



Executive Summary

Country Report Norway 2011 on measures to combat discrimination

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1. Introduction

Norway is a relatively homogenous country with approximately 5 million inhabitants. It is not a member of the European Union, but has since 1992 been a member of the Agreement on the European Economical Area (EEA), with its monitoring bodies the EFTA Surveillance Authority and the EFTA-court.

There are approximately 381,000 immigrants in Norway and 79,000 people born in Norway with immigrant parents. These two groups constitute approx 9.7% of the total population. The Sami people is the largest indigenous group of people in Norway, and constitute between 50,000 and 65,000 people. Other national minorities include Jews (approx 1,100 people), Kvens/ people with Finnish descent (approx 10,000-15,000 people). Approximately 700 persons belong to the traditional group of Roma people. No exact figure is available for *Romani* (travellers) in Norway, but estimates put the number at around a few thousand people.¹ About 82% Norwegians are members of the protestant state church, the other religions groups of a certain size belong to Islam, the Roman Catholic church or the Pentecostal church.² There are no reliable official statistical data regarding sexual orientation. Correct and reliable figures for the number of disabled people in Norway are difficult to find, but it is estimated that around 18 per cent of the population of working age (16-66 years) has some kind of physical or psychological impairment.³ There are 768,014 persons who are 65 years or older, out of a population of 4,985,870.⁴

The legal system is inspired by the roman legal system, and has a three-level court system which handles both criminal and civil law. Statutory provisions (formal legislation through Acts and their regulations) interpreted through the legal preparatory works and case law are the primary sources of law invoked in Norwegian courts of law and in respect of Norwegian administrative agencies, although international legislation, especially EU law, is increasingly being invoked in concrete cases, including in discrimination cases.

¹ Statistics from Statistics Norway and the governmental Action plan to promote equality and prevent ethnic discrimination 2009-2012.

² See www.ssb.no/samfunnspeilet/utg/200903/03/index.html. Religious affiliation is not registered officially through national statistics, thus the numbers are based on information about membership given by each religious group themselves.

³ See Norwegian Official Report NOU 1998:18 Det er bruk for alle (*All are useful*) chapter 9.6.5.

⁴ See annual statistics by 01.01.2012 from Statistics Norway on population, at <http://www.ssb.no/folkemengde/arkiv/tab-2012-02-23-01.html>.



2. Main legislation

Norway has ratified most of the major international instruments combating discrimination, with the notable exceptions being Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms and the UN Convention on the Rights of People with Disabilities.

The Norwegian Constitution has currently no provisions regarding discrimination. A Constitutional Committee forwarded a proposal for amendments in the Constitution to the *Storting* (Parliament) in December 2011, which covers non-discrimination in a very general manner. The proposed text reads (unauthorized translation): "*Everyone shall be equal before the law. No person shall be subject to unjust or disproportional differential treatment*".

The legislative framework for anti-discrimination legislation is otherwise well developed, however difficult to access as its legislative base is derived from four general main different legislative acts, as well as found in specialized legislation.

The key pieces of anti-discrimination legislation consist of the Gender Equality Act (GEA), the Anti-Discrimination Act (ADA), the Anti-discrimination and Accessibility Act (AAA) and the Working Environment Act (WEA), as well as specialized legislation (the seamen's act and housing acts). Section 135a and section 349a of the General Civil Penal Code contain criminal-law protection against discrimination.

The purpose of the *Anti-discrimination Act* (ADA) is to promote equality, ensure equal opportunities and rights and prevent discrimination based on ethnicity, national origin, descent, skin colour, language, religion or belief. ADA applies in all areas of society including employment, goods and services with the clear exception for family life and personal relationships. In employment there is no exception to discrimination for ethos organisations.

The purpose of the *Anti-discrimination and Accessibility Act* (AAA) is to promote equality, and ensure equal opportunities for and rights to social participation for all persons regardless of disabilities, and to prevent discrimination on the basis of disability. The AAA applies to all areas of society with the exception of family life and other relationships of a personal nature. The prohibition against discrimination relates to discrimination on the grounds of a present disability, assumed disability, past disability, possible future disability as well as discrimination of a person due to his/her relationship with a person with a disability. The AAA includes specific clauses on obligation to ensure general accessibility/accommodation (universal design) in sections 9-11 and individual reasonable accessibility/ accommodation in section 12. Any breach of these obligations is regarded as discrimination.

The *Working Environment Act* (WEA) chapter 13 covers discrimination in working life, and prohibits unlawful discrimination based on political views, membership of a trade union, sexual orientation and age. The WEA applies correspondingly in the case of



discrimination of an employee who works part-time or on a temporary basis. All employment aspects are covered by WEA chapter 13, such as recruitment, career development and promotion, working conditions, termination etc. The WEA applies to undertakings that engage employees, unless otherwise explicitly provided by the Act.

In terms of specialised legislation, the Seamen's Act on the employment relationship of seamen provides protection against discrimination on the basis of political views, membership of a trade union, sexual orientation, disability or age. Specialized legislation also includes prohibiting discrimination on the grounds of ethnicity, sexual orientation or disability in four different Acts regarding housing legislation.

A proposal for one comprehensive anti-discriminatory legal framework was presented in 2009 by a Commission set up by government. The government decided in 2011 to abolish this proposal, and is now preparing a specific new Act to cover sexual orientation which will, similarly to the ADA and AAA cover all areas, including goods and services, health and social benefits etc. Currently, the grounds of age and sexual orientation under the WEA are protected only in employment.

It is presumed that Norwegian anti-discrimination legislation is in line with the EU *acquis*. The government has committed to having as high - or higher - standards in its work against discrimination as the requirements of the EU.

3. Main principles and definitions

Norwegian anti-discrimination legislation addresses the following grounds of discrimination within all sectors: gender, ethnicity, national origin, descent, skin colour, language, religion or belief and disability. Discrimination based on political views, membership of a trade union, sexual orientation and age is covered within working life.

Direct and indirect discrimination, harassment, instructions to discriminate are defined in line with directives 2000/43 and 2000/78. Discrimination is defined in ADA section 4, AAA section 4 and WEA section 13-1. In WEA section 13-1, the concepts of direct and indirect discrimination are not defined, but are discussed in the preparatory works.⁵ Harassment is prohibited by ADA section 5, AAA section 6 and WEA section 13-1(2), and instructions to discriminate are prohibited in ADA section 6, AAA section 7 and WEA section 13-1(2).

Reasonable accommodation duties as well as provisions on sheltered/ semi-sheltered accommodation are provided for in the AAA.

Discrimination by association is covered through the AAA for disability, but not in the ADA for race/ ethnicity.

⁵ Ot.prp nr 49 (2004-2005) chapter 25:

<http://www.regjeringen.no/nb/dep/aid/dok/regpubl/otprp/20042005/otprp-nr-49-2004-2005-/25.html?id=397026>.



Perceived or assumed discrimination is covered by national discrimination legislation if the perception or assumption has actually resulted in a less favourable treatment of the person.

There are no legal rules per se in the field of anti-discrimination dealing with a situation of multiple discrimination. "Multiple discrimination" is not explicitly prohibited in (non-discrimination) statutory legislation or statutory legal instruments, however it is assumed that multiple discrimination is currently covered by the discrimination legislation. Both the Equality Ombud and Equality Tribunal have handled cases relating to cross-grounds/ multiple grounds discrimination, mainly in relation to gender and age, as well as gender and religion (hijab).

Protection against victimization is found in AAA section 8, ADA section 9 and WEA section 2-5.

In all different pieces of anti-discrimination legislation (the AAA, ADA and the WEA) a general exception for genuine and determining occupational requirements is accepted. In working life, exceptions for employers with an ethos based on religion or belief is as a general rule not accepted. However, employers with an ethos based on religion or belief may require that employees follow this religion or belief, provided that this is a genuine and determining occupational requirement in line with the general exception to the Act.

4. Material scope

National legislation applies in principle to all sectors of public and private employment and occupation, including contract work, self-employment, military service, and holding statutory office.

The scope of discrimination protection in the GEA, ADA and AAA apply to all sectors, also all sectors of public and private employment and occupation, including contract work, self-employment, military service, holding statutory office. That covers each of the specific grounds covered by the directives. The ADA and the AAA apply to all areas of society except for family life and personal relationships.

The WEA applies to undertakings that engage employees, unless otherwise explicitly provided by the Act. The provisions of the chapter also cover the employers' selection and treatment of self-employed and contract workers.

All aspects of employment, from the initial advertisements of posts until the termination of the work contract, are covered by existing legislation.

National law does not explicitly provide for an exception for the armed forces or the police, prison or emergency services in relation to age or disability discrimination.

There are no exceptions in relation to disability for health and safety.



5. Enforcing the law

Cases alleging instances of discrimination may either be brought before an ordinary court, the Labour Court or be brought to the national machinery set up to assess cases of discrimination: The Gender Equality and Anti-Discrimination Ombud (the Equality Ombud) and the Gender Equality and Anti-Discrimination Tribunal (the Equality Tribunal).

As a general rule, the procedures for addressing discrimination issues are the same for employment in the private and public sectors. Sanctions according to the ADA, AAA and WEA that are enforced by the civil courts consist of liability for damages/ compensation/ redress awarded to the claimant of discrimination. There are no upper limits for compensation, nor are there rules for calculation provided in the national legal framework. Sanctions according to criminal law consist of penalties.

More than 95% of all cases on discrimination are handled by The Equality Ombud and the Equality Tribunal. They cannot award compensation and only in very specific circumstances impose fines. Very few cases are handled annually by normal courts. This low rate of court litigation is among other factors due to the risks and costs involved in litigation, and the difficulties in obtaining free legal aid in discrimination cases.

The key procedural principle in Norwegian civil courts is the free evaluation of evidence by the courts in the course of the case as presented in courts. All kinds of evidence may be used, however, evidence may only be presented on facts which may be of importance for the ruling to be made. The scale and the scope of the presentation need to be proportionate in relation to the importance of the dispute. In civil cases before the courts, the procedural rules for evidence are the same in discrimination cases as in other cases.

Situation testing is not defined specifically in the law, as the law is silent on this issue. However, based on the principle of free evaluation of evidence by the courts, national law permits the use of situation testing in court for all discrimination grounds.

National law permits the use of statistical evidence to establish indirect discrimination, however, it is not necessary to prove if indirect discrimination has happened or not, as the assessment that has to be made according to national legislation is whether or not an action or non-action has had a negative result for the individual or the group.

The rule of shared burden of proof applies for all grounds of discrimination, including reasonable accommodation, harassment, victimisations and instructions to discriminate.

Associations may be used as agents in administrative proceedings and act on behalf of victims. The requirement is that the organisation must have a “*purpose, wholly or*



partly, to oppose discrimination” according to the grounds as prohibited by law”, see ADA section 12, AAA section 15 and WEA section 13-10. Actions by associations are discretionary.

6. Equality bodies

The Gender Equality and Anti-Discrimination Ombud (“the Equality Ombud”) and its appeal body, the Gender Equality and Anti-Discrimination Tribunal (“the Equality Tribunal”) constitute the administrative equality bodies set up to hear individual complaints to possible breaches of the non-discrimination legislation. The Ombud and Tribunal are a free low-threshold complaint system, and are alternative dispute mechanisms outside the judicial system, addressing cases of discrimination.

The Equality Ombud and -Tribunal are professionally independent central government bodies. The appointment, method of organisation, competencies and authority of these bodies are regulated in the Anti-Discrimination Ombud Act - AOT. The independence of the bodies are stipulated in law, and they are independent in their functions. The Equality Ombud has a dual role in working for equality, by enforcing the laws as well as proactively promoting equality and combating discrimination. As a law enforcer, the Equality Ombud issue opinions on complaints concerning breaches of statutes and provisions within the Ombud’s sphere of activity, and provides advice and guidance with regard to the legislation within its mandate. The statements of opinions are not legally binding and may not be subject of enforcement, however it is assumed that they should be adhered to by public bodies. The Equality Ombud shall seek to secure the parties’ voluntary compliance with this opinion.

The Ombud conducts independent surveys, publishes independent reports and makes recommendations on issues relating to discrimination. Every year the Ombud publishes annual reports and relevant reports on the status of equality.

The Equality Ombud is funded by annual grants financed by the Ministry of Children, Equality and Social Inclusion. Even though the Ombud is nominated by the Ministry and her staff is public officials her independence is not questioned in Norway, as her mandate is clarified by law, and she is not to be instructed by the Ministry. The income for the Ombud for 2011 was NOK 559.502.257,- (approx € 7.460.034,-).

The Equality Tribunal is the appeal body of the Equality Ombud. Its members are appointed by the Ministry of Children, Equality and Social Inclusion for a term of four years, with the possibility for reappointment. The chairperson and deputy chairperson shall fulfil the requirements prescribed for judges. The members are chosen because of their (academic) skills on discrimination issues. The Equality Tribunal has a secretariat, whose staff are public employees.

The Equality Ombud provides independent assistance to victims within the framework of providing information. She sees her role mainly as a law enforcer: to



assess whether or not a breach of the law has occurred or not. The Ombud is impartial when dealing with complaints. According to the AOT, the Ombud shall not represent the party in external proceedings. Therefore, the Ombud does not act as a legal representative or legal practitioner for victims. Neither the Ombud nor the Tribunal is entitled to take cases to court independently of a person individually complaining. It is a weakness of the Equality Ombud in relation to the task listed in directive 2000/43: neither she, nor anyone else, have the specific role of providing independent assistance to victims of discrimination. Until 2006, the Centre against Ethnic Discrimination (SMED) provided legal aid to victims of ethnic discrimination, but when the Centre became a part of the “new” Equality Ombud, the legal aid scheme was revoked. The fact that there is no legal aid scheme offered specifically to provide independent assistance to victims and to address discrimination because of ethnicity is a flaw with the current system with one holistic Equality Ombud covering all grounds.

Although there are very few Romas and travellers in Norway, the Equality Ombud has repeatedly addressed some of the key issues seen in relation to Roma and Travellers. In her report to the UN CERD committee, the Equality Ombud addressed the areas of critical concern: that the Roma’s access to basic rights is denied unless the traditional way of life is discontinued.⁶ In relation to schooling, the Ombud is concerned that the travellers are being made responsible for the consequences of the failure to adjust Norwegian school policy to the traditional manner of travelling. The Romas are furthermore systematically denied access to camp sites and restaurants on the grounds that they belong to a national minority. At the policy level, the Ombud has thus been a voice in the Norwegian public speaking for the Roma.

⁶ See Ombud’s Input to the Committee on the Elimination of Racial Discrimination (CERD) 2010, at http://www.ldr.no/Global/Rapporter/CERDreport_PDF.pdf.