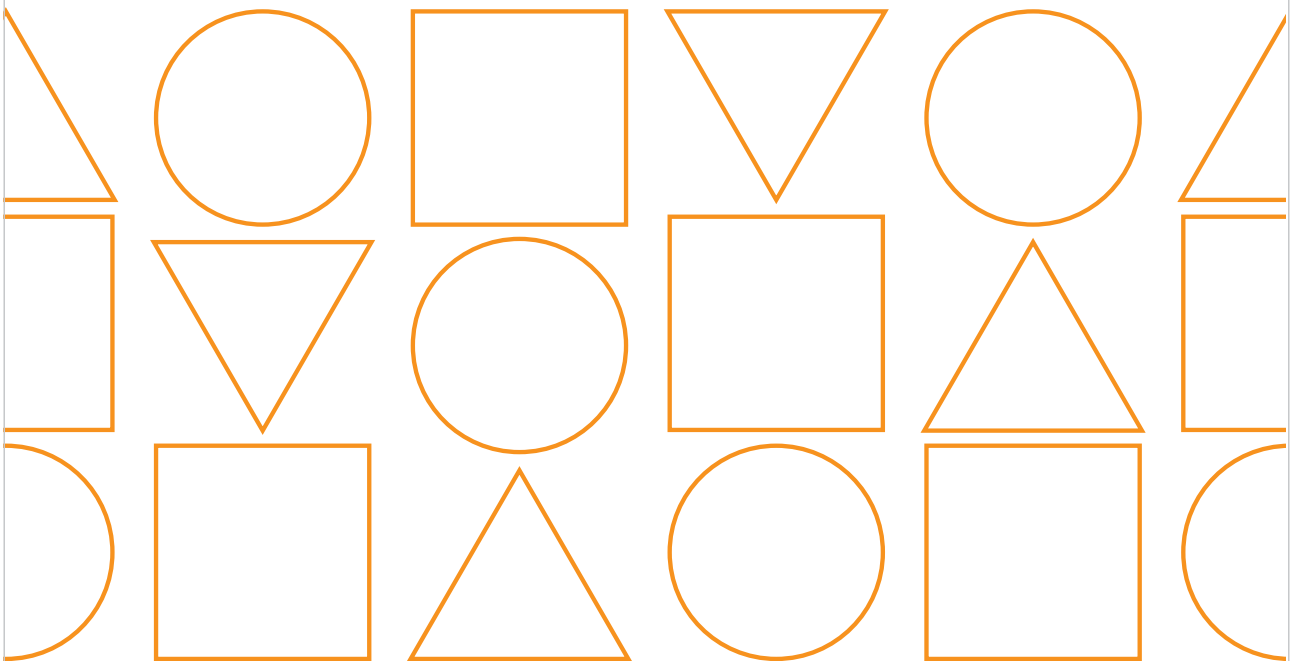


MPG Good as far as it goes,
but does it go far
enough?
A report on Norway's
Anti-discrimination Laws
and Policies



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Preface

This report has been prepared by the Migration Policy Group (MPG) at the request of the Norwegian government. It serves as a background report for the follow-up conference to the Norwegian Action Plan on Racism and Discrimination 2002-2006.

This conference, which is organised by the Ministry of Labour and Social Inclusion, will mark the launch of a new action plan. The aim of the conference is to put Norway and Norwegian policies in the discrimination field into a broader global context.

The views expressed in this paper are those of the Migration Policy Group and Timo Makkonen acting as MPG's expert.

Executive Summary

This report checks the position of Norway on anti-discrimination policies and law against applicable international and European standards. It also highlights promising practices in some European countries, particularly Ireland, the Netherlands and the United Kingdom. The report looks at three distinct areas that together determine the overall success - or the lack of it - of the fight against discrimination: (i) the institutional framework, (ii) the policy framework and (iii) the legal framework. The Government of Norway has in the recent years stepped up its activities with respect to all these fields. With regard to the institutional field, year 2006 saw the starting of the work of three new institutions, the Equality and Anti-Discrimination Ombudsman, the Equality and Anti-Discrimination Tribunal, and the Directorate of Integration and Diversity. The Ombudsman and the Tribunal offer for low-threshold access to justice and thereby contribute to the enforcement of anti-discrimination law, in addition to which the Ombudsman has more proactive duties. Year 2006 saw also the coming into force of the Anti-Discrimination Act, a sweeping piece of legislation that covers several discrimination grounds and many walks of life. The Act prohibits direct and indirect discrimination, harassment and instructions to discriminate. With regard to the policy framework, important recent initiatives include the White Paper on Work, Welfare and Inclusion, Action Plan for Integration and Social Inclusion of the Immigrant Population and Goals for Social Inclusion, and the Action Plan to Fight Poverty. Whereas the main thrust of these documents is upon promoting immigrants' opportunities in the field of working life, the actions cover a lot of ground and involve a number of government departments. The report finds Norway's overall performance to be somewhat mixed. On the one hand, there are many positive aspects: there is national governmental coordination that is complemented by action taken by other government departments and other stakeholders; the 'multi-ground' mandate of the Ombud and the Tribunal make it possible e.g. to deal with multiple discrimination; there is extensive use of positive action measures that promote inclusion; and the wide material and personal scope of the new anti-discrimination legislation forms a solid legal basis for action. In some of these respects Norway sets a positive example to the rest of Europe. On the other hand, there are areas in which Norway falls behind the applicable standards or the level of best practice. The report notes that equality considerations have not yet been fully mainstreamed into all decision-making; there is a significant and detrimental lack of equality data apart from official statistics; the legal framework is based on a negative, reactive approach, whereas a more proactive, positive approach, is what would be needed to promote achievement of equal treatment in practice; law's definition of indirect discrimination appears to be somewhat limited as is the scope of available sanctions and remedies, in addition to which the so-called justification clauses give rise to concern because of their potentially wide applicability. The report concludes that if Norway wants to make further headway in combating discrimination, it should deal with these concerns. In particular, the report

recommends the adoption of positive equality duties, mainstreaming of equality considerations into all decision-making, and monitoring of the national situation and impact of laws and policies through appropriate data collection mechanisms.

1. INTRODUCTION

1.1. Purpose of this Report

The purpose of this report is to check the position of Norway on anti-discrimination policies and law against the EU and to highlight promising practices in some European countries. This report focuses upon discrimination on the grounds of racial and ethnic origin and religion. It comes at a time when the Norwegian government has stepped up its anti-discrimination activities by means of adoption and reform of relevant policy programmes and legislation. On the other hand, the cases of Terje Sjoelie (a neo-Nazi leader accused of hate crimes¹), Ali Farah (a Somalian-origin man who was abandoned by ambulance drivers in August 2007 despite having been seriously injured²) and Eugene Obiora (a Nigerian who died in police custody in September 2006³) have made racism and ethnic discrimination in Norway big news both nationally and internationally.

This report proceeds as follows: The first part describes, in light of international and European standards and best practices, what a framework for an effective policy and legal response to discrimination looks like. The second part describes Norway's present policies and legislative efforts at combating discrimination. This is followed by the third part that analyses how well Norway's efforts meet the framework outlined in the first part. The report finishes off by making some suggestions as to how Norway might be able to make further headway in combating discrimination.

1.2. Discrimination, and Standards and Benchmarks in Anti-Discrimination Law and Policy

Discrimination is highly damaging for a large pool of actors. It negatively affects not just its direct victims and those who are dependent on them such as family members, but indirectly also all members of the disadvantaged groups, the business life, and the society as a whole.⁴ Everyday life and practical experience tell us that ethnic, religious and racial discrimination are not just going to 'wither away' on their own.⁵ Even more alarming is the fact that empirical studies show that discrimination continues to be a major problem even in those countries that have implemented vigorous measures to combat discrimination through legislation and e.g.

¹ See e.g. *Aftenposten* 17 December 2002.

² See e.g. *Aftenposten* 8 August 2007.

³ See e.g. *Aftenposten* 28 June 2007.

⁴ See e.g. European Commission: *European Handbook on Equality Data: Why and How to build to a national knowledge base on equality and discrimination on the grounds of racial and ethnic origin, religion and belief, disability, age and sexual orientation*, Available at:

http://ec.europa.eu/employment_social/fundamental_rights/pdf/pubst/stud/hb07_en.pdf

⁵ See e.g. Michael Banton, *Discrimination* (Buckingham: Open University Press, 1994), 16 ff. See also the articles in Christopher McCrudden (ed), *Anti-discrimination law* (2nd edn, Aldershot: Ashgate, 2004).

awareness raising programmes.⁶ These observations have led individual countries and the international community to embark on an ever-expanding mission to find new initiatives and effective solutions by which to overcome inequalities.

There are three primary sources that constitute the stock of standards from which countries can and do seek guidance and which form a benchmark against which their current performance can be measured:

- (i) *International and European legal standards* elaborated within the confines of the United Nations (UN), the International Labour Organisation (ILO), the Council of Europe (CoE) and European Union. These standards include the UN Convention on the Elimination of All forms of Racial Discrimination ('the CERD Convention'), the ILO Convention 111 on Discrimination, the European Convention on Human Rights together with its Protocol No 12 on discrimination, and very importantly, two EU anti-discrimination directives, viz. the Racial Equality Directive and the Employment Equality Directive⁷.
- (ii) *Soft law standards* including (a) the general recommendations issued by the UN Human Rights Committee, the UN CERD Committee and Council of Europe's ECRI, and (b) non-binding declarations adopted by the UN and other international bodies. This category also includes well-established international policy programmes such as EU's Community Programme for Employment and Social Solidarity (Progress).⁸
- (iii) *Best practices*, that is, measures that have proven to be efficient (cost/benefit point of view) and effective (results point of view) for the purpose of combating discrimination and promotion of equality. This report builds particularly upon the experiences of Ireland, United Kingdom and the Netherlands, all of which have a solid track record in the field of anti-discrimination work. This report outlines, particularly in the next section, several actions that can be considered best practices.

1.3. Devising an Adequate Institutional, Policy and Legal Framework on the Basis of International Standards and Best Practices⁹

⁶ See the examples in European Commission: *European Handbook on Equality Data: Why and How to build to a national knowledge base on equality and discrimination on the grounds of racial and ethnic origin, religion and belief, disability, age and sexual orientation*, Available at:

http://ec.europa.eu/employment_social/fundamental_rights/pdf/pubst/stud/hb07_en.pdf).

⁷ These directives are relevant not just for the EU countries, but also for Norway, a member of the European Economic Area (EEA) that has wanted to bring its anti-discrimination laws to the European level.

⁸ http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_315/l_31520061115en00010008.pdf

⁹ This section is based on, inter alia, the following books and articles: Jan Niessen, 'Making the Law Work. The Enforcement and Implementation of Anti-Discrimination Legislation.' *European Journal of Migration and Law* 5: 249-257, 2003. Michael Banton, *Discrimination* (Buckingham: Open University Press, 1994). Sandra Fredman, *Discrimination* (2002). John Griffiths, 'The Social Workings of Anti-Discrimination Law', in T. Loenen and P.R. Rodrigues (eds), *Non-Discrimination Law: Comparative Perspectives* (1999).

A. The institutional framework

National coordination. The development and implementation of a sustained, coherent and effective policy response to discrimination is only likely to take place when it is driven by government department or agency that has primary responsibility over these matters. In some countries responsibility for monitoring of the situation, development and implementation of policy measures, and the drafting of legislation and regulation is divided between a government department and a specialized body such as an Ombudsman.

Specialized bodies. The EU Race Equality Directive requires nationally the designation of a body or bodies for the promotion of equal treatment on the grounds of racial and ethnic origin. The competences of these bodies must include the provision of independent assistance to victims of discrimination, conducting of independent surveys concerning discrimination, and publishing independent reports and making recommendations.¹⁰ European Commission against Racism and Xenophobia's (ECRI) General Policy Recommendation No 2 on specialized bodies¹¹ elaborates upon the potential functions and responsibilities of specialized bodies, and emphasises their independence and accountability, along with the so-called Paris Principles.¹² Austria, Belgium, Cyprus, Estonia, France, Greece, Hungary, Ireland, Lithuania, the Netherlands, Slovenia and United Kingdom have set up equality bodies that are mandated to deal with a broad spectrum of discrimination grounds, including racial and ethnic origin.¹³

Mainstreaming. Experts and policymakers have increasingly come to believe that active, centralized coordination should be complemented by mainstreaming equality considerations into the work of all public bodies. Mainstreaming is, in the context of equal treatment policies, about placing equality considerations at the heart of all decision-making, and can be defined as the systematic incorporation of non-discrimination and equality concerns into all public policies, legislation and programmes. A key objective of the EU Progress programme, for instance, is to promote the mainstreaming of the principle of non-discrimination 'in all Community policies'.¹⁴

¹⁰ Article 13 of the Racial Equality Directive. See also Rikki Holtmaat: *Catalysts for Change? Equality bodies according to Directive 2000/43/EC – existence, independence and effectiveness*. European Communities 2007. Available at: http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/06catalyst.pdf

¹¹ ECRI general policy recommendation No 2: *Specialized bodies to combat racism, xenophobia, antisemitism and intolerance at national level*. Available at http://www.coe.int/t/e/human_rights/ecri

¹² Principles relating to the Status of National Institutions (The Paris Principles). UN General Assembly resolution 48/134. Available at: <http://www.ohchr.org/english/law/parisprinciples.htm>

¹³ Mark Bell et al: *Developing Anti-Discrimination Law in Europe: The 25 EU Member States compared*. European Network of Independent Experts in the non-discrimination field (November 2006), pp.88-89. http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/06compan_en.pdf

¹⁴ CSES, *Non-discrimination mainstreaming – instruments, case studies and way forwards*. April 2007, p. 1. Available at: http://ec.europa.eu/employment_social/fundamental_rights/pdf/pubst/stud/mainstr07_en.pdf. See also the Council Decision establishing the Progress Programme, available at: http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_315/l_31520061115en00010008.pdf

B. The policy framework

From anti-discrimination to promotion of equality. One fairly recent innovation in the field of equality policies that has become rapidly embraced by many experts and policy- and lawmakers at national and European levels, represents a fundamental change to the way these matters are conceived.¹⁵ The traditional approach has been to adopt legislation that allows individual victims recourse to law when their rights have been infringed. This approach is inadequate in many ways: legal action is seldom brought (according to data from different countries only some 5-20 % of the victims ever file a formal complaint – and even fewer pursue their cases successfully); it is not helpful in achieving structural change or fighting institutional discrimination; and it is retroactive rather than preventive. Instead, proactive policies that aim to *promote* the realization of equality in fact are what are needed to bring about social change. A typical component of the promotion of equality approach is the legislative imposition of *positive duties* on public authorities to foster equality, as is done e.g. in the UK and Finland.¹⁶

Embeddedness of equality policies. Equal treatment irrespective of racial or ethnic origin and religion is a major policy objective in and of itself in any contemporary society. At the same time, however, this objective is intrinsically connected to other major objectives, such as the promotion and guaranteeing of human rights, democratic decision-making, and to guaranteeing of core liberal values of modern Europe such as tolerance and respect for difference. Anti-discrimination is linked also to such all-important societal goals as high level of employment and of social protection, the raising of the standard of living and quality of life, economic and social cohesion, and solidarity. The more efficiently anti-discrimination efforts are embedded in policies aimed at achieving other goals and objectives, the higher the chance that these efforts are effective.¹⁷

Positive Action. Positive action, in the form of measures that take into account the disadvantaged socio-economic position of one or more groups with a view to alleviating or eliminating these disadvantages, are necessary in order to work towards *de facto* equality and to combat prejudices and stereotypes that systematic disadvantages tend to feed. Mere equal treatment of an already disadvantaged group of people serves only to sustain inequalities.¹⁸

¹⁵ For instance the EU Progress programme recognizes that “The nature and scale of the phenomenon of discrimination calls for a more proactive concept of equality, emphasizing public authority responsibility at all levels of governance.” See http://ec.europa.eu/employment_social/progress/no_discrim_en.htm

¹⁶ Generally on positive duties, see Sandra Fredman, ‘Equality: A new generation?’ *Industrial Law Journal*, Volume 30, Number 2, 1 June 2001. For a treatment of this subject with particular reference to Norway, see Ronald Craig, *Systemic Discrimination in Employment and the Promotion of Ethnic Equality* (Brill, 2006).

¹⁷ Jan Niessen, ‘Making the Law Work. The Enforcement and Implementation of Anti-Discrimination Legislation.’ *European Journal of Migration and Law* 5: 249-257, 2003, p. 2.

¹⁸ For instance, if a generation of Roma does not enjoy full equality of treatment in education, they are likely to end up at the margins of the society, even if employers would recruit on pure meritocratic (‘colour-blind’) basis.

Corrective action therefore needs to be taken in order to compensate for existing disadvantages and to prevent them from occurring in the future. Positive action can be based on law, public-sector driven programme or code of conduct, or voluntary action (based on a voluntary code of conduct, a scheme or a policy) and can be undertaken by any public or a private sector organisation. The EU Race Equality Directive allows the taking of positive action, but does not require it. Obligation to engage in positive action may however exist under international human rights law.¹⁹

Recognition of diversity. Many countries have chosen to pursue a strategy whereby cultural and religious diversity is recognized, respected and cherished under common political, legal, economic and – to a greater or smaller degree social – structures (this strategy can best be called ‘multicultural integration’²⁰). Recognition of diversity adds a further dimension to equality policies, complementing anti-discrimination efforts that in their most elementary form simply aim at assimilationist inclusion, and can significantly improve minorities’ sense of acceptance in and ‘ownership’ of their country. Notably, the Directives, and the international documents providing for freedom of religion and minority rights, require a degree of accommodation of religious and cultural practices and beliefs.²¹

Public procurement. One powerful instrument by which the public authorities can persuade businesses to embrace equality and diversity policies is by means of using ‘the power of the public purse’ by integrating equality considerations into public procurement. Public authorities do business with private companies on a large scale: in the EU, public procurement represents c. 16 % of the gross domestic product. In practice, the integration of equality considerations into public procurement entails that companies that provide works, goods and services to the public are required to take action to promote the achievement of equal treatment or *de facto* equality. This may involve the drawing up of equality plans, setting up of goals to achieve a representative workforce and conducting of workplace monitoring. Public procurement is used as an instrument to promote equality *inter alia* in the UK and the USA.²²

¹⁹ In relation to the obligation to take positive action, see Timo Makkonen, *Measuring Discrimination: Data Collection and EU Equality Law*. European Network of Legal Experts in the non-discrimination field (European Commission, 2007), p. 22.

²⁰ See Timo Makkonen: ‘Is multiculturalism bad for the fight against discrimination?’, in Martin Scheinin & Reetta Toivanen (eds): *Rethinking non-discrimination and minority rights* (Turku: Åbo Akademi University, 2004). See also Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (1995).

²¹ See e.g. Lucy Vickers: *Religion and Belief Discrimination in Employment – the EU law*. Thematic report of the European Network of Legal Experts in the non-discrimination field (European Communities, 2007).

²² For further information on public procurement, see PLS Ramboll Management: *Study of the Use of Equality and Diversity Considerations in Public Procurement: Final Report*. Available at: http://ec.europa.eu/employment_social/fundamental_rights/pdf/stureps/pubproc_en.pdf

See also Christopher McCrudden ‘Using public procurement to achieve social outcomes’ in *Natural Resources Forum* 28 (2004) 257-267, and Janet Cormack and Jan Niessen, Immigrant and minority businesses: Making the policy case, in *European Journal of Migration and Law* 4: 329-337, 2002.

Participation and dialogue. A proactive approach is essentially about continuing and reflexive follow-up and diagnosis of the situation and the working out of responses that best fit the identified problems. This calls for participation of all stakeholders, the affected groups in particular, because they have the requisite first-hand knowledge and expertise regarding problems and possible solutions. Also wide-based dialogue is called for, particularly (i) between the social partners, and between social partners and other stakeholders, and (ii) between the government and the NGOs representing the equality groups, and (iii) between the government, NGOs and international human rights bodies.²³

Data collection. Data collection refers to various methods by which it is possible to measure and analyse the extent, nature, causes and consequences of discrimination. These methods range from qualitative and quantitative surveys to more robust methods such as discrimination testing and ethnic monitoring. All international human rights bodies have called for national collection of equality data, and data collection is a top priority for instance for the EU Progress Programme. Victim surveys have been conducted in virtually all EU countries, testing is a widely used method in Europe, and ethnic monitoring is used in the UK and has been experimented with in the Netherlands.²⁴ The resulting data is useful for many different purposes: (i) to guide and support policy development and implementation; (ii) as proof in judicial processes; (iii) to enable national and international monitoring (by e.g. the UN CERD and Human Rights Committee and national Ombudsmen); (iv) to help public and private organisations to internally monitor their compliance with equality laws and regulations; (v) to enable informed and evidence-based sensitising and awareness-raising campaigns; and (vi) to provide the scientific community with the information resources it needs. Engagement in data collection has, without exceptions, showed inequalities to be larger and discrimination to be far more frequent than had been presumed e.g. on the grounds of the number of court cases.²⁵

²³ This is recognized for instance in the EU Progress programme that calls for 'dialogue among the social partners, NGOs and other stakeholders' (Article 7 of the Programme).

²⁴ See Timo Makkonen, *Measuring Discrimination: Data Collection and EU Equality Law*. European Network of Legal Experts in the non-discrimination field (European Commission, 2007).

²⁵ For instance, research conducted in Finland around year 2000 showed that whereas there had only been a handful of court cases involving ethnic discrimination, and whereas there had been only a few racially violent incidents of major proportions that would have caught the media's and general public's attention, every other immigrant origin person had in fact experienced ethnic discrimination in access to work and many others had been discriminated against in access to goods and services. This enormous gap between what is thought to exist and what really exists is common to all countries. See also European Commission, *European Handbook on Equality Data*.

C. The legal framework

In drafting legislation to combat discrimination the legislator has to make a decision with regard to which type(s) of law to rely upon. Choices include constitutional law, criminal law, civil law, labour law and administrative law.²⁶ Each of these has its pros and cons: Constitutional law carries a lot of authority and symbolical value, and provides the all-important framework for the exercise of public power, but can hardly suffice on its own as it is usually not directly applicable in disputes between private parties; criminal law aptly expresses society's condemnation of discrimination and has the benefit that evidence is usually collected by the police and/or public prosecutor, in addition to which there is usually a low financial risk for the victim, but on the other hand there is a higher threshold for proving discrimination i.e. it is harder to win cases, and victims have little or no control over the proceedings, and indeed criminal charges are only seldom brought about (in some European countries only 1 - 2 % of all victims of discrimination bring charges); in civil law and labour law proceedings the burden of proof is shared or in any case lower than in criminal cases and the complainant has better control of the proceedings, and the range of available remedies tends to be broader than in criminal cases, but there is a risk of potentially high litigation costs and responsibility for proving the case i.e. gathering evidence is upon the complainant (this responsibility can be alleviated to an extent by shifting the burden of proof and/or by providing for a right to obtain documents etc).

Whereas many EU Member States have anti-discrimination legislation that spans all these branches of law, most Member States transposed the EU equality directives through civil or labour law, with a minority having also introduced or amended criminal law provisions.²⁷ Considerably many states opted for a type of equality legislation that covers different types of discrimination (ethnic, religion, age, gender, disability) in a single law, which should be considered best practice as it has benefits from the point of view of addressing multiple and intersectional discrimination.²⁸ The traditional approach in the Nordic countries has been to opt for a combination of criminal law and labour law,²⁹ but the tendency has lately been towards generally applicable legislative frameworks.³⁰ ECRI has, in its General Policy Recommendation

²⁶ NB: The titles of the different branches of law vary between countries, especially between common law and civil law countries.

²⁷ Mark Bell et al: *Developing Anti-Discrimination Law in Europe: The 25 EU Member States compared*. European Network of Independent Experts in the non-discrimination field (November 2006), p. 14. Available at: http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/06compan_en.pdf

²⁸ See Timo Makkonen: *Multiple, Compound and Intersectional Discrimination* (Turku: Institute for Human Rights, 2002). Available at: <http://www.abo.fi/instut/imr/norfa/timo.pdf>

²⁹ Reliance on criminal law has in a historical perspective often resulted from the pursuance of fulfilment of international obligations, such as those set out in the CERD Convention.

³⁰ Indeed, many experts are of the view that it is important to include broad civil law procedures and remedies to the framework of anti-discrimination law. See e.g. Michael Banton, *Discrimination* (Buckingham: Open University Press, 1994).

No 7 recommended that national legislation to combat racism and racial discrimination should include provisions in all branches of law, as 'only such an integrated approach will enable member States to address these problems in a manner which is as exhaustive, effective and satisfactory from the point of view of the victim as possible'.³¹

The efficiency of domestic anti-discrimination law cannot be judged simply from the branch of law involved, but one has to analyse in detail the quality of that law. In this analysis questions like 'how is discrimination defined, does the concept cover direct and indirect discrimination, harassment and instructions to discrimination, and how the latter notions are defined' are relevant. Other pertinent questions relate to the material scope of the law, ways in which access to justice is made possible (is there e.g. a specialized complaints body, can organisations engage in the proceedings on behalf or in support of the victim, is sharing of the burden of proof provided for, are victims protected from further victimization) and to the range of applicable sanctions and remedies. Focus must also be on supporting measures that are essential for ensuring that the legislation achieves its purposes and is properly enforced. These include dissemination of information about anti-discrimination law to groups primarily protected by anti-discrimination law, businesses and the general public; capacity-building for legal professionals; training in anti-discrimination law; availability of legal materials (commentaries etc) on anti-discrimination law; screening of the existing legislation and regulation for possible inconsistencies with the anti-discrimination law; and support for organisations that provide legal advice and/or assistance to victims.

³¹See also the Explanatory Memorandum, p. 11. Available at: http://www.coe.int/t/e/human_rights/ecri/1-ecri/3-general_themes/1-policy_recommendations/recommendation_n7/ecri03-8%20recommendaation%20nr%207.pdf

2. NORWAY: DEMOGRAPHIC, SOCIAL AND ECONOMIC BACKGROUND

Immigrant population presently accounts for 8,9 per cent of Norway's total population of 4.7 million,³² and is now 415 000 strong.³³ Immigrant population's proportion of the whole population grew almost three-fold in 1986-2006. The first large group of immigrants came to Norway as labour immigrants in the 1960s and 70s. A relatively large number of refugees came to the country in the 1980s and 90s.³⁴ The free Nordic labour market and more recently the expansion of the EU (which impacts Norway through the EEA Agreement) has led to a growth of labour immigration, one indicator of which is that the number of granted work permits increased by 40 per cent in 2005-2006.³⁵ Indeed, labour on the one hand and family reunification and family establishment on the other were the most important reasons for immigration in 2006, each accounting for c. 40 per cent of all immigration.³⁶

Three out of four persons of the current immigrant population have a non-western background. Broken down by region, 230 000 are immigrants from Turkey and countries in Asia, Africa and South America, 80 000 have come from Eastern Europe, 54 000 have come from Nordic countries, and 51 000 have come from other countries in Western Europe and North America. The largest immigrant groups by nationality have come from Pakistan, Sweden, Iraq, Somalia, Denmark and Poland. Almost one in two of the immigrant population has Norwegian citizenship. Close to one in three lived in the capital Oslo at the beginning of 2007.³⁷

Statistics Norway expects that the immigrant population will continue to grow significantly, and estimates that in 2060 from 1 to 2 million immigrants will live in Norway, comprising between 19 to 27 per cent of the total population.³⁸

Norway is also the home of Saami, the indigenous people that is spread across Finland, Norway, Russia and Sweden. A number of other groups are recognized as national minorities, namely the

³² Statistics Norway: *Probably 4.7 millions before Midsummer Day*.

http://www.ssb.no/english/subjects/02/02/folkendrkv_en/

³³ This group includes persons who have two foreign-born parents, i.e. persons who neither have parents nor grandparents born in Norway, and covers first-generation immigrants and persons born in Norway of two foreign-born parents. Under a broader definition of an 'immigrant', where anyone who has at least one parent born outside Norway is counted as an immigrant, the population with immigrant background is 13,5 per cent of the total population (situation as of January 2006).

³⁴ *Plan of Action against Racism and Discrimination*, p. 5.

³⁵ Norwegian Directorate of Immigration: *Annual report 2006*.

http://www.udi.no/upload/English/EngPublications/AnnualReport/74297_Aarsrapport_Eng.pdf. See also UDI, Facts and figures 2006. http://www.udi.no/upload/English/EngPublications/AnnualReport/74298_Tall_Fakta_eng.pdf

³⁶ Statistics Norway: *Growth in number of labour immigrants*.

http://www.ssb.no/english/subjects/02/01/10/innvgrunn_en/.

³⁷ Statistics Norway: *Largest increase ever in immigrant population*.

http://www.ssb.no/english/subjects/02/01/10/innvbef_en/

³⁸ Statistics Norway: *Strong growth of immigrant population*.

http://www.ssb.no/english/subjects/02/03/innvfram_en/

Jews, the Kvens (Finno-ethnic minority population), the Roma/Gypsies, the Romani people/Travellers and the Skogfinns (people of Finnish descent living in southern Norway). As ethnic data is not collected in censuses or other major official surveys, the size of these groups is not known with any degree of accuracy. However, a government report from 2004, relying on information provided by researchers and/or the groups themselves, estimates that there are around 50,000-100,000 persons of Saami descent, 10,000-15,000 Kven, 2,000-3,000 Romani/Taters/travellers and 300-400 Roma/Gypsies and a few hundred Skogfinn.³⁹

An overwhelming majority of Norwegians, 83 per cent to be more exact, belong to the Church of Norway.⁴⁰ The Church is not just *de facto* but also *de jure* state church, as the Constitution declares that the Evangelical-Lutheran religion is the official religion of the state.⁴¹ Some 6.4 per cent of the population are registered as members of religious communities distinct from the Church. The majority of these, representing 4.5 per cent of the total population, are members of various smaller Christian sects. Muslims comprise 1,5 per cent of the population, whereas communities formed around other religions, such as Buddhism, Hinduism, Sikhism, Baha'ism and Judaism, are considerably smaller.

The situation in the Norwegian labour market is exceptionally good in an international comparison: the employment rates are high and unemployment rates low. The registered unemployment rate among immigrants (defined as first generation immigrants, meaning people born abroad by foreign-born parents who have settled in Norway for at least six months) was 5.0 per cent in May 2007. This represents the lowest level of immigrant unemployment in 17 years. The unemployment rate of the immigrant group was nonetheless three times as high as the rate within the majority population (1.4).⁴² This difference has been stable for a long time, also in periods of high unemployment rates. Immigrants from Africa had the highest unemployment rate, at 11.2 per cent, immigrants from Asia followed with 7.1 per cent, immigrants from (non-EU)

³⁹ The report adds that these numbers are contested, and that for instance the number of Romani/Traveller people can be much higher. On the other hand, it is pointed out that these figures reflect the number of people that conceivably associated themselves with an ethnic group, not the number of those who speak the language fluently or whose relatives in earlier generations were members of the groups in question. Norway's 17th/18th periodic report to the CERD Committee (September 2005), paras 49-51.

⁴⁰ <http://www.kirken.no/>

⁴¹ In addition, Article 4 of the Constitution requires that the King shall profess the Evangelical-Lutheran religion and uphold and protect the same, Article 12 requires that at least half the number of the Members of the Council of State shall profess the official religion of the state, and Article 92 of the Constitution requires that senior official posts in the State are open only to Norwegian citizens who speak the language. Recently the State-Church Committee recommended that the current state church system be discontinued. See <http://www.regjeringen.no/en/dep/kkd/Whats-new/nyheter/2006/On-the-relationship-between-the-Norwegian-State-and-the-Church-of-Norway.html?id=435167>

⁴² It might be added that the employment rate among first generation immigrants was 57.5 per cent whereas for the rest of the population the employment rate was 69,4 per cent (situation as of Q4/2005). Statistics Norway: More immigrants employed http://www.ssb.no/english/subjects/06/01/innvregsys_en. It might also be mentioned that the average unemployment rate for the EU-27 was 7.9 per cent in 2006 <http://epp.eurostat.ec.europa.eu>.

Eastern European countries had an unemployment rate of 5.8. per cent, and immigrants from western regions had a rate of about 2 per cent. The unemployment rate among those who were born in Norway to immigrant origin parents was half of that of the first generation immigrants.⁴³

Norwegian economy has been described as a “prosperous bastion of welfare capitalism”.⁴⁴ Its GDP per capita, valued at USD 43 574, ranks third in the world and is well above the EU average of USD 28 213.⁴⁵ Yet prosperity is not evenly spread: A study from 2002 shows that the income of non-Western immigrant families is on average approximately 25 % lower than the income of the majority population. This income gap is halved when the immigrant family has resided in Norway for 5 years.⁴⁶ A significant proportion of immigrant families are represented in the lowest income category: 36,7 per cent of families from East Europe and 41,5 per cent of families from Asia, Africa or Central and South America⁴⁷ had an after-tax income under 199 000 kroner (c. EUR 25 000), whereas the rate for non-immigrant families was 5,2. On the other hand, couples from West Europe and North America were over-represented in the top category of families with an income of 500 000 kroner or more.⁴⁸ These figures reflect the fact that non-western immigrant workers are over-represented in hotels, restaurants and industrial cleaning, i.e. occupations that do not pose educational demands.⁴⁹

Immigrants comprise a very heterogeneous group in terms of educational achievement. On the one hand, approximately one in two immigrant from North America or Western Europe had completed tertiary education, together with approximately every third immigrant from the Nordic Countries and countries like China, India, Philippines, Poland and Russia. Members of these groups were therefore on the average better educated than Norwegians. On the other hand, the rate for having completed tertiary education was approximately 20 per cent for immigrants originating from Asia or Africa, with only one in ten immigrant from Pakistan, Thailand, Turkey or Somalia having equivalent education.⁵⁰

The 2001 census revealed a yet another disparity between western and non-western immigrants. Whereas western immigrants tended

⁴³ Statistics Norway: ‘Lowest level of immigrant unemployment in 17 years’. http://www.ssb.no/english/subjects/06/03/innvarbl_en/. Statistics Norway: ‘Immigrant unemployment still falling’. http://www.ssb.no/english/subjects/06/03/innvarbl_en/.

⁴⁴ CIA: *World Factbook*, entry on Norway, at: <https://www.cia.gov/library/publications/the-world-factbook/geos/no.html>

⁴⁵ Information from International Monetary Fund (IMF), at www.imf.org. The figures relate to 2006.

⁴⁶ Norway’s 17th/18th periodic report to the CERD Committee (September 2005), para 53.

⁴⁷ A ‘family’ in this context refers – due to statistical reasons - to a married couple without children.

⁴⁸ Statistics Norway (SSB): Income statistics: Immigrants. Data for 1999.

http://www.ssb.no/english/subjects/05/01/inntinnv_en/tab-2001-08-29-05-en.html

⁴⁹ http://www.ssb.no/english/subjects/06/01/innvregsys_en/

⁵⁰ Statistics Norway: *Many non-western immigrants are more educated than non-immigrants*.

http://www.ssb.no/english/subjects/04/01/utinnv_en/

to have living conditions that were equal to those of the majority population, non-western immigrants were far more likely to live in cramped conditions (live in households with 3 or more occupants who live in close quarters) and not own the place they live in.⁵¹

Migration-related attitude surveys have been conducted in Norway annually at least since 1993. The results for the 2006 show that altogether 86 per cent of the Norwegians agree with the statement that 'All immigrants in Norway should have the same opportunities to have a job as Norwegians', whereas 9 per cent disagreed. The proportion of people disagreeing with this statement has declined steadily since 1993, when the proportion was 15 per cent. Three out of four Norwegian appreciates the importance of immigrants' contribution in the work life. However, significantly many are of the view that 'most immigrants abuse the social security system' (36 % agree), that 'most immigrants are a cause of insecurity in society' (41 % agree), that immigrants should become as similar to Norwegians as possible (49 % agree) and that most immigrants do not enrich the cultural life in Norway (20 % agree). One in three Norwegian does not have any immigrant contacts and the same amount would feel uncomfortable if his/her son or daughter would want to marry an immigrant.⁵² In another survey, 86 per cent of Norwegians expressed the view that immigrants are discriminated against in Norway. Only few responded that they had ever witnessed ethnic or religious discrimination, but the picture changed when more specific questions were asked, as for instance some 40 per cent reported having witnessed Muslims or visible minority people being subjected to verbal harassment.⁵³

Yet another survey conducted in 2006 was the Kelly Global Workforce Survey. It found that 40 per cent of respondents in Norway say they have been discriminated against, on some ground, when applying for a job in the last five years. The most commonly given reason for employment discrimination was age (22 per cent), followed by gender (8 per cent), race (4 per cent) and disability (2 per cent). However, levels of discrimination in Norway were found relatively low by global standards: Norway ranked 24th on the list of 28 countries. The neighbouring Sweden topped the list with 97 per cent of the respondents indicating that they had experienced discrimination on some ground.⁵⁴

⁵¹ Statistics Norway: *Non-western immigrants live in cramped conditions*.

http://www.ssb.no/english/subjects/02/01/fobinnvbolig_en/

⁵² http://www.ssb.no/english/subjects/00/01/30/innvhold_en/

⁵³ The survey also found that only a few immigrant-origin respondents had experienced discrimination during the previous year. However, the sample was too small for the results to be generalisable. IMDI:

Integreringsbarometeret 2006. IMDi-rapport 7-2007. Available at:

<http://www.imdi.no/upload/IMDI%20Integreringsbarometer%20internett.pdf>

See also IMDI: *Rapport om Rasisme og diskriminering i Norge 2001-2002*. Available at:

<http://www.imdi.no/upload/3431/Rasisme%20kap0.pdf> and Statistics Norway: *Attitudes towards immigrants and immigration, 2006*. Available at: http://www.ssb.no/english/subjects/00/01/30/innvhold_en/

⁵⁴ *Aftenposten* 15 Oct 2006: '40 percent feel discrimination'.

3. THE INSTITUTIONAL AND POLICY FRAMEWORK

3.1 The Institutional Framework

The government of Norway has stepped up its activities in the anti-discrimination field in the recent years. Many of these activities have involved reforms to institutional set up. Year 2006 saw the starting of the work of three new institutions, namely the Equality and Anti-Discrimination Ombud, the Equality and Anti-Discrimination Tribunal, and the Directorate of Integration and Diversity, and the designation of the Norwegian Centre for Human Rights as the national human rights institution in accordance with the Paris Principles.

A. The Government

Ministry of Labour and Social Inclusion (AID) is responsible for issues related to labour market policy, working environment and safety, social policy and welfare, integration and diversity, Saami and minority affairs, and migration. Therefore it has overall responsibility for Norway's refugee and immigration policy. The ministry has nine departments, some of which have subordinate agencies that are directed through acts, regulations, budgets and letters of appropriation. AID's Department of Migration directs the Directorate of Immigration (UDI) and the Norwegian Immigration Appeals Board (UNE), and the Department of Integration and Diversity directs the work of the Directorate of Integration and Diversity (IMDi). In terms of the substance of the work, the difference between the UDI and the IMDi is that the UDI is responsible for migration and immigration, including the running of reception centres for asylum seekers, while IMDi is responsible for persons who have been granted residence permits in Norway, and for other tasks in the field of integration and diversity.

Directorate of Immigration (UDI) is responsible for ensuring regulated immigration by processing applications for various types of residence and work permits, and for ensuring that refugees are granted protection through the processing of applications for asylum. The UDI also provides expert advice and recommendations in connection with the formulation of policies and regulations and provides the AID with overviews of development trends within the field of migration.⁵⁵

Directorate of Integration and Diversity (IMDi) is a relatively recently established agency: it started its work on 1 January 2006, when responsibility for matters relating to integration and diversity were transferred to it from the UDI.⁵⁶ It aspires to 'act as a competence centre and a driving force for

⁵⁵ For more: http://www.udi.no/upload/English/EngPublications/AnnualReport/74297_Aarsrapport_Eng.pdf

⁵⁶ For a evaluation report of the process of the establishment of the IMDi, see Statskonsult: *Evaluering av prosessen rundt etableringen av IMDi*. Statskonsult rapport 2007:3. Available at: <http://www.statskonsult.no/publik/rappporter/2007/2007-3.pdf>

integration and diversity⁵⁷. More specifically, IMDi's tasks include increasing participation in the labour market for people with immigrant backgrounds, implementing government policy for settling refugees and following up the Introductory Act, the programme of rights and obligations to receive tuition in the Norwegian language and Storting Report No 49. The IMDi has six regional offices.

Ministry of Children and Equality (BLD) is responsible for coordinating the Government's family and equality policies and legislation in this area. More specifically, it aspires to: strengthen consumer rights, interests and safety; allow children and young people to grow up safely and to participate in public decision-making processes; promote economic and social security for families; and promote full equality of status between men and women. As of October 2007 the Ministry of Children and Equality has coordination responsibility for discrimination on all grounds. Two key agencies from the point of this study are administratively attached to the Ministry of Children and Equality: The Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal.⁵⁸

Equality and Discrimination Ombud (LDO) started its work on 1 January 2006. The Ombud is charged with promoting equality and fighting discrimination on the grounds of gender, ethnic origin, sexual orientation, disability and age. In addition to various proactive duties, the mandate of the Ombud covers the processing of individual complaints of discrimination and the giving of advice to persons who suspect they have been discriminated against. The mandate of the Ombud is described in detail in section 4.5. of this report.

Equality and Anti-Discrimination Tribunal enforces Norway's equality laws through processing of complaints and appeals that have first come before the Ombud. The mandate of the Tribunal is described in greater detail in section 4.5 of this report.

Also several other ministries set out to fight discrimination and/or work for a tolerant, multicultural society in their specific responsibility areas. Ministry of Education and Research (KD) works for the provision of equal education and has, for instance, issued a Strategic Plan called *Equal Education in Practice! Strategy for better teaching and greater participation of linguistic minorities in kindergartens, schools and education 2007-2009*.⁵⁹ The strategy aims to improve the language skills, school performance and higher

⁵⁷ http://www.imdi.no/templates/CommonPage_6473.aspx

⁵⁸ Also the Ombudsman for Children and the Consumer Ombudsman are related to the Ministry of Children and Equality.

⁵⁹ Revised edition February 2007. Available at: http://www.regjeringen.no/upload/KD/Vedlegg/Grunnskole/Strategiplaner/Likeverdige_ENG_nettpdf

education opportunities of linguistic minorities. The Ministry of Local Government and Regional Development, on its part, is responsible for housing, and is committed to ensuring a well-functioning housing market and providing homes for those who have difficulty entering the housing market, including refugees. Ministry of Culture and Church Affairs (KKD) is responsible for cultural policy, church affairs and regulations. In recent years, a considerable proportion of the activities of the Ministry's Department of Church Affairs have been related to the follow-up of church reforms, relating to the relationship between church and state. In line with Norway's commitment to promote human rights worldwide, the Norwegian Ministry of Foreign Affairs is an active player in strengthening of human rights mechanisms within the UN and other intergovernmental organisations, and conducts human rights dialogues with countries like China.

Public authorities' policies in this field are described section 3.2. of this report.

B. Social partners

The largest and most influential social partners in Norway are the Norwegian Confederation of Trade Unions (LO)⁶⁰ for the employees' side and the Norwegian Confederation of Business and Industry (NHO)⁶¹ for the employers' side.⁶² The NHO and the LO negotiate every fourth year a collective agreement (*Hovedavtalen*) that covers employer and employee rights and obligations, including standard wage rates and working conditions, that apply at enterprise level. Both the LO and the NHO draw attention to the need to ensure equal opportunities for immigrants and minorities and to promote their inclusion in the work life. This said, gender equality issues figure more prominently in their agendas and work; on the other hand, discrimination on the basis of religion and nationality receive far less attention.

For the LO, 'equal rights' and 'social security and equal opportunities for all groups in society' are among the subjects of particular concern.⁶³ In its Programme of Action, adopted in May 2005, the LO pledges, inter alia, to: work for increased and quicker recruitment and integration of workers with a minority background; mainstream multicultural issues in the training of union representatives; increase representation of minority members at all levels in the trade union movement; and combat of every form of

⁶⁰ Norwegian Confederation of Trade Unions (LO) is Norway's largest worker's organisation with 835 000 workers in 23 national unions that are affiliated the LO.

⁶¹ The NHO - Norwegian Confederation of Business and Industry – is the main representative body for Norwegian employers with a current membership of over 17,000 companies.

⁶² Other organisations include: The Confederation of Vocational Unions (YS); Arbeidsgiverforeningen NAVO; Finansnæringens Hovedorganisasjon (FNH); Handels- og Servicenæringens Hovedorganisasjon (HSH); and Kommunenes Sentralforbund (KS).

⁶³ <http://www.lo.no/lobasen/Content/121443/THISISLO.PDF>

racism and discrimination.⁶⁴ LO has however been criticized for talking the talk but not necessarily walking the walk. A study conducted by FAFO, while noting LO's eagerness to show immigrant-friendly, politically correct values, criticised LO for a range of things, including the following: its previous Programme of Action did not translate into concrete measures at local and associational level; there was certain reluctance to recognize discrimination; ethnic minorities were strongly underrepresented in the different bodies of the trade union movement; distaste for ethnic monitoring; non-western immigrants were less readily welcomed than western immigrants; preference for 'colorblind' policies (i.e. distaste for accommodation of differences).⁶⁵

Like LO, also the NHO has recently shown an interest in this subject area. It has commissioned studies on integration⁶⁶ and discrimination⁶⁷ and launched the project *Ethnic Diversity (Etnisk mangfold)*, the purpose of which is to help minority youths who are finishing their studies to find work. In its website the NHO gives good practice –type of advice for employers in relation to recruitment of immigrants.⁶⁸ In connection with the national action under 2007 European Year of Equal Opportunities for all, the NHO visited 17 major companies such as Aker Kværner and Telenor with a view to providing advice and inspiration to these companies' work on diversity. Whereas the NHO agrees that there is ethnic discrimination in Norway, in its view immigrants' language difficulties and lacking education and work experience are major explanatory factors for immigrants' challenged position in the labour market.⁶⁹ Correspondingly, in its view the main responsibility for promoting employment prospects among minorities lies with the government, which should take action to improve newcomers' linguistic and other capacities.

So far the commitment of the social partners to advance the lot of immigrants and minorities has not figured directly in the collective agreements. This can be contrasted with gender equality, which has been directly addressed.⁷⁰ This said, some of the general measures benefit particular immigrant groups; these measures – particularly for the LO - include raising of the wages of poorly paid occupational groups where a disproportionate portion of immigrants find themselves in.

⁶⁴ <http://www.lo.no/lobasen/Content/109107/handlingsprogrammet-english.pdf>

⁶⁵ Monica Lund og Jon Horgen Friberg: Én mann – én stemme? Fagbevegelsens strategier for inkludering av etniske minoriteter i en europeisk sammenheng. Fafo-rapport 495. Available at: <http://www.fafo.no/pub/rapp/495/495.pdf>

⁶⁶ http://www.nho.no/files/Innvandring_integrering_og_syssetting.pdf

⁶⁷ http://www.nho.no/files/R_2006_10.pdf

⁶⁸ <http://www.nho.no/article.php?articleID=2421&categoryID=61>

⁶⁹ See e.g. NHO's comments to the draft law on ethnic discrimination, available at:

<http://www.nho.no/article.php?articleID=7317&categoryID=61>

⁷⁰ See e.g. Supplementary agreement VI, General Agreement Between NHO and LO on Equality of Men and Women in Working Life, in Basic Agreement 2002-2005 concluded by the LO and NHO. Available at:

<http://www.lo.no/lobasen/Content/1558/1558-Basicagreement02-05.pdf>. There has also been other action: The LO has for instance published a guide on gender mainstreaming:

http://www.lo.no/lobasen/Content/121426/Gender_Mainstreaming.pdf

C. Other stakeholders

There are hundreds of organisations in Norway that are not part of the government and that in one way or the other have an interest in the fight against discrimination/promotion of equality. A number of these organisations receive funding from the government by virtue of latter's recognition of the importance of dialogue and contact with civil society and organisations representing immigrants, particularly from the point of view of developing relevant policies.⁷¹

These stakeholders include the following (the list is not exhaustive, and the entries appear in no particular order):

Human rights organisations and groups. A range of human rights organisations and groups operate in Norway. These include, among others, Norwegian Helsinki Committee;⁷² Human Rights House Foundation;⁷³ Norwegian Red Cross;⁷⁴ Amnesty International Norway;⁷⁵ United Nations Association of Norway;⁷⁶ and Human Rights Committee of the Norwegian Bar Association. Whereas many of these focus on promoting human rights abroad, most also focus on Norway, for instance by means of providing information and advice, writing reports – including occasional 'shadow reports' to the UN human rights bodies - ethnic discrimination being one subject area among many that they are concerned with.

Organisations that focus specifically on racism and discrimination. The Anti-racist Centre (*Antirasistisk Senter*)⁷⁷ and the SOS Rasisme⁷⁸ focus directly upon combating racism and ethnic discrimination. Their work is mostly grassroots oriented, and include tolerance campaigns, partaking in public discussions, and activities that aim at achieving a wider coalition against racism and discrimination. A key part of the work of the Anti-racist Centre consists of projects that in various ways promote inclusion of immigrant youths into the society at large. OMOD (*Organisasjonen Mot Offentlig Diskriminering*, Organisation against Public Discrimination) is another important organisation in this context. OMOD's priority is to work in relation to public institutions, particularly by means of influencing relevant policies and laws, and the manner in which public authorities deal with immigrant and equality issues. OMOD aims to promote a dialogue between the various stakeholders, documents discrimination and racism,

⁷¹ See below section 3.2. of this report, particularly the entry on the Action Plan for Integration and Social Inclusion.

⁷² <http://www.nhc.no>

⁷³ <http://www.humanrightshouse.org/dllvis5.asp?ID=1518> See also <http://www.menneskerettigheter.no>

⁷⁴ <http://www.rodekors.no>

⁷⁵ <http://www.amnesty.no/>

⁷⁶ <http://www.fn.no>

⁷⁷ <http://www.antirasistisk-senter.no>

⁷⁸ <http://www.sos-rasisme.no/>

provides advice and information, and participates, in different ways, in the development of legal policies in this area.⁷⁹

Community organisations. There is a multitude of organisations representing different nationalities or ethnic groups, such as the Kven, Somali or Romani people, or certain religions, such as various forms of Islam. Many of these organisations are local,⁸⁰ and/or focused on particular subgroups such as youth of African origin (e.g. *African Youth in Norway, AYIN*).⁸¹ The Sámi Parliament (*Sametinget*) is in a class of its own as the official representative body of the Sámi indigenous people.⁸² There are also several cultural centres and other intercultural contact points, as well as organisations for the co-operation between different groups. One of the latter is the Immigrants's National Organisation (*Innvandrerne Landsorganisasjon, INLO*), a national organ comprised of immigrant umbrella organisations that works to promote genuine equality between immigrants and the Norwegians independent of gender, ethnicity, religion or political belonging.⁸³ One should also mention the Council for Religious and Life Stance Communities (STL), the goal of which is to promote understanding and respect between different religious and life stance communities through dialogue, and to work towards equality between various religious and life stance communities in Norway on the basis of international human rights standards.⁸⁴ Christian Intercultural Association (*Kristent Interkulturelt Arbeid, KIA*) is a Christian outreach organisation that provides also more general support for immigrants, for instance in the form of friendship services.⁸⁵

Organisations helping refugees, asylum seekers and immigrants. Norwegian Organisation for Asylum Seekers (NOAS) aims to advance the interests of asylum seekers in Norway. It provides legal aid and advice to its target group primarily in relation to asylum matters, aims to influence Norway's refugee policy and takes an interest also in equality issues. Norwegian Refugee Council (NRC, *Flyktninghjelpen*, former *Flyktningerådet*) is an internationally-oriented organisation that provides assistance, protection and solutions to refugees and internally displaced persons worldwide; in Norway it provides information and counselling on return and repatriation.⁸⁶ The MiRA Resource Centre aims to promote equality for black, immigrant and refugee women in Norway, for instance by means of raising awareness about the specific conditions of minority women, provision of legal and social services to the target groups, and networking in the form

⁷⁹ <http://www.omod.no>

⁸⁰ Eva Haagenen: "Norway's approach to integration of immigrants and minorities" *Canadian Diversity*, vol. 5:1 Winter 2006.

⁸¹ www.ayin.no

⁸² www.samediggi.no

⁸³ www.inlo.no

⁸⁴ <http://www.trooglivssyn.no>

⁸⁵ <http://www.kia-inter.no>

⁸⁶ <http://www.nrc.no>

of seminars and conferences. The organisation gives help and advice for those in its target group also in cases of discrimination.⁸⁷ The aim of SEIF (*Selvhjelp for innvandrere og flyktninger*) is to provide practical assistance and advice to immigrants and refugees, for instance with regard to dealing with tax, social or educational authorities. In discrimination cases SEIF advises individuals where they can turn to for further help.⁸⁸

Legal aid organisations. There are several organisations that provide 'general' legal advice. Juss-Buss, a free legal aid organisation operated by law students, is one of them. Besides provision of legal aid, it engages in legal politics, research and also education for those involved in its work.⁸⁹ During the last years Juss-Buss has provided legal aid in around 4000 – 4700 cases per year. Juss-Buss provides legal aid in the areas of immigration law and e.g. labour law, but does not specifically include discrimination among its key topics.

Research-oriented institutions and organisations. The Norwegian Centre for Human Rights (NCHR) is an independent national human rights institution, and focuses upon (i) national and international research on human rights, (ii) promotion of a rights-based development and (iii) human rights education. It is associated with the Faculty of Law at the University of Oslo. Discrimination and equal treatment, primarily from the legal point of view, are among the topics that the centre has been concerned with.⁹⁰ *Statistics Norway* (SSB) is in charge of producing official statistics in Norway, and produces regular reports on the socio-economic situation of immigrants as well as on public attitudes towards immigrants in Norway.⁹¹ *FAFO* is a foundation that engages in social scientific research. Its particular areas of interest include the labour market and welfare policy, and it has published several research reports on social inclusion and discrimination.⁹² A lot of research relating to immigrants and immigration is conducted under the *International Migration and ethnic relations (IMER)* and *Working Life* –research programmes of the Research Council of Norway.⁹³ Migration and welfare are also among the key research areas of the research institute NOVA, which is set up under the auspices of the Norwegian Ministry of Education and Research.⁹⁴ A great deal of research on international migration, integration and ethnic relations is conducted also at the Institute for Social Research (ISF).⁹⁵

⁸⁷ <http://www.mirasenteret.no>

⁸⁸ <http://www.seif.no>

⁸⁹ See Juss-Buss: *Årsrapport for Juss-Buss 2005*. Available at: <http://www.jussbuss.no>

⁹⁰ <http://www.humanrights.uio.no>

⁹¹ <http://www.ssb.no>

⁹² <http://www.fafo.no>

⁹³ <http://www.forskningsradet.no>

⁹⁴ www.nova.no

⁹⁵ <http://www.samfunnsforskning.no>

Advisory bodies. Norway's Contact Committee for Immigrants and the Authorities (*Kontaktutvalget mellom innvandrere befolkningen og myndighetene*, KIM) is a forum for structured dialogue between the immigrant community, political parties and government departments and agencies. It deals with issues of importance for the immigrant community and provides a point of contact between immigrants and the authorities. KIM also has an Immigrant Forum (IF) that is composed solely of persons representing immigrants, the job of which is to give advice to authorities and to influence policies in relevant areas. Both KIM and IF have addressed equality issues, and the IF has also set up a working group on discrimination.⁹⁶ Also some municipalities have their own advisory bodies for immigrant issues.⁹⁷

Political parties. The use of xenophobic and possibly even racist language in political contexts, particularly in connection to elections, has aroused some concerns in Norway.⁹⁸ To alleviate these concerns in the context of the local elections held in September 2007, the representatives of all main political parties signed up, upon the invitation of the Equality and Discrimination Ombud Beate Gangås, a special Declaration for Inclusive Elections.⁹⁹ In this declaration the representatives pledged, inter alia, to condemn all forms of harassment and discriminatory statements.¹⁰⁰

Sport organisations. Sports organisations can potentially play a key part in the building of a multicultural society. However, a recent study by the FAFO showed that participation of minority youths in voluntary children's and youth's organisations and in football clubs was disproportionately low. Whereas these organisations were found to be positively attuned to the participation of ethnic minorities, only a few had made any specific attempts to reach out to this group. Also their efforts at countering displays of racism were found to be inadequate.¹⁰¹

3.2 Major National Strategies

The present Government of Norway has recently outlined its policy in relation to equal treatment and diversity in three major documents. These are the White Paper on Work, Welfare and Inclusion, Action Plan for Integration and Social Inclusion of the Immigrant Population and Goals for Social Inclusion, and the Action Plan to Fight Poverty. The Action Plan to Combat Racism and Discrimination 2002-2006, launched by the previous government,

⁹⁶ For more information, see <http://www.kim.no>, and <http://www.kim.no/upload/Endelig%20brosjyre%20engelsk.pdf>

⁹⁷ See e.g. <http://www.byradsavdeling-for-barn-og-utdanning.oslo.kommune.no/category.php?categoryID=26399>

⁹⁸ <http://www.sos-rasisme.no/valg/>

⁹⁹ <http://www.ldo.no/no/Bevisst/Valgkamperklaringen/Bakgrunn-artikkel/>

¹⁰⁰ http://www.ldo.no/upload/Valgkamperkl%C3%A6ring2007%20med%20underskrifter_st%C3%A5ende.pdf

¹⁰¹ Jon Horgen Friberg og Heidi Gautun: Inkludering av etniske minoriteter i frivillige organisasjoner og fotballag for barn og ungdom i Oslo. FAFO-rapport 2007:16. Available at: <http://www.faf.no/pub/rapp/20016/20016.pdf>

will also be discussed here due to its importance for the theme at hand. An array of other reports and documents on specific topics has been produced as well, including the Strategic plan for equal education in practice (2004-2009).¹⁰²

White Paper on Work, Welfare and Inclusion (Report to the Storting No. 9, 2006-2007). In this White Paper the Norwegian Government outlines its policy in the areas of employment and welfare. The overall goal as formulated in the White Paper is to provide all people throughout Norway with the 'opportunity to develop their abilities and to live good and meaningful lives.' This is in practice seen to require an active labour policy and an inclusive labour market that are seen as keys to ensuring high labour force participation, low unemployment and reduced poverty.¹⁰³ In effect, the White Paper endorses measures that increase recruitment of immigrants to public administration, support entrepreneur activities among immigrants and enhance knowledge of Norwegian language and culture among immigrants.

Action plan for Integration and Social Inclusion of the Immigrant Population and Goals for Social Inclusion 2007. This Action Plan proceeds along the lines set out in the preceding government documents, and emphasises the importance of participation in the working life, knowledge of the Norwegian language and culture, equality of opportunities for each and every person, participation in the society at large, and gender equality. Whereas the responsibility for coordinating the plan of action is vested primarily in the Ministry of Labour and Social Inclusion, the 28 measures involve seven ministries. The total value of the entire plan, which is connected to the state budget for 2007, is NOK 400 million (c. EUR 50 million).

Some of the measures intend to build basic competences within specific target groups. These measures include the following: Granting of NOK 42.6 million to instruction in Norwegian language for asylum seekers and 10 million to survey the language skills of 4 year olds with an immigrant background (with a view to ensuring that they can successfully enter the school); development of a new subject curricula for instruction in Norwegian and the native language for linguistic minorities; and granting of NOK 10 million to a programme that builds basic competences (reading, numerical understanding, problem solving) among immigrants from non-western countries.

Most of the measures enumerated in the Action Plan involve the kind of action that directly or indirectly promotes the achievement of de facto equality particularly in the fields of employment and

¹⁰² Strategic plan: Equal Education in Practice! Strategy for better learning and greater participation by language minorities in day-care centres, schools and education, 2004-2009. Available at: http://www.regjeringen.no/upload/KD/Vedlegg/Grunnskole/Strategiplaner/Equal_education_Strategiplan_ENG.pdf

¹⁰³ Another document that is relevant in the present context is the Government's Action plan against poverty. http://www.regjeringen.no/Upload/AID/vedlegg/stmeld_9_2006_english.pdf

education, and that can therefore be labelled as positive action measures. These include:

- Extra ear-marked funding of NOK 165 million that help immigrants become a priority target group for admission to labour market programmes;
- NOK 20 million to qualification programme *Ny sjanse* [New Chance]¹⁰⁴ that is geared towards introducing immigrants who have a longish history of unemployment to the labour market;
- Continued funding for a pilot project promoting entrepreneurship among immigrants;
- Development in 2007 of a pilot project involving 'moderate affirmative action' for persons with immigrant backgrounds to state administration positions;
- Issuing of a call on all agencies within the state administration and health authorities to draw up concrete plans aimed at increasing the recruitment of persons with immigrant backgrounds; the measures taken and their results shall be published in the annual report of each agency; these agencies will also receive training in diversity management;
- Handing out of an award for ethnic diversity, on a yearly basis, to an enterprise that stands out for its efforts to promote ethnic diversity at the workplace;
- NOK 6 million to development projects at schools with more than 25 per cent minority-language pupils; The rationale behind the measure is to enhance in these schools the provision of high-quality teaching that is attractive to all pupil groups.
- Launching of a mentoring initiative the aim of which is to ensure that more young persons with immigrant backgrounds complete upper secondary education and go on to take higher education.

Yet other measures are taken to combat discrimination and to promote inter-group contact:

- Provision of NOK 2 million to NGOs and voluntary activities that promote participation, inclusion and contacts between population groups;
- Participation in the Council of Europe's 'All Different – All Equal' campaign¹⁰⁵ aimed at fighting prejudice and discrimination, and funding of the national secretariat of the campaign in 2006 and 2007 with NOK 4,3 million;
- Participation in the EU's anti-discrimination programme, in the confines of which a national awareness-raising campaign related to the Non-Discrimination Act will be carried out from November 2006 until October 2007; Participation in celebrating 2007 as the European year of equal opportunities under the coordination of the Ombudsman;
- Conducting of a study into discrimination in the housing market to monitor whether the equal treatment laws are actually complied with in this area;

¹⁰⁴ http://www.imdi.no/templates/Tema_4272.aspx

¹⁰⁵ <http://alldifferent-allegal.info/>

- Measures will be taken to fight discrimination in the police forces; these include raising the competence of police and law enforcement employees and the public prosecuting authority in matters related to diversity and discrimination, increasing recruitment of persons with minority backgrounds into these agencies, and effective and transparent dealing with complaints about the actions of the police that are related to ethnicity.¹⁰⁶

The Action Plan is accompanied by a section that lays down a rather elaborate scheme by which the Government intends to follow up the execution and results of the Action Plan. The scheme involves 17 goals (associated with the Action Plan) and the monitoring of one or more statistical indicators per goal that measure the progress made towards reaching that particular goal. On top of that, and informed by the fact that no bundle of indicators can ever provide a fully complete picture, the Ministry of Labour and Social Inclusion has requested Statistics Norway (SSB) to work on two comprehensive projects the first of which involves a study into the living conditions among non-western immigrants, and the second one of which involves a study into the ways in which immigrants have integrated into the Norwegian society. The ministries involved will report on the results by the end of 2007.¹⁰⁷

A follow up to the Action Plan was presented with the state budget for 2008 in the beginning of October 2007.

Action Plan against Poverty [Handlingsplan mot fattigdom, St.prp.nr. 1 (2006-2007)]. The provision of welfare services and benefits on a general basis for all who need them is one of the key premises of the Norwegian society. Therefore the needs of immigrants, refugees and minorities are provided for within the general welfare services, policies and programmes.¹⁰⁸ Immigrants and minorities in fact benefit somewhat more than the average citizens from these general measures, given that a disproportionate amount of them are socio-economically worse-off than the population at large. The Action Plan against Poverty (2006-2007) is one of the most recent measures taken to promote the achievement of an inclusive society where all have equal opportunities, rights and duties irrespective of economic or social background. In line with the previous government documents, the main strategy in the fight against poverty is employment, and therefore the emphasis is on active labour market policy and on securing equal opportunities. Ensuring that all children and youths irrespective of their background have equal chances and prospects in life is a particular priority. The various measures laid down in the Action Plan 2006-2007 increase the yearly expenditure related to the fight against poverty altogether with NOK 710 million (c. EUR 91 million). The government is committed to follow up the

¹⁰⁶ Pp. 9-15 of the Action Plan.

¹⁰⁷ P. 19 of the Plan of Action.

¹⁰⁸ See Eva Haagenen, 'Norway's approach to integration of immigrants and minorities', *Canadian Diversity*, Vol 5:1, 2006.

implementation of the measures through a broad set of indicators.¹⁰⁹

*National Action Plan to Combat Racism and Discrimination (2002-2006).*¹¹⁰ The former Norwegian Government launched the National Action Plan in June 2002 with a view to combating racism and ethnic discrimination in all walks of life, working life in particular. The plan recognizes Norway as a culturally diverse society, positively affirms the value of cultural plurality and the principle of equal opportunities, and goes some way in documenting discrimination against immigrants, minorities and the Saami. The Action Plan is based on the Government's previous Plan of Action (1998-2001), and is part of the Government's follow up of the UN 2001 World Conference against Racism held in Durban. It reflects the Government's view that combating racism and discrimination requires long-term, continuous, focused attention. The plan sets out altogether 48 measures under eight general headings, including the following:

- I. Working life
 - Organisation of a yearly forum for ethnic diversity in working life, with participation from the social partners, NGOs, government departments and other relevant institutions.
 - Formulation of contract compliance policies that require those that provide goods and/or services to the government to pursue a policy of non-discrimination;
 - Measures to promote employment of minorities and immigrants in the public sphere, including mentioning of equal opportunities when advertising vacancies, and integration of the diversity perspective into central government leadership training;
 - Launching of an initiative focusing on finding employment for unemployed immigrants;
 - Improvements with regard to recognition of skills acquired in other countries.
- II. Public services
 - Measures to encourage more educational institutions to focus on multicultural understanding; support for research the aim of which is to strengthen the minority perspective in public service provision;
 - Measures to increase the number of people from minority groups to health and social sector and to teacher training programmes;
 - Carrying out of a survey to identify municipal resources and needs with regard to nursing and health care services for minorities;

¹⁰⁹ AID: *Handlingsplan mot fattigdom*. St.prp. nr. 1 (2006-2007). Available at:

http://www.regjeringen.no/upload/kilde/pla/2006/0001/ddd/pdfv/292446-h-plan2006_fattigdom.pdf

¹¹⁰ Available at: http://www.regjeringen.no/upload/kilde/krd/pla/2002/0001/ddd/pdfv/160818-handlingsplan_mot_rasisme_og_diskriminering_2002-2006.pdf

- A number of measures will be taken to improve interpreting services.
- III. Schools and education
- Development of new teaching aids for use in schools as part of their general effort to raise awareness, with a special focus on racism and discrimination; Commemoration of the Holocaust Memorial Day in schools each year;
 - Measures to improve the way in which the subject 'Norwegian as a second language' is taught.
- IV. Police and prosecuting authorities
- Establishment of a central forum for a dialogue between the Directorate of Police and relevant NGOs, as well as similar forums at the local level;
 - Training on diversity and racism for all police employees;
 - Establishment of special units under the public prosecuting authority that will provide specialist expertise; Appointment of a specific person at each prosecutor's office who will be responsible for coordination between the police and the public prosecuting authority in cases involving ethnic discrimination and racially motivated harassment and violence;
 - Promotion of increased use of courses on racism and discrimination for judges.
- V. Documentation/Monitoring
- Preparation and publication of a report that builds upon all existing knowledge about the nature and extent of racism and discrimination;
 - The development of labour market statistics with regard to immigrants; improvement of the survey on attitudes about immigrants and immigration; conducting of a survey on the living conditions of immigrants;
 - Improvement of the system for registration of racist and discriminatory behaviour in police records.
- VI. Internet
- The National Bureau of Crime Investigation (Kripos) will assume a leading role in monitoring racist content in the Internet on a continuing basis; a telephone hotline will be established for the purposes of reporting racist content.
- VII. Local community
- Actions will be taken to build the expertise of municipal and county authorities in combating racism and discrimination; measures to prevent recruitment to racist and nationalist groups.

- VIII. Strengthening legal protection
- Adoption of a general law prohibiting ethnic discrimination;
 - Possible adoption of Protocol 12 to the ECHR, support for the incorporation of the Racial Equality Directive and the Employment Equality Directive into the EEA Agreement;
 - Continuing of the operations of the Center for Combating Ethnic Discrimination (SMED) until adoption of the new domestic anti-discrimination law.
- IX. General measures
- Action will be taken to combat ethnic discrimination at nightclubs, restaurants, discotheques etc; the police is to give priority to these cases, and the Government will prepare a legislative proposal to the effect that discrimination in these places may result in withdrawal of licences to serve alcohol.

A good proportion of these measures were implemented, and the Plan of Action received a fairly positive evaluation, although the Plan was also criticized for having been under-resourced and for not necessarily having led to many tangible changes in the structures and work practices of the stakeholders involved.¹¹¹ The Government announced in August 2007 that it will present a new National Plan of Action to Combat Racism and Discrimination sometime in fall 2008.¹¹²

Other initiatives. The Government has launched also many other measures that directly or indirectly impact the status and well-being of immigrants and minorities. One example is the establishment of the *Romani People's Fund* in 2004, the objective of which is to compensate Romani victims for the negative effects of previous assimilation policies. It should be noted, however, that it appears that individual access to compensation has its difficulties.¹¹³ Another interesting example, even in international comparison, is the establishment of the Norwegian Centre for Minority Health Research in 2003.¹¹⁴

Norway has also decided to participate in the EU-programme PROGRESS (Community Programme for Employment and Social Solidarity) through a decision made by the Norwegian Parliament. The PROGRESS programme, which will run from 2007 to the end of 2013, will consolidate and continue the activities of the four previous Community programmes to which Norway participated as

¹¹¹ See AID: *Evaluering av Handlingsplan mot rasisme og diskriminering* (2002-2006). Available at: http://www.regjeringen.no/upload/AID/publikasjoner/rapporter_og_planer/2007/R2007_hplan_rasisme_diskriminering_evaluering.pdf. See also http://www.regjeringen.no/upload/kilde/rap/2006/0016/ddd/pdfv/299289-r2006_hplan_rasisme.pdf

¹¹² *The Norway Post* 15/8/2007.

¹¹³ ECRI, 2nd Report on Norway, para 16. Available at: http://www.coe.int/t/e/human_rights/minorities/2_framework_convention%28monitoring%29/2_monitoring_mechanism/4_opinions_of_the_advisory_committee/1_country_specific_opinions/2_second_cycle/PDF_2nd_OP_Norway_eng.pdf

¹¹⁴ <http://www.nakmi.no>

well. In view of the Norwegian government, participation in the previous programmes has been valuable in terms of mutual learning and has contributed to create platforms for co-operation for the authorities, non-governmental organisations and the research community.¹¹⁵ The Progress programme is divided up into five policy sections which are (1) Employment, (2) Social inclusion and social protection, (3) Working conditions, (4) Non-discrimination and (5) Gender Equality.¹¹⁶

¹¹⁵ Minister of Labour and Social Inclusion: *Norway will participate in the EU-programme "Progress"*. Press release No. 37, published 27.04.2007

¹¹⁶ http://ec.europa.eu/employment_social/progress/index_en.htm. Evaluations of previous concludes that they overall have given good contributions to reach the objectives of the programmes, and there is therefore reason to believe that the continuation of the activities in a common programme will continue to yield positive results in the fields of employment, social policy and equal opportunities.

4. LEGAL FRAMEWORK

4.1. International Instruments: Ratification and Status

Norway has a good track record in terms of ratification of key international treaties. It has ratified the core international human rights conventions, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Social, Economic and Cultural Rights (ICESCR), International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). It was the first to ratify the ILO Convention No 169 concerning Indigenous and Tribal Peoples in Independent Countries, and it has ratified the CoE Framework Convention for the Protection of National Minorities (ETS No. 157). Norway has signed, but not ratified, protocol No. 12 to the ECHR, which provides for more wide-reaching protection from discrimination than the Convention itself.

By virtue of the international obligations that Norway has assumed, individual petitions can be filed with the CERD Committee, the Human Rights Committee and the European Court of Human Rights in case a person subject to Norwegian laws considers having been discriminated against on the grounds of his or her ethnic or national origin or religion. This can take place after the exhaustion of the domestic remedies, meaning that the international complaint system is in practice a second line of defence against discrimination. Under the aforementioned instruments Norway is also obliged to submit periodic country reports to the treaty bodies that oversee compliance with these instruments. Feedback from these bodies indicates that dialogue with the Norwegian authorities has been constructive, open and frank.¹¹⁷

The legal system in Norway is 'dualist' in nature. This means that the provisions of international legal instruments that Norway has ratified are not applicable in the domestic courts or other judicial bodies as such, but a specific legislative act is needed to render treaties part of the domestically applicable body of law. Whereas this kind of an arrangement is by no means incompatible with a state's obligations under international human rights law,¹¹⁸ a 'monist' system – where national and international law are viewed as a single legal system – is often thought to represent a somewhat more straightforward and clear solution, in part because

¹¹⁷ CERD Committee: *Concluding observations of the Committee on the Elimination of Racial Discrimination on Norway* (19 October 2006), CERD/C/NOR/CO/18, para 2. Advisory Committee on the Framework Convention: *Second Opinion on Norway*, (16 November 2006), ACFC/OP/II(2006)006, para 6. Human Rights Committee: *Concluding observations on Norway* (25 April 2006), CCPR/C/NOR/CO/5, para 2.

¹¹⁸ See e.g. D.J. Harris et al, *Law of the European Convention on Human Rights*, pp. 23-25.

under such systems international law is often given precedence over domestic law in case of conflict.

Four core human rights conventions have been incorporated into the Norwegian legal system through the Human Rights Act (*Menneskerettighetsloven*)¹¹⁹, which was adopted in 21 May 1999. These conventions are the ICCPR, ICESCR, the European Convention on Human Rights (together with its protocols No 1, 4, 6, 7, and 13), and the Convention on the Rights of the Child. The Human Rights Act gives these human rights instruments priority over conflicting domestic laws.¹²⁰ The decision not to incorporate the ICERD, or other key human rights conventions, through the Human Rights Act has occasioned criticism from many quarters, including the Committee on the Elimination of Racial Discrimination, civil society and individual experts.¹²¹ However, the government maintains that the fact that the Human Rights Act was not chosen as the incorporating statute does not mean that the ICERD is not considered to be an instrument of fundamental importance.¹²² The ICERD, on the other hand, has been transformed into the Norwegian legal system through the Non-Discrimination Act, as section 2 of the Act provides that the ICERD 'shall apply as Norwegian law'. In addition to this, the Act on the Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal specifies that it is the task of the Ombud to monitor that the Norwegian law and administrative practice are in compliance with the provisions of the ICERD.¹²³ The government has taken the view that conventions not incorporated through the Human Rights Act do not prevail over inconsistent domestic legislation, or do so only in exceptional circumstances.¹²⁴

The following table lists key UN and Council of Europe human rights documents that prohibit discrimination on the grounds of ethnic and national origin and religion, and the status of these instruments in Norway:

¹¹⁹ LOV 1999-05-21 nr 30: Lov om styrking av menneskerettighetenes stilling in norsk rett (*Menneskerettighetsloven*).

¹²⁰ Article 3 of the Act.

¹²¹ CERD, *Concluding observations on Norway*, 19 October 2006 (CERD/C/NOR/CO/18), para 14. Statement by the Norwegian Centre for Human Rights at the consideration by CERD of the Combined 17th and 18th Periodic Reports of Norway (CERD/C/497/Add.1), available at:

http://www.humanrights.uio.no/omenheten/nasional/monitor/smr_innlegg_cerd.pdf

Gro Hillestad Thune: 'Current Problems of Discrimination in Norway', in Stéphanie Lagoutte (ed.) *Prohibition of Discrimination in the Nordic Countries: The Complicated Fate of Protocol No. 12 to the European Convention on Human Rights* (Copenhagen: The Danish Institute for Human Rights, 2005).

¹²² Norway's report to the CERD Committee (September 2005), para 7.

¹²³ Lov om Ligestillings- og diskrimineringsombudet og Ligestillings- og diskrimineringsnemnda, § 1(2).

¹²⁴ Norway's 17th/18th periodic report to the CERD Committee (September 2005), para 8".

Convention	Ratification (r)/signature (s)	Domestic status
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	R: 6.8.1970	Transformation through the Anti-Discrimination Act
International Covenant on Civil and Political Rights (ICCPR)	R: 13.9.1972	Incorporation through the Human Rights Act
International Covenant on Economic Social and Cultural Rights (ICESCR)	R: 13.9.1971	Incorporation through the Human Rights Act
ILO Convention 111 concerning Discrimination in Respect of Employment and Occupation	R: 25.6.1958	Transformation through several acts
CoE Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)	R: 15.1.1952	Incorporation through the Human Rights Act
ECHR, Protocol 12 on discrimination	S: 15.1.2003, not ratified	-
CoE Framework Convention for the Protection of National Minorities	R: 17.3.1999	No specific domestic legislation.
Convention on the Protection of the Rights of All Migrant Workers and Members of their Families	S/R: Not signed or ratified	-

Norway has, in consequence of the results of referenda held in 1972 and 1994, chosen not to join the EU. Norway belongs to the European Economic Area (EEA), together with the EU Member States and the fellow European Free Trade Association (EFTA) states Iceland and Liechtenstein. By virtue of its membership in the EEA, Norway has agreed to enact legislation similar to that passed in the EU in relation to the creation of the single market. This legislation covers matters pertaining to the free movement of goods (excluding agriculture and fisheries), persons, services and capital, and extends to such matters as social policy, consumer protection, environment, company law and research.¹²⁵ There was no obligation to include the EU racial equality directive and the employment equality directive to this category of laws, but Norway decided voluntarily to bring its laws to the European level. With a view on that, it adopted in 2004 the Anti-Discrimination Act and amended the Working Environment Act, and the Government is of the view that the latter documents meet the requirements put forth by the EU directives.¹²⁶

4.2. The Constitution

The Constitution (*Kongeriget Norges Grundlov*) dates from 1814, and is among the oldest still-functioning constitutions in the world. It has been amended several times, but no major revision has taken place due to constitutional conservatism. The Constitution

¹²⁵ European Commission, *The EU's relations with Norway*, http://ec.europa.eu/external_relations/norway/intro/index.htm

¹²⁶ See e.g. travaux préparatoires to the new equality legislation and the report of Norway to CERD (September 2005), para 15.

guarantees some basic freedoms, such as freedom of religion and freedom of expression, but does not lay down a detailed bill of rights or articulate a general prohibition of discrimination. However, Article 110c provides that it is the responsibility of the State authorities to respect and ensure human rights and that specific provisions for the implementation of treaties shall be determined by law.¹²⁷

4.3. Anti-Discrimination Act

Protection against discrimination was significantly strengthened in Norway on 1 January 2006 when the Anti-Discrimination Act entered into force. The Act states that its purpose is to promote equality, ensure equal opportunities and rights, and prevent discrimination based on ethnicity, national origin, descent, skin colour, language, and religion or belief.¹²⁸

The Act – just like all other pieces of Norwegian anti-discrimination law of domestic origin - does not specifically mention ‘race’ as a distinct ground of discrimination. According to the Government this omission was intentional, because on its view (i) the concept of race as based on biological and hereditary characteristics is grounded in theories that has no justifiable scientific basis or content, (ii) the concept has strong negative connotations and (iii) protection against racial discrimination is in fact provided through prohibition of discrimination on the grounds enumerated in the Act.¹²⁹ The CERD Committee has not fully accepted this line of reasoning, and has recommended that the government ensures ‘that discrimination on the grounds of race is adequately covered in existing legislation and falls within the mandate of the Equality and Anti-Discrimination Ombud’.¹³⁰

Section 2 of the Act, as mentioned, provides that the ICERD shall apply as Norwegian law.¹³¹

The scope of application of the Act is wide: it is applicable with respect to all areas of society, except for family life and personal relationships. Direct and indirect discrimination, harassment and instructions to discriminate against a person on the basis of the aforementioned grounds are prohibited. It is prohibited to be an accessory to any breach of the prohibition against discrimination laid down in the Act. The Act provides protection against victimization, viz. the subjection of a complainant or a witness to unfavourable treatment on account of the complaint.

¹²⁷ English translation of the Constitution of Norway is available at the website of the Stortinget, at <http://www.stortinget.no/english/constitution.html>

¹²⁸ Section 1 of the Act. For travaux préparatoires, see:

<http://www.regjeringen.no/Rpub/OTP/20042005/033/PDFS/OTP200420050033000DDDPDFS.pdf>

¹²⁹ Government report to the CERD Committee, para 10. Also the Plan of Action against racism and discrimination follows a similar logic, and does not use the concept of ‘race’.

¹³⁰ CERD: *Concluding observations on Norway*, CERD/C/NOR/CO/18, para 15.

¹³¹ Unofficial translation by the Office of the Ombud.

Section 4 of the Act provides definitions of direct and indirect discrimination:

“Direct discrimination” shall mean that the purpose or effect of an act or omission is such that persons or enterprises are treated less favourably than others are, have been or would have been treated in a corresponding situation on such grounds as are mentioned in the first paragraph. “Indirect discrimination” shall mean any apparently neutral provision, condition, practice, act or omission that would put persons at a particular disadvantage compared with other persons on such grounds as are mentioned in the first paragraph. “Indirect discrimination in working life” shall mean any apparently neutral provision, condition, practice, act or omission that in fact has the effect of putting a job applicant or employee in a less favourable position than other job applicants or employees on such grounds as are mentioned in the first paragraph.

“Harassment” is defined as acts, omissions or statements which have an offensive, frightening, hostile, degrading or humiliating effect, or which are intended to have such an effect. It is for the employers and the management of organisations or educational institutions to take precautions to prevent the occurrence of harassment.¹³²

Differential treatment that constitutes a necessary and proportionate measure in order to achieve a legitimate objective is not considered to be discrimination under the Act. Nor is positive special treatment that contributes to the achievement of the purpose of the Act discrimination. The Act provides that such special treatment shall be discontinued when its purpose has been achieved.¹³³ The prohibition of discrimination based on religion or belief does not apply to actions and activities carried out under the auspices of religious and belief communities and enterprises with a religious or belief-related purpose, provided that (i) the actions or activities are significant for the accomplishment of the community’s or the enterprise’s religious or belief-related purpose and (ii) the matter at hand does not deal with the working life.¹³⁴

The Act provides for a number of arrangements that are highly useful for persons who consider bringing legal action to remedy discrimination. Section 10 provides for the sharing of the burden of proof, and stipulates that if there are circumstances that give rise to a belief that discrimination (direct or indirect, harassment, instruction to discriminate, victimization) has taken place, the breach shall be assumed to have taken place unless the respondent produces evidence to the contrary. To enable individuals, who suspect that they have been discriminated against in the recruitment or selection process, to determine whether to

¹³² Section 5 of the Act.

¹³³ Section 8 of the Act.

¹³⁴ Section 3 of the Act.

bring legal action, section 11 provides that employers are obliged to disclose in writing information about the appointment, in particular about the qualifications of the person appointed. Organisations, the exclusive or partial purpose of which is to fight discrimination, can be used as legal agents in administrative proceedings. This means that these organisations can be authorized to act on behalf of the aggrieved person before the Ombudsman or the Tribunal. A person appointed by such an organisation is entitled to act as a legal representative also in other types of legal proceedings, unless the court in question holds that the person is not adequately qualified.¹³⁵

Section 7(1) prohibits employers from trying to acquire information about applicant's religious or cultural background at any stage during the recruitment and selection process. This prohibition does not apply if such information is obtained on account of the nature of the position, or if it is part of the purpose of the enterprise concerned to promote specific religious or cultural views and the stance of the employee will be significant for the accomplishment of the said purpose.¹³⁶

A victim of discrimination is entitled, if a court so decides, to obtain just satisfaction (redress), the amount of which the court can rather freely appreciate ('what is reasonable given the circumstances of the parties and other facts in the case').¹³⁷ Satisfaction can be awarded irrespective of the degree of fault (intention or negligence) on part of the wrong-doer, and is without prejudice to the right of the aggrieved person to claim compensation for financial loss under the ordinary rules governing damages. Particularly serious or re-occurring breaches of the prohibitions of the Anti-Discrimination Act give rise to criminal liability if they are carried out jointly by a group of three or more people. Penalty for such gross breaches consists of fines or imprisonment for the maximum period of three years. Sharing of the burden of proof does not apply to criminal proceedings.

4.4. Sector-specific Laws and the Criminal Code

Several sector-specific laws provide further protection by means of prohibiting discrimination within their specific fields of application. Some of these seek to complement the Anti-Discrimination Act and the Gender Equality Act by means of prohibiting discrimination on the basis of other grounds than those dealt with in this paper. For instance, Chapter 13 of the recently revised Working Environment Act¹³⁸ prohibits discrimination on the basis of membership of a trade union, sexual orientation, disability and age, in the field of employment.

¹³⁵ Section 12 of the Act.

¹³⁶ Section 7(2) of the Act.

¹³⁷ Section 14 of the Act.

¹³⁸ Act of 17 June 2005 No. 62 relating to working environment, working hours and employment protection, etc. (Working Environment Act).

Yet other laws provide further protection against discrimination on the basis of ethnicity, descent, religion and national origin. The Tenancy Act, Right-of-occupancy Act,¹³⁹ Housing Cooperative Act and Home Building Association Act belong to this class of acts and prohibit discrimination in their specific fields of application.¹⁴⁰ It appears however that the non-discrimination provisions of these acts are seldom applied in the courts.¹⁴¹

Article 349a of the Penal Code criminalizes refusal of provision of goods and services in an occupational or similar activity, and refusal of admission to a public gathering, on grounds of religion, race, colour or national or ethnic origin:

A person who in an occupational or similar activity refuses any person goods or services on the same conditions as apply to others because of the latter's religion or belief, skin colour or national or ethnic origin, shall be liable to fines or imprisonment for a term not exceeding six months. The same penalty shall apply to any person who in any such activity refuses a person goods or services as mentioned because of his or her homosexual preference, lifestyle or orientation.

Yet, the number of cases brought to the courts has remained very low, and even these cases seldom result in a conviction.¹⁴²

Article 135a of the Penal Code, which was revised in 2003 and 2004, prohibits racist propaganda and incitement to racial hatred. Section 330 of the Penal Code prohibits the forming of or participation in an association that is prohibited by law or the purpose of which is to commit or encourage criminal acts, including associations set up for the purposes of spreading racist ideas.

4.5. Act on the Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal

The Act on the Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal was adopted in June 2005 and it entered into force in January 2006. The law established the office of a new Ombud that replaced three prior institutions and organisations, namely the Gender Equality Ombud, the Gender Equality Centre and the Centre for Combating Ethnic Discrimination (SMED).

¹³⁹ Right-of-occupancy is a specific type of legal arrangement in the area of housing that is common to the Nordic Countries. Under this arrangement a person has a right to occupy a specific apartment without being a tenant or the owner of the apartment.

¹⁴⁰ These acts prohibit also discrimination on the basis of belief, language and sexual orientation. Lov om husleieavtaler (*husleieloven*), Lov om burettslag (*burettslagslova*), Lov om bustadbyggjelag (*bustadbyggjelagslova*), Lov om eierseksjoner (*eierseksjonsloven*).

¹⁴¹ Norway: *Plan of Action for Human Rights (1999-2000)*, available at: <http://www.ohchr.org/english/countries/coop/norway.htm>

¹⁴² The third report of ECRI on Norway mentions that "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". ECRI: *Third report on Norway* (adopted on 27 June 2003), para 12.

The Ombud and the Tribunal monitor and contribute to the implementation of several domestic acts, including the Act on Gender Equality (9 June 1978, No. 45) and the Anti-Discrimination Act, in addition to which they have similar powers in respect of anti-discrimination provisions of specific acts that relate to the working environment and worker protection and specific aspects of housing.¹⁴³ The Ombud is also entrusted with the obligation to monitor that Norwegian law and administrative practice are in accordance with Norway's obligations under the ICERD and CEDAW.

The Ombud is an independent public administrative agency administratively subordinate to the Ministry for Children and Equality. Freedom from any political pressure or guidance is explicitly guaranteed in law.¹⁴⁴ The Ombud has two main functions: First, the Ombud is entrusted with spearheading activities to promote equality and combat discrimination, as laid down in section 3 of the Act, according to which:

The Ombud shall work to promote genuine equality irrespective of gender, ethnicity, national origin, descent, skin colour, language, religion or belief in all areas of society. In the sphere of working life, the Ombud shall also work to promote equal treatment irrespective of political views, membership of an employee organization, sexual orientation, disability or age. The Ombud shall also work to promote equal treatment irrespective of homosexual orientation in the housing sector.¹⁴⁵

This promotional role is further clarified in the regulations issued by the Ministry of Children and Equality, according to which the Ombud shall play a proactive role, for instance by means of monitoring developments in the society; acting as a whistleblower by calling attention to any problems; raising awareness of equality and equal treatment, and actively influencing attitudes and behaviour; providing information, support and guidance in efforts to promote equality and fight discrimination in the public, private and voluntary sectors; providing advice and guidance on ethnic diversity in working life to employers, free of charge; serving as a meeting place and information centre.¹⁴⁶

Second, The Ombud is entrusted with monitoring and ensuring compliance with the Anti-Discrimination Act. The Ombud can examine any case where a violation of the afore-mentioned anti-discrimination norms is suspected. The Ombud may take up cases on his or her own initiative or on the basis of an application from other persons. If the person filing the complaint is someone else than the person whose rights are directly at stake, the consent of

¹⁴³ Section 1 of the Act.

¹⁴⁴ Section 2(1) of the Act.

¹⁴⁵ English translation of the Act, available at: <http://www.regjeringen.no/en/doc/Laws/Acts/The-Act-on-the-Equality-and-Anti-Discrim.html?id=451952>

¹⁴⁶ Section 1(a-f) of the Royal Decree of 16 December 2005.

the latter is needed before the case can be dealt with (exceptions apply).¹⁴⁷ In examining the case the Ombud can issue an opinion on the matter and if an infringement is found, he or she must try to secure voluntary compliance with it. If this fails, the Ombud can bring the case to the Tribunal. The Ombud is obliged to provide guidance to persons who bring a case before it, but is not allowed to act as a legal counsel or to represent a party in a legal proceeding.¹⁴⁸ In 2006, the Ombud dealt with 286 cases dealing with discrimination, and was contacted more than 1200 times for advice and guidance. The clear majority of the cases dealt with gender discrimination in employment.¹⁴⁹

A case can be brought to the Equality and Anti-Discrimination Tribunal even if the Ombud decides not to do so. A party to the case, or a third party acting on the consent of the party, can bring the case to the Tribunal as well. In addition, the Tribunal itself may require the Ombud to bring before the Tribunal specific cases that have been dealt with by the Ombud. Upon finding discrimination, the Tribunal may order actions to be stopped or be remedied, or it may order other measures with a view to ensuring that discrimination, harassment, instructions or victimization is brought to an end and is not repeated. The Tribunal may set a time limit for compliance with the order and may decide to impose a coercive fine to ensure its implementation. In certain cases involving public authorities the Tribunal's powers are limited to the issuing of an opinion.¹⁵⁰ The Tribunal may not annul or alter administrative decisions made by other public administrative agencies.

During the first year of its operation (2006), effectively comprising ten months, the Tribunal dealt with 27 cases. The overwhelming majority of these, 24, dealt with gender discrimination, whereas only one case dealt with discrimination on the grounds of ethnicity/nationality and none involved discrimination on the grounds of religion.¹⁵¹

¹⁴⁷ Section 3 of the Act. The law provides that consent is not needed 'if special considerations so warrant'.

¹⁴⁸ Section 4 of the Act.

¹⁴⁹ Ombud: *Resultatrapport 2006*, available at: <http://www.ldo.no/no/TopMenu/Om-ombudet2/Resultatrapport-2006/>

¹⁵⁰ Section 9 of the Act.

¹⁵¹ Likestillings- og diskrimineringsnemnda: *Årsrapport 2006*. Available at: <http://www.diskrimineringsnemnda.no/iwips/568149593/>

5. ASSESSMENT

5.1. The Institutional Framework

With respect to the institutional setting the Norwegian government has done much 'by the book'. Most importantly, it has designated a lead ministry that is responsible for coordinating policies in this field: from October 2007 onwards this will be the Ministry of Children and Equality that will have the responsibility for coordinating the action across all equality strands. Also other ministries, particularly the Ministry of Labour and Social Inclusion, and also the Ministry of Education and Research, have designed and implemented complementary policy measures in their respective areas of responsibility, although one cannot speak of full mainstreaming across all ministries at this time, as equality issues have not been systematically integrated into all decision-making. Complementarity of work between the Ministry of Children and Equality and the Ministry of Labour and Inclusion appears a rather inevitable result of the somewhat original division of labour between them, as 'equality' and 'inclusion', and measures that promote their achievement, in practice overlap to a considerable degree.

Administrative reorganisation of the Directorate of Immigration (UDI) by means of the creation of a separate Directorate of Integration and Diversity (IMDi) has undoubtedly helped to bring clarity into the functions of the two institutions and helped foster confidence in government's integration work. The reorganisation was, according to an evaluation report that mostly looked at the technical side of things, conducted fairly successfully.¹⁵²

The establishment of the Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal have significantly strengthened access to justice in discrimination cases by providing for low-threshold proceedings. From the point of view of personal and material scope the respective mandates of the two bodies are broader than those required by Article 13 of the Racial Equality Act, as they cover a relatively wide range of discrimination grounds (e.g. gender, ethnicity, national origin, descent, skin colour, language, religion or belief) and – with some restrictions – their field of duty covers 'all areas of society'. On the other hand, Article 13 requires specialized bodies to (i) provide independent assistance to victims of discrimination, (ii) conduct independent surveys concerning discrimination, and (iii) publish independent reports and make recommendations relating to discrimination, and it is not entirely clear whether the Ombud's (the Tribunal is not a specialized body in the sense of Article 13) mandate would in a strict legal scrutiny meet these requirements, as the Ombud can

¹⁵² Statskonsult: *Evaluering av prosessen rundt etablering av IMDi*. Rapport 2007:3. Available at: <http://www.statskonsult.no/publik/rappporter/2007/2007-03.htm>. See also AID: *En bedre utlendingsforvaltning*. Report of 09.08.2007. Available at: http://www.regjeringen.no/Upload/AID/publikasjoner/rappporter_og_planer/2007/R2007_utlendingsforvaltning.pdf

only provide 'guidance' to victims, and as conducting of surveys on discrimination is not among the specifically listed duties of the Ombud. On the other hand, Article 13 does not require that there is a single specialized body that is in charge of all three duties listed in the Article; there can be two or more institutions that together get the job done.

The fact that the respective mandates of the Ombud and the Tribunal cover several discrimination grounds represents a fast-growing European trend and is very welcome, particularly because this approach offers clear advantages in terms of addressing multiple and intersectional discrimination and because it emphasises the core principles of equality and diversity that underpin protection against discrimination on all of the grounds.¹⁵³ That said, international experiences suggest that it may in practice be somewhat challenging to ensure full utilization of all existing expertise while avoiding the formation of a hierarchy of grounds that emerges particularly if ground-specific needs are not taken into account and if each ground is not allocated a fair share of attention and resources, the latter often being in short supply.¹⁵⁴ One possible way to find potential solutions to these challenges is to establish contacts, if such do not already exist, with the existing 'multi-ground' equality bodies in other countries, for the purposes of mutual benefit and learning. The Irish Equality Authority, functioning since 1999, and the recently established UK Equality and Human Rights Commission (that partly builds upon the work of single-ground equality bodies that preceded it) could be looked up to in this respect.¹⁵⁵

In the process of setting up the Ombud it was decided that its mandate should not cover provision of legal assistance to victims of discrimination, as this was considered incompatible with the Ombud's law enforcement role - which is a rather common position.¹⁵⁶ Since the Centre for Combating Ethnic Discrimination (SMED) was abolished at the same time as the Ombud was established,¹⁵⁷ and since the other organisations either provide only advice or focus mainly on other types of cases, the non-availability of free legal assistance has occasioned criticism.¹⁵⁸ In this connection it should be noted that enforcement and legal aid functions are not considered mutually incompatible in all jurisdictions. For instance the Irish Equality Authority does the

¹⁵³ See e.g. Colm O'Conneide, *A Single Equality Body: Lessons From Abroad*, (Equal Opportunities Commission, 2002). Available at: <http://83.137.212.42/sitearchive/cre/downloads/seb.pdf>

¹⁵⁴ *Idem*.

¹⁵⁵ For their websites, visit <http://www.equality.ie> and <http://www.equalityhumanrights.com>

¹⁵⁶ The situation is similar in e.g. Finland and the Netherlands.

¹⁵⁷ SMED, the Centre for Combating Ethnic Discrimination, was a state-run but independent administrative agency that existed between 1998 and 2005. Its mandate covered (i) provision of legal aid to victims of discrimination, (ii) documentation of the types and scope of discrimination in Norway, and (iii) information provision and awareness raising activities. The SMED handled on the average 200-250 cases per year during 1999-2003. SMED was not empowered to litigate before the courts, but could in cases of 'principle importance' cover attorney's fees. SMED was closed when the new Equality and Anti-Discrimination Ombud took office. www.smed.no

¹⁵⁸ This was noted also in the Advisory Committee's (Framework Convention) second report on Norway.

following: it has the power to instigate litigation on its own behalf or to assist a litigant; its in-house legal service may, where the case has strategic importance, provide free legal assistance to complainants; it conducts inquiries that may result in the Authority serving a 'non-discrimination notice' the breach of which is a criminal offence; it reviews domestic legislation; it drafts statutory Codes of Practice; it issues recommendations; and it conducts research and co-operates with the Central Statistics Office and other bodies that produce equality data.¹⁵⁹ Also the UK Commission for Racial Equality (CRE), the powers of which will in October 2007 be taken over by the UK Commission for Equality and Human Rights (CEHR), has functions that relate both to more general enforcement of the law and provision of assistance, including legal representation if necessary, to victims of discrimination. It should be noted that publicly funded independent legal advice and assistance could significantly improve easy access to justice.

5.2. The Policy Framework

Norway's existing policies show a clear commitment to inclusion of immigrants and thereby to equal treatment and also the achievement of a good measure of *de facto* equality between different population groups. The government, and also many other stakeholders, have recognized the fact that Norway has become a culturally and religiously diverse country, and that this tendency is going to strengthen in the future, because immigrant labour is considered to be a crucial asset in maintaining the thriving Norwegian economy and welfare.

There is much in Norway's policies that is commendable: The underlying value base is clearly and explicitly spelled out, which helps to bring integrity into the work at hand; the number and comprehensiveness of policy programmes and the wide range of planned and implemented measures signal that the engagement is taken seriously; policies are based on a fairly careful examination of the processes that lead to discrimination and exclusion, and on an analysis of the situation of the different target groups (e.g. first generation v. second generation; non-western v. western immigrants); discrimination is seen in a wider context, primarily in that of inclusion/exclusion, and immigrant and immigration policies are set out in a wider human rights context, which has led to the highly visible and commendable emphasis on gender equality and the fight against forced marriages, FGM (female genital mutilation) and human trafficking; and many if not most policy programmes are followed up by the government either through a group of indicators or evaluation reports, an approach which indicates government's commitment to carry out the policies in practice. But what really distinguishes the Norwegian government's efforts in a European or even global comparison is the frequent use of (soft)

¹⁵⁹ See Shivaun Quinlivan: *Country Report – Ireland*. Available at: http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/irlrep07_en.pdf

positive action measures, although most measures are not labelled as such but rather as measures promoting inclusion. Norway is clearly using the fruits of its blooming economy as a lever to bring about positive social change and to promote further material and social well-being among the whole population. In effect, it *promotes* inclusion and equality instead of simply *fighting* marginalization and discrimination.

Government's policies are characterized by a strong commitment and focus on securing access to employment. This is undoubtedly appreciated by all stakeholders, including the target groups themselves, as better chances in the working life promote overall well-being within these groups. Government's intention to ensure that immigrants are able and willing to contribute to the Norwegian society, and particularly its economy, will – if successful - also work towards reduction of prejudices and inter-group tensions, because everyone will be seen to be in the same boat, which increases intergroup solidarity. Government's 'work first' approach is also linked to its determination to prevent the formation of ethnic class divisions – another laudable goal.¹⁶⁰ That said, it is of greatest importance that immigrants are not simply seen in terms of human resource, because that can lead to disregard or even disrespect towards 'non-productive' immigrants and refugees and lead to demands that 'immigrants return home' when their services are no longer needed for one reason or the other. It is also important to understand that promotion of equal treatment and fight against discrimination necessarily involve a lot more than just measures promoting inclusion; focus should also be on effective judicial and other enforcement of equal treatment law and on interventions that aim at reducing prejudices, stereotypes and racist beliefs and attitudes.

Current government's value base, as it appears from the aforementioned policy documents, approaches classical – almost doctrinaire – liberalism accompanied by individualism, democracy and a degree of egalitarianism.¹⁶¹ The good point in all of this is that equality, non-discrimination and tolerance –and therefore inclusion - are integral and standing elements of a policy of this kind. But in this line of thinking recognition of diversity does not necessarily mean accommodation of difference. Indeed, Norway's policies lay much weight on the following: knowledge of the Norwegian language, culture and customs; individualism and gender equality, meaning inter alia that immigrant and minority women are expected to participate in the working life just like men, and children are expected to be brought up in a way that ensures full knowledge of the Norwegian language and culture; the status of Christianity and the Church of Norway, both of which are

¹⁶⁰ See for instance the Action Plan for Integration and Social Inclusion of the Immigrant Population and Goals for Social Inclusion 2007, p. 6: 'The Government wishes to prevent the development of a class-divided society where persons with immigrant backgrounds have poorer living conditions and a lower rate of social participation than the general population'. See also p. 4 of the White Paper on Work, Welfare and Inclusion.

¹⁶¹ This was even more visible in the previous government's policies, e.g. in the Report No 49 to the Storting.

guaranteed and bolstered in the Constitution, for instance in the requirement that at least half of the members of the Cabinet must belong to the Church; the mandatory teaching of Christian religion ('Christian Knowledge and Religious and Ethical Education') in schools and preschools, which is not necessarily fully in line with recognition of religious diversity and freedom;¹⁶² and the emphasis on single nationality to the exclusion of dual nationality in the Nationality Act. Indeed, as such, these kinds of measures, laws and practices lean more toward assimilation and nation-building than multiculturalism in the sense of full recognition of cultural and religious (as opposed to mere ethnic) diversity. This is also what a considerable portion of Norwegians expect, as one in two Norwegian thinks that immigrants should become as similar to Norwegians as possible (i.e. they support assimilation).¹⁶³

An approach based on genuine recognition of the deep and complex cultural and religious diversity of the current population of Norway would involve measures that ensure that immigrants and minorities have a genuine opportunity to maintain and develop their own cultural, religious and linguistic identities; this would require proactive and far-reaching action because of the pressures that inevitably come from the mainstream society.¹⁶⁴ The government does go some way in this direction, as it has ratified the Framework Convention for the Protection of National Minorities, provides funding to religious and cultural associations,¹⁶⁵ and as the specific needs and characteristics of persons with immigrant or minority background can be taken into account in the implementation of specific measures in practice.¹⁶⁶ It must also be acknowledged that the pertinent international legal standards- the benchmark that is applicable here - in the form of so-called minority rights are generally but not yet universally accepted in Europe, and are in any case fairly weak. That said, it is likely that Norway's current policies will be met with resentment from some quarters of the society sooner or later,¹⁶⁷ which means that Norway would do

¹⁶² The UN Human Rights Committee found in November 2004 that this mandatory subject violated freedom of religion as laid down in the ICCPR. Whereas the government has subsequently reformed this subject, several human rights organisations hold that the situation continues to be unacceptable, partly because the Education Act and the Preschool Act require children to be provided a Christian upbringing. Norwegian Helsinki Committee: Human Rights Developments in Norway 2005. Report 1/2006. Available at:

http://www.nhc.no/php/files/documents/Publikasjoner/Rapporter/Landogtema/HRdevelopmentsinNorway_2005.pdf

¹⁶³ http://www.ssb.no/english/subjects/00/01/30/innvhold_en/

¹⁶⁴ See Timo Makkonen: "Minorities' Right to Maintain and Develop Their Cultures: Legal Implications of Social Science Research" in Martin Scheinin and Francesco Francioni (eds.) *Cultural Rights as Human Rights* (Brill Academic Publishers, forthcoming in 2008).

¹⁶⁵ http://www.regjeringen.no/en/dep/kkd/Selected-Topics/Tros-og_livssynssamfunn.html?id=1147

¹⁶⁶ See Eva Haagensen, 'Norway's approach to integration of immigrants and minorities', *Canadian Diversity*, Vol 5:1, 2006.

¹⁶⁷ It is likely that particularly those immigrants that come from collectivistic cultural settings find the government's exceptionally strong emphasis on individual achievement and individual ambition, which is applied across the board (with respect to men, women and children), somewhat alien. There are practical issues as well, as the expectation of immigrant women's equal labour force participation runs counter to the fact that immigrant families have on the average more children than other families and tend to subscribe to cultural values that seek to maintain women's role as home-makers. These facts should not be taken to imply that the government should not fight patriarchal cultural values – indeed it is its obligation also under the UN CEDAW Convention – but the government should also

well to consider ways in which to go further in accommodating and even celebrating cultural and religious diversity. This would add another layer to its equality policies and make immigrants and members of minorities feel more at home and that they are accepted as what they are and not as what they are expected – by the mainstream society - to become.

The range of actions specified in the different official documents give rise to both positive and negative remarks. On the positive side, some of the measures are innovative, and most of all, they have led to positive results. One example is the obligation upon public authorities to invite at least one qualified immigrant origin person to interview whenever there is a job opening. This has led to an increase in the representation of this group in the public sector.¹⁶⁸

On the negative side there are obvious omissions. Most importantly, data collection and research into discrimination does not figure in the programmes nearly as prominently as they should.¹⁶⁹ This is rather surprising considering particularly that ECRI, CERD Committee and Advisory Committee on the Framework Convention have all consistently and repeatedly in their respective country reports urged Norway to take action in this area. Government's defence for the lack of action has been to insist that collection of ethnic data is prohibited by the data protection laws applicable in Norway. Recent research into data collection and data protection has established, however, that it is often falsely believed that data protection laws prohibit data collection; at any rate, the international and European data protection standards do not stand in the way of data collection.¹⁷⁰ Even if the collection of personal ethnic data would indeed be prohibited in Norway, a wealth of information can be collected by other means, including sample surveys, discrimination testing, statistical indicators and qualitative research. In terms of data collection Norway presently falls far behind the applicable international and European standards.¹⁷¹

recognize that too sudden or purely government-driven changes and pressures can lead to considerable psychological stress called 'acculturation stress' that can *negatively impact* immigrants' integration into the society at large. Unrealistically ambitious policies (a threshold that may however not yet have been stepped over) can therefore be counterproductive.

¹⁶⁸ See the evaluation report regarding the National Action Plan to Combat Racism and Discrimination 2002-2006. Available at: http://www.regjeringen.no/upload/kilde/rap/2006/0016/ddd/pdfv/299289-r2006_hplan_rasisme.pdf

¹⁶⁹ Research into discrimination/equality in Norway consists mostly of qualitative studies, occasional small-scale discrimination testing studies and of statistical indicators regarding immigrants' living conditions together with some questions about experienced discrimination. The police has also started to record hate crimes against immigrants and some other groups (interview of Justice Minister Storberget in *Aftenposten* 17.9.2007). In addition, the government has announced that it will chart the existence of discrimination in the public sector (*pressemelding Nr 105*, 03.09.2007). The project 'Common measures for Discrimination', which has now completed, set out to develop and propose better ways to measure discrimination, but its work does not appear to have led to permanent improvements as of yet. <http://www.ldo.no/no/TopMenu/Aktuelt/Prosjekter/Common-Measures-for-Discrimination/>

¹⁷⁰ Timo Makkonen, *Measuring Discrimination: Data Collection and EU Equality Law*. European Network of Legal Experts in the non-discrimination field. European Commission, 2007.

¹⁷¹ ECRI General Policy Recommendation No 4: *National Surveys on the experience and perception of discrimination and racism from the point of view of potential victims*. European Commission: *European Handbook on Equality Data*

Evidence clearly shows the benefits of data collection and research. A recent report regarding the Netherlands highlights the crucial role that social science research and legal research has played in the formation of national anti-discrimination laws and policies. The research has not only shown discrimination to be a lot more widespread than had been expected, but explains why victims seldom bring legal action and suggests improved mechanisms for the enforcement of the law.¹⁷² One useful data collection example comes from Ireland, where the Quarterly National Household Survey (elsewhere known as the Labour Force Survey) has been successfully used to compile a wide range of data on discrimination.¹⁷³ In the UK, ethnic recording in censuses and ethnic monitoring in workplaces and the wide use of robust research methods such as discrimination testing and victim surveys have served to create a highly useful national knowledge base on equality and discrimination upon which the government and the civil society has been able to build, implement and follow-up informed policies.¹⁷⁴

A key resource in the designing and implementing future data collection is the *European Handbook on Equality Data*, produced by the European Commission, which describes the best practices in this area. The Handbook recommends each country to launch 'an array of in-depth investigations into the (i) causes, (ii) forms, (iii) extent, and (iv) effects of discrimination', and recommends the use of 'multiple data sources and multiple methods of analysis', including official statistics, complaint statistics, research (both quantitative and qualitative surveys), and workplace monitoring. It however leaves it to each member state to decide which particular action to take.¹⁷⁵ In practice, a good start for the building of a national knowledge-base on discrimination can be achieved by

(Luxemburg: European Communities, 2007). Human Rights Committee, *Consolidated guidelines for state reports*. CCPR/C/66/GUI/Rev.2 (26.02.2001), paragraph C.6. Committee on the Economic, Social and Cultural Rights, *General Comment No 1*. HRI/GEN/1/Rev.7 (12.05.2004). UN CERD Committee, *General Recommendation IV*. HRI/GEN/1/Rev.7 (12.05.2004). CERD Committee, *General recommendation XXVII on discrimination against Roma*. HRI/GEN/1/Rev.7 (12.05.2004). Advisory Committee to the Framework Convention for the Protection of National Minorities, Outline for reports to be submitted pursuant to Article 25 paragraph 1 of the Framework Convention for the protection of national minorities. Adopted by the Committee of Ministers on 30.09.1998 at the 642nd meeting of the Ministers' Deputies.

¹⁷² Rikki Holtmaat: *Country Report: The Netherlands*. European Network of Independent Legal Experts. Available at: http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/nlrep07_en.pdf

¹⁷³ See Shivaun Quinlivan: *Country Report – Ireland*. Available at: http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/irlrep07_en.pdf. One should note that this kind of action is not completely unknown in Norway, as the Statistics Norway has conducted a survey of living conditions of immigrants and descendants in 2006, the first results of which are expected to be available in January/February 2008. This survey also inquired about discrimination experiences, as did its predecessor survey conducted in 1996. One should also take note of the UDI reports on the *Nature and Scope of Racism and Discrimination in Norway 1999-2000 and 2001-2002*.

¹⁷⁴ See Colm O'Conneide: *Country Report: United Kingdom*. Available at: http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/ukrep07_en.pdf

¹⁷⁵ European Commission: *European Handbook on Equality Data: Why and How to build to a national knowledge base on equality and discrimination on the grounds of racial and ethnic origin, religion and belief, disability, age and sexual orientation*, recommendations 1-8. Available at: http://ec.europa.eu/employment_social/fundamental_rights/pdf/pubst/stud/hb07_en.pdf

means of conducting victim surveys on a regular basis, e.g. every three years, and by means of conducting discrimination testing in key domains such as employment and housing.

Another apparent omission is the lack of explicit commitment to mainstream equality considerations into all public decision-making. It also appears to be the case that equality issues are presently not considered in public procurement, unlike for instance environmental issues.¹⁷⁶ Also, whereas the government has made efforts at ensuring and enhancing structural dialogue with and participation by the civil society, for instance by means of setting up the Contact Committee for Immigrants and Authorities (KIM) already in 1984 for the first time, and whereas the representatives of the civil society have been heard in the processes leading to the adoption of new equality legislation and preparation of country reports to the international human rights bodies, some members of the civil society are dissatisfied with the level of dialogue and co-operation, and would have for instance wanted to participate in the evaluation of the national Action Plan on Combating Racism and Discrimination 2002-2006.¹⁷⁷

Overall, the government's policies mostly appear modern, fairly well-thought-out and most of all, ambitious. The ambitiousness of the Government is well showcased by the remark made by the Minister of Labour and Social Inclusion, according to which Norway intends to be the most inclusive society in the world.¹⁷⁸ That said, it is clear that surprisingly much remains to be done, and that inclusion and ethnic equality are not quite there at the very top of the list at the government's agenda: for instance environmental matters and gender equality remain higher priorities for the moment. It is also impossible to conclude on the basis of the available evidence what exactly the practical impact of all these measures has been in the real life.

5.3. The Legal Framework

In some respects the Norwegian anti-discrimination legislation provides for better protection than its closest benchmark, i.e. the EU equal treatment directives, yet in other respects it falls behind them. One aspect with regard to which the Norwegian law goes further than the directives is the material scope covered by the legislation. The field of application of the Anti-Discrimination Act is general and defined in negative terms: only family life and personal relationships fall outside of it. This is rather exceptional in the

¹⁷⁶ http://www.regjeringen.no/Upload/MD/Vedlegg/Planer/T-1467_eng.pdf

¹⁷⁷ See Advisory Committee on the Framework Convention, *Second Report on Norway*, 5 October 2006, para 39.

¹⁷⁸ The preface by minister Bjarne Håkon Hanssen to the Action Plan on Integration and Social Inclusion of the Immigrant Population and Goals for Social Inclusion. Available at: http://www.regjeringen.no/Upload/AID/publikasjoner/rapporter_og_planer/2006/H-plan2006_int_og_inkl_english.pdf

European context.¹⁷⁹ Also the prohibited grounds of discrimination are defined rather widely, covering as the law does 'ethnicity, national origin, descent, skin colour, language, religion and belief'. The concept of 'ethnicity' is arguably broader than the concept of 'ethnic origin' used in the EU Race Directive and includes the latter,¹⁸⁰ whereas the EU directives do not specifically cover 'national origin', 'descent', 'skin colour' or 'language' covered by the Norwegian law. The non-inclusion of reference to the concept of racial origin, a concept used in the EU directives, will be discussed below.

The Anti-Discrimination Act contains innovative features related particularly to the field of employment; these features are not completely unknown in Europe but they are not common either and are not found in the Directives. First, employers and the management of organisations and educational institutions have a proactive duty to take precautionary action to prevent the occurrence of harassment. Second, employers are – with some exceptions - prohibited from inquiring about job applicant's religious or cultural beliefs or background. Third, job applicants are entitled to demand that the employer provides information in writing about the qualifications (education etc) of the person who was appointed – an entitlement, if effective, that goes some way in helping potential complainants decide whether to bring legal action. The effectiveness of the obligation to produce documents is however hampered by the fact that the obligation is sanctionless.

There are some areas in which the level of protection against discrimination provided by the Norwegian law falls short of that provided by the Directives. These include the following: definition of indirect discrimination is narrower than that contained in the Directives, meaning that it is more difficult to establish discrimination;¹⁸¹ the same goes for the specific definition of 'indirect discrimination in working life', that does not appear to allow the use of hypothetical comparators;¹⁸² protection against victimization (reprisals) is limited to victims and witnesses, unlike is the case with the Directives; and section 3(1) of the Non-Discrimination Act provides, in the interests of protection of religious autonomy, for a rather broad exception to the applicability of the Act whenever the practice of a religion or belief is at stake.

¹⁷⁹ See Aileen McColgan et al: *Comparative analyses on national measures to combat discrimination outside employment and occupation*. Available at:

http://ec.europa.eu/employment_social/fundamental_rights/pdf/pubst/stud/mapstrand1_en.pdf

¹⁸⁰ See e.g. Ot.prp. nr. 33, pp. 87-88.

¹⁸¹ The definition of indirect discrimination in the directives is framed in terms of persons being put at 'particular disadvantage', whereas Section 4(3) of the Anti-Discrimination Act reads as follows: 'Med indirekte diskriminering menes enhver tilsynelatende nøytral bestemmelse, betingelse, praksis, handling eller unnløstelse som fører til at personer på grunn av forhold som nevnt i første ledd blir stilt særlig ufordelaktig sammenliknet med andre.'

¹⁸² According to section 4(2), "indirect discrimination in working life" shall mean any apparently neutral provision, condition, practice, act or omission that in fact has the effect of putting a job applicant or employee in a less favourable position than other job applicants or employees on such grounds as are mentioned in the first paragraph'. Whereas it is not required that discrimination has already in fact taken place, the comparison must be made with 'other job applicants or employees'.

But it is the broadly formulated justification clause of section 4(3) where the Norwegian law most clearly falls short of the level of protection provided in the Directives, by permitting differential treatment whenever that is necessary to achieve 'a legitimate aim' and if it is not considered disproportionate. This justification defence is applicable also with respect to actions that would under the EU directives be considered direct discrimination and which in that context cannot be justified.

There are also some broader issues and concerns that are discussed below in a bit more detail.

Absence of an equality duty. One of the stated objectives of the Anti-Discrimination Act is 'promotion of equality'. However, the Act does not provide the tools for this, as it does not lay down any positive equality duties. This omission was intentional, as the Commission that produced the *White Paper for a law against ethnic discrimination*¹⁸³ had proposed the inclusion of an equality duty.¹⁸⁴ This duty would have posed an equality duty upon public authorities, upon employers in both public and private sectors, and upon employee and employer organisations. The omission is highly regrettable, as mere prohibition of discrimination – even if the prohibition would be always be complied with in practice, which is not likely – will only serve to maintain existing inequalities, not remedy them.

One influential example in this connection comes from the United Kingdom, where most British public authorities have been imposed a general statutory duty to eliminate unlawful discrimination and to promote equality of opportunity and good relations between persons of different ethnic groups. This duty was introduced by the Race Relations (Amendment) Act 2000 and has been supplemented by additional specific statutory duties in the Race Relations Act 1976 (Statutory Duties) Order 2001. The Commission for Racial Equality (CRE) has published several statutory Codes of Practice that elaborate upon these duties. The race equality duty requires a wide range of public authorities to monitor their functions and policies for any adverse impact on race equality. These bodies are required to assess the likely impact of any proposed policies on the promotion of race equality. Moreover, they are required to prepare and publish a Race Equality Scheme, setting out how they intend to fulfil the requirements of the duty. Most public authorities bound by the general duty have a specific duty to promote race equality as employers. This means that they have to monitor, by ethnic groups, all employees, and all applications for jobs, promotion and training. They also have to extend monitoring to the main areas of their service delivery. In

¹⁸³ See NOU 2002:12 (*Rettslig vern mot etnisk diskriminering*). Available at: <http://www.regjeringen.no/nb/dep/aid/dok/regpubl/otprp/20042005/Otprp-nr-33-2004-2005-/2/2.html?id=394998>

¹⁸⁴ It should be noted that the employer's organisations, notably the NHO, opposed the inclusion of an equality duty for private sector employers. See: <http://www.nho.no/article.php?articleID=7317&categoryID=61>

Northern Ireland the Fair Employment Act 1989 imposes a positive duty on employers with a workforce of ten or more employees to take measures to ensure a fair proportion of both of the two major religious communities in Northern Ireland, Catholics and Protestants, in their workforce. These employers are required to monitor annually the composition and pay scales of their workforce.

It should be noted that the imposition of a positive equality duty does by no means necessarily have to involve ethnic or religious monitoring; this kind of an arrangement exists e.g. in Finland.¹⁸⁵

Race. The omission of a specific reference to 'race' or 'racial origin' in the Norwegian anti-discrimination legislation has given rise to some concerns, particularly on part of the UN CERD Committee. On the one hand it is easy to be sympathetic to the reasons brought forward by the Norwegian government for non-inclusion of 'race'; it is indeed wise not to accord the concept of 'race' the kind of legitimacy that the use of this concept in legislation or other official documents inevitably entails.¹⁸⁶ Furthermore, it is not in current conditions likely that the Norwegian courts would fail to recognize or condemn racial discrimination on account of this omission, given that the Anti-Discrimination Act provides protection against discrimination on the grounds of 'ethnicity' and 'colour' and because the CERD Convention, which explicitly covers race discrimination, has been made part of the Norwegian legal system. And indeed, several other countries share Norway's distaste of the concept of 'race'.¹⁸⁷

On the other hand, the case can be made that in strict dogmatic analysis discrimination on the grounds of (assumed) 'race' is different from discrimination on the grounds of ethnicity, colour or religion.¹⁸⁸ Furthermore, the problem of bestowing racial theories legitimacy by means of referring to 'races' in legislation can be circumvented by means of prohibiting discrimination on the grounds of 'assumed race' of a person.¹⁸⁹ This solution should be

¹⁸⁵ See Timo Makkonen: *Report on Measures to Combat Discrimination: Country Report Finland*. European Network of Independent Experts in the non-discrimination field. Available at:

http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/firep07_en.pdf

¹⁸⁶ It should be noted that the effect of referring explicitly to 'race' in legislation is different in countries that are already permeated by 'racial thinking', such as the USA or the UK.

¹⁸⁷ See Mark Bell et al: *Developing Anti-Discrimination Law in Europe: The 25 EU Member States compared*. European Network of Independent Experts in the non-discrimination field (November 2006), pp. 19-20. These countries include Austria, Finland and Sweden.

¹⁸⁸ The government's policy line seems to rely on the argument that since there are no races, there can be no race discrimination either. This belief is explicitly mentioned in the Plan of Action against racism and discrimination 2002-2006 (p. 4). It needs however to be understood that what is at stake is not distinctions that are based on 'real' groups or membership in such groups (the existence of which would be hard if not impossible to prove in any objective way), but distinctions based on socially shared and subjectively held classifications. The distinction is essentially social not natural, and therefore the argument that 'there are no races and therefore there can be no racial discrimination' does not hold. See also Banton, *International action*, p. 50 ff, where he discusses what is meant by 'racial discrimination' in the CERD Convention.

¹⁸⁹ For instance in France the various laws refer to 'real or presumed' (*vraie ou supposé*) race.

satisfactory to the CERD Committee as well.¹⁹⁰ Another possible solution is to include 'race' in the list of grounds together with a statement indicating that the use of the term 'race' does not imply acceptance of theories about the existence of separate human races – this is the approach adopted in the EU racial equality directive.¹⁹¹

Sanctions. The range of applicable sanctions and remedies is somewhat limited, and e.g. the payment of redress depends upon the degree of fault. The repertoire of sanctions and remedies developed in European jurisdictions include various types of civil sanctions (reinstatement, damages, compensation), criminal sanctions (fines, imprisonment) and administrative sanctions (administrative fines, confiscation of property, publication of decision, prohibition of the exercise of a particular type of a profession or activity, withholding of benefits, suspension of e.g. liquor licence from a restaurant). In some jurisdictions, e.g. in Ireland, courts can issue orders aimed at the those violating equality laws, demanding them to take specific action such as: creation of an equal opportunities policy; equality training for interview boards or the whole staff; and reviewing of recruitment practices.¹⁹² In whole, there is a clear tendency among legal scholars – and European jurisdictions – to view that the most ordinary sanctions and remedies, viz. criminal sanctions and the payment of damages, constitutes an insufficient response to discrimination.

Constitution. The Constitution lays down the most elementary values of a country and provides a legal framework for the exercise of public powers. As such, it has considerable authority both symbolically and legally. At present the Constitution of Norway does not contain a bill of rights or an equality clause. The inclusion of such a clause could have positive effects and should be considered.

Ratification or Protocol No 12 to the ECHR. Norway has signed but not ratified Protocol No 12 to the European Convention. Protocol No 12 provides for more far-reaching protection against discrimination than the ECHR itself, and Norway has for some time considered its ratification. Given that the Protocol does not add any new substantive obligations for states that have already ratified the ICCPR and the ICERD – such as Norway - the effect of the ratification would simply be that victims of discrimination have access –after exhaustion of domestic remedies – to the Strasbourg

¹⁹⁰ Former long-time member and chair of the CERD Committee, and a renown publicist in this area, Michael Banton, has in his numerous books defended the view that the CERD Convention is about the prohibition of discrimination on the basis of assumed races, on account that there are – in terms of biology – no separate human races. See e.g. Michael Banton, *Discrimination* (Buckingham: Open University Press, 1994), or Banton: *International Action Against Discrimination*.

¹⁹¹ See Recital 6 of the Directive.

¹⁹² Mark Bell et al: *Developing Anti-Discrimination Law in Europe: The 25 EU Member States compared*. European Network of Independent Experts in the non-discrimination field (November 2006), p. 81 ff

court when they are of the view that their rights have been infringed.¹⁹³ That being the case, ratification would essentially be a further sign of commitment to guarantee equal treatment on part of the Norwegian government.

Enforcement. The Ombud's and Tribunal's case statistics show that complaints about racial, ethnic or religious discrimination are only seldom brought about. This gives rise to genuine concern, and Norway should consider how to improve judicial protection against discrimination. This report suggests two mechanisms by which the enforcement of anti-discrimination law can be strengthened: First, interest groups (interested associations that have full legal powers) could be empowered to bring claims on their own behalf, as is done in the Netherlands.¹⁹⁴ This means that they could take legal action even when there is no concrete victim. Second, discrimination testing could be used more frequently either as a means of gathering evidence (where discrimination has already taken place and the case has been brought to a court or Tribunal), or as a grounds for bringing legal action in the first place in the interests of ensuring compliance with the law, or simply as a research method with a view to *assessing* the extent of compliance with the law.¹⁹⁵ It is also of greatest importance to foster awareness about the existence of racial and ethnic discrimination and of the available legal remedies.

¹⁹³ Martin Scheinin, Experiences of the Application of Article 26 of the ICCPR, in Stephanie Lagoutte (ed), *Prohibition of Discrimination in the Nordic Countries: The Complicated Fate of Protocol No 12 to the European Convention on Human Rights* (The Danish Institute for Human Rights, 2005).

¹⁹⁴ Rikki Holtmaat: *Country Report: The Netherlands*. European Network of Independent Legal Experts. Available at: http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/nlrep07_en.pdf

¹⁹⁵ See e.g. idem and Timo Makkonen, *Measuring Discrimination: Data Collection and EU Equality Law*. European Network of Legal Experts in the non-discrimination field (European Commission, 2007).

6. CONCLUSIONS

Overall, Norway's present anti-discrimination laws and policies, with some exceptions, compare rather well with those of the EU countries.¹⁹⁶ Particularly the quantity and quality of policy measures that promote inclusion are undoubtedly of interest to other countries in Europe. Also the wide material scope of application of the Anti-Discrimination Act provides a positive example in the European context, as do some of the innovative employment-related aspects of the Anti-Discrimination Act, for instance the job applicants' entitlement to demand that the employer provides information in writing about the qualifications of the person who was appointed.

That said, the applicable standards and best practices show that there are some major concerns and a lot of room for further improvement. The development of anti-discrimination laws and policies has in virtually all countries been one of gradual improvement and the tightening of the respective laws, and Norway is not likely to make an exception in this regard. Indeed, the government set up in June 2007 a committee to prepare a proposal for a new, comprehensive equality law that would replace the current patchwork of several separate laws.¹⁹⁷ The Committee is also charged with consideration of the ratification of Protocol No 12 and the possible adoption of a Constitutional equality clause, and is expected to review some of the substantive provisions of the Anti-Discrimination Act.

The work of the Committee provides an opportunity to address some of the concerns identified in this report, such as the definition of 'indirect discrimination' and the widely formulated exception and justification clauses of the Anti-Discrimination Act, as well the relatively narrow reach of the applicable sanctions and remedies. The Committee and the other stakeholders (ministries and the Parliament) should take the opportunity to bring Norwegian efforts to a completely new level by means of adoption of positive equality duties. These duties should cover the public sector, ensuring that each government department and agency mainstreams equality concerns into all policy-making and follow-up activities, for instance by means of prospective and retrospective impact assessments. Public sector entities should also promote equal treatment as employers through active and fair recruitment, promotion and retention policies. These positive duties should include a duty to take positive action measures to compensate for unjust intergroup differences in wellbeing and opportunities whenever such action is warranted; policies and governments come and go, but fight

¹⁹⁶ This conclusion is warranted also with a view to the fact that the European Commission has sent formal requests to 14 EU member states because it is of the view that the latter may not yet have fully or correctly transposed the EU directives into the domestic laws. See

http://ec.europa.eu/employment_social/fundamental_rights/legis/lginfringe_en.htm

¹⁹⁷ AID: Nytt diskrimineringslovutvalg skal samle lover mot diskriminering. Pressemelding No 63, 01.06.2007.

<http://www.regjeringen.no/nb/dep/aid/pressemeldinger/2007/63.html?id=469622>

against discrimination and promotion of equal treatment require continuous commitment, and the imposition of positive equality duties would ensure a minimum level of action in this regard also in the future. Positive equality duties could also be extended to the private sector, either through a direct duty (that could be implemented through codes of practice and/or adoption of internal complaints procedures and concrete corporate policies to combat discrimination and harassment¹⁹⁸) or through public procurement/contract compliance policies.

The findings of this report align rather well with the results of a recent study that measured the performance of 28 countries, including the 25 EU member states together with Canada, Norway and Switzerland, in the area of immigrant integration.¹⁹⁹ That study, called the Migrant Integration Policy Index (MIPEX), used a whopping 140 policy indicators that were geared towards capturing the essence of these countries' policies with respect to (i) labour market access, (ii) family reunion, (iii) long term residence, (iv) political participation, (v) access to nationality, and (vi) anti-discrimination. Overall, Norway placed eighth in this survey, after Sweden, Portugal, Belgium, the Netherlands, Finland, Canada and Italy, but ahead of e.g. Denmark and France. Norway was found to fare rather well in the areas of labour market access, family reunion, long-term residence and especially political participation, but was found to perform rather poorly in the areas of access to nationality and anti-discrimination. Norway's meagre performance in the field of anti-discrimination policies is partly explained by the fact that one of the key questions for the MIPEX survey was whether the anti-discrimination laws prohibit discrimination on the basis of nationality, a form of discrimination not covered by the Norwegian legislation or this report. By comparing the performance of each country in these six policy areas, the MIPEX report also suggests where to look for best practice. In the area of anti-discrimination policies the best achievers were Sweden, Portugal, Canada, the Netherlands and the UK, whereas in the area of access to nationality the highest rated countries were Sweden, Belgium, Portugal and Canada.²⁰⁰

At the end of the day, it is of outmost importance to understand that promotion of equality requires action on a broad front. As Michael Banton has said, 'the objective of equal opportunity campaign should be to see that all institutions, like professional associations, employers, state services, schools, hospitals, and so on, have their own policies which apply the general principles to the special features of their organisations and the way in which they operate'.²⁰¹ To achieve this it is necessary to foster *a culture of equality* that encourages all potential actors to engage in the

¹⁹⁸ Rikki Holtmaat: *Country Report: The Netherlands*. European Network of Independent Legal Experts, p. 71. Available at: http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/nlrep07_en.pdf

¹⁹⁹ Jan Niessen - Thomas Huddleston and Laura Citron, *Migrant Integration Policy Index* (2007).

²⁰⁰ Idem.

²⁰¹ Michael Banton, *Discrimination* (Buckingham: Open University Press, 1994) p. 72.

action. To this end it is necessary to increase public awareness about discrimination and to render the oftentimes hidden discriminatory practices visible. This calls for ways in which the situation can be monitored and documented, such as discrimination testing and victim surveys that should be conducted on a regular basis in order to obtain trend data. Powerful policy recommendations spring from the results, make informed action possible, and contribute to a social and cultural change through enhanced awareness.

With these measures Norway would stand a much better chance to reach its goal of becoming the most inclusive country in the world – a goal that for most other countries would be beyond reach in any foreseeable future.



Strategic thinking
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