

A Commentary on Norway's Combined Seventeenth and Eighteenth Periodic Report Submitted by Norway under Article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination.

Antirasistisk Senter, Norway

Summary

Antirasistisk Senter has restricted its comments to the following subjects:

- The Anti-Discrimination Act
- Documentation and monitoring
- Discriminatory attitudes
- Increasing police awareness of and knowledge about ethnic minorities
- Dissemination of racist ideas
- Increased efforts to combat racism on the Internet
- Efforts to stop recruitment to racist and nationalist circles and to prevent racially motivated violence
- Equal treatment by bodies administering justice
- The Police

Commentary

A. General legal framework

- **The Anti-Discrimination Act**

In reference to the state periodic report, para 10-15 of the Norwegian Report:

In April 2005 the Storting (The Norwegian Parliament) adopted a new law prohibiting ethnic and religious discrimination (Anti-Discrimination Act). However, in doing so the Storting specifically voted down a proposed provision that would have imposed proactive obligations on employers to address such discrimination and to promote ethnic equality in employment. The substance of this proactive obligation provision, which was voted down, was modeled after the proactive obligation provision in the current Norwegian Act on Gender Equality.

It is somewhat surprising that the Storting could see the need to impose proactive obligations on employers to promote gender equality and at the same time see no need to impose such obligations to promote ethnic equality. Traditional complaint-based antidiscrimination laws are limited in their ability to address modern forms of ethnic discrimination, which are subtle and systemic in their operation.

First, complaint-based approaches fail to capture discrimination that does not result in a formal complaint. Secondly, complaint-based approaches tend to individualize discrimination

by searching for individualized explanations – by searching for a blameworthy perpetrator and an innocent victim. This makes it difficult for the process to identify more structural forms of discrimination. Thirdly, the difficulties in proving discrimination in complaint-based approaches are often insurmountable. Fourthly, complaint-based approaches cannot bring about organizational transformation, which is the key to successfully addressing systemic ethnic discrimination in employment.¹

Proactive obligation approaches have comparative advantages that complaint-based approaches do not have. The proactive obligations imposed on employers are *ongoing* obligations and *organization-wide* obligations. Because proactive regimes work preventively on a macro-level rather than retrospectively on a micro-level, they can encourage the production of information which can make visible systemic ethnic discrimination and they can avoid the creation of hostility that arises at the workplace when an employer or employee is accused of discrimination.²

The Norwegian Government apparently recognize the limitations of the complaint-based approach and the advantages of the proactive obligation approach. After 25 years of exclusive use of the complaint-based approach in addressing gender discrimination, the Government and Storting added the proactive obligation provision to the Act on Gender Equality in 2002. It is suggested that the Anti-Discrimination Act also include a provision whereby employers are obligated to take proactive measures to address ethnic discrimination.

In reference to the state periodic report, para 17:

Because the Center for Combating Ethnic Discrimination (SMED) was merged as a part of the new Equality and Discrimination Ombud, the previous legal aid provide by SMED has come to an end. Although the Government considers that an expanded duty of guidance on the part of the new Ombud will alleviate the loss of such legal aid to victims, there are several types of assistance previously provided, that the new Ombud will not be able to provide. For example, SMED previously assisted victims in the writing of complaints to police regarding unlawful and inappropriate police behaviour. SMED also assisted victims in the writing of complaints and appeals to immigration administrative agencies. Furthermore, SMED assisted victims of discrimination in the carrying out of negotiations with employers in conjunction with inappropriate dismissals. This negotiation process is a statutory right for all persons subjected to dismissal.

The Government has not provided any alternative source of help for victims of ethnic discrimination regarding these three types of legal aid previously provided by SMED. Nor is additional funding for NGOs providing advice and aid made available.

C. Main Policy Principles

- **Documentation and monitoring**

In reference to the state periodic report, para 90-92:

In para 90 reference is made to a report made by the Directorate of Immigration, a report based on interviews with immigrant representatives and representatives of the municipal

¹ See Ronald Craig, Systemic Discrimination in Employment and the Promotion of Ethnic Equality (doctoral thesis delivered to the University of Oslo Law Faculty in 2005)(to be published by Brill Publications in 2006).

² Ibid.

authorities. As stated, this report is based on, and reflects, *perceptions* of the situation, and cannot be said to give information on the *extent* of racism and discrimination. The reports produced by the Centre for Combating Ethnic Discrimination titled Moving Toward Better Protection (2001, 2002 and 2003) are based on the cases that was admitted to the Centre.

Hence, the Antiracist Centre maintain the criticism voiced for more than 15 years, about lack of representative, systematic, comparable and reliable data and documentation of racial discrimination in Norway, and urge the Norwegian authorities to start the work on better documentation and monitoring of racism and discrimination.

In particular we urge the development of a transparent system with which the police accumulate statistics of the incidents reported to them. This request has been put forward to authorities on all levels for several years. We are therefore very disappointed in what seem to be a refusal to systematize and make this data available.

D. Racial Discrimination/Racist Attitudes/Racially Motivated Violence

- **Discriminatory attitudes**

Reference is made to the state periodic report, para 93-94.

The state claims in para 94 that “The above-mentioned reports (cf. paragraphs 90-91), together with reports from non-governmental organisations operating in the field, have provided a relatively good picture of the kind of racial discrimination that occurs and of the areas of society where discrimination most often takes place.”

In our view the main challenge is not the “lack of picture” of racial discrimination, but the lack of systematic, reliable, accumulated data of the extent and nature of the discrimination.

We regret that the State report have no mention of statistics on racially motivated violence at all under the headline and paragraphs regarding this topic. The penal code has paragraphs dealing with racially motivated crimes (hate speech, harassment, violence, vandalism), but even on this area, where the data *are* available, the authorities have proved unwilling to produce statistics. This in sharp contrast to the majority of other European law enforcement agencies.

II Information relating to articles 2 to 7.

Article 2.

- **Increasing police awareness of and knowledge about ethnic minorities**

Reference is made to the state periodic report, para 112-114:

The Antiracist Center welcomes the initiatives taken by the Police Directorate in developing guidelines for personnel policy, which has also been a subject in the continuing education at the Police Academy. Antiracist Centre have been invited to give lectures on several occasions.

Although the guidelines are commendable, we have found that there is a lack in implementation in the daily police work. The state report fails to mention to what degree measures have been taken to ensure implementation.

The new programme will not include training of officers in how to deal with racially motivated crimes, even though we have urged them to do so on several occasions.

Article 4

- **Dissemination of racist ideas**

Reference is made to the state periodic report, para 142-147

The state Report states that “*section 135 a of the Penal Code has been amended, and its scope is widened. This will to a large extent accommodate the concerns expressed by the Committee.*” (para 143).

Although it is correct that the scope of the section 135a is widened, we do not agree that this will accommodate the concerns expressed by the Committee.

The main problem with this paragraph – regardless of the widened scope – is that the Supreme Courts ruling in the “Sjølie-case” has made it practically impossible to use the paragraph, because the ruling dismissed the gross racist statements made by Mr. Sjølie. When expressions of this kind is not enough for sentencing, a wider scope is of no use.

The Antiracist Centre and the Mosaic Religious Community sent a complaint to CERD in order to see if Norway did fulfill its positive obligation under CERD art. 6. CERD issued its view in 15 august 2005 and made it very clear that Norway did not fulfill its obligation with the Supreme Court Ruling. Norwegian authorities have since promised to act according to the CERD’s views, and the State Attorney office is searching for cases to be tried, so that the border between freedom from harassment and freedom of expression can be found. The Antiracist Centre have since then worked hard to find and report cases to the police in order to put this new attitude to test. At present there is one case waiting in the justice system so that we can see if the court will follow CERD’s recommendations.

- **Increased efforts to combat racism on the Internet**

Reference is made to the state periodic report, para 148-149

Apart from establishing an email-adress, and placing information on the Police web-site, little action being taken by the Norwegian police in this matter.

To our knowledge the only case currently in the legal system was the result of the investigative work of the Antiracist Centre. The case concerns an article posted on the website www.fomi.no, titled ”Western muslims racist feast of rape”, and is allegedly a translation of an article written by a former officer of the Australian army, in a magazine called Frontpage Magazine, commented by “a member of FOMI”.

The introduction of the article reads: *In Norway and several other western countries, muslim immigrants go almost berserk in raping western, non-muslim women, and media, police and governments are desperately trying to put this under the carpet.*

The case was first dismissed by the police, and the reason given was that although the web-site in question does have a responsible editor, the police allegedly could not prove that the editor had approved of this specific article. The editor claimed that “someone” must have put the article up on the website without her consent. The url of the Fomi-website has lately been changed to <http://rto73.0catch.com/> The article in question is still published can be read on

<http://rto73.0catch.com/Spesial/Voldtektsfest.htm>. An appeal on the police dismissal has been filed by Antiracist Centre to the district attorney.

- **Efforts to stop recruitment to racist and nationalist circles and to prevent racially motivated violence**

Reference is made to the state periodic report, para 151-157

In our view the most important work on this in the past years has been done by the police. It should be mentioned here that the organized far right in Norway is at present very small and badly organized. The only group which actively recruits youths, the neo-nazi VIGRID-group, has had some success in this, but the police have monitored their activities very closely and contacted the youths involved and their parents. We commend the work by the police in this field. The EXIT-programme mentioned in the state report (para 154-156) has not focused on helping individuals out of racist organisations, but held several seminars and training courses for municipal administration and youth workers.

Article 5

- **Equal treatment by bodies administering justice**

Reference is made to the state periodic report, para 159-160

The Director General of Public Prosecutions has not yet produced any reports that clarifies what have been done on the bullet points in para 159, but states in a letter to the Antiracist Center dated 12.05.2006 that they are “still working” on these tasks.

- **The Police**

Reference is made to the state periodic report, para 161-170

Re para 167 – The Police Directorate has not made a report on the relationship between ethnic minorities and the police.

Re para 169 – The police have established manual routines for registering complaints against the police based on racism and discrimination. Admitting that these routines are not satisfactory, claims are made that the reason for not establishing routines for computer-registering data, and that adequate data tools are lacking. We refer to our comments above re para 90-92, and conclude that we find it quite interesting that in 2006 the lack of data tools should be an excuse.

- **The Directorate of Customs and Excise**

Reference is made to the state periodic report, para 174-177

The State Reports lists several courses and programmes in multi-cultural understanding. However welcoming these courses – ethnic minorities in Norway have yet to see any practical consequences of these courses.

Antirasistisk Senter

Contact details:

Postboks 244 Sentrum

N-0103 Oslo

+4723139000

linloekken@antirasistisk-senter.no