Norway

Criminal Code, §77
now provides that such an aggravating circumstance occurs when the background of an offence is inter alia, another person's religion or belief, skin colour, national or ethnic origin or other circumstances concerning groups who are in special need of protection.

Criminal Code, §135a
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 is likely to reach a large number of persons shall be deemed equivalent to a publicly uttered expression, cf. section 7, n°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 »

Criminal Code, § 142
Any person who by word or deed publicly insults or in an offensive or injurious manner shows contempt for any creed whose practice is permitted in the realm or for the doctrines or worship of any religious community lawfully existing here, or who is accessory thereto, shall be liable to fines or to detention or imprisonment for a term not exceeding six months.
A prosecution will only be instituted when the public interest so requires.

Criminal Code, § 330 Any person who establishes or participates in any association that is prohibited by law, or whose purpose is the commission or encouragement of offences, or whose members pledge themselves to unconditional obedience to any person, shall be liable to fines or to detention or imprisonment for a term not exceeding three months.
If the purpose of the association is to commit or encourage felonies, imprisonment for a term not exceeding six months may be imposed.

Case Law

Uttalelser om jøder

Høyesteretts (Cour suprême norvégienne) *kjennelse* ***21.12.2007****, HR-2007-02150-A, (sak nr. 2007/947), straffesak, anke Straffeloven § 135a (****résumé****)*

Den offentlige påtalemyndighet (statsadvokat Johan Kr. Øydegard) mot A (advokat John Christian Elden)

Dommere: Tønder, Utgård, Øie, Indreberg, Gussgard

Saken gjaldt spørsmål om uttalelser om jøder gitt i intervju med avisen Verdens Gang (VG) rammes av straffeloven § 135a, som setter forbud mot blant annet rasediskriminerende uttalelser.

I en reportasje VG hadde om "konfirmasjon" av en 19 år gammel kvinne, arrangert av noe som avisen betegnet som "nazi-gruppen X", var det også referert et intervju med A, som ble presentert som gruppens leder. I intervjuet gir A en redegjørelse for hva han og X mener om jøder og innvandrere. Det uttales blant annet at X " … ønsker å ta makten i samfunnet, renske ut jødene … ", at "…jødene er hovedfienden, de har drept vårt folk, de er ondskapsfulle mordere. De er ikke mennesker, de er parasitter som skal renskes ut … ". Han ga også uttrykk for at X var i krig med jødene, samtidig som han uttalte at medlemmene i X gis våpen- og kamptrening. Videre uttalte han: "Jeg beklager ikke hvis noe skjer med folk jeg ikke ønsker her i landet … ".

Tingretten kom til at uttalelsene var straffbare i henhold til straffeloven § 135a og dømte A til en straff av fengsel i 45 dager, som ble gjort betinget. Lagmannsretten kom til at A måtte frifinnes. Det ble vist til Grunnloven § 100 om ytringsfrihet og til flertallets votum i plenumssaken inntatt i Rt. 2002 side 1618.

Høyesterett kom til at uttalelsene ble rammet av bestemmelsen og opphevet lagmannsrettens dom. Selv om A ikke direkte ga uttrykk for at han ville bruke vold eller direkte oppfordret andre til bruk av vold, kom Høyesterett til at uttalelsene, lest i sammenheng, vanskelig kunne forstås på annen måte enn som en trussel om at vold og tvang kunne bli benyttet mot jøder. Med dette hadde A oppfordret eller gitt sin tilslutning til klare integritetskrenkelser mot jøder. Uttalelsene hadde dermed en slik kvalifisert krenkende karakter at straffeloven § 135a var overtrådt. De ga dessuten utrykk for en slik nedvurdering av jøders menneskeverd at de også av denne grunn var straffbare.

Disponible sur : http://www.domstol.no/no/Enkelt-domstol/-Norges-Hoyesterett/Avgjorelser/Avgjorelser-2007/Uttalelser-om-joder/

Norway

Re Morgenavisen [1979] E.C.C. 139 (23 Sept. 1978) – Doctrinal comment

Even when a state's implementing language seems to be fairly broad, national courts have not applied Article 4 to prohibit every statement derogatory of certain racial or ethnic groups. The Supreme Court of Norway, for example, in *Re Morgenavisen*[354] overturned the convictions of a writer of a letter to the editor and of the newspaper that published the letter for breach of a penal code provision prohibiting publication of matter likely to expose a group of persons to hatred, persecution or contempt, which was enacted to implement the CERD Convention. The letter cast aspersions on immigrant workers in Norway, including Pakistanis, Turks and Arabs. The Supreme Court described the letter as "a somewhat disjointed mixture of exaggerated and at times meaningless statements and allegations against refugees, immigrant workers, in particular Pakistanis, and those [the writer called] extremists."[355] The lower court had focused on the letter's allegations of criminality among immigrant workers, but the Supreme Court, while acknowledging that "the letter may be likely to have a negative effect on the attitude of certain readers to the immigrant workers in question," nonetheless held that the letter did not "threaten" or "insult" any person or group of persons on the grounds of race, national or ethnic origin. The penal code provision, the Court said, "cannot be interpreted to give protection against every statement which may have a negative effect on attitudes to the persons covered by the provision."[356] The Court emphasized the "considerable" effects that an expression must have before it falls within the penal code provision. Specifically addressing the CERD Convention, the Court said that the Convention "is clearly based on situations which are different from the above case."[357] The CERD Convention and the penal code provision, the Court said, must be read in light of the constitutional protection of freedom of speech, and should the two conflict, greater weight should be given to freedom of speech.[358] The Court then proceeded to express the classic civil libertarian argument that suppression of prejudiced and biased opinion will result in such statements going underground and thus flourishing and causing greater harm than if "they are expressed in public and can be answered."[359] So long as there is freedom of speech, "all groups must find themselves subject to such attacks, even if they are basically biased or use misleading information."[360] Thus, the Court concluded, the effects of speech must be "strong" and "widespread" before it will find that "the limit of what is lawful is transgressed."[361]

CERD, 37th Sess., U.N. Doc. CERD/C/172/Add.18 (1989) at 12 (indicating that homicide committed on account of racial or religious hatred results in imprisonment for life).

354. [1979] E.C.C. 139 (23 Sept. 1978) available in LEXIS.
355. *Id.* at *5.
356. *Id.* at *6.
357. *Id.*
358. *Id.*
359. *Id.*
360. *Id.* at *7.
361. *Id.*

In a strongly worded dissent, one justice said he would uphold the convictions, because "the description of the Pakistanis is so gross and biased, and the appeal to human prejudices against foreigners so strong, that the minority has the right in my opinion to the protection of the law. I cannot see that legitimate considerations or freedom of expression will suffer" if the convictions are upheld.[362] Criticizing the sentence-by-sentence analysis by the majority, the dissenting justice wrote that "a philological or logical analysis of the individual sentences" is an inappropriate method of assessing the impact of such a letter. Pointing out that most people will read the letter quickly without subjecting it to critical analysis, he said that the meaning conveyed by the letter as a whole becomes even stronger, and that the "extreme exaggeration and unreasonable generalisations together express a strong emotional appeal which is likely to expose Pakistanis to hatred and contempt."[363]

F. Reservations to Article 4

With 146 states parties as of 1996,[364] the Convention on the Elimination of All Forms of Racial Discrimination is the second most widely ratified of all human rights treaties.[365] Five of the countries acceded or ratified with an "understanding" emphasizing the importance of freedom of expression and assembly and stating that legislation may be adopted pursuant to Article 4 only insofar as it gives due regard to the principles embodied in the Universal Declaration.[366] Five other countries ratified subject to a reservation that their ratification did not imply the acceptance of obligations going beyond the limits of what was permitted in their respective constitutions.[367] In its report on Article 4, the Committee on the Elimination of Racial Discrimination said it remained to be seen whether any state's constitutional provisions might inhibit the enactment of legislation implementing Article 4. The Committee also said:

> It is clear, however, that the constitutional guarantees of freedom of speech and freedom of association may not be invoked as a bar to such legislation, in view of the categorical provisions of Article 29(2) of the Universal Declaration of Human Rights, and Article 19(3) and Article 21 of the International Covenant on Civil and Political Rights.[368]

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362. *Id.* at *8. (Blom, J., separate opinion, voting to dismiss appeal).
363. *Id.*
364. U.N. Doc. RD/844 (27 Feb. 1996).
365. The most widely ratified as of end 1994 was the Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), *entered into force* Sept. 2, 1990, with 159 states parties. U.N. Doc. RD/844 (27 Feb. 1996).
366. Austria, Belgium, France, Italy, Papua New Guinea. United Nations, HUMAN RIGHTS: STATUS OF INTERNATIONAL INSTRUMENTS, 100, 101, 105-06, 108-09 AND 112 (1987). The United States ratified the Convention in 1994 with the following reservation:

> The Constitution and laws of the United States contain extensive protections of individual freedom of speech, expression and association. Accordingly, the United States does not accept any obligation under this Convention, in particular under Articles 4 and 7, to restrict those rights, through the adoption of legislation or any other measures, to the extent that they are protected by the Constitution and laws of the United States.

367. Bahamas, Barbados, Guyana, Jamaica, Nepal. *Id.* at 100, 101, 106, 107 and 111-12.
368. CERD Report on Article 4, *supra* note 285 at 36, para. 209.

[*in* FARRIOR S., "Molding the Matrix: The Historical and Theoretical Foundations of International Law Concerning Hate Speech", *Berkeley Journal of International Law*, 1996, Vol. 14, pp. 1-98, spec. pp. 58-59]

Norvège

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.

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.

[ECRI, Fourth report on Norway, adopted on 20 June 2008, CRI(2009)4, §§ 11-12]

C'est avec intérêt que l'ECRI prend note de l'arrêt de la Cour suprême du 21 décembre 2007 relatif à des propos violemment antisémites, tenus en juillet 2003 par le porte-parole d'un groupe d'extrême droite au cours d'un entretien avec l'un des principaux journaux norvégiens. L'accusé avait notamment déclaré que les Juifs étaient « l'ennemi numéro un », qu'ils avaient « tué nos concitoyens » et qu'ils étaient des « meurtriers sanguinaires ». Il a également affirmé que les Juifs n'étaient « pas des humains mais des parasites » et qu'ils devaient être « éliminés ». Enfin, il a déclaré que l'organisation dont il était le porte-parole menait un entraînement aux armes et au combat, et qu'il ne se souciait pas de ce qui pouvait arriver aux personnes qu'il ne souhaitait pas voir dans le pays. L'accusé a été déclaré coupable à l'unanimité par le tribunal de district. La Cour d'appel a ensuite renversé ce jugement à l'unanimité, considérant que ces déclarations étaient protégées par

la liberté d'expression. A la suite d'un recours formé par le Procureur général de l'Etat contre cette décision, la Cour suprême, s'appuyant sur une erreur de droit, a rejeté à l'unanimité l'acquittement qui avait été prononcé par la Cour d'appel et a conclu que ces déclarations étaient passibles de sanctions en vertu de l'article 135a, puisqu'elles soutenaient ou appelaient ouvertement à des actes de violence physique à l'égard des Juifs, et constituaient un dénigrement manifeste de leur valeur humaine.

L'ECRI note que l'arrêt de la Cour suprême s'appuie sur l'article 135a tel qu'il était rédigé avant les modifications entrées en vigueur le 1er janvier 2006. Cela étant, il constate que la Cour suprême fait également référence aux débats parlementaires ayant abouti à la formulation actuelle de l'article 100 de la Constitution et note que les autorités norvégiennes considèrent que l'arrêt de la Cour suprême clarifie considérablement le champ d'application de l'article 135a dans sa formulation actuelle. Les autorités norvégiennes soulignent en particulier que l'accent mis par la Cour suprême sur l'existence d'un appel ou d'un soutien ouvert à des actes de violence physique et d'un dénigrement manifeste de la valeur humaine d'un groupe de personnes contribuera au développement d'une pratique cohérente en matière de poursuites dans les affaires d'expression de sentiments racistes. L'ECRI note que le développement d'une telle pratique figure parmi les domaines à prendre en considération dans les initiatives en cours du Bureau du Procureur général de l'Etat visant à sensibiliser la police et les procureurs généraux à la question du racisme et de la discrimination raciale et à renforcer leurs compétences en la matière.

[ECRI, Quatrième rapport sur la Norvège, adopté le 20 juin 2008, CRI(2009)4, §§ 11-12]

Norway

2. UN Committee on the Elimination of Racial Discrimination communications

a) *Jewish community of Oslo v. Norway* (communication 30/2003), 15 August 2005

On 19 August 2000, a group known as the 'Bootboys' organized and participated in a march in commemoration of the Nazi leader Rudolf Hess in Askim, near Oslo. The march was headed by Mr. Terje Sjolie who made a speech in which (inter alia) he honored Rudolf Hess. On 23 February 2001, the District Attorney of Oslo charged Mr. Sjolie with a violation of section 135a of the Norwegian Penal Code which prohibits a person from threatening, insulting, or subjecting to hatred, persecution or contempt, any person or group of persons because of their creed, race, color or national or ethnic origin. On 16 March 2001 Mr. Sjolie was acquitted by the Halden City Court. The prosecutor brought the case before the Borgarting Court of Appeal where Mr. Sjolie was convicted of a violation of section 135a, because of the references in his speech to Jews. The Court of Appeal found that, at the least, the speech had to be understood as accepting the mass extermination of the Jews, and that this constituted a violation of section 135a. Mr. Sjolie appealed to the Supreme Court which overturned the conviction by a majority of 11 to 6. **The Supreme Court found that penalizing approval of Nazism and prohibiting Nazi organizations would be incompatible with the freedom of speech.**

The complainants contended that they were victims of violations of Articles 4 and 6 CERD. They alleged that, as a result of the Supreme Court's judgment of 17 December 2002, they were not afforded protection against the dissemination of ideas of racial discrimination and hatred, as well as incitement to such acts, during the march of 19 August 2000 and that they were not afforded a remedy against this conduct, as required by the Convention. With regard to the complainants' status as victims, the complainants argued that they were victims of the above violations because of the general inability of Norwegian law to protect them adequately against the dissemination of anti-Semitic and racist propaganda, and incitement to racial discrimination, hatred and violence. They claimed that the mere existence of particular domestic laws may violate the rights of a person, and referred to case-law of the Human Rights Committee and the European Court of Human Rights in this regard. Secondly, although they were not confronted directly with participants in the march, the complainants claimed they were potential victims since there was a real and imminent risk for them to be exposed to the alleged violations. Furthermore, the petitioners claimed that as organizations they were directly affected, as it is said they will no longer be able to rely on the protection of the law in conducting their work following the Supreme Court decision. With regard to the merits of the claim, the complainants referred to the Committee's general recommendation no. 15 which requires State parties to penalize four categories of misconduct: dissemination of ideas based on racial superiority or hatred; incitement to racial hatred; acts of violence against any race, and incitement to such acts; and to prohibit organizations which promote and incite racial discrimination. In light of the Supreme Court's decision regarding Mr. Sjolie's speech, section 135a of the Penal Code is unacceptable as a standard for protection against racism. They therefore argued that the State party violated article 4 of the Convention, and consequently violated article

6, as the legal regime laid down by the Supreme Court necessarily implies that no remedies, such as compensation, can be sought.

The State party submitted that an *actio popularis* is not possible within the Committee's complaint procedure, as a "group of individuals" for the purposes of Article 14(1) of the Convention is a group of which every individual member could claim to be a victim of the alleged violation. The State party emphasized that the Supreme Court had applied a proper balancing of the right to freedom of expression against the right to protection from racial discrimination, as is their obligation under the Convention, taking into consideration the "due regard" clause in Article 4. It also pointed out the recent changes to s100 of the Constitution and s135a of the Penal Code, following which the authors can no longer be considered 'potential victims' of racial discrimination contrary to the Convention. Any possible violation could only relate to the period preceding the adoption of the amendments to Norwegian law.

The complainants responded to the State Party's submissions that it remained undisputed that dissemination of ideas based on racial superiority or hatred may still go unpunished under Norwegian law. With regard to the due regard clause, the complainants referred to the jurisprudence of the Human Rights Committee and the European Court of Human Rights, both of which have accorded racist and hate speech little protection under the right to freedom of expression. The authors further stated that the Supreme Court decision in the *Sjolie* case was already having a significant effect as a precedent, despite the entry into force of the new legislation. They provided a decision by the Oslo police dated 31 May 2005 not to prosecute the leader of a Neo Nazi organization, in relation to statements made to the effect that Jews had killed millions of 'his people', that Jews should be 'cleansed', and were 'not human beings' but 'parasites'. The police dropped the case with explicit reference to the *Sjolie* case.

The Committee found that with regard to the "victim" status, it should adopt a similar approach as was adopted in the jurisprudence by other bodies referred to by the complainants. It considered that the authors belong to a category of potential victims. The Committee also found that it must review the communication on the basis of the facts as they transpired at the material time, irrespective of subsequent changes in the law. Furthermore, the Committee referred to the incident where a police decision referred to the Sjolie case. **The Committee emphasized that Mr. Sjolie's speech contained ideas based on racial superiority or hatred; the deference to Hitler and his principles and 'footsteps' must in the Committee's view be taken as incitement at least to racial discrimination, if not to violence. The Committee also noted that the principle of freedom of speech has been afforded a lower level of protection in cases of racist and hate speech dealt with by other international bodies, and that its own General recommendation No 15 clearly states that the prohibition of all ideas based upon racial superiority or hatred is compatible with the right to freedom of opinion and expression. Therefore the statements of Mr. Sjolie are not protected by the due regard clause and accordingly his acquittal by the Supreme Court gave rise to a violation of Articles 4 and 6 of the Convention.**

	CERD-4 / CERD-6 / CERD-5
Subject :	states parties shall condemn all propaganda and all organizations based on ideas of superiority / incitement to racial discrimination / incitement to violence / prohibit and bring to an end racial discrimination by any persons, group or organization / states parties shall assure effective remedies / enjoyment of the rights set forth in article 5
Keywords :	obligations of states / discrimination / race / freedom of expression / incitement to discrimination / effective remedy
Communication :	030/2003
Parties :	**The Jewish community of Oslo; the Jewish community of Trondheim; Rolf Kirchner; Julius Paltiel; the Norwegian Antiracist Centre; and Nadeem Butt v. Norway**
Reference :	opinion of 15 August 2005

Facts :

1. The authors of the communication, dated 17 June 2003, are Mr. Rolf Kirchner, born on 12 July 1946, leader of the Jewish community in Oslo, Mr. Julius Paltiel, born on 4 July 1924, leader of the Jewish community in Trondheim, and Nadeem Butt, born on 16 June 1969, leader of the Norwegian Antiracist Centre (NAC). They claim to be victims of violations by Norway [Footnote 1: Norway recognized the competence of the Committee to receive and consider communications under article 14 by declaration of 23 March 1976.] of articles 4 and 6 of the Convention. They are represented by counsel.

AUTHOR'S SUBMISSIONS:

2.1 On 19 August 2000, a group known as the 'Bootboys' organized and participated in a march in commemoration of the Nazi leader Rudolf Hess in Askim, near Oslo. Some 38 people took place in the march, which was routed over 500 meters through the centre of Askim, and lasted 5 minutes. The participants wore 'semi-military' uniforms, and a significant number allegedly had criminal convictions. Many of the participants had their faces covered. The march was headed by Mr. Terje Sjolie. Upon reaching the town square, Mr. Sjolie made a speech, in which he stated:

> *'We are gathered here to honor our great hero, Rudolf Hess, for his brave attempt to save Germany and Europe from Bolshevism and Jewry during the Second World War. While we stand here, over 15,000 Communists and Jew-lovers are gathered at Youngsroget in a demonstration against freedom of speech and the white race. Every day immigrants rob, rape and kill Norwegians, every day our people and country are being plundered and destroyed by the Jews, who suck our country empty of wealth and replace it with immoral and un-Norwegian thoughts. We were prohibited from marching in Oslo three times, whilst the Communists did not even need to ask. Is this freedom of speech? Is this democracy? ... Our dear Führer Adolf Hitler and Rudolf Hess sat in prison for what they believed in, we shall not depart from their principles and heroic efforts, on the contrary we shall follow in their footsteps and fight for what we believe in, namely a Norway built on National Socialism ...'* [Footnote 2: The speech was recorded on video by the magazine 'Monitor'. It was later used in the criminal proceedings against Mr. Sjolie.]

2.2 After the speech, Mr. Sjolie asked for a minute's silence in honor of Rudolf Hess. The crowd, led by Mr. Sjolie, then repeatedly made the Nazi salute and shouted 'Sieg Heil'. They then left the scene.

2.3 The authors claim that the immediate effect of the march appeared to be the founding of a Bootboys branch in nearby Kristiansand, and that for the next 12 months the city was 'plagued' by what the authors describe as incidents of violence directed against blacks and political opponents. They further state that, in the Oslo area, the march appears to have given the Bootboys confidence, and that there was an increase in 'Nazi' activity. Several violent incidents took place, including the murder by stabbing on 26 January 2001 of a 15 year old boy, Benjamin Hermansen, who was the son of a Ghanaian man and a Norwegian woman. Three members of the Bootboys were later charged and convicted in connection with his death; one was convicted of murder with aggravating circumstances, because of the racist motive of the attack. The authors state that he and one of the other persons convicted in this case had participated in the march on 19 August 2000.

2.4 The authors state that the Bootboys have a reputation in Norway for their propensity to use violence, and cite 21 particular instances of both threats and the use of violence by the Bootboys between February 1998 and February 2002. Mr. Sjolie himself is currently serving a term of imprisonment for attempted murder in relation to an incident in which he shot another gang member.

2.5 Some of those who witnessed the commemoration march filed a complaint with the police. On 23 February

2001, the District Attorney of Oslo charged Mr. Sjolie with a violation of section 135a of the Norwegian Penal Code; this prohibits a person from threatening, insulting, or subjecting to hatred, persecution or contempt, any person or group of persons because of their creed, race, color or national or ethnic origin. The offence carries a penalty of fines or a term of imprisonment of up to two years.

2.6 On 16 March 2001, Mr. Sjolie was acquitted by the Halden City Court. The prosecutor appealed to the Borgarting Court of Appeal, where Mr. Sjolie was convicted of a violation of section 135a, because of the references in his speech to Jews. The Court of Appeal found that, at the least, the speech had to be understood as accepting the mass extermination of the Jews, and that this constituted a violation of section 135a.

2.7 Mr. Sjolie appealed to the Supreme Court. On 17 December 2002, the Supreme Court, by a majority of 11 to 6, overturned the conviction. It found that penalizing approval of Nazism would involve prohibiting Nazi organizations, which it considered would go too far and be incompatible with the right to freedom of speech. [Footnote 3: Section 100 of the Norwegian Constitution guarantees the right to freedom of speech.] The majority also considered that the statements in the speech were simply Nazi rhetoric, and did nothing more than express support for National Socialist ideology. It did not amount to approval of the persecution and mass extermination of the Jews during the Second World War. It held that there was nothing that particularly linked Rudolph Hess to the extermination of the Jews; noted that many Nazis denied that the holocaust had happened; and that it was not known what Mr. Sjolie's views on this particular subject were. The majority held that the speech contained derogatory and offensive remarks, but that no actual threats were made, nor any instructions to carry out any particular actions. The authors note that the majority of the Court considered article 4 of the Convention not to entail an obligation to prohibit the dissemination of ideas of racial superiority, contrary to the Committee's position as set out in General Recommendation 15.

2.8 The authors claim that the decision will serve as a precedent in cases involving s135a of the Penal Code, and that it will henceforth not be possible to prosecute Nazi propaganda and behavior such as that which occurred during the march of 19 August 2000. Following the Supreme Court decision, the Director of Public Prosecution expressed the view that, in light of the Supreme Court's decision, Norway would be a safe have for Nazi marches, due to the prohibition on such marches in neighboring countries.

THE COMPLAINT:
3.1 The author's contend that they are victims of violations by the State party of articles 4 and 6 of the Convention. They allege that, as a result of the Supreme Court's judgment of 17 December 2002, they were not afforded protection against the dissemination of ideas of racial discrimination and hatred, as well as incitement to such acts, during the march of 19 August 2000; and that they were not afforded a remedy against this conduct, as required by the Convention.

(...)

On the merits
3.7 In relation to the merits of the claim, the authors refer to the Committee's General Recommendation No 15, paragraph 3, which requires States parties to penalize four categories of misconduct: dissemination of ideas based on racial superiority or hatred; incitement to racial hatred; acts of violence against any race, and incitement to such acts. They consider that the decision of the Supreme Court is incompatible with the Committee's General Recommendation in relation to article 4 in this regard.

3.8 The authors note that, in the Committee's recent concluding observations on Norway's 15th periodic report, it noted that the prohibition on dissemination of racial hatred is compatible with the right to freedom of speech; article 20 of the International Covenant on Civil and Political Rights stipulates the same. The authors invoke paragraph 6 of General Recommendation No 15, which states that organizations which promote and incite racial discrimination shall be prohibited, and submit that the State party's alleged failure to meet these requirements has been noted with concern by the Committee on previous occasions. [Footnote 8: The author refers to the 12th to 14th Period Reports (1996/1997) , Concluding Observations adopted by CERD at its 1242nd meeting (51st Session) on 21 August 1997, paragraph 13; and 15th Periodic Report (1999), Concluding Observations by CERD adopted at its 1434th meeting (57th Session) held on 23 August 2000, paragraph 14.] The authors submit that it is fully acceptable for a State party to protect democratic society against anti-democratic propaganda. In particular, they state that there is no basis for the Supreme Court's conclusion that article 4 of the Convention does not require States parties to penalize the dissemination of ideas of racial superiority, given the Committee's clear position on this issue.

3.9 The authors contend that the Supreme Court underestimated the danger of what it termed 'Nazi rhetoric', and that the object of article 4 is to combat racism at its roots. As the Supreme Court minority pointed out, Mr. Sjolie's speech accepted and encouraged violent attacks on Jews, and paid homage to their mass extermination during World War II. In particular, the declaration that the group would follow in the Nazi's footsteps and fight for what they believed in had to be understood as an acceptance of and incitement to violent acts against Jews. The use of the Nazi salute made clear that the gathering was not peaceful, and, given the Bootboys' record of violence, the commemoration march was frightening and the incitement to violence evident.

3.10 The authors state that, in light of the Supreme Court's decision, section 135a of the Penal Code is unacceptable as a standard for protection against racism. They therefore argue that the State party violated article 4 of the Convention, and consequently violated article 6, as the legal regime laid down by the Supreme Court necessarily implies that no remedies, such as compensation, can be sought.

STATE PARTY'S OBSERVATIONS:
(...)

AUTHOR'S SUBMISSIONS:
(...)

5.5 In a further submission dated 20 February 2004, the petitioners draw the Committee's attention to the Third Report of the European Commission against Racism and Intolerance (ECRI) on Norway, dated 27 June 2003. In this report, the ECRI stated that Norwegian legislation did not provide individuals with adequate protection against racist expression, particularly in light of the Supreme Court's judgment in the *Sjolie* case. The ECRI recommended that Norway strengthen protection against racist expression through relevant amendments to its Constitution and criminal law.

(...)

Decision on admissibility :

7.1 At its 65th and 66th sessions, the Committee considered the admissibility of the communication.

(...)

7.5 On 9 March 2005, the Committee therefore declared the communication admissible.

POST-ADMISSIBILITY SUBMISSIONS:
STATE PARTY'S OBSERVATIONS:
8.1 By noted of 9 June 2005, the State party submits that there has been no violation of articles 4 or 6 of the Convention. It states that, consistent with the provisions of the Convention, article 135a of the Norwegian Penal Code must be interpreted with due regard to the right to freedom of expression. The State party's obligation to criminalize certain expressions and statements must be balanced against the right to freedom of expression, as protected by other international human rights instruments. [Footnote 15: Reference is made to article 10 of the ECHR and article 19 of the ICCPR.] In the present case, the Norwegian Supreme Court carefully assessed the case following a full hearing, including arguments on the requirements of the relevant international instruments. It concluded that the proper balance of these rights resulted in there being no violation of article 135a in the present case, a conclusion which the Court considered to be consistent with the State party's obligations under the convention, taking account of the 'due regard' clause in article 4 of the Convention.

8.2 For the State party, States must enjoy a margin of appreciation in balancing rights at the national level, and that this margin has not been overstepped in the present case. The majority of the Supreme Court found that s135a applied to remarks of a distinctly offensive character, including remarks that incite or support violations of integrity and those which entail a gross disparagement of a group's human dignity. The majority considered that the remarks had to be interpreted in the light of the context in which they were made and the likely perception of the remarks by an ordinary member of the audience. [Footnote 16: The State party draws the Committee's attention to the reasoning of the majority set out on pages 11 and 12 of the English version of the judgment, however the Court's conclusions in this regard are not summarized in the submission. In the judgment, the majority concludes that various remarks in question are 'absurd' 'defy rational interpretation', and 'cliché', that they expressed no more than general support for Nazi ideology, which according to the majority did not imply support for the extermination, or other systematic and serious acts of violence against Jews. Hess, in whose

memory the march was held, was not particularly associated with Holocaust. The majority also notes that the group of Sjolie's supporters was small, and those opposing the speech were in the majority and able to voice their disapproval.] The State party submits that the Committee should give due respect to the Supreme Court's interpretation of these remarks, since it had thoroughly examined the entire case.

8.3 The State party submits that the Committee's General Recommendation 15 should be interpreted as recognizing that the application of article 4 requires a balancing of the right to freedom of expression against the right to protection from racial discrimination.

8.4 The State party notes the Committee's decision that the authors belong to a 'category of potential victims'; to the extent that the authors are 'potential victims', the State party draws attention to recent changes in Norwegian law which strengthen legal protection against the dissemination of racist ideas. It argues that, following the adoption of recent changes to s100 of the Constitution and s135a of the Penal Code, the authors can no longer be considered 'potential victims' of racial discrimination contrary to the Convention; any possible violation could only relate to the period preceding the adoption of these amendments.

8.5 A completely revised version of section 100 of the Constitution entered into force on 30 September 2004, affording the Parliament greater scope to pass laws against racist speech, in conformity with its obligations under international conventions. Parliament has since used this new power to amend s135a of the Penal Code, to provide that racist remarks may be subject to prosecution even if they are not disseminated among the public. Racist statements made negligently are now also proscribed - intent need not be proved. The maximum punishment has been raised from 2 to 3 years imprisonment. The balance between s135a and freedom of speech, however, must be weighed by the courts in each case. According to the State party, these recent amendments contradict the authors' assertion that the verdict in the *Sjolie* case would serve as a precedent, and that it will be more difficult to prosecute dissemination of ideas of racist discrimination and hatred. The State party further refers to the adoption of a new Discrimination Act, which incorporates the Convention, and provides criminal sanctions for serious cases of incitement to or participation in discrimination, thus supplementing the new provisions of s135a. The government is also developing a new Anti-Discrimination Ombudsman with a mandate to monitor and enforce these new provisions.

8.6 The State party submits that, in light of the above changes in the State party's laws, and their effect on the authors as 'potential victims', the Committee should reconsider its decision on admissibility, pursuant to Rule 94, paragraph 6, of its Rules of Procedure, at least as far as the communication raises questions regarding the general legal effects of the Supreme Court's judgment. [Footnote 17: The submission then reads: 'The government however trusts the Committee to undertake any required assessments at this point'.]

8.7 Finally, the State party notes that the authors have not identified how the remarks of Mr. Sjolie have had adverse effects on their enjoyment of any substantive rights protected by article 5 of the Convention.

AUTHOR'S SUBMISSIONS:
9.1 In their comments on the State party's submissions dated 4 July 2005, the authors invoke their earlier submissions, in which issues relating to the merits were addressed. They emphasize that it remains undisputed that, under Norwegian law as it presently stands, only three of the four relevant categories of racial discrimination referred to in article 4 of the Convention are penalized; contrary to article 4 and Recommendation 15, dissemination of ideas based on racial superiority or hatred may go unpunished.

9.2 In relation to the State party's request for the Committee to reopen the question of admissibility of the complaint, the authors state that the Committee must review and assess the communication on the basis of the facts at the material time, and not on the basis of legislation adopted subsequently. In any event, the new legislation has not addressed the authors' main concern, namely the failure of the law to proscribe all relevant categories of misconduct under the Convention; thus the authors remain potential victims.

9.3 In respect of the 'due regard' clause in article 4, the authors maintain that penalizing all four categories of misconduct is clearly compatible with any international principle of freedom of speech. For them, the Committee must undertake its own interpretation of the impugned statements, rather than defer to the interpretation adopted by the Norwegian Supreme Court. [Footnote 18: References are made to decisions of the ECHR: *Lehideux and Isorni v France*, 23.09.1998, app 24662/94, para 50-53; and *Jersild v Denmark*, 23.09.1994, app 15890/89, para 35.] In characterizing the speech, the authors note that Hess was well known as Hitler's Deputy and confidant, instrumental in the development of the Nuremberg laws. They maintain that, as the minority of the Supreme Court found, anyone with a basic knowledge of Hitler and National Socialism would have understood Mr.

Sjolie's speech as an acceptance and approval of mass violence against Jews in the Nazi era.

9.4 The authors refer to jurisprudence of the ECHR and the Human Rights Committee, both of which have accorded racist and hate speech little protection under the freedom of speech provisions of their respective conventions. [Footnote 19: Particular mention is made of *Jersild v Denmark*, concerning racist comments by the 'Greenjackets' against Africans and foreigners, held not to be protected by freedom of speech; and *J.R.T and W.G. v Canada*, Communication No 104/1981, Views adopted 6 April 1983.] According to the authors, the role of the due regard clause is to protect the role of the media in imparting information about issues of public importance, provided the objective is not advocacy of racial hatred. It is submitted that the State party offers a much broader level of protection to hate speech than standards established in international case law. The authors further state that the Supreme Court decision in the *Sjolie* case is already having a significant effect as a precedent, despite the entry into force of the new legislation. They provide a decision by the Oslo police dated 31 May 2005 not to prosecute the leader of a Neo Nazi organization, in relation to statements made to the effect that Jews had killed millions of 'his people', that Jews should be 'cleansed', and were 'not human beings' but 'parasites'. The police dropped the case with explicit reference to the *Sjolie* case.

9.5 The authors further submit that invoking freedom of speech for racist and discriminating purposes amounts to an abuse of the right of submission. They reiterate that the balance between freedom of speech and protection from hate speech following the Sjolie decision is such that persons are afforded protection only against the most distinctive and offensive remarks, entailing severe violations of a group's dignity.

9.6 Finally, the authors note that Norway does not prohibit racist organizations and that the Supreme Court in the *Sjolie* case built on the view that such a ban would be unacceptable, contrary to the Committee's General Recommendation 15, paragraph 6.

Views :

10.1 Acting under article 14, paragraph 7(a), of the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee has considered the information submitted by the petitioners and the State party.

10.2 In relation to the State party's request that the Committee should reconsider its decision on admissibility pursuant to Rule 94, paragraph 6, of its Rules of Procedure in the light of recent legislative changes, the Committee considers that it must review and assess the communication on the basis of the facts as they transpired at the material time, irrespective of subsequent changes in the law. Further, the authors have referred to at least one incident following the recent amendments to the relevant legislation where the judgment in the *Sjolie* case was apparently interpreted as a bar to the prosecution of hate speech.

10.3 The Committee has noted the State party's submission that it should give due respect to the consideration of the *Sjolie* case by the Supreme Court, which conducted a thorough and exhaustive analysis; and that States should be afforded a margin of appreciation in balancing their obligations under the Convention with the duty to protect the right to freedom of speech. The Committee notes that it has indeed fully taken account of the Supreme Court's decision and is mindful of the analysis contained therein. However, the Committee considers that it has the responsibility to ensure the coherence of the interpretation of the provisions of article 4 of the Convention as reflected in its general recommendation No.15.

10.4 At issue in the present case is whether the statements made by Mr. Sjolie, properly characterized, fall within any of the categories of impugned speech set out in article 4, and if so, whether those statements are protected by the 'due regard' provision as it relates to freedom of speech. In relation to the characterization of the speech, the Committee does not share the analysis of the majority of the members of the Supreme Court. Whilst the contents of the speech are objectively absurd, the lack of logic of particular remarks is not relevant to the assessment of whether or not they violate article 4. In the course of the speech, Mr. Sjolie stated that his 'people and country are being plundered and destroyed by Jews, who suck our country empty of wealth and replace it with immoral and un-Norwegian thoughts'. He then refers not only to Rudolf Hess, in whose commemoration the speech was made, but also to Adolf Hitler and *their* principles; he states that his group will 'follow in their footsteps and fight for what (we) believe in'. The Committee considers these statements to contain ideas based on racial superiority or hatred; the deference to Hitler and his principles and 'footsteps' must in the Committee's view be taken as incitement at least to racial discrimination, if not to violence.

10.5 As to whether these statements are protected by the 'due regard' clause contained in article 4, the Committee

notes that the principle of freedom of speech has been afforded a lower level of protection in cases of racist and hate speech dealt with by other international bodies, and that the Committee's own General recommendation No 15 clearly states that the prohibition of all ideas based upon racial superiority or hatred is compatible with the right to freedom of opinion and expression. [Footnote 20: See paragraph 4.] The Committee notes that the 'due regard' clause relates generally to all principles embodied in the Universal Declaration of Human Rights, not only freedom of speech. Thus, to give the right to freedom of speech a more limited role in the context of article 4 does not deprive the due regard clause of significant meaning, all the more so since all international instruments that guarantee freedom of expression provide for the possibility, under certain circumstances, of limiting the exercise of this right.. The Committee concludes that the statements of Mr. Sjolie, given that they were of exceptionally/manifestly offensive character, are not protected by the due regard clause, and that accordingly his acquittal by the Supreme Court of Norway gave rise to a violation of article 4, and consequently article 6, of the Convention.

10.6 Finally, in relation to the State party's submission that the authors have failed to establish how the remarks of Mr. Sjolie adversely affected their enjoyment of any substantive rights protected under article 5 of the Convention, the Committee considers that its competence to receive and consider communications under article 14 is not limited to complaints alleging a violation of one or more of the rights contained in article 5. Rather, article 14 states that the Committee may receive complaints relating to 'any of the rights set forth in this Convention'. The broad wording suggests that the relevant rights are to be found in more than just one provision of the Convention. Further, the fact that article 4 is couched in terms of States parties' obligations, rather than inherent rights of individuals, does not imply that they are matters to be left to the internal jurisdiction of States parties, and as such immune from review under article 14. If such were the case, the protection regime established by the Convention would be weakened significantly. The Committee's conclusion is reinforced by the wording of article 6 of the Convention, by which States parties pledge to assure to all individuals within their jurisdiction effective protection and a right of recourse against any acts of racial discrimination which violate their 'human rights' under the Convention. In the Committee's opinion, this wording confirms that the Convention's 'rights' are not confined to article 5. Finally, the Committee recalls that it has previously examined communications under article 14 in which no violation of article 5 has been alleged. [Footnote 21: See for example: Communication No 10/1997, *Ziad Ben Ahmed Habassi v Denmark*, Opinion adopted on 17 March 1999, paragraphs 9.3 and 10, where the Committee found a violation of articles 2 and 6; Communication No 16/1999, *Kashif Ahmed v Denmark*, Opinion adopted 13 March 2000, paragraphs 6.2 - 9, where the Committee found a violation of article 6; and Communication No 27/2002, *Kamal Qureshi v Denmark*, Opinion adopted 19 August 2003, paragraphs 7.1 - 9.]

11. The Committee on the Elimination of Racial Discrimination, acting under article 14, paragraph 7, of the Convention on the Elimination of All Forms of Racial Discrimination, is of the view that the facts before it disclose violations of articles 4 and 6 of the Convention.

Remedy proposed :

12. The Committee recommends that the State party take measures to ensure that statements such as those made by Mr. Sjolie in the course of his speech are not protected by the right to freedom of speech under Norwegian law.

13. The Committee wishes to receive, within six months, information from the State party about the measures taken in the light of the Committee's Opinion. The State party is requested also to give wide publicity to the Committee's Opinion.

Individual Opinion :

Public Policies

- Alder
- Etnisitet
- Funksjonsevne
- Kjønn
- Religion
- Seksuell orientering
- Arbeidsliv
- Vold og trakassering

Klage til ombudet

- Slik klager du..
- Klageskjema.
- Saksgang.

Kontakt oss

Telefon: 23 15 73 00
Pressekontakt: 91 59 88 56
Grønt nummer: 800 41 556

Følg oss

Bli venn med ombudet på Facebook.
LDO på Twitter.

Samfunnsregnskap til NHO-president

NHO-president Kristin Skogen Lund fikk julegave av Likestillings- og diskrimineringsombudet i dag: Saldo, ombudets samfunnsregnskap for likestilling og diskriminering. [21. des 2010]

Kontakt LDO også i jula

Likestillings- og diskrimineringsombudet er tilgjengelig i romjula. [23. des 2010]

Rett til høytidsfri

Nå når det nærmer seg jul, passer det å minne om at også andre religiøse høytider gir rett til fridager. [2. des 2010]

Forbudt å diskriminere hiv-positive

Diskriminerings- og tilgjengelighetsloven skal sikre at hiv-positive har samme rettigheter som alle andre. Den forbyr diskriminering og trakassering på grunn av nedsatt funksjonsevne. [1. des 2010]

Etterlyser likestillingspolitikk i kulturlivet

-Jeg etterlyser en likestillingspolitikk som kan bryte noen av de barrierene som møter kvinner på kulturfeltet, sa Sunniva Ørstavik i møte med kulturminister Anniken Huitfeldt i dag. [1. des 2010]

En million til utbedring

Skedsmo kommune foreslår å bruke en million kroner på å sikre universell utforming av gågata i Lillestrøm. [1. des 2010]

Kalender, bilder og CV.

Mangfold i arbeidslivet

- Mangfold i arbeidslivet - utfordringer og muligheter!
- Håndbok for arbeidslivet, Likestilling og mangfold.

Publikasjoner

- SaLDO.
- Praksis.
- Håndbok for arbeidslivet.
- Håndbok for universitets-, høyskolesektoren og forskningsinstituttsektoren.
- Se alle.

European Commission against Racism and Intolerance
Commission européenne contre le racisme et l'intolérance

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ECRI REPORT ON NORWAY

(fourth monitoring cycle)

Adopted on 20 June 2008

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60 YEARS ANS 2009

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

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[39], 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 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[40], 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.

[39] See above, Existence and Implementation of Legal Provisions – Provisions covering racially motivated offences.

[40] See above, Existence and implementation of Legal Provisions – Provisions covering racially-motivated offences.

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 [41].

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 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.

[41] ECRI General Policy Recommendation N°7, paragraph 16 (and paragraph 36 of the Explanatory Memorandum).

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[42]. 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

[42] See above, Existence and implementation of Legal Provisions – Provisions covering racist expression.

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.

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