

**European Commission
Against Racism and Intolerance**

Third report on Norway

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Table of contents

Foreword	4
Executive summary	5
II. FOLLOW-UP TO ECRI'S SECOND REPORT ON Norway	6
International legal instruments	6
Constitutional provisions and other basic provisions	6
Criminal law provisions	7
Civil and administrative law provisions	9
Specialised bodies and other institutions	10
Administration of justice	10
Reception and status of non-citizens.....	11
- Refugees and asylum seekers	12
Education and awareness-raising	14
Access to public services	14
- Access to health.....	14
- Access to education	15
Vulnerable groups.....	17
Monitoring the situation in the country.....	18
Conduct of law enforcement officials.....	19
Media.....	20
Climate of opinion	21
III. SPECIFIC ISSUES	22
Equal opportunities and non-discrimination in housing and employment.....	22
Ensuring protection against racist expression	24
BIBLIOGRAPHY	27

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.

One of the pillars of ECRI's work programme is its country-by-country approach, whereby it analyses the situation as regards racism and intolerance in each of the member States of the Council of Europe and makes suggestions and proposals as to how to tackle the problems identified.

The country-by-country approach deals with all member States of the Council of Europe on an equal footing. The work is taking place in 4-5 year cycles, covering 9-10 countries per year. The reports of the first round were completed at the end of 1998 and those of the second round at the end of the year 2002. Work on the third round reports started in January 2003.

The third round reports focus on "implementation". They examine if ECRI's main recommendations from previous reports have been followed and implemented, and if so, with what degree of success and effectiveness. The third round reports deal also with "specific issues", chosen according to the different situations in the various countries, and examined in more depth in each report.

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 propose, if they consider it necessary, amendments to 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 following report was drawn up by ECRI under its own and full responsibility. It covers the situation as of 27 June 2003 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.

Executive summary

Since the publication of ECRI's second report on Norway, progress has been made in a number of the fields highlighted in the report.

Norway adopted a National Plan of Action to Combat Racism and Discrimination (2002-2006), which contains measures in key areas of legislation and policy, such as employment, education, public services, the criminal justice system and local communities. A bill against ethnic discrimination has been drafted and is planned to be adopted in 2004; new antidiscrimination provisions are also in the process of being introduced in the field of employment and housing. Efforts have been made to ameliorate the response of the criminal justice system, notably the police and the prosecuting authorities, to manifestations of racism and discrimination. Initiatives have also been taken to tackle discriminatory practices by the police, including the adoption of an action plan to raise the awareness of the police of diversity and its implications.

Some of the recommendations contained in ECRI's second report, however, have not, or not fully, been implemented, notably as concerns the need to ensure adequate protection against racist expression, an issue which remains of special concern to ECRI. In spite of the initiatives taken, much remains to be done to ensure that foreigners and persons of immigrant background enjoy genuinely equal opportunities in employment and housing as the rest of the population of Norway. The exploitation in public and political debate of problems, admittedly of serious concern, but applying only to a small minority of the immigrant population has resulted in the stigmatisation of certain minority communities as a whole. Furthermore, a number of issues as regards immigrants and asylum seekers in Norway are raised by ECRI in the report.

In this report, ECRI recommends that the Norwegian authorities take further action in a number of areas. It recommends, inter alia, that adequate protection be available to individuals against racist expression. In order to improve equal access and opportunities in employment and housing for foreigners and persons of immigrant background, ECRI recommends a thorough enforcement of the relevant legislation and the adoption of further initiatives. In the framework of the ongoing process of adoption of antidiscrimination provisions, ECRI furthermore encourages the Norwegian authorities to ensure that adequate legal provisions and mechanisms of enforcement are put in place. Additional work is also necessary towards a more satisfactory implementation of the legal provisions already in force. ECRI calls for further efforts in the field of policing a diverse society and in education. It formulates recommendations aimed at ensuring that the rights of asylum seekers and persons without legal status in Norway are thoroughly respected.

II. FOLLOW-UP TO ECRI'S SECOND REPORT ON NORWAY

International legal instruments

1. A special act of implementation is required in order that the provisions set forth in international agreements can be directly applicable in the Norwegian legal order. In its second report on Norway, ECRI noted that, by virtue of the Human Rights Act of 21 May 1999, three fundamental human rights instruments had been incorporated into Norwegian legislation, and that the provisions contained therein prevailed over any other conflicting statutory provisions. ECRI recommended that Norway ensure that all international human rights instruments are afforded the same status in Norwegian domestic legislation.
2. ECRI notes that the legislative commission established by the Government in March 2000 to draft a bill on prohibiting ethnic discrimination¹ (hereafter: "the legislative commission") has recommended that the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) be incorporated into Norwegian law through an addition to the Human Rights Act. ECRI also notes that the Convention on the Rights of the Child has been made directly applicable in the Norwegian legal order through an addition to the Human Rights Act in June 2003, and that the Norwegian authorities are considering the question of making also the Convention on the Elimination of All Forms of Discrimination against Women directly applicable in the same way, although a decision on the latter has not yet been taken.
3. ECRI notes that Norway signed Protocol No. 12 to the European Convention on Human Rights (ECHR) on 15 January 2003. The Norwegian authorities have stated their intention to ratify the Protocol and to incorporate it into the domestic legal order through an addition to the Human Rights Act. Norway has not yet signed the Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, although work in view of the signature of this instrument is reported to be well underway.

Recommendations:

4. ECRI recommends that Norway ensure that international human rights instruments are afforded the same prevailing status in Norwegian domestic legislation. In particular, it recommends this be done in respect of the ICERD and the Convention on the Elimination of All Forms of Discrimination against Women. ECRI recommends that the Norwegian authorities ratify as soon as possible Protocol No. 12 to the ECHR and that they sign and ratify the Additional Protocol to the Convention on Cybercrime.

Constitutional provisions and other basic provisions

5. In its second report on Norway, ECRI recommended that a specific reference to the prohibition of racial discrimination be introduced in the Constitution. No such reference has been introduced in the Norwegian Constitution. A debate is

¹ See below, Civil and administrative law provisions

currently ongoing on the reform of Article 100 of the Constitution, which deals with freedom of expression. ECRI will address this question in Section II of this report.

Recommendations:

6. ECRI reiterates its recommendation to the Norwegian authorities to strengthen the constitutional protection against discrimination. In this respect, 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 the constitution enshrine the principle of equal treatment, the commitment of the State to promote 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.

Criminal law provisions

7. In its second report on Norway, ECRI addressed the question of the extent to which the criminal law provisions in force in Norway allow for the racist motivation of ordinary offences to be taken into account in prosecutions and sentencing.
8. The Norwegian Criminal Code provides that the racist motivation constitutes a specific aggravating circumstance in respect of a limited number of offences: bodily harm, vandalism and some felonies against personal liberty. In addition, the Norwegian case law indicates that the racist motivation may be considered as an aggravating circumstance of all offences. Thus, for instance, the racist motivation has been considered as an aggravating circumstance in the case of violence and harassment leading, in April 1999, to the death of Beheim Karlsen, and in the case of the murder, on 26 January 2001, of Benjamin Hermansen. In this last case, which received considerable public attention and prompted much public debate, three persons were condemned to 18, 17 and 3 years of prison. ECRI notes, however, that the number of cases tried in court might not genuinely reflect the extent of the phenomenon of racially motivated offences in Norway. In this respect, the absence of data on the number of cases in respect of which the racist motivation has been invoked by the victims constitutes a particular obstacle.
9. In its second report on Norway, ECRI recommended the strengthening of criminal, civil or administrative law provisions in order to control the organisation, financing and propaganda activities of racist groups.
10. Following the murder of Benjamin Hermansen, the Ministry of Justice appointed an ad hoc committee to examine different legal approaches in respect of dissemination of racist ideas, racist organisations and racist marches. As concerns racist organisations, the committee concluded that the best approach in Norway is to concentrate on prohibiting the activities of the organisations, rather than the organisations as such. The legislative commission, which also addressed this question, concluded that a ban on racist organisations would not be effective as racist groups in Norway are generally not formally organised.
11. In its second report on Norway, ECRI noted the weak implementation of the provisions against racism and discrimination contained in the Criminal Code, notably Article 135a, which prohibits racist propaganda and incitement to racial hatred, and Article 349a, which prohibits refusal of goods and services in an

occupational or similar activity on grounds of religion, race, colour or national or ethnic origin and refusal of admission to a public performance or exhibition or other public gathering on the same grounds. ECRI recommended that steps be taken to sensitise police officers at all levels to the relevant legislation and the correct procedure to follow in complaints of racism and discrimination, and to sensitise the general public and key professional groups to these issues. ECRI also recommended the appointment of contact persons within the police with particular responsibility for dealing with such complaints.

12. Since ECRI's second report, these provisions have continued to be applied in a limited number of cases and have extremely rarely led to condemnations. ECRI will address the question of the implementation and possible reform of Article 135a in Section II of this report. As concerns Article 349a, the number of complaints filed was 8 in 1999, 15 in 2000 and 13 in the first half of 2001. However, only one case resulted in a condemnation. It has been reported to ECRI that these figures do not reflect the real extent of discrimination in access to public places, a phenomenon which appears to be rather widespread, especially in Oslo. ECRI is pleased to note that the Director General of Public Prosecutions has established a working group to consider the practice of the police and the prosecuting authorities with regard to cases concerning Articles 135a and 349a. The working group completed its work in November 2002. As regards cases under Article 349a, it highlights the limited number of complaints and stresses the sometimes poor quality of the investigations. For instance, in a case mentioned in ECRI's second report, concerning the allegedly discriminatory refusal of entry to a hospital, dismissed by the police and the prosecuting authorities, the working group found that the investigation was flawed, notably due to the fact that the alleged victim had not been heard and that it was not required of the hospital to produce data in its defence. ECRI understands that this and other cases will be used by the Director General of Public Prosecutions to issue guidelines to ameliorate the investigations of the police and the decisions of the prosecuting authorities in cases concerning Article 349a. ECRI also notes that, in its National Plan of Action to Combat Racism and Discrimination, the Norwegian government has undertaken to strengthen its efforts to combat discrimination at nightclubs, discotheques and restaurants and to propose that it may result in the withdrawal of licenses to serve alcohol.
13. Following the murder of Benjamin Hermansen, the Director General of Public Prosecutions issued instructions aimed at enhancing the priority given by the police and the prosecuting authorities to racially motivated crime and at keeping records of such cases. ECRI has been informed by the Norwegian authorities that, in conformity with the National Plan of Action, a person responsible for co-ordinating the police and the prosecuting authorities in cases of racism and discrimination has been appointed within each public prosecutor's office and that a position at the Office of the Director General of Public Prosecutions has been assigned specific responsibility for following up judicial developments and disseminating information on these issues. In the National Action Plan, the Government furthermore undertakes to enhance training of judges and police officers on racism and discrimination.

Recommendations:

14. ECRI recommends that the Norwegian authorities keep the effectiveness of the existing criminal law provisions against racism and discrimination closely under review. In particular, it recommends that the Norwegian authorities explicitly provide in law that racist motivation constitutes a specific aggravating

circumstance for all offences. ECRI also recommends the strengthening of legislation to counter racist organisations, including by providing for the possibility of dissolution of such organisations. It furthermore recommends that the criminal law provisions aimed at prohibiting discrimination be fine-tuned in order to increase their effectiveness, including through the provision of a wider and more severe range of sanctions. On all these aspects, ECRI draws the attention of the Norwegian authorities to its general policy recommendation No. 7 on national legislation to combat racism and racial discrimination.

15. ECRI recommends that the Norwegian authorities pursue their efforts to improve the quality of the investigations of the police and of the decisions of the prosecuting authorities in cases involving alleged acts of racism and racial discrimination. It highlights that such efforts should not be limited to cases under Articles 135a and 349a but should also extend to cases of ordinary offences in respect of which racist motivation is alleged.
16. ECRI recommends that the Norwegian authorities considerably strengthen their efforts to train judges on issues pertaining to racism and discrimination.

Civil and administrative law provisions

17. In its second report on Norway, ECRI recommended that Norway consider the adoption of a body of anti-discrimination legislation covering discrimination in all fields of life and providing for effective enforcement.
18. ECRI is pleased to note that the legislative commission established to draft a bill on prohibiting ethnic discrimination has issued its report in June 2002. The report proposes a general ban on ethnic discrimination applicable to a wide range of fields of social life. The main remedy provided for in the bill is compensation for non-pecuniary damages, although other possible sanctions include an order to correct or put a stop to a discriminatory act. The commission proposes a shared burden of proof in cases concerning ethnic discrimination and the introduction of a duty on public authorities and employers in both the public and the private sector to take action to promote equality and prevent ethnic discrimination. The report of the commission was widely circulated for consultation, including within civil society actors. ECRI understands that the Norwegian government intends to examine the numerous responses received in the framework of this consultation process and to submit to the Parliament a bill against ethnic discrimination in 2004.
19. ECRI draws the attention of the Norwegian authorities to its general policy recommendation No. 7 on national legislation to combat racism and racial discrimination, which contains detailed recommendations on the provisions which ECRI considers should feature in an effective body of civil and administrative legislation against racial discrimination. In this recommendation, ECRI addresses many of the questions that it understands have been raised in the consultation process and will be discussed by the Government. These questions include, for instance, the areas covered by the prohibition of discrimination, the range of sanctions that should be available in discrimination cases, and the enforcement of the duty to promote equality and to prevent racial discrimination. ECRI would like to stress, in particular, that in this general policy recommendation, it recommends that the law explicitly prohibit discrimination on grounds such as race, colour, language, religion, nationality or national or ethnic origin.

Recommendations:

20. ECRI encourages the Norwegian authorities in their efforts to adopt a comprehensive body of civil and administrative law provisions against racial discrimination. It encourages the Norwegian authorities to ensure that, in examining the different options, the need to grant the highest level of protection to victims of racial discrimination is taken into account. In this context, it strongly recommends that the Norwegian authorities take into consideration ECRI's general policy recommendation No. 7 on national legislation to combat racism and racial discrimination.

Specialised bodies and other institutions

21. In its second report on Norway, ECRI recommended that the Norwegian authorities develop further the role and functions of the Centre for Combating Ethnic Discrimination (SMED).
22. In its report, the legislative commission proposes the establishment of a separate enforcement mechanism for enforcing the envisaged Act against ethnic discrimination, which will have the authority to make decisions and determine sanctions. This enforcement mechanism corresponds largely to that already in place to enforce the existing provisions on gender equality and ECRI understands that the Norwegian government is therefore considering the possibility of merging the two.
23. As concerns the role of SMED, which currently includes the provision of legal assistance to victims of discrimination, the legislative commission proposes that SMED should discontinue its legal assistance functions – this would be ensured by the ordinary system of providers of legal aid – and become a Centre for Ethnic Equality, whose functions would be promotion of equality irrespective of ethnic origin, including through information campaigns, training initiatives for public authorities and professional groups and general monitoring functions. ECRI notes that non-governmental organisations have expressed concern at this proposal, as they consider that specialised legal assistance will continue to be necessary even after the establishment of the separate administrative enforcement mechanism, especially for those claims related to racial discrimination which would not fall in the competence of such mechanism.

Recommendations:

24. ECRI recommends that the Norwegian authorities ensure that specialised legal assistance is available to alleged victims of racial discrimination. In this respect, it draws the attention of the Norwegian authorities to its general policy recommendation N° 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level and to its general policy recommendation No. 7 on national legislation to combat racism and racial discrimination, both of which contain detailed recommendations on the role and functions to be entrusted to specialised bodies.

Administration of justice

25. ECRI notes that the non-governmental sector has undertaken research aimed at identifying possible patterns of racial discrimination or situations of disadvantage

of minority groups in the justice system. ECRI has received reports of difficulties in ensuring professional interpretation to persons who do not master the Norwegian language sufficiently, but also of patterns of differential treatment as concerns sentencing and of instances of prejudicial remarks and attitudes in courts. The Norwegian authorities have informed ECRI that work has been initiated to ensure that the services provided by interpreters engaged in the public service generally, and the legal services in particular, is of adequately high standards.

Recommendations:

26. ECRI recommends that the Norwegian authorities initiate research aimed at identifying possible patterns of discrimination or situations of disadvantage of minority groups in the justice system. This research should also include, as appropriate, a gender perspective.

Reception and status of non-citizens

27. In its second report on Norway, ECRI noted reports of difficulties encountered by foreigners to join or visit their families in Norway. It also noted allegations that foreign women who had been ill treated by their husbands may be subject to deportation if they divorce. ECRI recommended that the Norwegian authorities ensure that the fundamental rights laid down in the European Convention of Human Rights, such as the right to private and family life, are fully respected for persons of immigrant origin residing in Norway.
28. Non-governmental organisations report a restrictive trend in the policy of granting visa for visits, especially since 11 September 2001, and family reunification. The Norwegian authorities have stated that some modifications have been adopted in the field of family reunification in order to conform to generally more restrictive European standards. A particular problem that has been put to ECRI's attention is connected with the requirement that the person residing in Norway possess the necessary means to support the person who applies for family reunification. ECRI notes that, since May 2003, this requirement has been extended to persons who have been granted humanitarian status in Norway, who, as will be mentioned below, represent a considerable number of those who apply for asylum. It has also been reported that for certain categories of persons, including non married partners and girls from certain countries who, in these countries, are considered to have reached the age of marriage, it is particularly difficult, in practice, to be granted the right to join their families in Norway. The time for processing application for family reunification is also reported to have become increasingly long.
29. The Norwegian authorities have stated that foreign women who have divorced from their husbands following ill-treatment have a right to obtain residence permits and are, thus, not expelled: in order for this permit to be granted no special conditions apply, and, as a rule, the woman's account of the facts is sufficient, unless the authorities have reasons to doubt its truthfulness. The Norwegian authorities recognise that, in some cases, ill-treated foreign women may not be aware of this right and therefore, in order to avoid expulsions, may end up staying in abusive relationships until after three years of residence in Norway, when they are entitled to a permanent residence permit. However, ECRI has continued to receive reports of serious difficulties for ill-treated foreign women to obtain residence permits following divorce due to ill treatment; it has been reported that not only, in practice, the account of the woman is often not

believed, but that medical certificates are also in some cases not enough to prove ill treatment.

30. Foreigners who have committed a criminal offence may in some cases be expelled from Norway, although some categories of persons, such as those born in Norway, may not be expelled. Non-governmental organisations have reported to ECRI that there is no clarity on the criteria used for selecting the foreigners subject to expulsion and that expulsions have been executed also in respect of persons with close family ties in Norway or towards a country where the person expelled had no family ties.

Recommendations:

31. ECRI reiterates its recommendation that efforts be made to 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. It recommends in particular that the Norwegian authorities ensure that the right of the foreign spouse to obtain a residence permit in case of divorce due to ill treatment is thoroughly respected in practice. ECRI also recommends to the Norwegian authorities to ensure that no expulsion order is served on foreigners in violation of their private and family life.

- Refugees and asylum seekers

32. In its second report on Norway, ECRI recommended that the standard of services and housing in reception centres be adapted to the duration of stay of asylum seekers. It supported the Norwegian government's decision that asylum seekers be allowed to work while they are waiting for their asylum application to be processed.
33. Since ECRI's second report, the average time for the examination of asylum applications is reported to have reduced. However, many asylum seekers continue to reside in reception centres for a long time, sometimes for two or three years, including after recognition of refugee status and pending a decision on their settlement in a municipality. ECRI notes that initiatives have been taken to improve the health services provided to asylum seekers in reception centres. ECRI welcomes the fact that asylum seekers may be allowed to work after they have had their initial interview. It notes, however, that they are not allowed to enrol secondary or higher education and that the offer of Norwegian language courses has recently been removed. ECRI also notes that reception centres are often located in isolated areas with little opportunity for interaction with the outside world. It has been pointed out that these conditions taken together unduly delay the integration process of refugees in Norway. ECRI notes that only around 2% of asylum seekers secure refugee status, while between 20 and 30% of asylum applicants are granted residence permits on humanitarian grounds.
34. In its second report, ECRI stressed that asylum seekers, even if their claims are not considered to be valid by the authorities, should not be treated as criminals and addressed in this context the issue of detention of asylum seekers who cannot produce any identity documents or who are considered likely to evade a deportation order.
35. Both the Norwegian authorities and non-governmental organisations have reported to ECRI that the number of asylum seekers in detention is relatively

small. In some cases, the maximum period of detention of 6 or 12 weeks, respectively for those who cannot produce any identity documents and for those who are considered likely to evade a deportation order, has not been respected.

36. It has been reported to ECRI that a number of persons who, for various reasons, cannot be returned to their countries of origin, live in Norway -- some for a considerable length of time – without legal status. ECRI notes that there are at present no mechanisms to legalise the situation of persons who are in Norway without legal status.
37. ECRI notes that, in December 2002, the Norwegian government submitted a bill to the Parliament on an introduction scheme for newly arrived immigrants. The Parliament decided for the adoption of the bill in June 2003. The new Act will enter into force by 1 September 2003 as a voluntary arrangement, and should be implemented in each municipality not later than 1 September 2004. According to the Act, newly arrived refugees and persons with a residence permit for humanitarian reasons and their families who need basic qualifications, have a right and an obligation to take part in individually adapted introduction programmes. The programme, which in principle will last for a period of up to two years, aims at providing knowledge of Norwegian society and language, and at preparing for further education or employment. Those who participate in the programme are entitled to an introductory benefit, generally higher than the ordinary social welfare benefit, which will be reduced in case the person does not participate in the programme without a valid reason. Those who take part in the programme are also entitled to a housing benefit. The introductory programme will be administered by the municipalities. Non-governmental organisations and representatives of immigrant communities have reported to ECRI that the programme responds largely to a demand from the immigrant communities. They point out, however, that exceptions must be allowed for persons who are in special or vulnerable situations.

Recommendations:

38. ECRI recommends that the Norwegian authorities ensure that asylum seekers can participate into Norwegian society during the examination of their asylum applications, including through adequate availability of opportunities to study and learn the Norwegian language. It encourages the authorities to deploy efforts to integrate the reception centres into the local communities. ECRI furthermore draws the attention of the Norwegian authorities to the small rate of recognition of asylum seekers as refugees.
39. ECRI encourages the Norwegian authorities to keep the situation as concerns detention of asylum seekers under review and to ensure that it is always used as a last resort.
40. ECRI recommends that the Norwegian authorities address the situation of persons living in Norway who cannot be returned to their countries of origin, including, as necessary, through the establishment of procedures to legalise the situation of persons who are in Norway without legal status.
41. ECRI recommends to the Norwegian authorities to ensure that the introductory programme for newcomers is adapted to the special circumstances of each individual person, including his or her level of education, professional competence, age and health status. ECRI furthermore recommends that the

Norwegian authorities ensure that a high standard of training is provided in the framework of the introductory programme in all municipalities, including, as necessary, through guidelines, monitoring mechanisms, training of educators and transmission of best practices between different municipalities.

Education and awareness-raising

42. In its second report on Norway, ECRI recommended that specific training on human rights and issues of racism and discrimination be introduced in teacher training courses. It also recommended that the Norwegian authorities ensure the removal of passages unlikely to foster tolerance from school textbooks.
43. ECRI has been informed that, from August 2003, a plan will enter into force aimed at introducing human rights as a compulsory course in teacher training. As concerns textbooks, the Norwegian authorities have pointed out that, since Spring 2000, the responsibility for ensuring the quality control on textbooks – i.e. their conformity with the national curriculum and the legislation in force -- has been transferred from the central authorities to the publishers and the individual schools.
44. ECRI notes that, although courses such as social sciences and Christianity, religion and ethics in primary and secondary schools include teaching on issues falling in the field of interest of ECRI, there is no specific compulsory course on human rights in Norwegian schools at present – human rights were introduced as a national optional subject in upper secondary schools in 2002/2003. ECRI also notes that the Ministry of Education has initiated a campaign on recruitment of teachers, which pays particular attention to the need to increase the representation of minority groups within the teaching staff.

Recommendations:

45. ECRI encourages the Norwegian authorities to ensure that issues of mutual respect and of racism and discrimination are adequately addressed as part of the human rights curriculum of teacher training. It recommends that the Norwegian authorities monitor the quality control on textbooks carried out by publishers and the individual schools. It encourages the Norwegian authorities to strengthen the human rights dimension of school curricula and to pursue their efforts to enhance recruitment of teachers from minority groups.

Access to public services

- Access to health

46. In its second report on Norway, ECRI encouraged the Norwegian authorities to take further measures in order to improve the access of certain disadvantaged minorities to health, such as the provision of information about availability of health services in a number of languages and the recruitment of staff of immigrant background. ECRI noted that a Plan of Action to cover the health needs of the Sami was to be set up.
47. The Plan of Action to cover the health needs of the Sami was presented in the Autumn 2001. ECRI notes that one of the main challenges highlighted in the report is the provision of health services, and information on the availability of

these services, in the Sami language, which the government intends to ensure beyond the geographical areas in which the Sami currently enjoy these rights by law. The measures contained in the plan include training of interpreters and the establishment of a psychosocial centre for the Sami and of a research centre for Sami health. The report stresses the need for the authorities to listen to the demands from the Sami population. In this respect, ECRI notes that a constructive dialogue is ongoing between the Health authorities and the Sami Parliament.

48. Efforts to improve the provision of health services, including their availability in different languages, have been made also in respect of other minority groups, such as asylum seekers in reception centres. As concerns recruitment of staff of immigrant background, ECRI notes that the Norwegian Institute of Public Health has taken part in several initiatives under the Plan of Action for Recruitment of Persons with an Immigrant Background in the Central Government Sector (1998-2000)² and that 15.5% of the personnel of the Institute is composed of persons of immigrant background. The Norwegian authorities have informed ECRI that a report on health in Norway presented in January 2003 emphasises the need to address the health situation of women, and particularly immigrant women. The Ministry of Health reports that it is also actively participating in the preparation of the report on Norway as a multicultural society, which should be presented in 2004.
49. In its second report on Norway, ECRI noted that, in the context of the criteria set by the Norwegian Blood bank for blood donation, certain statements made by the Norwegian Board of Health, to the effect that Africans were a high-risk group for HIV/AIDS had been criticised by Norwegian anti-racist groups as being discriminatory and stigmatising. The Norwegian authorities have informed ECRI that the guidelines regulating blood donation are being reviewed and are expected to be ready before the end of 2003.

Recommendations:

50. ECRI encourages the Norwegian authorities to ensure a thorough implementation of the Plan of Action to cover the health needs of the Sami, in close consultation with representatives of the Sami communities. It encourages the Norwegian authorities to pursue their efforts to reach minority groups with limited access to health services, including through provision of information about availability of health services in a number of languages and the recruitment of staff of immigrant background. It strongly encourages the Norwegian authorities to take concrete steps to address the health needs of women belonging to minority groups, including women of immigrant background, and to do so in close consultation with representatives of these groups and, particularly, women. ECRI furthermore underlines that all possible care should be used to avoid that any measures taken in the field of health, including blood donation, impact in a discriminatory or stigmatising way on minority communities.

- Access to education

51. In its second report on Norway, ECRI recommended that the system of classes for the teaching of NOM (Norwegian as a mother tongue) and NOA (Norwegian as a second language) be reviewed in order to ensure that no discrimination

² See below, Equal opportunities and non-discrimination in housing and employment

exists and that children's language abilities are objectively re-assessed at regular intervals.

52. ECRI has received numerous reports according to which there is still no uniform mechanism or criteria in practice for the assignment of school children to NOM or NOA classes. Individual schools have therefore developed their own practices in this respect. In many cases, the decision is made by the teacher or the headmaster. The will of the parents is taken into account in certain schools. However, many parents are reported not to be aware of the assignment of their children to NOA classes. The criteria on the basis of which the assignment is made also vary widely. The Norwegian authorities have informed ECRI that tools have been prepared in order to enable teacher to better assess the linguistic competences of the children. However, ECRI notes reports according to which a number of schools tend to assign automatically children who present "differences" of any sort to NOA classes. For instance, the print media published a report according to which 85% of children of immigrant background, including Norwegian citizens, attended NOA classes. According to the Norwegian authorities, in 2002/2003, 81% of non-Norwegian mother tongue children in primary and lower secondary education attended additional or adjusted training in the Norwegian language. The Norwegian authorities have stressed that the NOA classes are intended as a provisional measure to enable the smooth transition of school children to learning Norwegian as a mother tongue. ECRI notes, however, that in some cases, school children assigned to NOA classes never make the transition to NOM classes during their 10 years of compulsory education. ECRI also notes that in some cases, assignment to NOA classes can be stigmatising for children and that certain employers clearly prefer to hire persons who have followed NOM classes. ECRI has registered a strong demand from the non-governmental sector for detailed data on the system of NOM and NOA classes, including the number of students assigned to these classes, and the number of students who are transferred from one class to the other.
53. In its second report on Norway, ECRI noted that the Education Act, which entered into force on 1 August 1999, gave pupils in the Sami districts the right to receive all education in Sami. Outside the Sami districts, this right is granted when at least ten pupils in the municipality require so. This right is sustained as long as there are six pupils left in the group. ECRI notes that the Sami Parliament is engaged in a dialogue with the Norwegian authorities in order to grant Sami pupils an individual right to education in the Sami language throughout the country.
54. In its second report on Norway, ECRI recommended that the religious education provided in schools reflect the religious diversity of Norwegian society and that the predominance of one particular religion as a compulsory area of study be avoided.
55. Following an evaluation of the compulsory course entitled "Christian knowledge and religious and ethical education", the Norwegian authorities have standardised the rules governing the exemption of pupils from the course, which will be limited to activities of a religious nature. The syllabus for this subject was also revised by a Committee that included representatives of religious minority groups. The balance in the teaching of the different religions has reportedly been adjusted and the subject is now entitled "Christianity, Religions and Ethics". Guidelines have also been developed for teachers of this subject. ECRI notes that the Islamic Council of Norway and the Norwegian Humanist Association have brought, without success, legal suites claiming the right of children to total

exemption from the course. ECRI notes that a case has been filed before the European Court of Human Rights and a communication submitted to the United Nations Human Rights Committee.

Recommendations:

56. ECRI strongly recommends that the Norwegian authorities devote efforts to monitoring the functioning of the system of assignment of school children to NOM and NOA classes. It recommends that assignment of children to these classes is made on the basis of clear criteria and of a uniform procedure and that the observance of these criteria and procedure in practice is rigorously monitored. It also recommends more transparency as concerns data on the system of NOM and NOA classes, including the number of children in NOM and NOA classes and their transition from one class to the other.
57. ECRI encourages the Norwegian authorities to pursue their dialogue with the Sami Parliament on the issue of granting Sami pupils an individual right to education in the Sami language throughout the country.
58. ECRI reiterates its recommendation that the religious education provided in schools reflect the religious diversity of Norwegian society and that the predominance of one particular religion as a compulsory area of study be avoided.

Vulnerable groups

59. Persons of immigrant background continue to be particularly vulnerable to racism and discrimination. As highlighted in other sections of this report, ECRI notes that this situation is, at least in part, connected with the events of 11 September 2001 and the attention devoted by some media and politicians to issues such as forced marriages and female genital mutilation. While it condemns the practices of forced marriages and female genital mutilation, ECRI notes that the exploitation of these issues in public debate has further contributed to a climate where minority groups, and notably Muslims, are the targets of generalisations and stereotypes, sometimes leading to acts of racism or discrimination.
60. Some isolated incidents of harassment of members of the Sami population continue to be reported, although the situation globally seems to be improving. An issue of concern to the representatives of the Sami population is the draft bill on Legal Rights to, and Management of, Land and Natural Resources in Finnmark County (the Finnmark Act). The Sami Parliament is concerned, among other aspects, that the draft bill does not sufficiently guarantee their right to preservation of traditional livelihood.
61. In its second report, ECRI noted the research work being undertaken on assimilation policies and systematic serious human rights violations, such as forced sterilisations of women, practiced in the past in Norway against the members of the Romani communities. ECRI understands that the establishment of a system of reparation for human rights violations has been examined by the Norwegian Government in close consultation with the representatives of the Romani communities. The latter have stressed that human rights violations were not limited to forced sterilisation of women, but included other practices such as lobotomy and forced separation of children, and that any system of reparation should take all violation of human rights into account. As concerns other areas,

representatives of the Romani communities point out that recent legislation has made more difficult the exercise by Romani people of certain professions in the craft industry traditionally exercised by them, as qualifications or equipment that they do not always possess have now been made compulsory for these professions. The survival and development of the Romani language is also an area of priority for some representatives of these communities. In addition, ECRI notes that only a minority of the members of the Romani community is itinerant or partially itinerant and that the itineraries are reported to be generally well established, which should make the organisation of education for children of itinerant families less difficult.

Recommendations:

62. ECRI encourages the Norwegian authorities to pursue their dialogue with the Sami Parliament in view of the adoption of the Finnmark Act.
63. ECRI furthermore encourages the Norwegian authorities to pursue their dialogue with the representatives of the Romani communities in view of the establishment of a system of reparations for past human rights violations committed against the members of these communities. It also encourages the Norwegian authorities to intensify their efforts to support the Romani language and to provide children of itinerant families with regular education. ECRI furthermore encourages the Norwegian authorities to ensure that the exercise by Romani people of certain traditional professions in the craft industry is preserved.

Monitoring the situation in the country

64. In its second report on Norway, ECRI recommended that the Norwegian authorities consider collecting data to assess and evaluate the situation and experiences of vulnerable groups.
65. ECRI has registered a strong demand from the Norwegian non-governmental sector for accurate data on the situation of minority groups across a range of areas of social life, including, for instance, education, employment, housing and relations with the police and immigration authorities. It has been pointed out that such data exist, although limited to certain priority areas of policy. In the National Plan of Action, the Norwegian authorities have committed themselves to a certain number of initiatives in this field, including the conduct of a survey on integration and living conditions for people in the immigrant community. ECRI considers that more accurate information on the real position of different groups in society across a number of fields of social and economic life would be desirable, as it would help uncover the presence of direct and indirect discrimination or institutional discrimination.
66. In its second report on Norway, ECRI recommended that the Norwegian authorities develop a registration system enabling the government to monitor racially motivated incidents.
67. In its National Plan of Action, the Norwegian government undertakes to improve the system for the registration of instances of racist and discriminatory behaviour in the police criminal records. It has been reported to ECRI that work has already started in this respect, although the development of a performing informatic tool will require time.

Recommendations:

68. ECRI encourages the Norwegian authorities to improve their monitoring systems by collecting information broken down according to categories such as "race", colour, religion, language, nationality and national or ethnic origin, with due respect to the principles of confidentiality and the voluntary self-identification of persons as belonging to a particular group. These systems should also take into consideration the gender dimension, particularly from the point of view of possible double or multiple discrimination. ECRI also draws the attention of the Norwegian authorities to its general policy recommendation n° 4 on national surveys on the experience and perception of discrimination and racism from the point of view of potential victims.
69. ECRI encourages the Norwegian authorities to strengthen their efforts to ensure that comprehensive data are available on the way the different levels of the criminal justice system, from the police to the prosecuting authorities and the courts, deal with racist and discriminatory acts. It points out that these acts should also include racially motivated offences³. ECRI also stresses the role that should be played in this respect by the new mechanisms that may be established by the envisaged Act against ethnic discrimination⁴.

Conduct of law enforcement officials

70. In its second report on Norway, ECRI recommended that steps be taken to ensure that no discriminatory practices exist in the controls carried out at borders and by the police. ECRI recommended, in particular, an intensification of efforts to train the officials responsible for these areas and the introduction of a system for monitoring the frequency of police checks on individuals, in order to uncover any possible pattern of disproportionate checks on certain groups of the population of Norway. ECRI also recommended that the Norwegian authorities intensify their efforts to recruit police officers from minority groups.
71. Following ECRI's second report, the Ministry of Justice and Police set up a working group with the aim to improve the police officers' understanding of the legislation against racism and discrimination and of international human rights instruments and to raise their awareness of diversity and its implications. In November 2001, the working group presented a report including a range of proposals to prevent racism and discrimination within the police. This plan received a positive response from civil society. Many of the proposals made by the working group are reflected in the National Plan of Action. Thus, a forum consisting of representatives of the Directorate of the police and of relevant non-governmental organisations has been established, while similar local fora are in the process of being established in each police district. The objective of these fora is to ensure better communication and dialogue between the different parties involved. The procedure for registering complaints of alleged misbehaviour of the police has been improved and the police have been instructed to keep records of all complaints of racism and discrimination against them and to inform the complainants of the follow-up given to their complaints. Training measures are also envisaged. ECRI notes however, that, at present, there is no compulsory course focusing on racism and discrimination in the three-year curriculum taught at the Police Academy, although an optional course on these issues exist. It also

³ See above, Criminal law provisions

⁴ See above, Specialised bodies and other institutions

notes that optional in-service courses have been proposed by the Oslo police on the practical challenges faced when policing a diverse society.

72. In the National Plan of Action, the Government undertakes to introduce a system of registration in connection with police checks, which enables individuals to document how frequently they are checked. ECRI understands that this system will be introduced as a pilot project and that, at the demand of the Parliament, the Ministry of Justice and Police intends to submit before the end of the Summer 2003 a proposal on the modalities for the introduction of such a system. ECRI points out that, in consideration of reports of disproportionate checks on members of minority groups, especially since 11 September 2001, the introduction of a system for monitoring the frequency of police checks on individuals is particularly desirable.
73. The Norwegian authorities report that the many efforts undertaken to recruit members of minority groups in the police have not always been successful. However, they note that, recently, the number of persons belonging to minority groups who have applied for positions with the police has considerably increased.

Recommendations:

74. ECRI encourages the Norwegian authorities to thoroughly implement the measures envisaged by the National Plan of Action in respect of law enforcement officials.
75. ECRI encourages the Norwegian authorities to take further steps to increase the competence of police officers in policing a diverse society and their knowledge of issues of racism and discrimination, through compulsory initial and, as necessary, in-service training on these issues.
76. ECRI encourages the Norwegian authorities to proceed with the introduction of a system for monitoring the frequency of police checks on individuals. It recommends that such a system be evaluated and that civil society and representatives of the immigrant communities participate in the evaluation of this system with a view to its possible extension.
77. ECRI encourages the Norwegian authorities to pursue their efforts to improve representation of minority groups in the police. It stresses that efforts are also needed to ensure that conditions of work, such as a workplace free from harassment, be such that these persons will wish to stay in the police once recruited.

Media

78. In its second report on Norway, ECRI noted that immigrants and young people of immigrant background mostly appeared in media reports in connection with cases involving crime. ECRI therefore recommended that the media profession ensure that the guidelines contained in the existing codes of conduct are put into practice.
79. ECRI notes that persons of immigrant background have continued to feature in the media predominantly in connection with crime stories or, especially in 2000 and 2001, in connection with the issues of forced marriages and female genital

mutilation. The Norwegian Press Council monitors the observance by the media profession of the Code of Ethics of the Norwegian Press, which requires, for instance, that irrelevant personal or private aspects should not be mentioned and that the use of titles unrelated to the text should be avoided. The Council has received a very limited number of complaints of breach of these recommendations in respect of cases involving persons of immigrant origin and has issued warnings accordingly.

Recommendations:

80. ECRI recommends that the media profession continue to monitor the observance of the Code of Ethics. It also stresses that a stronger representation of persons of immigrant background in the media profession could affect positively the image of persons of immigrant background as reflected in the press.

Climate of opinion

81. In its second report on Norway, ECRI expressed concern at the use of arguments scapegoating persons of immigrant origin within mainstream political discourse and encouraged politicians to take a firm and public stance against the use of racist or xenophobic discourse in political life. ECRI also recommended firmer measures, such as more active use of the legislative possibilities against racist propaganda and incitement to racial hatred, against political parties that resort to this type of discourse.
82. It has been reported to ECRI that, since ECRI's second report, the situation as concerns the use of racist or xenophobic discourse in political life has slightly improved. However, the use of arguments scapegoating persons of immigrant origin and against the adoption of measures targeting disadvantaged groups has continued. ECRI also expresses concern at the stigmatising effects that the exploitation by some mainstream politicians of issues such as forced marriages, female genital mutilation and gang violence, has had on entire communities. While it recognises the serious concerns to which such issues give rise, ECRI notes that such discourse has resulted in increased generalisations and negative stereotypes vis-à-vis persons of immigrant origin.
83. In its second report on Norway, ECRI noted that, thanks to initiatives such as the EXIT project and the dissemination of experience by the Multi-Professional Advisory Service in dealing with cases of conflict, the problem of extreme-right youth groups appeared to be under control.
84. It has been reported to ECRI that these groups are at present not very well organised and that many of their leaders are not active as they are serving prison sentences for having committed criminal acts. However, ECRI is concerned that these groups are still present in Norwegian society and that, as illustrated by the acts reported in other parts of this report, some of their members still put into practice their racist beliefs.

Recommendations:

85. ECRI stresses 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 the members of minority communities. ECRI

emphasises that politicians should also stress the positive role of these communities in Norwegian society and address in public debate all problems faced by the immigrant communities, such as those stemming from racism and discrimination.

86. ECRI strongly encourages the authorities to keep the situation as concerns extreme-right youth groups under control and to take the necessary corrective action, including by ensuring that the relevant legislation is fine-tuned and effectively implemented, as suggested in other parts of this report.

III. SPECIFIC ISSUES

Equal opportunities and non-discrimination in housing and employment

87. It is generally recognised that in Norway, as in many other European countries, employment and housing are areas in which discrimination is particularly acute. Discrimination in these areas also appears to be of particular concern for the victims, as illustrated by the fact that most complaints of discrimination received by the SMED concern employment. While a number of initiatives have been taken in order to combat discrimination in employment and housing and to promote equal access and participation of foreigners and persons of immigrant background in these areas, much remains to be done to ensure that persons belonging to these groups enjoy genuinely equal opportunities in employment and housing as the rest of the population of Norway.
88. As concerns employment, in its second report on Norway, ECRI noted that the application of Article 55a of the Act of 4 February 1977 No.4 relating to Worker Protection and the Working Environment (hereafter "the Working Environment Act") remained problematic. ECRI notes that Article 55a was modified in 2001. These changes enabled the alleged victim of discrimination to obtain from the employer written information on the formal qualifications of the person recruited, and established that the alleged victim of discrimination can file a civil action, in which the burden of proof is shared with the alleged discriminator, and obtain pecuniary damages from the employer. ECRI notes, however, that these changes have not resulted in more cases being brought under Article 55a. The introduction of a new chapter in the Working Environment Act concerning discrimination is currently being discussed and is expected to enter into force in January 2004. According to the new provisions, the prohibition of discrimination, which will cover a wide range of grounds, will apply not only to recruitment, but also throughout the work relationship and to dismissals and it will be possible to file a claim for non-pecuniary damages. However, at the moment, it is not clear whether the enforcement mechanism, which may be established in the framework of the envisaged Act against ethnic discrimination,⁵ will be made competent to ensure observance of these new provisions.
89. In its second report on Norway, ECRI also recommended that the arrangements for recognition of education and professional experience of foreigners be improved. The Norwegian authorities report that a database on foreign education has been established in order to improve the system of recognition of educational qualifications from abroad and that the procedures and requirements for recognition of foreign diplomas and other certificates showing formal qualifications have been simplified: for instance, passing a Norwegian language

⁵ See above, Specialised bodies and other institutions

test is no longer required in connection with the recognition of qualifications. Systems for evaluating formal and non-formal professional qualifications of foreigners by means of practical tests, with a view to facilitating their access to the labour market, have also been piloted. The National Action Plan mentions that the Government is continuing its efforts in these areas.

90. In its second report on Norway, ECRI also recommended an evaluation of the Plan of Action (1998-2000) for Recruiting Persons with Immigrant Background to the State Sector, and the continuation of efforts in this field. The Government reports that, at the end of 2001, the proportion of persons of non-Western immigrant background was of 3.7% in the Ministry of Health and Social Affairs, 3.3% in the Ministry of Education, Research and Church Affairs and 3.6% in the Ministry of Local Government and Regional Development, while smaller proportions of this category of employees were registered in other ministries. The evaluation of this plan, which took place at the end of 2000, concluded for a continuation of the measures contained therein, some of which are reflected in the National Plan of Action. According to the National Plan of Action, all central government agencies will be required, when advertising job vacancies, to encourage persons with an immigrant background to apply. As a pilot project, they will also be required to call for an interview at least one applicant of immigrant background for each vacant post, provided that the applicant is qualified for the position. All central government agencies will also be encouraged to establish "racism-free" zones, whereby clear objectives will be set in the field of raising staff awareness of their own attitudes towards diversity, both internally and in relations with users.
91. The National Plan of Action also contains measures targeting the private sector, including the establishment of a forum for ethnic diversity in working life, which brings together government representatives, the social partners and non-governmental organisations in order to discuss and promote new initiatives and transfer knowledge to further develop diversity in the labour market. According to the National Plan of Action, the Employment Agencies will have to focus on finding employment for unemployed immigrants – ECRI understands that concrete targets have been set in this respect -- and improve the quality of the service provided to these persons.
92. The situation as concerns housing for foreigners and persons of immigrant background does not appear to have significantly changed since ECRI's second report. Persons of immigrant origin are still much more likely to rent accommodation than the rest of the Norwegian population, although only about 20% of housing units in Norway are for rent, most of which are owned by private households. Discrimination, coupled with social and economic disadvantage, can still make it very difficult for these persons to find adequate housing. Most problems of discrimination are reported to come from private landlords and housing co-operatives. In its second report on Norway, ECRI noted that discrimination on the part of an individual landlord was not prohibited by legislation, and that only one case had been brought concerning overtly discriminatory offers of housing carried by a housing agency, which the Supreme Court found not to be in violation of Article 349a⁶. ECRI recommended research into discriminatory practices and barriers or exclusionary mechanisms in public and private sector housing.

⁶ See above Criminal law provisions

93. ECRI welcomes the fact that, in December 2002, the Norwegian Government has submitted to the Parliament a bill which introduces provisions against discrimination on grounds, *inter alia*, of religion, colour, language, ethnic or national origin, into legislation regulating social housing, private housing and housing co-operatives. The new law was adopted by the Parliament in June 2003 and is expected to entry into force in 2004. The Norwegian authorities have informed ECRI that the enforcement mechanism which may be established in the framework of the envisaged Act against ethnic discrimination⁷ will be made competent to ensure observance of these new provisions.
94. ECRI has been informed that the government is currently working on the preparation of a report on housing policy. Among other aspects, the report will take into account the position of minority groups on the housing market and their needs. The Norwegian authorities recognise that housing is one of the areas in which discrimination is more acute. It does not appear to ECRI, however, that the National Plan of Action contains an adequate range of measures in the field of housing to reflect such level of priority.

Recommendations:

95. ECRI recommends that the Norwegian authorities take further steps to combat discrimination of persons of immigrant background in the labour market and to ensure that these persons enjoy genuinely equal opportunities in employment. It encourages in particular the Norwegian authorities to pursue their efforts to improve the system of recognition of formal and non-formal educational and professional experience of foreigners. ECRI also encourages the Norwegian authorities to pursue their efforts to improve the representation of persons of immigrant background in the public sector and stresses, in this respect, the need that representation is satisfactory at all career levels. ECRI strongly recommends a thorough implementation of the initiatives enumerated in the National Plan of Action.
96. ECRI recommends to the Norwegian authorities to deploy special efforts to address the problems of discrimination and disadvantage of persons of immigrant background in housing. In addition to a rigorous implementation of the antidiscrimination provisions in the field of housing, such efforts should include more proactive measures, including, for instance, requiring central and local authorities to draw up targeted action plans to address the housing situation of minority groups.

Ensuring protection against racist expression

97. In its second report on Norway, ECRI noted the difficulties encountered in implementing Article 135a of the Criminal Code, which, as mentioned above⁸, criminalizes public utterances and communications which threaten, insult, or subject to hatred, persecution or contempt a person or a group of persons because, *inter alia*, of their creed, race, colour or national or ethnic origin. These difficulties were, at least in part, linked to the strong weight given by the Norwegian judicial system to freedom of speech. ECRI expressed the hope that the September 1999 report of the committee established to clarify the balance between the freedom of expression and other rights and freedoms guaranteed by

⁷ See above, Specialised bodies and other institutions

⁸ See above, Criminal law provisions

Norwegian legislation and practice would stimulate debate on the importance of ensuring protection against racist statements and insults.

98. Since ECRI's second report, 38 complaints were filed on the basis of Article 135a in 1999, 32 in 2000 and 39 in the first half of 2001. However, ECRI notes that final condemnations have been extremely rare. These have included, in 2002, the first unconditional prison sentence for racist speech pronounced against the leader of a nationalist group who had distributed, over the Internet and through the print media, strongly depreciatory remarks about minority groups in general and Jews in particular. The verdict, issued in the district court was not appealed. ECRI notes that the working group established by the Director General of Public Prosecutions to examine the practice of the police and the prosecuting authorities with regard to cases concerning Articles 135a and Article 349a⁹ has examined 130 cases brought under Article 135a. The working group found that the investigations had been carried out satisfactorily in about half of the examined cases, whereas for the other half, investigations had not been carried out adequately. ECRI understands that the Director General of Public Prosecutions intends to follow up the findings of the working group, including through training initiatives and the establishment of clear guidelines on how to carry out investigations in cases brought under Article 135a.
99. While it welcomes these initiatives, ECRI considers that the Norwegian legislation, as it currently stands and is interpreted, does not provide individuals with adequate protection against racist expression. In ECRI's opinion, this has become particularly apparent following the Supreme Court's judgment of 17 December 2002, which overturned a Court of Appeals decision to condemn the defendant for breach of Article 135a. In the context of an illegal demonstration held in memory of Rudolf Hess, attended by about 30 persons -- some of them carrying Norwegian or South State flags -- the defendant resorted to strongly anti-immigrant and antisemitic speech, including the following: "(...) every day our people and country is robbed and destroyed by Jews who take the wealth and replace it with immorality and anti-Norwegian thoughts." After the speech, the defendant requested one minute's silence in memory of Rudolf Hess and then shouted "siege heil". The defendant was acquitted in first instance by the District Court. The Court of Appeals found the defendant guilty in respect of the antisemitic part of his speech, while it considered that his anti-immigrant statements were protected by freedom of speech. In the Supreme Court, all judges agreed that the defendant's anti-immigrant statements were not punishable. A majority of 11 judges, however, held that also the antisemitic statements were protected by freedom of speech and the defendant was therefore released of all charges. The majority of the judges held that the right to freedom of expression required that a person should not risk being punished for an opinion that was not explicitly expressed but only interpreted into his statements. A minority of six judges found, on the other hand, that it was not sufficient to take into consideration only the words spoken outside their context, when this gave a completely different impression than the words taken in the context in which they were uttered. ECRI deeply regrets that statements such as those uttered in the circumstances and in the case in question may go unpunished.
100. ECRI understands that a debate is ongoing in Norway on the balance between freedom of expression and the right of individuals to be protected from racist speech. Such debate involves the reform of both Article 100 of the Constitution,

⁹ See above, Criminal law provisions

which protects freedom of expression¹⁰, and Article 135a. ECRI has been informed that the Norwegian government intends to submit to the Parliament a set of different proposals for reform of Article 100, the content of which is not known to ECRI. As concerns Article 135a, ECRI notes that, following the conclusions of the *ad hoc* committee of the Ministry of Justice¹¹, the scope of this article has been extended to cover display of symbols and signs such as the swastika or other signs connected with Nazi organisations. ECRI also notes that the legislative commission has formulated proposals for reform of this article, notably as concerns the requirement that racist expression take place "in public". Both the Director General of Public Prosecutions and the legislative Commission have furthermore proposed that behaviour falling under article 135a may be punished not only when intentional but also when it results from serious negligence. ECRI recalls that, in its general policy recommendation No. 7 on national legislation to combat racism and racial discrimination, it recommends that the constitution provide that the exercise of freedom of expression may be restricted with a view to combating racism and that any such restrictions should be in conformity with the European Convention of Human Rights. In this general policy recommendation, ECRI also recommends that a series of acts be criminalized, including: public incitement to violence, hatred or discrimination; public insults and defamation; threats against a person or a grouping of persons on certain grounds; public expression, with a racist aim, of an ideology which claims the superiority of, or which depreciates or denigrates, a grouping of persons on certain grounds; public denial, trivialisation, justification or condoning, with a racist aim, of crimes of genocide, crimes against humanity or war crimes; and public dissemination or public distribution, or the production or storage aimed at public dissemination or public distribution, with a racist aim, of written, pictorial or other material of a racist nature.

Recommendations:

101. ECRI strongly recommends to the Norwegian authorities to strengthen the protection provided by Norwegian legislation against racist expression, including through a reform of the relevant provisions of the Constitution and the adoption of adequate criminal law provisions. For both aspects, ECRI draws the attention of the Norwegian authorities to its general policy recommendation No. 7 on national legislation to combat racism and racial discrimination.
102. ECRI reiterates in this context its recommendations formulated above concerning the continuation of efforts to improve the quality of the investigations of the police and of the decisions of the prosecuting authorities in cases involving alleged acts of racism, and concerning the need to considerably strengthen the efforts to provide judges with further training on issues pertaining to racism and discrimination.

¹⁰ See Constitutional provisions and other basic provisions

¹¹ See Criminal law provisions

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