

NATIONAL LEGAL MEASURES TO COMBAT RACISM AND INTOLERANCE IN THE MEMBER STATES OF THE COUNCIL OF EUROPE

NORWAY, Situation as of 31 December 2002

General Overview

Preliminary Note: this table is accompanied by an explanatory note.

COUNTRY: NORWAY	Constitutional provisions	Specific legislation	Criminal law	Civil and administrative law
Norms concerning discrimination in general	No	No	No	No
Norms concerning racism	No	No	Articles 135a, 232 and 349a of the Criminal Code.	Section 55a of the Employment Act (recruitment)
Relevant jurisprudence	Rt 1983 1077 (<i>obiter dictum</i>)	No	Yes	No

EXPLANATORY NOTE

NORWAY / GENERAL OVERVIEW

Norway's legislative arrangements specifically designed to combat racism are based on two criminal law provisions: one is directed against the spread of racial hatred, the other against the refusal to supply a service intended for the public. There are also two provisions that make the racist nature of an offence against life or physical integrity, as well as of substantial damage to property, an aggravating circumstance.

The skeleton nature of these arrangements and the fact that they solely consisted of criminal-law measures came in for much criticism. Accordingly, in 2001 the Norwegian parliament passed legislation banning discrimination in recruitment. Moreover, in June 2002 a committee of experts proposed a preliminary bill on ethnic discrimination with the aim of instituting general arrangements to combat direct and indirect discrimination in civil matters (particularly housing). There are also plans to

extend the possibilities of awarding compensation for non-pecuniary damage and of partly reversing the burden of proof in civil cases involving allegations of discrimination. Lastly, the creation of a specialist supervisory body, the Anti-Discrimination Inspectorate, is under serious consideration¹. From the criminal-law standpoint, the experts recommended strengthening the legislation against racist propaganda (Article 135a of the Criminal Code).

It can in any case be noted that, Norway, like other Nordic countries, is combating racism not only by legal measures but above all, by social action (information and awareness-raising campaigns in schools and firms, measures to integrate immigrants and refugees, etc.).

Constitutional law: Norway

Preliminary Note: this table is accompanied by an explanatory note

Constitutional provision	Scope	Relevant jurisprudence	Remarks
Equality of treatment (unwritten constitutional principle)		Rt 1983 1017 (<i>obiter dictum</i> : a racist law could be set aside).	Disputed by legal writers.

EXPLANATORY NOTE

NORWAY / CONSTITUTIONAL LAW

General comment

The Norwegian Constitution is the oldest in Europe, as it dates from 1814. Thus it originally contained an Article 2 which banished Jews from the Kingdom. Needless to say, this provision has since disappeared.

The principle of equality

The Norwegian Constitution contains no provision expressly prohibiting racial discrimination. Nor is there any provision generally establishing equality of treatment or prohibiting discrimination.

Legal writers have nevertheless wondered whether equality of treatment might not be regarded as an unwritten principle of constitutional law. However, the question remains very controversial², particularly as the Supreme Court hesitates to recognise unwritten constitutional rights unless human dignity is flagrantly flouted. For this reason it has declared in an *obiter dictum* that a law imposing eugenic sterilisation could be rejected³.

At the same time, case-law and legal opinion are unanimous in stressing that administrative authorities must respect the principle of equal treatment as an unwritten

principle of administrative law, which inter alia forbids the administration from practising any discrimination on racial grounds⁴.

Criminal law: Norway

Preliminary Note: this table is accompanied by an explanatory note

Offence	Source	Scope	Sanction	Relevant jurisprudence	Remarks
Racial motives as an aggravating circumstance.	Article 232 and 292 of the Criminal Code.	Applies to offences involving bodily harm and to substantial damage to property.	Normal maximum penalty may be exceeded.	LB 1997-02128 (where an offence is committed on racist grounds a suspended sentence cannot be given) Rt 1994 974 (aggravating circumstance applicable to acts committed against immigrants on account of their status).	Provisions introduced in 1989 (art. 232) and 1995 (art.292).
Racist propaganda	Article 135a of the Criminal Code.	Does not cover minor cases. A specific attack on an individual or a group of individuals is necessary.	Fine or up to two years' imprisonment	Rt 1997 1821 (no privilege for statements of a political nature) Rt 1981 1305 (pamphlets against Muslim migrant workers; conviction for repeated attacks).	Proposals to reinforce this measure are being considered (penalising statements made in private and racist signs or symbols)
Refusal to supply services or benefits intended for the public	Article 349a of the Criminal Code.	The provision also makes it an offence to refuse access to a public	Fine or up to six months' imprisonment		This provision has, so to speak, remained a dead letter.

	event.		
Membership of a criminal organisation.	Article 330 of the Criminal Code	Fine or up to six months' imprisonment.	Provision officially supposed to prevent racist organisations, but in fact never enforced in this context.

EXPLANATORY NOTE

NORWAY / CRIMINAL LAW

Article 232 and 292 of the Criminal Code

The first provision, introduced in 1989 by Act n° 68 of 16 June, makes the racist nature of an offence an aggravating circumstance. This is not applicable to all offences, only to those restrictively enumerated in Article 232, i.e. cases of minor or serious bodily harm and attacks which have led to death (Arts. 228-231 of the Criminal Code). In such cases the judge has the power to exceed the maximum penalty prescribed by the relevant provision. Following its amendment in 1995, Article 292 makes the aggravating circumstance applicable to acts of vandalism.

Neither provision defines what is meant by "racist nature". The relevant preparatory documents stress, however, that an offence may be regarded as racist when race, skin colour, nationality or ethnic origin are involved (interpretation confirmed by case-law, see Rt 1994-974 and by legal writers, who point out that the legislation is primarily concerned with offences against persons from third-world countries⁵). A minority of MPs opposed this proposal as they considered that the racist nature of an offence was difficult to prove and the concept of racism vague⁶.

In any case, a court of appeal ruled that where an offence is committed on racist grounds the courts generally cannot give a suspended sentence or a sentence constituting an alternative to imprisonment, such as community service⁷.

Article 135a of the Criminal Code

This provision, which was adopted in application of the UN International Convention on the Elimination of All Forms of Racial Discrimination, penalises racist propaganda and incitement to racial hatred. It replaces a previous provision on the same subject dating from 1961 (Art. 135 para. 2), which was less severe (maximum sentence of one year's imprisonment) and, above all, more restricted in scope.

Article 135a is so worded as to require a specific attack on an individual or a particular group of individuals; on the other hand, the mere propagation of racist ideas is not punishable⁸. In addition, racist remarks must have been disseminated in public.

The Supreme Court has on a number of occasions handed down decisions defining the scope of Article 135a. In most of the cases the court had to deal with the clash between this criminal-law provision and freedom of expression under Article 100 of the Constitution. After wavering between an attitude highly favourable to sanctioning abuses of freedom of expression (Rt 1977 114: a neo-Nazi stated in an interview that Jews must be isolated, and the court ruled that the author of these remarks could not rely on the defence of freedom of the press⁹) and a more liberal standpoint (Rt 1978 1072: a reader, who had expressed hatred of immigrant workers in a letter, was discharged by virtue of the freedom to express diverging opinions), the Supreme Court gave a leading decision in November 1997 (Rt 1997-1821), making clear its refusal to tolerate racist comments, even of a purely political nature.

In that decision the court upheld the penalty imposed on the leader of an extreme right-wing group whose political programme focused on the return or the forced sterilisation of adopted children of foreign origin and of foreign spouses of ethnic Norwegians. Although the propaganda targeted non-Norwegians in general, the court held that, in the light of the convicted political leader's earlier statements of hatred, the call for return or sterilisation was primarily aimed at all coloured persons and accordingly denigrated non-white ethnic groups. The court also refused to make an exception in the case of political opinions, where these reflected a deep-seated contempt for others¹⁰.

Article 349a of the Criminal Code

This provision, also adopted in application of the UN Convention on the Elimination of All Forms of Racial Discrimination, has been the subject of only one judgment by the Supreme Court¹¹. In that case, an estate agent who had made publicly available lists of dwellings, some of which were labelled "solely for Norwegians in permanent employment", was acquitted on the ground that the labelling at issue was not attributable to the estate agent but to her principals. The court added that the estate agent had moreover not restricted access to the lists to Norwegians alone¹².

Article 330 of the Criminal Code

This provision, which prescribes penalties for anyone belonging to an organisation dedicated to committing offences, was presented in the preparatory documents relating to the ratification of the UN Convention on the Elimination of All Forms of Racial Discrimination as a suitable provision for combating violent extremism. However, it has never been used for that purpose¹³.

Application of criminal law

Organisations combating racism continue to deplore the very low number of convictions for racist offences or offences committed on racist grounds¹⁴. In the wake of this criticism, in 2001 the public prosecution service called on the police and public prosecutors to give priority to inquiries relating to offences committed on racist grounds¹⁵.

Civil and administrative law: Norway

Preliminary Note: this table is accompanied by an explanatory note

Provision	Scope	Consequences of breach	Relevant jurisprudence	Remarks
Section 55a of the Employment Act (1977)	Bans discrimination in recruitment matters	Compensation		
Sections 2 and 9 of the Data Protection Act (2000)	Data on ethnic origin are deemed "sensitive" and are subject to processing restrictions.	Criminal-law penalty (fine or up to one year's imprisonment) for breaching an order from the supervisory authority to cease the processing complained of		Provision introduced in 2001
Creation of a national centre against ethnic discrimination				

EXPLANATORY NOTE

NORWAY / CIVIL AND ADMINISTRATIVE LAW

Labour law

Since 1 July 2001 employers have been prohibited from discriminating in recruitment matters on grounds of race, ethnic origin or skin colour (section 55 a of the Employment Act). Employers in breach of this provision are not ordered to hire the person concerned but are required to pay compensation. Where there is prima facie evidence of discrimination, it is for employers to prove that they were honest in their dealings.

Since this is a recent provision, there is not yet any relevant case-law.

Data protection

Except where expressly provided for by law, sensitive data can in principle be processed only with the consent of the person concerned or the permission of the supervisory authority.

National centre against ethnic discrimination

Established by governmental decree¹⁶ in 1998, this information and mediation body has the task of providing free assistance to victims of ethnic discrimination perpetrated by public institutions, private firms or individuals. The assistance provided takes the form of counselling; the centre is not authorised to represent victims in the courts. In 2001 some 250 people were aided by this body.

The centre, which was initially experimental in nature (its terms of reference expired at the end of 2002), will continue to operate until a specialist body with decision-making powers has been set up (cf. general overview).

Note

¹ See the report (*Rettslig vern mot etnisk diskriminering*) filed by the committee of experts, chaired by Professor Holgersen, on 14 June 2002. The intention is also to incorporate the UN Convention on the Elimination of All Forms of Racial Discrimination into Norwegian domestic law. The government reacted very favourably to the experts' proposals, particularly since they were entirely consistent with its 2002-2006 Plan to Combat Racism and Discrimination.

Note

² T. Einarsen/J. Aall, Legitimasjonsplikten etter fremmedloven, TfR 1988, p. 13. One author has expressed the opinion that legislation which established apartheid would not violate the Constitution (J. Andenaes, Statsforfatningen i Norge, Oslo 2000, p. 370).

Note

³ Rt. 1983 1018.

Note

⁴ On this particular point, see A Frihagen, Forvaltningsrett, Oslo 1992, vol. 1, p. 202.

Note

⁵ A. Bratholm and M. Martningsdal, *Straffeloven med Kommentarer*, Oslo 1995, volume II, p. 583

Note

⁶ B. Lynstad, *Strafferettslige og straffeprosessuelle lovendringer i 1988 og 1989, Lov og Rett* 1990, p. 323.

Note

⁷ LB 1997-02128

Note

⁸ Eg: "Yankees go home!", an example drawn from H. Jakhelln, *Ytringsfrihet og rasediskriminering, Lov og Rett* 1980, p. 190.

Note

⁹ Also see Rt 1981-1305.

Note

¹⁰ It can nonetheless be noted that legal writers do not unanimously concur with the court's decision, which was adopted by a majority of 12 for and 5 against. See, in particular, *Kjuus-saken, Rasediskriminering og ytringsfrihet in Lov og Rett* 1998, pp. 259 ff.; the author argues that the highly political nature of the impugned texts should have made Article 135a inapplicable.

Note

¹¹ Although some ten complaints have been lodged each year since 1997, convictions are extremely rare. The last dates back to 2001 (a judgment by the Oslo Court on 19 April); the owner of a bar was fined for having refused to admit someone of African origin.

Note

¹² Rt 1999-1192

Note

¹³ G. Nystuen, *ibid.* p. 129.

Note

¹⁴ See, *inter alia*, the criticism voiced by the Norwegian Centre for the Fight Against Racism (*Norsk Antirassistisk Senter*) on its web-site:http://www.antirassistisk-senter.no/infobank/hoyre_nor/blind_hoyre.html

Note

¹⁵ Circular of 23 January 2001, issued shortly after the murder of an adolescent of African origin by a neo-Nazi gang

Note

¹⁶ Decree of 11 September 1998