practice is reproduced throughout the country.

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<sup>30</sup> European Court of Human Rights, Grand Chamber, Case of Folgerø and Others v. Norway (Application No. 15472/02), Strasbourg, 29 June 2007. Article 2 of Protocol 1 to the European Convention on Human Rights stipulates that “[n]o person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions”.

58. *ECRI recommends that the Norwegian authorities monitor the practical implementation of the new system for Norwegian language instruction to ensure that special assistance is offered to pupils on the basis of actual need and irrespective of considerations such as a pupil's immigrant background.*
59. *ECRI recommends that the Norwegian authorities ensure that the teaching of religion is in full compliance with the right to education protected by Article 2 of Protocol No.1 to the European Convention on Human Rights, in accordance with the case law of the European Court of Human Rights and with the guidelines provided in ECRI's General Policy Recommendation No.10 on combating racism and racial discrimination in and through education<sup>31</sup>. ECRI also recommends that the Norwegian authorities ensure that alternative educational opportunities of equal value are made available for children who are exempted from the course.*
60. *ECRI strongly recommends that the Norwegian authorities take measures to bridge the gap in educational attainment between children of immigrant origin and other children. ECRI recommends that the Norwegian authorities focus in particular on reducing the disproportionately high drop out rates from secondary education and that they increase efforts to promote kindergarten attendance among children of immigrant background. ECRI recommends that the Norwegian authorities improve their systems for measuring the impact of the different initiatives they take in this field and that they ensure that good practice is reproduced throughout the country.*

## **Housing**

61. In its third report, ECRI recommended that the Norwegian authorities strengthen their efforts to address the problems of discrimination and disadvantage faced by persons of immigrant background in housing. In addition to a rigorous implementation of housing anti-discrimination legislation, ECRI recommended that such efforts include more proactive measures, such as requiring central and local authorities to draw up targeted action plans to address the housing situation of persons of immigrant background.
62. As already noted<sup>32</sup>, legal protection against discrimination has since then been strengthened, notably through the introduction of anti-discrimination provisions in housing legislation, followed by the enactment of the Anti-Discrimination Act and the establishment of specialised institutions that assist with the implementation of these provisions. A number of cases dealt with by the LDO and the Equality and Anti-Discrimination Tribunal have concerned racial discrimination in the renting and purchasing of property, a phenomenon that continues to be commonly reported. ECRI notes that a study on discrimination against immigrants and refugees in rental housing has been commissioned by the Norwegian authorities and will be completed before the end of 2008. The study will attempt to measure the effect of the anti-discrimination provisions of housing legislation, notably those embedded in the Tenancy Act, and to give a more detailed picture of possible discrimination patterns facing immigrants and refugees within different segments of the housing market.
63. The Norwegian authorities have highlighted that alongside general measures to help people in need of a place to live through favourable loans and grants offered by the State Housing Bank, persons of immigrant background may benefit from more specific measures included in the social housing action plans of municipalities. The Norwegian authorities report that these plans, which normally include all disadvantaged groups on the housing market, pinpoint local

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<sup>31</sup> ECRI General Policy Recommendation No.10, paragraphs II. 2. b) and c).

<sup>32</sup> Existence and Implementation of Legal Provisions - Provisions covering racial discrimination.

challenges, set targets within a defined timeframe, and identify measures to be used.

64. Overall however, persons of non-Western immigrant background<sup>33</sup> still have considerably poorer housing standards than average. For instance, the rate of homelessness is six times higher among persons of non-Western immigrant background than in the population as a whole. However, some progress has also been registered. Thus, a study on living conditions among persons of non-Western immigrant background published by Statistics Norway in February 2008<sup>34</sup> indicates that a bigger share of persons of non-Western immigrant background live in owned property today than ten years ago, while the share of those who live in rented accommodation and cramped conditions has decreased.
65. *ECRI recommends that the Norwegian authorities include a comprehensive set of measures in the National Action Plan 2009-2013 to tackle racial discrimination in housing.*

## Health

66. Since ECRI's third report, racial discrimination in health and the position of persons of immigrant background in this field have been the object of considerable public attention, especially in relation with an incident that occurred in August 2007. After being attacked in a park in Oslo, a 37-year-old man of ethnic minority background was left unattended by paramedics of the emergency services and was transported to hospital in a taxi, where he underwent surgery for several hours to treat serious head injuries. ECRI notes that the investigation by the Norwegian Board of Health Supervision found that there had been a serious breach of the law governing the duties of health personnel. The Board considered the behaviour of the paramedics to have been improper and unacceptable. However, the Board did not find it sufficiently documented that the cause for the behaviour was actually grounded in racism and ethnicity. The LDO on the other hand found in March 2008 that the behaviour of the paramedics was in breach of the Anti-Discrimination Act. Both decisions have recently been appealed.
67. Following this case, the Norwegian authorities initiated a survey on racial discrimination in the public sector whose preliminary findings indicate that there is still little awareness among most agencies in the public sector of the different manifestations of racial discrimination, including institutional discrimination<sup>35</sup>. Civil society actors have reported that the health sector is one of the sectors of the administration where greater awareness and recognition of racial discrimination would be particularly beneficial. Beyond the individual racist or racially discriminatory behaviour of any individuals working in the healthcare field, which should be effectively identified and adequately sanctioned, ECRI considers that there is a need to examine the extent to which unwitting prejudice, ignorance, thoughtlessness and racist stereotyping result in processes, attitudes and behaviour that prevent persons belonging to minority groups from receiving professional health services equal to those received by others.
68. ECRI understands that one of the few measures of the National Action Plan (2002-2006)<sup>36</sup> not to have been implemented, is a survey regarding the possible need to adapt health and care services for persons of immigrant background.

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<sup>33</sup> According to the Norwegian authorities, their statistical category of "Non-Western countries" comprises countries in Asia, Turkey, Africa, South and Central America and Eastern Europe.

<sup>34</sup> See below, Monitoring racism and racial discrimination.

<sup>35</sup> See above, Overarching strategies.

<sup>36</sup> See above, Overarching strategies.

ECRI also notes, however, that the Norwegian authorities have announced that a study on health and immigration will be finalised in May 2009. Although ECRI is not aware of the exact scope of this study, it hopes that it will provide an opportunity to tackle the issues mentioned above.

69. One particular dimension of racial discrimination in health and of the position of persons of immigrant background in this field is connected to the extent to which persons who do not master the Norwegian language are able to obtain professional services in practice. In this connection, ECRI notes that the Directorate of Integration and Diversity<sup>37</sup> has carried out research among doctors into practices relating to the use of interpretation. ECRI also notes that the LDO has suggested that the right to a free interpreter when using public services, including health services, should be guaranteed by clearer legal provisions, whereas the Norwegian authorities have stated that the legal provisions are clear and that it is the availability of interpretation that should be improved. In this connection, ECRI notes that in August 2007, the Norwegian authorities initiated a one-year education programme in community interpretation in Oslo. A database containing information on interpreters and their qualifications has also been set up with the objective of facilitating the use of interpretation by the public services. Although these initiatives are not specific to the health sector, ECRI considers that they might be instrumental in addressing current shortcomings in the availability of professional interpretation in health and care services.
70. *ECRI recommends that the Norwegian authorities carry out in-depth research on and address manifestations of racial discrimination in the health sector, including institutional discrimination.*
71. *ECRI recommends that the Norwegian authorities ensure that all instances of racist or racially discriminatory behaviour by health personnel are effectively investigated and adequately sanctioned.*
72. *ECRI urges the Norwegian authorities to increase the availability and use of professional interpretation in the health sector.*

### **Administration of justice**

73. In its third report, ECRI recommended that the Norwegian authorities initiate research aimed at identifying possible patterns of discrimination or situations of disadvantage affecting ethnic minority groups in the criminal justice system, which should include, as appropriate, a gender perspective. ECRI understands that research has since been carried out on the availability of interpretation and translation services in the legal system, which is still reported to be an area where there are margins for improvement. To ECRI's knowledge, no further research has been carried out in the field highlighted by ECRI's recommendation. However, ECRI considers that such research would be useful, especially as ECRI has received some reports of shortcomings in the way in which, for instance, violent offences committed against ethnic minority women are investigated.
74. Another issue that has been raised with ECRI concerns the possible discriminatory impact of the use of fingerprint data which has been collected as part of the asylum procedure for criminal investigations. ECRI notes that the establishment of a fingerprint database to be included in the immigrant registry was originally authorised by the Norwegian Parliament with the limitation that fingerprint data collected as a mandatory part of the asylum procedure was to be used only in order to establish the identity of asylum seekers (and not as an aid in

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<sup>37</sup> See above, Discrimination in Various Fields – Employment.

possible subsequent criminal investigations). However, ECRI notes that the police have since been granted the power to use the fingerprint data contained in the immigrant registry in the investigation of crimes which carry sentencing guidelines of six months' imprisonment or more. It has been stressed that this may have a discriminatory impact on the position of ethnic minority groups in the criminal justice system.

75. *ECRI reiterates its recommendation that the Norwegian authorities conduct research aimed at identifying possible patterns of racial discrimination or situations of disadvantage affecting ethnic minority groups in the justice system and include, as appropriate, a gender perspective.*
76. *ECRI recommends that the Norwegian authorities increase the availability and use of professional interpretation in the legal system.*

### **Access to public places**

77. Discrimination in access to places of entertainment such as bars, restaurants and discotheques continues to be reported. In its third report, ECRI noted that the National Action Plan 2002-2006 had announced plans to introduce legislation to the effect that discrimination in access to places of entertainment might result in the withdrawal of licences to serve alcohol. Although the Alcohol Act has not been amended, ECRI notes that since January 2008 the law regulating the granting of licences to serve food and beverages expressly provides that a breach of the Anti-Discrimination Act can result in the withdrawal of such licences. The police can also decide to close down such places of entertainment temporarily on the same grounds. ECRI also notes that the Norwegian authorities intend to cover discrimination in access to places of entertainment as one of the focus areas of the plan of action against racism and discrimination that is currently being prepared<sup>38</sup>.
78. *ECRI recommends that the Norwegian authorities increase their efforts to counter racial discrimination in access to places of entertainment.*

### **III. Racist Violence**

79. The Norwegian authorities and civil society organisations concur to say that racist violence has not been a prominent phenomenon in Norway since ECRI's third report. At the same time, ECRI notes that no comprehensive data on the incidence of racist violence is available at the moment. As already mentioned, the police and prosecuting authorities are working to improve monitoring of racist incidents and investigation into possible racist offences<sup>39</sup>, which obviously cover violent incidents and offences. Apart from this data, what is known about racist violence comes essentially from media reports.
80. Essentially, the reports of racist violence that ECRI has become aware of are connected with the activities of extreme right-wing groups. For instance, there were reports of violent acts carried out by neo-Nazis against two Kurdish families in Halden, a town in East Norway near the border with Sweden, in 2005. However, by and large, ECRI considers that the recommendation it made in its third report to the effect that the Norwegian authorities should keep the situation as concerns extreme right-wing groups under control and take the necessary corrective action, has been followed. ECRI welcomes in particular the work carried out by the police to stop recruitment to these circles. However, ECRI

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<sup>38</sup> See above, Overarching strategies.

<sup>39</sup> See above, Existence and Implementation of Legal Provisions – Provisions covering racially motivated offences.



considers that the situation calls for continued close attention, particularly as extreme right-wing groups are still actively present on the Internet.

81. *ECRI recommends that as part of their efforts to improve monitoring of racist incidents and the investigation of possible racist offences<sup>40</sup>, the Norwegian authorities pay particular attention to violent incidents and offences.*
82. *ECRI encourages the Norwegian authorities to pursue their efforts to keep the situation as concerns extreme right-wing groups under control. It recommends that the Norwegian authorities monitor the Internet activities of the members of these groups and take firm action against any offences they commit through the Internet.*

#### **IV. Racism in Public Discourse**

83. In its third report, ECRI stressed that politicians should take a firm and public stance against the use of racist or xenophobic discourse in political life and pay particular attention to the risks of stigmatisation of members of minority communities. Since then however, ECRI notes that the use of this type of discourse by Norwegian political parties has continued, often in connection with security concerns. For instance, ECRI notes that during the run-up to the September 2005 general elections, the Progress Party (Fremskrittspartiet, FrP) disseminated a brochure establishing, through text and images, very clear links between serious security issues and persons of foreign origin. More generally, many civil society actors find that the expression of anti-immigrant views in political and public debate has become more common in Norway in recent years. In particular, there has reportedly been a rise in the association of Muslims on the one hand, and terrorism and violence on the other, as well as generalisations and stereotypes concerning persons of Muslim background.
84. However, welcome initiatives have also been taken to curb the expression of racist and xenophobic propaganda in politics. Thus, at the initiative of the LDO, in the course of the 2007 municipal elections all main political parties represented in Parliament signed a pledge to refrain from racist or xenophobic discourse, and discourse that might stigmatise other vulnerable groups. The pledge is reported to have worked well, although ECRI understands that the media uncovered a few cases where it was not respected.
85. ECRI reiterates that political parties must resist the temptation to approach issues relating to minority groups, including persons of immigrant background, in a negative fashion and should emphasise the positive contribution made by different minority groups to Norwegian society, the economy and culture. ECRI's position is that political parties should take a firm public stance against any forms of racism, discrimination and xenophobia.
86. *ECRI encourages the Norwegian authorities to consider the adoption of legal provisions specifically targeting the use of racist and xenophobic discourse by exponents of political parties. In this respect, ECRI draws the attention of the Norwegian authorities to the relevant provisions contained in its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination<sup>41</sup>.*
87. In its third report, ECRI noted that persons of immigrant background had continued to feature in the media predominantly in connection with crime stories

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<sup>40</sup> See above, Existence and implementation of Legal Provisions – Provisions covering racially-motivated offences.

<sup>41</sup> ECRI General Policy Recommendation N°7, paragraph 16 (and paragraph 36 of the Explanatory Memorandum).

or issues of forced marriages and female genital mutilation. In its third report, ECRI also stressed the importance of monitoring the observance of the Code of Ethics by the media profession. ECRI furthermore emphasised that an increased presence of persons of immigrant background in the media profession could positively affect the media portrayal of persons of immigrant background.

88. In spite of a considerable increase in the overall number of complaints received by the Press Complaints Commission since ECRI's third report, complaints filed with this commission in relation to issues of immigration, racism and/or persons with an immigrant background have not been significantly on the rise. At the same time, civil society actors have reported to ECRI that news media have continued to refer to suspects' national origins and ethnic backgrounds when these do not have any bearing on the case. News coverage of violence between close family members is also reported to often include speculations with regard to cultural or religious motivations when those involved have ethnic minority backgrounds, while similar episodes involving ethnic Norwegians are portrayed as the result of individual medical or psychological conditions. Furthermore, the sensationalism and sweeping generalisations with which the media has reportedly often addressed phenomena such as female genital mutilation and family violence regardless of the actual opinions or attitudes towards these phenomena among members of the communities concerned, has continued to contribute to the stigmatisation of entire groups.
89. As concerns the representation of persons of immigrant background in the media profession, positive developments have been reported to ECRI as concerns media recruitment practices. Thus, individual media are reported to increasingly encourage persons with an immigrant background to apply for positions as journalists and the number of journalists of immigrant background has reportedly increased since ECRI's third report.
90. *ECRI encourages the Norwegian authorities to impress on the media, without encroaching on their editorial independence, the need to ensure that the method of reporting does not contribute to creating an atmosphere of hostility and rejection towards members of any minority groups. ECRI recommends that the Norwegian authorities increase opportunities to discuss with the media and members of other relevant civil society groups how this could best be achieved*

## **V. Vulnerable/ Target Groups**

### **Muslim communities**

91. Civil society actors agree that Islamophobia has been on the rise since ECRI's third report. Political, and more generally public debate has been characterised by frequent associations made between Muslims on the one hand, and terrorism and violence on the other, and by generalisations and stereotypes concerning perceived cultural features of persons of Muslim background. Although many have stressed that such a debate has had a negative impact on the general public's perception of Muslims, generally speaking it does not seem that these perceptions have translated into acts of violence against this part of Norway's population, at least not to any visible extent. Instances of discrimination on the basis of actual or perceived Muslim background have however been reported. For instance, there are reports of women wearing the Islamic headscarf having been refused employment or having been dismissed from their jobs. Persons with names revealing a possible Muslim background are also widely reported to experience difficulties in securing job interviews. Furthermore, plans to build Mosques have sometimes been met with unjustified resistance among the general population and local authorities.

92. *ECRI strongly recommends that the Norwegian authorities monitor the situation as concerns Islamophobia in Norway and take swift action to counter any such manifestations as necessary. It encourages the Norwegian authorities to co-operate with representatives of the Muslim communities of Norway in order to find solutions to specific issues of their concern.*

### **Romani/Tater and Roma communities**

93. In its third report, ECRI made a number of recommendations aimed at combating discrimination against Romani/Tater communities (estimates of whose population vary from 2 000 to over 10 000 persons) and Roma communities (around 500 persons) and at improving their situation. ECRI recommended in particular that the Norwegian authorities pursue dialogue with representatives of the Romani/Tater communities in view of the establishment of a system of reparations for past human rights violations committed against members of these communities. ECRI notes that in 2004 the Norwegian Government established a fund of 75 million NOK to this end. The fund is administered by a foundation composed of Romani/Tater representatives and an observer from the authorities. The Norwegian authorities have reported that the fund has an annual return of 3,7 million NOK, which is allocated to activities aimed at developing Romany language, culture and history.
94. In its third report, ECRI recommended that the Norwegian authorities intensify their efforts to support Romani language education and provide children of itinerant families (which include both Romani/Tater and Roma families) with regular education. The Norwegian authorities have reported that in 2004 the Ministry of Education and Research launched a three-year pilot project aimed at devising appropriate solutions to favour the integration of Romani/Tater children into the education system and promote the acknowledgement of their culture more successfully in schools. The project is continuing throughout 2009 and, according to the Norwegian authorities, the response so far has been that the project is developing in a positive direction. The Ministry is considering extending the duration of the project and including more schools. There are also plans to develop a thematic booklet by the end of the year. It is not clear to ECRI however, the extent to which this project has resulted in an increased participation of Romani/Tater children in education. In this respect, civil society actors have stressed that lack of data on school attendance and attainment by Romani/Tater and Roma children negatively affects the possibility of designing and evaluating policies targeting them. Concerning in particular Roma children, ECRI notes that recent media reports indicate that their participation in school is very low. The Norwegian authorities and civil society organisations have stated that approximately 60 of the estimated 150 Roma children are enrolled in school, although data is not available on how regularly they attend school. No progress is reported in the field of supporting their language (Romanese) education. The Ministry of Education and Research is working on measures concerning Roma children in kindergarten, primary, secondary and upper secondary education. These measures will be part of an action plan which will be drawn up by the Ministry of Labour and Social Inclusion. The plan is due by the end of 2008.
95. In its third report, ECRI also recommended that the Norwegian authorities find arrangements that would allow Romani/Taters to continue to exercise certain traditional professions in the craft industry. ECRI is not aware of developments in this field.
96. Romani/Taters and Roma are also reported to experience discrimination when trying to gain access to campsites. Furthermore, they are reported to sometimes meet with difficulties when trying to report these cases to the police. ECRI notes that the LDO plans to start work in co-operation with Romani/Tater and Roma

organisations, the campsites' management companies, the police and local authorities to address this problem.

97. ECRI notes that the Norwegian authorities have recently committed to establishing an action plan to improve the situation of the Roma communities, which will have a value of 3 million NOK.
98. *ECRI strongly recommends that the Norwegian authorities take measures to address discrimination against members of Romani/Tater and Roma communities and to improve the situation of members of these communities across all fields of life, including education, housing, employment and relations with the police. ECRI strongly recommends that the Norwegian authorities involve representatives of Romani/Tater and Roma organisations in the designing and implementation of these measures. It recommends that the Norwegian authorities include commitments in these areas in the Plan of Action against Racism and Discrimination (2009-2013).*

### **Jewish communities**

99. Since ECRI's third report, the most visible manifestations of antisemitism in Norway are reported to have taken the form of speech by extreme right-wing groups through different means of communication<sup>42</sup>. However, ECRI notes that manifestations of antisemitism intensified during the Israel-Hezbollah conflict in Lebanon in the summer of 2006, including an outbreak of desecrations and insults, threats and physical attacks against members of Jewish communities. In September 2006, several rounds from an automatic military rifle were also fired at the Oslo synagogue. One person was convicted for this offence by Oslo District Court in June 2008. ECRI notes that in general, representatives of Jewish communities have valued the response made by the Norwegian authorities to the manifestations of antisemitism that have occurred in Norway since ECRI's last report.
100. *ECRI encourages the Norwegian authorities to monitor the situation as concerns manifestations of antisemitism in Norway closely and to continue to react to any manifestations that may occur. It draws the attention of the Norwegian authorities to its General Policy Recommendation No. 9 on the fight against antisemitism, which contains practical guidance on measures governments can take to prevent and counter antisemitism.*

### **Sami communities**

101. In its third report, ECRI noted some reported incidents of harassment of members of the Sami communities, although the situation seemed to be globally improving. Since then, cases of harassment of members of the Sami communities and hate speech targeting Sami on the Internet, have continued to be reported. The Norwegian authorities have informed ECRI that in two surveys carried out among Sami on perception of discrimination, 36% of the interviewees indicated having experienced discrimination in 2003-2004 and 25% in 2005-2006. The Norwegian authorities report that they are currently preparing a White Paper that will cover discrimination against members of Sami communities.
102. In its third report, ECRI recommended that the Norwegian authorities pursue their dialogue with the Sami Parliament in view of the adoption of the Finnmark Act, which dealt with legal rights to and management of, land and natural resources in Finnmark county. ECRI is pleased to note that the Finnmark Act was enacted in June 2005 and came into force on 1 July 2006.

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<sup>42</sup> See above, Existence and implementation of Legal Provisions – Provisions covering racist expression.

103. *ECRI recommends that the Norwegian authorities monitor and address all manifestations of racism and discrimination against the Sami population.*

## **VI. Reception and Status of Non-Citizens**

104. At the time of ECRI's third report, the Norwegian authorities were in the process of setting up a two-year introductory programme for refugees, persons granted residence on other protection or humanitarian grounds, and members of their families who came to join them in Norway. The programme includes Norwegian language training, an insight into Norwegian society and preparation for working life or further education and is addressed to people between the ages of 18-55 without basic qualifications. In parallel to this programme, which has now been running for almost four years, an obligation to complete a 300-hour course of Norwegian language and insight into Norwegian society was introduced for most immigrants coming to Norway as from 1 September 2005. Both schemes are administered by the municipalities which are required by law to organise the courses.
105. In its third report, ECRI recommended that the introductory programme for refugees should be adapted to the special circumstances of each individual person, including his or her level of education, professional competence, age and health status and that a high standard of training should be provided in municipalities throughout the country. ECRI notes that the municipalities are required to provide the course at three different levels. However, it seems that there are still margins for improvement in terms of better tailoring courses to individual needs and that the quality of training offered varies greatly from one municipality to the other.
106. ECRI notes that the two-year introductory programme for refugees is combined with an economic benefit, which can be reduced if the person does not participate in the course without a valid reason. ECRI has received reports however, that in some cases benefits have been reduced even when absence was justified. As concerns the 300-hour course, ECRI notes that those who are under an obligation to follow this course must complete it in order to be eligible for permanent residence and, as from 1 September 2008, Norwegian citizenship.
107. ECRI also notes that while persons who are nationals of EEA/EFTA countries are exempted from the obligation to follow the 300-hour course, non-EEA/EFTA nationals are not only under that obligation but, if they come to Norway on a work permit, must also cover the participation costs themselves. The extent to which such differential treatment on the basis of nationality can be seen to rest on an objective and reasonable justification has been questioned.
108. *ECRI encourages the Norwegian authorities to ensure that the courses imparted as part of the introductory programme for refugees and the 300-hour course for immigrants are tailored as much as possible on the needs of the individual person concerned. It recommends that the Norwegian authorities further intensify their current efforts to ensure a good standard of training in municipalities throughout the country.*
109. *ECRI recommends that the Norwegian authorities monitor the use of reductions in economic benefits as sanctions for non-compliance with the obligation of participating in the introductory programme for refugees. It also recommends that they monitor the impact of the obligation to complete the 300-hour course on immigrants' access to permanent residence and citizenship.*
110. *ECRI encourages the Norwegian authorities to review the obligation to complete the 300-hour course in the light of the prohibition of discrimination on grounds of nationality.*

111. In its third report, ECRI recommended that the Norwegian authorities ensure that the right to private and family life is fully respected for all persons residing in Norway, including foreigners and persons of immigrant origin. Family reunification was one of the areas covered by this recommendation. Civil society actors have consistently reported to ECRI that it has since become increasingly difficult for persons residing in Norway to have the members of their family join them there. In this connection, in addition to the almost two-fold increase in processing fees for non-EEC/EFTA nationals who apply for a residence or work permit, income requirements have been highlighted as especially problematic. In particular, it has been highlighted that only recognised refugees (and not persons who are granted residence on other protection or humanitarian grounds) are exempted from meeting this requirement. ECRI notes that the Immigration Act of 15 May 2008 No. 35 (which is expected to enter into force on 1 January 2010) announces that the Government will raise the amount of income required for family reunification purposes, as well as tighten the income requirement in other regards (i.e. it shall be made a condition that the reference person has had sufficient income also in the year before the permit is granted, and also that the reference person has not received social assistance in the year before the permit is granted). On the other hand, by extending the notion of refugee to include all persons who are given residence on international protection grounds<sup>43</sup>, a number of those who are currently subject to the income requirement would be exempted.
112. Another issue brought to ECRI's attention concerning spousal reunification, is that for those who are over 23, the income requirement applies only if they have been married for less than three years, whereas for those who are under 23 the requirement applies irrespective of the length of time they have been married. It has been highlighted that this policy impacts disproportionately on persons of immigrant background, among whom there is a higher share of persons who get married at a young age. The Norwegian authorities have highlighted that this policy aims at preventing forced marriages and at encouraging self-sufficiency. Civil society organisations stress however, that a number of persons who get married at a young age may be forced to leave education in order to meet the income requirement that would allow their spouses to join them in Norway.
113. In its third report, ECRI also addressed practices relating to the issuing of visas to non-citizens, notably for visiting their families in Norway. ECRI notes that practices concerning the issuing of visas to Pakistani siblings of Norwegian residents have been changed so as to better take the specific circumstances of individual cases into account. ECRI understands that the Directorate of Immigration is carrying out a review of practices in the issuing of visas to nationals of all countries.
114. In its third report, ECRI recommended that the Norwegian authorities ensure that foreign women who have divorced from their husbands due to ill-treatment obtain a residence permit, as provided for by law. ECRI has since continued to receive reports of difficulties encountered by some of these women in securing residence essentially linked to the fact that their account is not believed or that medical certificates are not deemed to provide enough evidence of ill-treatment. The Norwegian authorities emphasise that the conditions for establishing likelihood of the ill-treatment in these cases are not strict. According to the regulations, the assessments shall be based on the explanation of the ill-treated woman, unless there are clear reasons to believe that her explanation is not true. Although comprehensive data is not available, on the basis of research and on actual figures relating to the year 2005, the Norwegian authorities estimate that about two thirds of applications made by these women result in residence being granted

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<sup>43</sup> See below, Asylum Seekers.

by the Directorate of Immigration. The authorities also point out that an additional number of these women obtain residence on appeal.

115. *ECRI reiterates its recommendation that the Norwegian authorities ensure that the right to private and family life is fully respected for all persons residing in Norway, including foreigners and persons of immigrant origin. In particular, ECRI encourages the Norwegian authorities to ensure that refugees and persons who are granted residence on other protection or humanitarian grounds are not kept away from their families for unduly long periods of time.*
116. *ECRI recommends that the Norwegian authorities ensure that any measures they take to combat forced marriages and promote self sufficiency do not put persons of immigrant background at a disadvantage without objective and reasonable justification, notably as concerns these persons' right to private and family life.*
117. *ECRI reiterates its recommendation that the Norwegian authorities ensure that the right of foreign spouses to obtain a residence permit in case of divorce due to ill treatment is thoroughly respected in practice.*
118. ECRI notes that since its last report, tackling forced marriage and female genital mutilation has been an important priority for the Norwegian authorities, who have devoted considerable human and financial resources to these issues, as reflected in the Action Plan for the Integration and Social Inclusion of the Immigrant Population, the Action Plan for combating female genital mutilation (2008-2011) and the Action Plan against forced marriage (2008-2011). ECRI welcomes the willingness of the Norwegian authorities to address these problems, which are also of concern for organisations working in the field of protecting the rights of persons of immigrant background. However, the latter have pointed out that so far government action in this field has not made the most of the expertise existing among grass-roots organisations, which have close links with and enjoy the trust of the communities most affected by these phenomena. It has been stressed that this tends to diminish the effectiveness of government action in this area.
119. *ECRI recommends that in their efforts to tackle forced marriages and female genital mutilation, the Norwegian authorities continue their current efforts for taking into account the NGO's knowledge and make the most of the existing expertise among grass-roots organisations which have close links with and enjoy the trust of the communities most affected by these phenomena.*

## **VII. Asylum Seekers**

120. In its third report, ECRI noted that only around 2% of those who applied for asylum were granted refugee status and that between 20 and 30% of them were granted residence permits on other grounds. ECRI notes with interest that the share of asylum seekers who are recognised as refugees has since risen considerably (11% in 2005, 16% in 2006 and 20% in 2007). When other international protection grounds (i.e. not relating to the Refugee Convention) and humanitarian grounds are considered, the share of asylum applications that have resulted in a residence permit being granted has also increased since ECRI's third report (37% in 2005 and 41% in 2006 and 38% in 2007)<sup>44</sup>. ECRI notes with interest that the new Immigration Act<sup>45</sup> will extend the notion of refugee to include those persons who are entitled to international protection on grounds other than

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<sup>44</sup> The number of applications for asylum was 5402 in 2005, 5302 in 2006 and 6528 in 2007. There were 579 decisions granting full refugee status in 2005, 461 in 2006 and 1014 in 2007. There were 862 decisions granting a residence permit on other international protection grounds (i.e. not relating to the Refugee Convention) in 2005, 600 in 2006 and 864 in 2007. There were 1073 decisions granting a residence permit on humanitarian grounds in 2005, 625 in 2006 and 996 in 2007. The numbers above only include First Instance decisions, not including numbers from the Appeals Board.

<sup>45</sup> See above, Reception and Status of Non-Citizens.

those relating to the Refugee Convention, and notably Article 2 and 3 of the European Convention on Human Rights, which concern respectively the right to life and the prohibition of torture.

121. ECRI notes that since its last report, new procedures for the examination of asylum applications have been introduced. These include a 48-hour procedure designed to deal with manifestly ill-founded cases, including applications from nationals of countries regarded as safe. Civil society actors have stressed that a procedure of such a short duration jeopardises the normal operation of existing legal safeguards. It is reported for instance, that lawyers often do not have more than a couple of hours to appeal against a negative decision issued in this procedure.
122. In its third report, ECRI recommended that the Norwegian authorities ensure that asylum seekers can participate in Norwegian society during the examination of their asylum applications, including through opportunities to learn the Norwegian language. ECRI is pleased to note that as from 1 September 2007, asylum seekers older than 16 who are waiting for a residence permit in reception centres receive up to 250 hours of instruction in the Norwegian language. If they eventually receive a residence permit, they join the introductory programme for refugees<sup>46</sup> organised by the municipality where they live. In its third report, ECRI also encouraged the Norwegian authorities to promote a better integration of the reception centres into local communities. The Norwegian authorities report that the managers of the reception centres have obligations to establish good co-operation and contacts with local communities and must draw up a written plan to this end.
123. In its third report, ECRI recommended that the Norwegian authorities keep the situation as concerns the detention of asylum seekers under review and ensure that it is only used as a last resort. The legal framework governing detention of persons who are in Norway without legal status, including persons who have received a final rejection of their asylum applications, has remained unchanged. These persons may be held in detention pending the execution of a deportation order (in this case, the maximum length of detention is 6 weeks, although the new Immigration Act extends this term to 12 weeks, or longer in case of special circumstances) or if the identity of the person is not known or the authorities suspect that it might be false. The practice concerning detention is also reported to have remained unchanged. The Norwegian authorities have indicated that the average duration of detention was 3.2 nights in 2007 and 3.1 in 2008. Most detainees are reportedly kept for between a few hours and 2 weeks, although there have been individual cases where people have been detained for much longer. ECRI understands that the Parliamentary Ombud is currently investigating complaints on detention of asylum seekers at the detention centre in Trandum and the conditions in which they live and that the Ministry of Justice and Police has announced improvements in detention conditions there.
124. In its third report, ECRI recommended that the Norwegian authorities address the situation of non-citizens who could not be returned to their countries of origin for practical reasons and therefore lived in Norway without legal status. It is difficult to establish the number of people in this category, which include rejected asylum seekers, irregular migrants and persons who remained in Norway after their permits expired. ECRI understands that between 2000 and 2006, approximately 22 000 asylum seekers had left the reception centres without the Directorate of Immigration being in a position to account for them. However, many are thought to have left the country and the estimation that seems to prevail sets the number at around 10 000 for the whole group.

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<sup>46</sup> See above, Reception and Status of Non-Citizens.



125. Since they cannot legally work, many of these persons are reportedly employed illegally, as a rule under very disadvantageous conditions. They also have no access to health services other than emergency services. As concerns rejected asylum seekers, ECRI notes that after they were denied accommodation in reception centres for asylum seekers in January 2004 and a number of them were left destitute as a result, these persons can now be accommodated in two temporary reception centres, where they also receive a small weekly allowance. ECRI notes that the LDO has received a number of complaints from persons accommodated in the temporary reception centres about the conditions there.
126. In its third report, ECRI recommended that the Norwegian authorities consider the establishment of procedures which would enable non-citizens who cannot be returned to their countries of origin for practical reasons to gain legal status. The Norwegian authorities have stressed that their position, as also reflected in regulations introduced in June 2007 and the new Immigration Act, is that special regulatory provisions allowing for individual access to residence permits can only be envisaged for those who co-operate on being returned, while for the others the principle should remain that no such permits shall be granted. However, it has been stressed that it proves very difficult in practice for the person concerned to provide proof of such co-operation. More generally, it has been highlighted that a number of these persons have now been living in Norway for many years.
127. ECRI notes that in recent years, the Norwegian authorities have started to issue "limited-right" permits to persons who are allowed to stay on humanitarian grounds, but in respect of whose identity the Norwegian authorities have strong doubts. The rights attached to these permits are limited in that, for instance, the latter do not provide a basis for gaining permanent residence nor do they give the holder access to the introductory programme for refugees. ECRI notes that the new Immigration Act introduces a provision enabling such permits to be issued, although the Norwegian authorities also consider that extensive use of such permits is not desirable.
128. *ECRI recommends that the Norwegian authorities ensure that any time limits set for the examination of asylum applications do not jeopardise the normal operation of legal safeguards, such as access to a lawyer or the possibility of lodging an appeal.*
129. *ECRI strongly recommends that the Norwegian authorities facilitate access to residence permits for non-citizens who cannot be returned to their country of origin for practical reasons.*

#### **VIII. Monitoring Racism and Racial Discrimination**

130. As was the case at the time of ECRI's third report, civil society actors working in the fields covered by ECRI's mandate in Norway are unanimous in highlighting monitoring of manifestations of racism and racial discrimination as one of the areas where improvements and government action are most urgently needed.
131. One area of monitoring that needs to be addressed concerns the need to collect both more accurate information on concrete manifestations of racial discrimination and data on the position of minority groups in a number of areas that could help to identify patterns of racial discrimination. ECRI is pleased to learn that since its last report work has been carried out in these areas. Thus for instance, a study on living conditions among non-Western immigrants was carried out in 2005-2006 to increase knowledge about the perception of discrimination among this group of persons, their language skills and practices, social contacts, family situations and specific challenges they might face in the

labour and housing markets<sup>47</sup>. At the initiative of the Directorate of Integration and Diversity (IMDi), a survey was also carried out among non-Western immigrants about, *inter alia*, the perception of discrimination. Furthermore, surveys have continued to be carried out by Statistics Norway on attitudes towards immigrants and immigration policies among the general public, which can also contribute to shedding light on racial discrimination.

132. However, civil society organisations stress that while perception-based information is essential in order to gain a comprehensive picture of racial discrimination, this information should be accompanied by greater efforts to generate data on actual manifestations of racial discrimination and on the position of minority groups in a number of areas than is the case at present. As concerns the need for data on manifestations of racial discrimination, ECRI reiterates that the introduction of a duty for public authorities and employers to promote equality and eliminate discrimination provides a unique opportunity to introduce monitoring obligations concerning manifestations of discrimination<sup>48</sup>. This will constitute an invaluable complement to the information resulting from the activities of the LDO<sup>49</sup> and the data which will hopefully be increasingly available on the response of the police and prosecuting authorities to cases of racism and racial discrimination<sup>50</sup>.
133. With regard to the need for more information on the position of minority groups in a number of areas, ECRI notes that although no data broken down by grounds such as ethnic origin is collected in Norway at present, data on parental country of birth is largely available in administrative registers. The Norwegian authorities have pointed out that because of the patterns of immigration to Norway, parental country of birth can be used at present as a reasonably accurate proxy for ethnic origin. However, ECRI notes that even this type of data is currently not collected in respect of all areas where it could be used to monitor possible patterns of racial discrimination or progress achieved through the implementation of anti-discrimination or social inclusion policies. Furthermore, ECRI stresses that as time goes by, the extent to which parental country of origin can be used as a proxy for ethnic origin to monitor discrimination is decreasing, as the parents of the youngest Norwegians of immigrant background are increasingly also Norwegian-born.
134. Another area of monitoring that has been highlighted as needing improvement concerns the measures that are taken to counter racial discrimination and promote the social inclusion of persons of immigrant background. Civil society actors have repeatedly stressed that there is no overall picture of the measures taken throughout the country and, perhaps more importantly, no information on the extent to which the measures taken have yielded results. It has been stressed that as a result, measures are sometimes continued or discontinued without the necessary knowledge base that would allow a fully informed decision on the matter. On the other hand, ECRI also notes that the Norwegian authorities have made efforts to build evaluation mechanisms into many of the measures they have taken, although it would seem that this could be done more effectively and systematically.

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<sup>47</sup> See above, Discrimination in Various Fields – Housing.

<sup>48</sup> See above, Existence and Implementation of Legal Provisions - Provisions covering racial discrimination.

<sup>49</sup> See above, Existence and Implementation of Legal Provisions - Provisions covering racial discrimination.

<sup>50</sup> See above, Existence and Implementation of Legal Provisions - Provisions covering racially motivated offences.

135. *ECRI strongly recommends that the Norwegian authorities take steps to improve their monitoring of racism and racial discrimination in Norway. This should include monitoring manifestations of racial discrimination and patterns of disadvantage among the population of immigrant background, but also monitoring the effectiveness of measures taken to counter these phenomena. ECRI strongly recommends that the Norwegian authorities work in close co-operation with civil society actors to identify the type of information needed, the areas in respect of which it should be collected and the evaluation mechanisms that would best allow for progress to be made in the field of monitoring.*
136. *ECRI recommends that the Norwegian authorities consider collecting information broken down according to categories such as ethnic or national origin, religion, language and nationality to monitor racial discrimination and patterns of disadvantage among the population of immigrant background. ECRI recommends that the Norwegian authorities ensure that this is done in all cases with due respect to the principles of confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group. These systems should be elaborated in close co-operation with all the relevant actors, including civil society organisations.*

## **IX. Conduct of Law Enforcement Officials**

137. In its third report, ECRI made a number of recommendations aimed at combating racism and racial discrimination in policing. As reflected in other parts of this report<sup>51</sup>, civil society organisations consider that the police is one of the Norwegian institutions that has taken the fight against racism and racial discrimination and promotion of diversity more seriously since ECRI's last report. Progress is therefore reported in a number of areas. At the same time, there are still very important challenges ahead and the police also remains one of the institutions in respect of which persons of immigrant background more frequently raise issues of racial discrimination.
138. However, the number of formal complaints of police misconduct in which issues of racism or racial discrimination are raised is very limited. Complaints that do not entail criminal responsibility are examined by mechanisms that are internal to the police although, if racial discrimination is at stake, the complainant can also turn to the LDO. Although the tagging system allowing the retrieval of information on the number of complaints processed through the internal mechanisms that raise issues of racism or racial discrimination is still being fine-tuned, figures available indicate that in 2006 there were 12 complaints of this type (out of a total of 701) and that only two were found to be justified. When the police conduct complained of may give rise to criminal responsibility, the complaints are investigated by the Norwegian Bureau for the Investigation of Police Affairs, which can bring charges against the officers concerned. Established in January 2005, the Bureau for the Investigation of Police Affairs is organised as an independent service outside the police and the prosecuting authorities, although it reports administratively to the Ministry of Justice and professionally to the Director General of Public Prosecutions. The registration procedures until 2007 have not made it possible to generate valid statistics on cases concerning issues of racism or racial discrimination. The Bureau is working on improving the procedures. From 2008 the Bureau will have a procedure to collect data on cases where the complainant claims that the police conduct was racist or discriminating, independent of the legal classification of the offence. Since 2005 the Bureau has handled cases where racism or racial discrimination has been an issue. There are examples of cases where the conduct complained of did not meet the criteria of the provisions in the Penal Code concerning racist conduct or speech, but where the Bureau

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<sup>51</sup> Existence and implementation of Legal Provisions - Provisions covering racially motivated offences.

has considered other provisions such as misconduct in duty, gross lack of judgement in the course of duty or improper conduct towards a person in the performance of duty. Although data on the number of complaints filed with the Bureau that raise issues of racism or racial discrimination is not readily available, the Norwegian authorities have reported that complaints of this type are very rare. There were, however a few such cases in 2006 and 2007.

139. One of these cases, in which a 48-year-old man of Nigerian origin lost his life following an arrest made in a social welfare office in Trondheim in September 2006, has received much public attention. Following a refusal on the part of officials to pay welfare benefits, the man became angry and four police officers arrived on the scene. After a controversial grip called the “choke hold” was used around his throat, the man died by asphyxiation. The subsequent investigation by the Special Unit found no grounds to prosecute one officer in May 2007, while the case for the other three had previously been closed due to insufficient proof of any punishable offence. ECRI notes that following public protest, demonstrations and criticism about the investigation and its results, the Director General of Public Prosecutions decided to re-open the investigation into the case. ECRI understands that, although a number of shortcomings were highlighted as concerns the use of the “choke hold”, the findings as concerns the officers’ criminal responsibility were confirmed. ECRI also understands that the Ministry of Justice has ordered a review of all complaints mechanisms against police misconduct, including the Bureau for the Investigation of Police Affairs, whose results will be available in April 2009.
140. Since its last report, ECRI has continued to receive information indicating that racial profiling, notably in stop and search operations carried out by police and customs and immigration officials is still common in Norway. While the Norwegian authorities are aware of the problem – ECRI notes for instance that provisions that clarify the legal framework for the exercise of general immigration checks have been introduced in the new Immigration Act – it does not appear to ECRI that measures commensurate to the problem have yet been taken. In its third report, ECRI encouraged the Norwegian authorities to proceed with plans to introduce a system for monitoring the frequency of police checks on individuals. It recommended that such a system be evaluated and that civil society actors participate in the evaluation of this system with a view to its possible extension. However, ECRI understands that although this system was piloted in 2003 in one geographical area, in February 2004 the Parliament decided that it should be discontinued. Instead, a scheme involving clearly visible identification numbers on police uniforms was introduced.
141. In its third report, ECRI also encouraged the Norwegian authorities to pursue their efforts to improve the representation of persons of immigrant background in the police. It recommended that in addition to recruiting officers of immigrant background, the authorities focus on improving working conditions through measures aimed for instance at preventing racial harassment, so as to ensure that these officers remain in the police service once recruited. ECRI welcomes the efforts made by the Norwegian Police Academy, also in co-operation with the National Police Directorate in these areas. Figures indicate that the number of persons of immigrant background who have applied for the Police Academy and started the training has been on the rise since ECRI’s third report. ECRI notes however, that the Norwegian authorities do not collect figures on the number of persons of immigrant background who are serving as police officers, a circumstance that makes it difficult to evaluate the extent to which efforts to promote the retention of officers of immigrant background in the police service have been successful. Civil society organisations report that a disproportionate number of police officers of immigrant background leave the service and highlight

racial harassment, prejudice and stereotypes in the workplace as one of the reasons for this.

142. More generally, the Norwegian authorities report that they are aware of the fact that many persons of immigrant background, especially among the young, have little trust in the police due to bad experiences in contacts with the police service. They recognise that this is a problem that needs to be addressed. ECRI notes that since its last report, fora for dialogue between the police and representatives of immigrants' organisations have been set up at central and local levels. It also notes that a train-the-trainer programme on racism and racial discrimination was initiated at the combined initiative of the Public Management Department and the Police Academy and is now being revised. More recently, the National Police Directorate has initiated a project (*Safety and Trust*) whereby five police districts will identify and work on a number of areas in the field of improving relations between police and persons of immigrant background. Training on diversity, ethics, and issues of racism and racial discrimination will form an integral part of the project. The results of the evaluation of the project will form the basis for further training and work on improving policing a diverse society.
143. *ECRI encourages the Norwegian authorities in their efforts to combat racism and racial discrimination in policing and improve the performance of the police in providing professional services to a diverse society.*
144. *ECRI recommends that the Norwegian authorities ensure that effective investigations are carried out into all alleged cases of racial discrimination or racially-motivated misconduct by the police and that as necessary, the perpetrators of these acts are adequately punished. To this end, ECRI draws the attention of the Norwegian authorities to its General Policy Recommendation No. 11 on combating racism and racial discrimination in policing, where it recommends that a body, independent of the police and prosecution authorities, should be entrusted with the investigation of alleged cases of racial discrimination and racially-motivated misconduct by the police<sup>52</sup>.*
145. *ECRI strongly recommends that the Norwegian authorities take steps to address racial profiling, notably in stop and search operations carried out by police and customs and immigration officials. In particular, ECRI recommends that the Norwegian authorities carry out in-depth research on racial profiling and monitor police activities in order to identify racial profiling practices. To these ends, ECRI strongly recommends that the Norwegian authorities draw inspiration from its General Policy Recommendation No. 11, which provides extensive guidelines in both areas<sup>53</sup>.*
146. *ECRI encourages the Norwegian authorities to intensify their efforts to recruit persons of immigrant background into the police and ensure that they have equal opportunities for progression in their careers, in accordance with its General Policy Recommendation No. 11<sup>54</sup>. ECRI recommends that the Norwegian authorities follow-up progress achieved in these areas by collecting adequate data to monitor both the recruitment and retention of officers of immigrant background in the police.*

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<sup>52</sup> ECRI General Policy Recommendation No.11, paragraphs 9 and 10 (and paragraphs 54-57 and 58-61 of the Explanatory Memorandum).

<sup>53</sup> ECRI General Policy Recommendation No.11, paragraph 2 (and paragraphs 40-43 of the Explanatory Memorandum).

<sup>54</sup> ECRI General Policy Recommendation No.11, paragraph 17 (and paragraphs 79-81 of the Explanatory Memorandum).

147. *ECRI recommends that the Norwegian authorities intensify their work to improve relations between the police and persons of immigrant background, notably young people. It draws the attention of the Norwegian police to its General Policy Recommendation No. 11, which provides guidance in a number of relevant areas<sup>55</sup>.*

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<sup>55</sup> ECRI General Policy Recommendation No.11, Part IV.

## INTERIM FOLLOW-UP RECOMMENDATIONS

The three specific recommendations for which ECRI requests priority implementation from the Norwegian authorities are the following:

- ECRI recommends that the Norwegian authorities ensure that the general duty on public authorities and private employers to promote equality and prevent discrimination in carrying out their functions includes specific duties, notably in the field of monitoring, and the adoption and implementation of equality programmes as recommended in its General Policy Recommendation No.7 on national legislation to combat racism and racial discrimination<sup>1</sup>. ECRI recommends that the Norwegian authorities empower the Equality and Anti-Discrimination Ombud to legally enforce the duty for public authorities and employers to promote equality and eliminate racial discrimination in carrying out their functions. ECRI draws the attention of the Norwegian authorities to its General Policy Recommendation No.7 on national legislation to combat racism and racial discrimination, where it provides additional guidance on this issue<sup>2</sup>.
- ECRI urges the Norwegian authorities to increase the availability and use of professional interpretation in the health sector. ECRI recommends that the Norwegian authorities increase the availability and use of professional interpretation in the legal system.
- ECRI strongly recommends that the Norwegian authorities take steps to address racial profiling, notably in stop and search operations carried out by police and customs and immigration officials. In particular, ECRI recommends that the Norwegian authorities carry out in-depth research on racial profiling and monitor police activities in order to identify racial profiling practices. To these ends, ECRI strongly recommends that the Norwegian authorities draw inspiration from its General Policy Recommendation No. 11, which provides extensive guidelines in both areas<sup>3</sup>.

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

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<sup>1</sup> ECRI General Policy Recommendation No.7, paragraph 8 (and paragraph 27 of the Explanatory Memorandum).

<sup>2</sup> ECRI General Policy Recommendation No.7, paragraph 8 (and paragraph 27 of the Explanatory Memorandum).

<sup>3</sup> ECRI General Policy Recommendation No.11, paragraph 2 (and paragraphs 40-43 of the Explanatory Memorandum).





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