

Norway

Report published in 2014

<http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Norway/NOR-CbC-V-2015-002-ENG.pdf>

- **Context information from ECRI**

The 2008 action plan for improving the quality of life among lesbian, gay, bisexual and transgender (LGBT) persons is perceived as a historical milestone. Police statistics do not provide a clear picture of the extent of hate speech and racist and homo/transphobic violence. Many such incidents are not reported to the police. LGBT persons have a higher risk than the general population of suffering from psychological problems, suicide attempts, substance abuse and sexually transmitted diseases. There is a general lack of knowledge about transgender issues. Transgender persons face intolerance and transphobia, but gender identity is not mentioned in the hate-crime provisions. Only one hospital provides specific trans-related public healthcare.

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The police should set up specialised units or appoint specialised officers in each police district to deal with racist and homo-/transphobic incidents. An IT-based system should be set up for recording and monitoring these incidents.* One or more police units should be given responsibility for combating hate speech on the Internet and initiate preventive and repressive action throughout the country.

The authorities should develop a new comprehensive action plan for LGBT persons. It should place particular emphasis on improving knowledge and openness in connection with transgender persons. Moreover, the authorities should include gender identity into the hate crime provisions. They should also develop legislation on gender recognition and gender reassignment. Gender reassignment and other specific treatment for transgender persons should be available in several medical facilities.

80. In 2010 the Norwegian Institute of Public Statistics conducted a living-conditions survey on lesbian, gay and bisexual persons; 1,5% of the respondents defined themselves as LGB and 0,3% were unsure how to define themselves. However, the authorities tend to rely on a higher estimate given by researchers: 3 to 5% of the population. Little quantitative research has been done on transgender persons. In 2012, the authorities estimated their number to be at least 19 000; for approximately 700 persons the diagnosis of transsexualism had been made. Moreover, according to the authorities, every year 10 to 12 children are born with ambiguous genitalia and about 300 with atypical genitalia. ECRI welcomes the research done so far on LGB; it encourages the authorities to collect data on them on a more regular basis, for example when gathering statistics on the general population.¹⁰⁴ ECRI also encourages the authorities to fill the obvious gap that exists in so far as data on transgender persons is concerned.

- **Transphobia and data on hate crimes in the country**

38. On 22 July 2011, Norway was shaken by the terrible attacks of Anders Behring Breivik which caused 77 deaths. Most of them were young persons. Oslo District Court found that Breivik was sane and sentenced him to 21 years of containment, a special form of prison sentence that can be extended indefinitely. ECRI considers that this case raises important questions about racist motivation; while it is not disputed that Breivik committed these offences out of hatred, the victims did not belong to a vulnerable group. It is clear that the Oslo court devoted to the motivation issue as much attention as it could in a case involving personal criminal responsibility. However, ECRI regrets that some of the broader questions – for example the possible influence of hate speech and Islamophobia in the public debate on Breivik’s motivation - were not addressed in the report of the commission discussed in § 45.

39. Breivik’s attacks were not the only hate motivated attacks in Norway. In 2011 the police flagged 139 of the recorded hate crime cases (64%) as violence, in 2012 154 (71%) and in 2013 156 (66%). In these figures cases of homicide and physical assault are bundled together with cases of damage to property, desecration of graves, attacks on places of worship, vandalism, threats and threatening behaviour.⁵⁵ The police believe that the brutal murder of Mahmed Shirwac Jamal, a Norwegian of Somali origin on 27 August 2008 in Trondheim was racially motivated.⁵⁶ The perpetrator, who had written racist online postings and possessed several firearms, was sentenced to compulsory psychiatric care.⁵⁷ In October 2012, a Sami woman was attacked by a gang of men who tried to set her coat on fire.⁵⁸ A search conducted on 16 July 2013 at the home of the Norwegian neo-Nazi Kristian Vikernes in France resulted in the seizure of five firearms. The French authorities considered that he was capable of preparing a major terrorist act. Even though Vikernes had published hate motivated statements while serving a prison sentence for murder in Oslo, he was indicted for incitement to hatred only in France.⁵⁹ On 15 February 2014, a man of Liberian origin was attacked by five young persons, one of them using a shovel. LGBT persons are also attacked. On 25 February 2014 the court trial began of 11 youngsters who had trapped and beaten a homosexual man with a bat.⁶⁰ The Action Plan for LGBT states that LGBT teenagers are subject to homo/transphobic violence from peers and close family members.

41. As already stated in § 28, police statistics do not provide a clear picture about the extent of racist and homo/transphobic⁶⁴ violence, as there is considerable underreporting. According to a detailed report on hate crime issued by the Oslo police in 2013, there are several possible reasons for the under-reporting mentioned above: victim’s lack of confidence in the police; police officers’ reluctance to record cases; in some reported cases the racist or homo/transphobic motivation might not be perceived or identified by the police.

43. ECRI recommends that the authorities set up specialised units or appoint specialised officers in each police district to deal with racist and homo- /transphobic incidents; these should also liaise with the vulnerable groups.

44. ECRI also recommends that the authorities set up an IT-based system for recording and monitoring racist and homo-/transphobic incidents and their processing through the judicial system (§ 12 of ECRI's General Policy Recommendation No. 11 on Combating racism and racial discrimination in policing).

81. ECRI recommends that the Norwegian authorities collect data on LGBT persons systematically.

- **Legislative issues**

9. On 1 January 2014 EADA and three other acts against discrimination on the grounds of gender, disability and sexual orientation entered into force. The authorities have informed ECRI that the new government plans to bundle these four acts into a general anti-discrimination act. ECRI is pleased to note that EADA is mostly in line with its GPR No. 7. This part of the report will concentrate on few remaining problems. ECRI encourages the Norwegian authorities to include, in the planned general anti-discrimination act, the elements that have been identified as missing in the following paragraphs.

82. ECRI notes that the protection of LGBT persons has been strengthened by the recent inclusion in the Constitution of the human right to equal treatment and of the general prohibition of discrimination (cf. § 2). However, gender identity is not mentioned in the hate-crime provisions of the CC 1902.

83. ECRI recommends that the Norwegian authorities include gender identity in all articles of the Criminal Code concerning hate motivated offences.

86. In 2008, the Action Plan for Improving the Quality of Life among LGBT (2009- 2012) was adopted.¹⁰⁷ School, education and health were focal areas of the action plan, which also covered the fields of research, child and family policy, working life, police and prosecution, immigration as well as "national minorities". Combating discrimination of sexual minorities internationally was also one of its goals. In 2011 a LGBT Knowledge Centre was set up as part of the plan, with the aim to increase knowledge about the lives of LGBT persons. According to the action plan, equal opportunities and gender issues were part of the university curriculum for those studying to become teachers. Sexual orientation was to be one of the topics for grades 1 to 4; by grade 4 at the latest, pupils were to be exposed to the concept of families with same-gender parents. Terminology was changed and new teaching material on sexual relationships was prepared. The national initiative against bullying, which had started about a decade before, was continued and a book and exhibition project named "Gay Kids" aimed at raising awareness and disseminating knowledge about same-sex relations among children and adolescents. The city of Oslo established a special health centre for LGBT persons between the age of 13 and 30. Other cities integrated such services in their general-care health centres.

88. In 2013, a large study¹⁰⁹ concluded that the living conditions of lesbian, gay and bisexual persons had improved. On the one hand, a substantial proportion of lesbian and gay persons live ordinary lives with few or no special burdens related to their sexual orientation. The proportion of people with

negative attitudes against LGBT persons has also decreased and there is less fear regarding the situation of children with lesbian and gay parents. On the other hand, as negative views persist among a share of the population, it is still not uncommon for LGBT persons not to disclose their sexual orientation. The risk of psychological problems, of suicide attempts, of substance abuse and of sexually transmitted diseases persisted affecting the LGBT community more than the rest of the population. However, it is less pronounced than previously thought. Another study highlights that LGBT persons with migration backgrounds are confronted with a high degree of intolerance in their own communities. The first study on Norwegian transgender people was conducted in 2013. It concluded that there was a general lack of knowledge about transgender issues; this was felt in a particularly acute manner in the field of public health care and education. As a result, transgender persons suffered from intolerance and transphobia. Many did not dare to come out.

90. ECRI recommends that the authorities develop and adopt a new comprehensive action plan for LGBT persons focusing particularly on improving knowledge and openness in connection with transgender persons and their situation.

91. According to civil society and research, in practice only persons diagnosed with transsexualism have full access to specific trans-related public health-care, including gender reassignment treatment. Other transgender persons do not receive adequate public health-care.¹¹³ In addition, transsexualism can be diagnosed in only one hospital, the Oslo University Hospital (OUH). This is also the only hospital providing gender reassignment treatment that is reimbursed by public health-insurance schemes. ECRI encourages the authorities to ensure that transgender persons (a broader category than transsexuals) can receive free treatment – which is crucial for their condition - in at least two or three specialised medical facilities.

92. ECRI recommends that the authorities ensure that gender reassignment and other specific treatment for transgender persons is made available to them in several medical facilities and that their cost is reimbursed by public health insurance schemes.

93. The legal recognition of gender change is based on administrative practice established in the 1970s. The tax authorities change the gender marker in the national identification number after certification by the OUH that the person in question has undergone a “real sex conversion” which includes irreversible sterilisation. As the OUS is the only institution which provides for such treatment, it makes key decisions in three crucial areas: fulfilment of the diagnostic criteria, provision of health treatment and determination whether the above-mentioned condition for legal recognition of change of gender is fulfilled. ECRI welcomes the fact that the authorities have set up an expert group (with the involvement of civil society) to review the issue of legal recognition of a person’s preferred gender and that they are in the process of establishing a complaints mechanism to which transgender people can turn when they are denied health care from the OUS.¹¹⁵ ECRI encourages the authorities to establish a proper legal framework, which would also spell out the procedure for gender recognition and gender

reassignment. They can seek inspiration from international standards and draw on internationally available expertise.

94. ECRI recommends that the authorities develop legislation on gender recognition and gender reassignment, in line with international standards and expertise.

- **List of recommendations from ECRI**

7. (§ 32) ECRI also strongly recommends the authorities to give one or more police units responsibility for combating hate speech on the Internet along with appropriate technical and human resources.

9. (§ 43) ECRI recommends that the authorities set up specialised units or appoint specialised officers in each police district to deal with racist and homo-/transphobic incidents; these should also liaise with the vulnerable groups.

10. (§ 44) ECRI also recommends that the authorities set up an IT-based system for recording and monitoring racist and homo-/transphobic incidents and their processing through the judicial system (§ 12 of ECRI's General Policy Recommendation No. 11 on Combating racism and racial discrimination in policing).

19. (§ 83) ECRI recommends that the Norwegian authorities include gender identity in all articles of the Criminal Code concerning hate motivated offences.

20. (§ 90) ECRI recommends that the authorities develop and adopt a new comprehensive action plan for LGBT persons focusing particularly on improving knowledge and openness in connection with transgender persons and their situation.

21. (§ 92) ECRI recommends that the authorities ensure that gender reassignment and other specific treatment for transgender persons is made available to them in several medical facilities and that their cost is reimbursed by public health insurance schemes.

22. (§ 94) ECRI recommends that the authorities develop legislation on gender recognition and gender reassignment, in line with international standards and expertise.