



ROYAL MINISTRY
OF FOREIGN AFFAIRS

Your ref.:

Our ref.:

Date:

21 February 2006

"Communication from Norway to the Committee on the Elimination of Racial Discrimination regarding the View in Communication No. 30/2003 – The Jewish Communities in Oslo and Trondheim et al vs. Norway.

1. Introduction

The Norwegian Government hereby submits its response to the view of 15 August 2005 issued by the Committee on the Elimination of Racial Discrimination in Communication No. 30/2003 The Jewish Communities in Oslo and Trondheim et al vs. Norway.

The Government honours its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination. Norway has recognised the competence of the Committee to receive and consider communications under article 14. Accordingly, the Government attaches great importance to the Committee's view. The Government has in accordance with the view taken the necessary steps to ensure that statements such as those made by Mr. Sjølie, in the course of his speech 19 August 2000, are no longer protected by the right to freedom of speech under Norwegian law, cf. the Committee's opinion paragraph 12.

2. The Norwegian Government has given the Opinion wide publicity

The Government has given the view from the Committee wide publicity as requested by the Committee, cf. the Committee's opinion paragraph 13.

The Ministry of Justice and the Police issued a press statement 25 August 2005 informing the public of the Committee's opinion. In the press statement the then Minister of Justice and the Police assured that Norwegian authorities, including the prosecuting authority and the courts – would attach importance to the opinion. The

Postal address:

N-, Norway

Office address:

N-0251 Oslo

Bank payments:

6345.05.02822

Org. no.: 972 417 920

Telephone:

+47 22 24 36 00

Fax:

+47 22 24 95 80/81

Enquiries to:

post@mfa.no

www.odin.dep.no/ud

Minister also informed of several legislative developments providing enhanced protection against racist utterances.

The Committee's view received nation-wide mass media coverage. Hence, the opinion has become widely known in the Norwegian society.

Furthermore, the Ministry of Justice and the Police has published a translation into Norwegian of the Committee's view on its website jointly with the circular mentioned in the paragraph below.¹ The view is also published in English on the website of the Norwegian Ministry of Foreign Affairs.²

Moreover, the Government has distributed a circular, which informs the relevant Norwegian authorities, non-Governmental organisations and the faculties of law about the Committee's view, its importance, and the implications that the view has for Norwegian law. The circular is explained in further detail below. In addition a translation into English of the circular is enclosed.

Also worth mentioning in this regard is that the Ministry of Justice and the Police funded a seminar held by the Anti Racist Centre in Oslo 20 October 2005 and a proceeding report on the Committees' view and its implication for Norwegian law.

3. The Present Substantive Norwegian Law gives Adequate Protection against racist utterances

In addition to informing of the Committee's view, the circular clarified relevant changes in Norwegian law after the judgement by the Norwegian Supreme Court in the Sjølie case. These changes strengthen considerably the protection against racist speech under Norwegian law.

First, the Constitution's Article 100 on freedom of expression was amended by the Storting on 30 September 2004. The amended Article 100 entered into force immediately. The Supreme Court's acquittal in the Sjølie case was rooted in this constitutional provision prior to its amendment. The new provision allows for punishment of racist utterances to a greater extent than at the time of Sjølie's speech. Second, section 135 a of the Norwegian Penal Code, which criminalises racist utterances, has been amended twice since the Sjølie case. Both amendments broadens the purview of section 135 a, thus providing stronger protection against racist utterances. Third, the International Convention on the Elimination of All Forms of Racial Discrimination has been given status as Norwegian law through incorporation of the Convention itself. Hence, Norwegian courts will apply the provisions of the convention directly. Thereby, the convention will provide protection against racist

¹ <http://www.dep.no/jd/norsk/dok/regelverk/rundskriv/012041-250019/dok-bn.html>

² <http://www.dep.no/odinarkiv/norsk/ud/2005/presse/032201-230013/dok-bn.html>

utterances in two ways. Both by serving as a guiding instrument for the interpretation of section 135 a of the Norwegian Penal Code and by independently providing protection against racist utterances in accordance with the Convention text itself. (The enclosed circular provides further details on the referred changes.)

Another noteworthy change in Norwegian law is the new Act 3 June 2005 no. 33 on prohibition of discrimination on the basis of ethnicity, national origin, ancestry, skin colour, language, and religious and ethical orientation (the Discrimination Act) which provides additional protection to section § 135 a against discrimination rooted in racism.

In addition to the changes in substantive law, the establishment of the Equality and Anti-discrimination Ombud 1 January 2006 on the basis of the newly adopted Act 10 June 2005 no. 40 will contribute to the enforcement of laws protecting against racism. The mandate of the Ombud is to promote equality and combat discrimination on the basis of – inter alia – ethnic origin. The ombud supervises and contributes to the implementation of the Discrimination Act and the International Convention on the Elimination of All Forms of Racial Discrimination, cf. section 1 of the Act establishing an Equality and Anti-discrimination Ombud.

Taken in consideration the constitutional and legislative developments since the statements of Mr. Sjølie 19 August 2000, the Government is convinced that under present Norwegian law statements like those uttered by Mr. Sjølie will be penalised. The Government also emphasises that the strong connection between the Convention and section 135 a of the Penal Code, as well as the general relationship between the Convention and other Norwegian law through its recent incorporation, ensures that any discrepancies in interpretation will be avoided since the interpretation applied by Norwegian Courts will reflect the content of the Convention.

The Government considers that no further legislative act is necessary to establish the level of protection against racist utterances required by the Convention. Henceforth, the Government considers that it has fulfilled its obligations as laid down by the Committee in its opinion paragraphs 12 and 13."

Regards