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# Hate Speech and Hate Crime



The Equality and Anti-Discrimination Ombud's Report:

Hate Speech and Hate Crime

2015

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# Foreword

People are hated and despised for being who they are. Hate speech and hate crime hit hard. They hurt individuals and threaten democracy.

This report highlights the harmful effects hate speech and hate crime have on society. Research shows that the presence of hate speech leads to more hate speech, and that the result is exclusion and polarisation. The report is based on research and experience from civil society, the Equality and Anti-Discrimination Ombud's advisory work as well as our dialogue and cooperation with key institutions.

Hate speech and hate crime are serious social problems requiring collective, comprehensive action by the government. The problems are obvious, the political will exists, and this report, accompanied by some proposed measures, provides a solid foundation for the development of a comprehensive policy.

A handwritten signature in blue ink, reading "Sunniva Ørstavik". The signature is fluid and cursive, with the first letter 'S' being particularly large and stylized.

*Sunniva Ørstavik, Equality and Anti-Discrimination Ombud*

Hate speech and hate crime have received increased attention in recent years and there is widespread consensus that these phenomena constitute a social problem with significant adverse effects. The Ombud has made a review of their status and has revealed a number of challenges and shortcomings with government efforts to counteract them. With this report, the Ombud wishes to provide government with input on how best to work against hate speech and hate crime. We suggest that the government prepare a comprehensive national action plan to respond to the current challenges in an effective manner. This report is in two parts; the first part deals with hate speech and the second with hate crime.

Any discussion on hate speech must start with the protection of the freedom of speech. Most speech is permissible in Norway and freedom of expression is an essential principle in Norwegian law. However, this is not absolute. The Criminal Code prohibits certain types of serious hate speech, but there is a high threshold for a statement to be considered illegal. Social science research shows that *both* legal and illegal hate speech cause society and individuals major harm. If you want to fight the harm which both legal and the illegal hate speech inflict upon individuals and society, it is appropriate to have a definition of hate speech that includes both categories.

The Equality and Anti-Discrimination Ombud therefore operates from a broad, social science definition of hate speech - which covers both illegal and legal hate speech: *Hate speech is degrading, threatening, harassing or stigmatising speech which affects an individual's or a group's dignity, reputation and status in society by means of linguistic and visual effects that promote negative feelings, attitudes and perceptions based on characteristics such as ethnicity, religion, gender, disability, sexual orientation, gender expression, gender identity and age.*

Hate speech contributes to social exclusion and increased polarisation. Moreover, such speech intimidates people deterring them from speaking publically, and thus weaken democracy. Hate speech fans prejudice, creates fear and anxiety among the affected groups and it deprives people of dignity. Hate speech can therefore trigger discrimination and harassment and/or violence. Research from the Norwegian Police University College demonstrates a clear connection between hate speech on the internet and the capacity and willingness for violence.

International human rights impose a number of obligations upon Member States when it comes to combating hate speech. These obligations include (1) securing the principle of non-discrimination, (2) combating the underlying causes of discrimination, (3) taking proactive and preventive measures to realise the principle of equality and non-discrimination. Norway's key commitments and recommendations arise from the UN Convention on Racial Discrimination, UN Women's Discrimination Convention and the UN Convention on the Rights of Persons with Disabilities.

The government's efforts to combat hate speech have been modest. This is partly because the focus has been on the distinction between criminal and lawful hate speech, and partly because the government has believed that the adverse effects of hate speech were neutralised through democracy and freedom of speech itself. The Ombud's proposal for a more proactive deterrence of hate speech is shared by actors from civil society and government, including the Oslo Police District. In 2014, the Action Plan against Radicalisation and Violent Extremism was established, which examines the most extreme forms of hate crime and hate speech. The purpose is to prevent recruitment to violent extremism and the action plan outlines a series of proactive measures. This action plan is necessary and important, but it contains no coherent strategy regarding hate speech and it omits hate speech that is not motivated by extremism, such as hate speech motivated by sexual orientation, disability, gender, Sami origin, etc.

The Equality and Anti-Discrimination Ombud therefore recommends that the government prepare a comprehensive national action plan regarding the entire spectrum of hate speech, both legal and illegal, with regard to all the various bases that motivate hate speech. In this report, the Ombud proposes specific recommendations for such an action plan; see Section 2.1-2.5:

- Research on the nature, extent and effects of hate speech
- Strengthened efforts in schools
- The government's obligation to actively promote equality
- Efforts to change attitudes
- Strengthening of civil society working with hate speech

Hate crimes are criminal acts or criminal speech that express intolerance and discrimination, i.e., motivated by hate or prejudice. Hate crime is not a legal term and there is no uniform definition internationally. The Oslo Police District defines hate crime as: "[...] offenses wholly or partly motivated by negative attitudes to a person's actual or perceived ethnicity, religion, sexual orientation, gender expression and/or disability. On equal footing are also criminal offenses motivated by negative attitudes, committed against persons whose political engagement involve these categories."

Hate crimes are a violation of the principle of equality and non-discrimination - a fundamental principle in the most significant human rights conventions. Member States therefore have a positive duty to combat hate crimes.

Hate crimes attack the very identity of the victim, and may have consequences far beyond the person or persons directly affected by the crime. The perpetrator sends signals to the group that identifies with the victim that they should not feel safe. This in turn can prompt those identifying with the victim to change their behaviour because of fear or a sense of exclusion. There have been very few criminal cases involving hate crime in Norwegian courts. The cases that have been brought before the Supreme Court have mostly dealt with criminal speech.

Norway has never had a national action plan to combat hate crime. The National Police Directorate warns against underreporting and points out that registering hate crime is a challenge. The Ombud believes this reflects the lack of a unified national definition of hate crime and lack of knowledge about hate crime by the police.

In this report, the Ombud proposes specific recommendations to combat hate crime; see Section 4.1 to 4.8:

- National standard for registering hate crime
- Statistics on hate crime
- Uniform definition of hate crime
- Training of police and prosecutors
- Raising awareness with police, police procedures
- Hate crime in teaching and professional police education
- Strengthening of civil society working with hate crime
- Research on the nature, extent and effects of hate crime.

# Introduction

In recent years, hate speech and hate crime have garnered increased attention, both nationally and internationally. When it comes to hate speech against ethnic and religious minorities, the economic crisis and immigration to western countries are considered an important explanation of the extent of the phenomenon. There has so far been little attention directed to the fundamental causes of hate speech against other groups. For all forms of hate speech, the increased use and availability of social media have led to hate speech spreading rapidly and reaching consistently more people. In Norway, we started talking seriously about hate speech and hate crime in the aftermath of the terrorist attacks in 2011.

There are of course plenty of different opinions about where the limits on free speech should be placed. Meanwhile, it is agreed that hate speech is a real social problem because it can have the effect of preventing others from freely expressing themselves publically. In addition, hate speech gives rise to negative feelings, attitudes and perceptions towards certain groups in society. In that way, hate speech can contribute to cementing or reinforcing existing negative stereotypes and prejudices about groups based on characteristics such as gender, ethnicity, disability and sexual orientation.

The Ombud has the responsibility of oversight regarding three human rights conventions: UN Convention on Racial Discrimination, the UN Convention on Discrimination against Women and the UN Convention on the Rights of Persons with Disabilities. Through the Ombud's oversight and reporting on these conventions, and our work against discrimination in general, we see that the government's efforts to combat hate speech (legal and illegal) and hate crime, has had little effect.

When it comes to hate crime, the UN Committee on the Elimination of Racial Discrimination confirms the Ombud's perception. The Committee has on several occasions criticised Norway for things such as a lack of statistics and inefficient prosecution of hate crime. The Ombud also found that efforts to counteract and limit the scope and harm of hate speech (legal and illegal) were very modest. The Ombud therefore believes that Norway needs a comprehensive national strategy if we are to succeed in combating hate speech and hate crime, and their harmful effects.

This report is based on research, experience from civil society, the Equality and Anti-Discrimination Ombud's advisory work and the dialogue and cooperation with key institutions. We have collected and obtained an overview of existing research and other literature on hate speech and hate crime, especially regarding adverse effects. We have been in dialogue with representatives of the Oslo Police District and the head of the hate crime project at the Norwegian Police University College. We have met with the Director of Public Prosecutions and participated in meetings organised by the Ministry of Justice and Public Security for the development of the Action Plan against Radicalisation and Violent Extremism.

The Ombud held an open debate in 2014 about hate speech, with input from politicians, journalists, and professionals from home and abroad. We have also held meetings with the Dembra project and the Stop Hate Speech campaign as well as arranged a meeting of specialists for insight into NRK's moderation of online debates. We have invited and participated in meetings with civil society for input and feedback regarding the work with hate speech and hate crime, and the Ombud has its own advisory committee, with representatives from 14 different organisations, which has focussed on this topic. We have received feedback on articles about "lawful" hate speech published in the media and on the website of the project Status of Freedom of Speech in Norway. We have participated in lectures about hate speech at the contact forum with national minorities organised by Ministry of Local Government and Regional Development. LDO has also placed this topic on the agenda of the Nordic Ombud meeting and the Nordic Forum in Malmö in 2014.

This report is divided into two parts, one concerning hate speech and one concerning hate crime. Hate speech and hate crime can be understood as points on a continuum from legal to criminal. In addition, the two phenomena overlap because hate speech can be a criminal offence and therefore covered by the term hate crime. Both hate speech and hate crime are relevant to Norway's human rights obligations. Common to hate speech and hate crime are underlying causes, including negative stereotypes and prejudice which describe some groups or individuals as inferior.

The first part provides a definition and description of hate speech, as well as a discussion of its harmful effects. It is followed by a presentation of hate speech in light of Norway's human rights obligations. There is further an overview of existing initiatives and challenges. Finally, this section provides recommendations for measures that the Ombud believes are the minimum necessary if we are to succeed in combating the extent and harmful effects of hate speech.

Similarly, part two provides a definition and description of hate crime, followed by a review of human rights obligations, Norwegian law and jurisprudence. After that, the Ombud reviews the greatest challenges in this area and provides recommendations to meet them in an efficient and precise manner.



# Part 1: Hate Speech

# 1 Hate speech

## 1.1 What is hate speech?

Any discussion on hate speech must start with the protection of freedom of speech in § 100 of the Constitution. Most speech is allowed in Norway, and freedom of speech is an essential principle in Norwegian law. However, freedom of speech is not absolute. Norwegian law prohibits certain types of serious hate speech by either such speech being forbidden by various provisions of the Criminal Code, or by the victims being given the opportunity to seek civil damages for the offence.

Criminal Code § 135 a protects against serious hate speech which wilfully or through gross negligence is made publicly. The speech must threaten or insult someone, or incite hatred, persecution or contempt for someone because of their:

- a) skin colour or national or ethnic origin,
- b) religion or belief, or
- c) sexual orientation or
- d) disability.<sup>1</sup>

In Norway, there is a very high threshold before speech is considered criminal. Prosecutors have pursued just under ten prosecutions for violations of Criminal Code § 135 a in the past decade. Social science research shows that both legal and illegal hate speech inflicts major harm on society and individuals. If you want to fight the harm that *both* legal and illegal hate speech inflicts on individuals and society, it is useful to operate with a definition of hate speech that includes both categories. In addition, the definition of hate speech should take into account both the *intention* behind and the *effects* the speech has on the person or persons affected.

This report therefore uses a broad social science definition of hate speech, rather than the more limited definition provided in the Criminal Code. The Ombud operates from the following definition:

*Hate speech is degrading, threatening, harassing or stigmatising speech which affects an individual's or a group's dignity, reputation and status in society by means of linguistic and visual effects that promote negative feelings, attitudes and perceptions based on characteristics such as ethnicity, religion, gender, disability, sexual orientation, gender expression, gender identity and age.*<sup>2</sup>

<sup>1</sup> Note that gender is not covered by Criminal Code § 135 a.

<sup>2</sup> The definition is partly based on Anne Birgitta Nilsen's definition of "Hate Speech" in the book: *Hatprat* [Hate Speech] (Cappelen Damm Oslo: 2014), p. 104.

## 1.2 Background and problem description

From public debates one can get the impression that the phenomenon of hate speech came about through digital media. But hate speech is not a new phenomenon. Throughout history, hate speech has been used deliberately in war and conflict as a tool to prepare for and legitimise persecution, murder, hatred and discrimination of selected groups of people.

Although hate speech did not arise with the emergence of digital media, there is also no doubt that digital media is a highly effective tool for spreading hate speech to large parts of the population. Because of the wide catchment area, speech that otherwise would have been considered extreme by most, gets the appearance of being universal, for example, through networks and communities mobilising people to press “like” etc.

For many years, the government’s strategy to limit hate speech was free flow, in the belief that hate speech would be cleansed and corrected through public debates. This assumption finds little or no support in existing research about hate speech.<sup>3</sup> We can therefore not assume that “public airing” will either restrict the harm this speech creates or the extent of hate speech. On the contrary, the latest report on the status of freedom of speech in Norway shows that hate speech creates a climate that weakens democracy by limiting different groups’ public participation. In addition, it appears that hate speech creates greater legitimacy of prejudice and hatred towards certain groups, which in turn can contribute to the increase rather than decrease of such speech.

### 1.2.1 Characteristics of illegal and legal hate speech

Hate speech, regardless of the motivating reason (such as ethnicity, gender, disability, etc.) has many common denominators. It is often built on negative stereotypes, prejudice and stigmas, and it affects both individual and group dignity and reputation in society. Those who engage in hate speech often play on unfounded fear, contempt for what is different, conceptions of natural hierarchies and they tend to use exclusionary rhetoric. Degrading talk about groups or individuals, harassment and conspiracy theories are prevalent. In its most extreme form, hate speech comes in the form of threats, glorification of violence, incitement to violence, death threat rhetoric - and in some cases in combination with violence and murder, i.e., hate crime.

We can find all these elements in the large spectrum of hate speech, whether it’s motivated by LGBT status, ethnicity, religion, disability or gender. This speech ranges from criminal to lawful speech.

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<sup>3</sup> Mullen, Brian and Tirza Leader: “Linguistic Factors: Antilocutions, Ethnonyms, Ethnophaulisms, and Other Varieties of Hate Speech” On the Nature of Prejudice: Fifty Years after Allport (red. John Dovidio mm.) Blackwell: 2005, s. 202.

On July 22, 2011, the terrorist Anders Behring Breivik murdered 77 people in Norway, many of them children and adolescents. Breivik claimed that through their political commitment to a multicultural, egalitarian society, they constituted a threat to Norway. He spread the attitudes and ideas that formed the basis for his actions on the internet, including in the form of a 1,500-page document and countless posts on various sites. The interesting thing about Breivik's speech in this context is that most of this speech was within limits of the freedom of speech and therefore did not constitute a violation of criminal law.

Hateful speech goes from lawful to unlawful, however, when it incites violence or threatens violence. A female social commentator received a letter the day before she was to participate in a debate. The letter is clearly beyond the scope of legal speech:

“You fucking whore! I will drain the blood from your filthy body and choke the air out of your lungs the next time I hear from you. Either shut up or I'll make you shut up for good. It's your choice. .... Either stay home tonight, or we'll make sure that you won't live to see tomorrow. .... There is no room for cunts like you in public.”

This type of criminal hate speech rarely has any repercussions in practice, partly because it is considered impossible to pursue criminal speech in cases where the perpetrator's identity is unknown or because there is a lack of evidence.

The similarities between legal and illegal hate speech are clearly displayed in the TV documentary *Woman, I hate you* from 2013. In the documentary, nine high-profile women (journalists, politicians and bloggers) relate their stories of widespread harassment and intimidation, including threats of violence and rape, as a direct consequence of their participation in public debate. In addition to illegal hate speech, the women were repeatedly subjected to derogatory statements about their bodies, appearance and gender. The women experienced the latter comments as dehumanising and degrading, but they are at the same time fully legal. Common to this legal hate speech is that it focuses on actual or presumed characteristics of the women speakers and not on the *content* of what these women said.

People with disabilities are also a group that is typically subjected to hate speech based on actual or presumed characteristics of them as a person. An example of this is a case where three month old Ludvik was grossly harassed by a hacker on Facebook because he has Down's syndrome. On Facebook it was said that Ludvik was just a burden on society, a freak, and that his parents should have had an abortion.

Another example of how people with disabilities are subjected to hatred on the internet, is a website that was created in 2006 titled “Rate my Down's”. The anonymous creators posted photos of people with Down's syndrome and invited readers to vote on the degree of mental retardation and to comment on the pictures. When the case received media attention, the anonymous creators of the website wrote to a newspaper:

“We’re a gang of friends that created this site for fun. No offense was meant. The reason was simply that we were bored one day and wanted to do something different.”

Similar prejudiced and condescending comments and hate speech are also directed against persons belonging to other protected grounds of discrimination (ethnicity, religion, sexual orientation, etc.). Online newspapers, social media and websites among others that are meant to convey fear propaganda and hate rhetoric, can provide countless examples of debaters who attack Muslims, Jews, immigrants, Roma, Sami, sexual minorities and other vulnerable groups. Also here we see that the speech is directed against actual or presumed characteristics of a person or group and that negative value is attached to these characteristics.

### 1.2.2 Harmful effects of hate speech

Existing international research shows that hate speech has harmful effects, regardless of whether it falls outside the criminal ban and is thus “legal” hate speech. This research<sup>4</sup> shows that hate speech:

- contributes to social exclusion and increased polarisation that breaks down social cohesion
- has a deterrent effect on participation in our democratic system, in other words, members of the targeted groups avoid speaking when they can expect to be dehumanised and harassed
- fans prejudice, i.e., hate speech is not only a symptom of prejudice – the speech also has a contagious effect that leads to more hate speech
- entails denigration of the targeted groups (e.g., Muslims or Jews), also in the eyes of random readers and listeners
- creates anxiety and deep worry among members of the targeted groups
- deprives people of their dignity by saying that they are not equal citizens of society

Although there is very little Norwegian research on the harmful effects of hate speech, there is no reason to believe that the effects are not the same in Norway. Norwegian reports indicate that this harm to society also occurs here. The Annual Report<sup>5</sup> on Human Rights in Norway provides a good description of the prevalence of hate speech and views this in light of the intolerance reflected in surveys. One of the studies discussed in the annual report indicated that ten percent of respondents said that they felt antipathy towards Jews, and eight percent would not have Jews as neighbours or friends. The same survey revealed that antipathy was even greater against other particularly vulnerable groups. In the survey a large number of respondents would have disliked having Muslims, Somalis and Roma as neighbours - the figures were respectively 25, 40 and 50 percent.

<sup>4</sup> John Dovidio, red., On the Nature of Prejudice: Fifty Years After Allport (2005), ch. 9, 10 og 12.  
<sup>5</sup> Annual Report on Human Rights in Norway 2012, Norwegian Centre for Human Rights, pp. 33-34.

In its threat assessment for 2014<sup>6</sup>, the Norwegian Police Security Service (PST) describes the growing problem of speech on the internet with hateful, harassing and threatening content that is not criminal. The PST noted the danger of this speech influencing government officials to limit their own freedom of speech.

The Norwegian survey on the status of freedom of speech<sup>7</sup> from 2014 also shows that hate speech can have harmful effects for those who participate in public debate. In the survey, it emerges that the harm is greater among people with ethnic minority backgrounds than those with majority background. While 19 percent of the majority population responded that the experience of hate speech would have consequences for future participation in the public debate, 36 percent of people from minority groups responded the same.

The huge difference between the ethnic majority and the ethnic minorities was explained by the fact that the latter often received biased comments relating to their religious and ethnic identity. For people with ethnic majority background, the unpleasant comments were far more often linked to the issue being discussed. We have no similar studies on other bases of discrimination, but there is no reason to assume that the same harmful effects don't also apply to other groups who are particularly vulnerable to hate speech related to actual or perceived personal characteristics.

It is further reasonable to assume that groups that are already exposed to other forms of discriminatory behaviour will experience being subjected to hate speech in public as more stressful than individuals and groups who, to little or no extent, are subjected to discriminatory behaviour. From such a perspective, efforts against hate speech will also be an important contribution to the fight against discrimination and for equality. Furthermore, by reducing the extent of hate speech, it will promote real freedom of expression for those who currently choose not to participate in public debate.

### **1.3 The Ombud's concerns**

In addition to the above negative consequences of hate speech, based on the Ombud's experience, there is reason to believe that hate speech triggers discrimination in Norway. The Ombud believes that repeated hate speech targeting selected groups can contribute to legitimising harassment and discrimination of individuals belonging to these groups. From a social perspective, a steady stream of hate speech against selected groups will, in the long term, create social exclusion, polarisation and widely accepted denigration - all well-known triggers for discrimination.

The Ombud is also concerned about hate speech creating a culture of fear in the population towards the groups targeted by it, without this fear having any rational justification. Such social processes put social cohesion in danger. Researcher Cora Alexa Døving of by the Norwegian Centre for Studies of Holocaust and Religious Minorities (HL-centre) has illustrated how a series of articles entitled "Islam in Tromsø," along with comments from readers that followed in the wake

<sup>6</sup> Open Threat Assessment 2014. Norwegian Police Security Service.

<sup>7</sup> Status of freedom of expression in Norway: Freedom of speech in Norway: Attitudes and experiences in the population: Results from population survey 2014 (Oslo Fritt Ord Foundation, ISF, IMK, FAFO), pp. 39-45.

of the series of articles, drove an irrational fear of Islam in Tromsø. As Døving says:

“The 1000 Muslims in Tromsø city were interpreted in the light of an international and media-defined image of Islam. Simply put, writers of both the editorial content and the comments from readers referred to a greater extent, to conditions in Saudi Arabia, Afghanistan, Pakistan and the topic of terrorism, than they did to a Norwegian or Northern Norwegian reality. It is obvious that the series fostered fear among the public and also provided an inaccurate picture of Islam in Tromsø. The newspaper’s printing of some very racist comments from readers meant that the depiction of Islam as a whole is indeed built on generalisation, essentialism and conspiracy theories.”<sup>8</sup>

There is particular reason to be watchful against hateful rhetoric from public figures who hold positions of power. Hate speech from prominent politicians and other key opinion makers adversely affect the real opportunities and the motivation of targeted groups to participate in democracy, and it weakens their sense of belonging to Norwegian society. A weakened sense of belonging to society at large and low confidence in government can in turn contribute to radicalisation, especially among young people.

Furthermore, the Ombud believes that hate speech can lead to harassment and/or violence. A report from the Norwegian Centre against Racism in 2012 gives an account of many cases of harassment and violence experienced by Muslims and immigrants (combined with hate speech) after the explosion in the Government Quarter on July 22, 2011.<sup>9</sup>

Research carried out at the Norwegian Police University College confirms, moreover, that there is a clear connection between hate speech and radicalisation and violent extremism.<sup>10</sup>

“The research bears out that extremism’s online activity is well organised and utilises thoughtful communication strategies. It is a question of structures consisting of “key nodes”, “distributors”, “manufacturers” and “discussion forums”.<sup>11</sup>

<sup>8</sup> See Døving, Cora Alexa: “Islam in Tromsø. A serial in the regional newspaper Nordlys” in Døving and Kraft: Religion in the press (Oslo: University Press, 2013)

<sup>9</sup> Haarr G, Anne Gerd og Partapuoli, Kari Helene. On harassment of Muslims and immigrants after the explosion in the Government Quarter 22.07.2011 (2012).

<sup>10</sup> Inger Marie Sunde (Red.): Prevention of radicalisation and violent extremism on the internet, Police University College (PHS Research 2013: 1), 25. “Violent extremism” is defined in the Government’s Action Plan against radicalisation and violent extremism in 2014: 7.

<sup>11</sup> Key nodes are a so-called “web forum” which “owns” the ideological foundation. Ibid., P. 24. The same report provides examples of key nodes and distributors: “On the right there are document.no, Stormfront and Gates of Vienna as examples of such forums. On the jihadist side, examples are Profetens Ummah and islam.net.» Ibid., s. 28.

“There is ... broad research consensus that social media is an important tool for recruitment and radicalisation»<sup>12</sup>

“The research clearly shows that social media is used extensively to convey knowledge about violent methods, weapons use, how to make explosives and bombs etc.”<sup>13</sup>

“The research on extremism reveals that online extremism contains a great deal of hate propaganda and violent rhetoric.”<sup>14</sup>

The research thus shows a connection between hate speech on social media and the ability and willingness to carry out violence.

#### **1.4 International human rights and hate speech**

International human rights are relevant to hate speech in different ways. Hate speech is driven by negative stereotypes and prejudice that consider specific groups or individuals as inferior because of their personal characteristics. Human rights are based on the principle that all people are equal. The principle of non-discrimination runs through international human rights as a common thread. The implementation of human rights in practice ensures that negative stereotypes and prejudice – which are the underlying causes for and drive hate speech – are not able to flourish freely.

If hate speech and the harmful effects are not counteracted by the state and society, the risk increases for some groups to become more marginalised and isolated, and for conflicts and polarisation to increase. As pointed out above, this can also lead to violence and hate crime.

International human rights therefore impose a number of obligations on Member States when it comes to combating the harm arising from hate speech. These obligations include: (1) securing the principle of non-discrimination, (2) combating the underlying causes (“root causes”) of discrimination, including negative stereotypes and prejudice, (3) taking proactive and preventive measures for realising the principle of equality and non-discrimination. In addition, the UN and Council of Europe’s monitoring bodies regularly provide both general and specific recommendations for how Member States can combat hate speech effectively in practice. In the following, we explain the key obligations and recommendations in this area when it comes to Norway.

#### **The UN International Convention on the Elimination of Racial Discrimination (CERD)**

Article 4 of the convention specifically requires that the parties to the convention shall adopt criminal provisions prohibiting the dissemination of ideas based on racial superiority or hatred. General recommendation no. 35 on combating racist

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<sup>12</sup> Ibid., 47.

<sup>13</sup> Ibid., 58.

<sup>14</sup> Ibid., 60.

hate speech (2013)<sup>15</sup> describes in detail the type of speech to be criminalised:

- (a) “All dissemination of ideas based on racial or ethnic superiority or hatred, by whatever means;
- (b) Incitement to hatred, contempt or discrimination against members of a group on grounds of their race, colour, descent, or national or ethnic origin;
- (c) Threats or incitement to violence against persons or groups on the grounds in (b) above;
- (d) Expression of insults, ridicule or slander of persons or groups or justification of hatred, contempt or discrimination on the grounds in (b) above, when it clearly amounts to incitement to hatred or discrimination;”

Under Article 2<sup>16</sup>, the parties have an obligation to also counteract and combat “lawful” hate speech which leads to the kind of harm to society as mentioned above under Section 1.2.2 of this report. Article 7 obliges the Member States to take immediate and effective measures in areas such as teaching, education, culture and information, to combat prejudice which leads to racial discrimination and to promote understanding, tolerance and friendship between ethnic groups.

General recommendation no. 35 describes this obligation in detail:

“School curricula, textbooks and teaching materials should be informed by and address human rights themes and seek to promote mutual respect and tolerance among nations and racial and ethnic groups.” (pkt. 32)

“Information campaigns and educational policies calling attention to the harms produced by racist hate speech should engage the general public; civil society...; parliamentarians and other politicians; educational professionals; public administration personnel; police ...; and legal personnel, including the judiciary.” (Sec. 36)

“The Committee recommends that educational, cultural and informational strategies to combat racist hate speech should be underpinned by systematic data collection and analysis in order to assess the circumstances under which hate speech emerges, the audiences reached or targeted, the means by which they are reached, and media responses to hate messages.” (Sec. 38)

“...States parties should encourage the public and private media to adopt codes of professional ethics and press codes that incorporate respect for the principles of the Convention and other fundamental human rights standards.” (Sec. 39)

<sup>15</sup> Committee on the Elimination of Racial Discrimination: General recommendation No. 35, “Combating racist hate speech” (CERD/C/GC/35) (United Nations: 2013, International Convention on the Elimination of Racial Discrimination)

<sup>16</sup> See Article 2. 1 letter d) and e) and Article 2. 2

In its concluding observations in March 2011 (no. 21) the CERD Committee expressed concern over the negative impact of racist remarks in public discourse in Norway<sup>17</sup>.

#### The UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

CEDAW's Article 5 obliges all Member States to take all appropriate measures to change the fundamental behaviour patterns and stereotypes and prejudice that may lead to the marginalisation and discrimination of women and girls. This includes stereotypes and prejudice that are expressed in both legal and illegal hate speech. General recommendation no. 28 on Member States' key obligations (from 2010)<sup>18</sup> clearly expresses the state's obligation to prevent and proactively work to protect women against cultural practices based on prejudice and stereotyped roles for men and women:

“The obligation to protect requires that States parties protect women against discrimination by private actors and take steps directly aimed at eliminating customary and all other practices that prejudice and perpetuate the notion of inferiority or superiority of either of the sexes, and of stereotyped roles for men and women.” (Sec. 9).

#### UN Convention on the Rights of Persons with Disabilities (CRPD)

CRPD's Article 8 obliges the Member States to adopt immediate effective and appropriate measures to combat stereotypes, prejudice and harmful practices relating to persons with disabilities, including those based on gender and age. The measures required of the government include:

- implementation of public awareness campaigns,
- promotion of the rights of people with disabilities in the educational system, including all children from a young age and
- encouragement of all media to depict people with disabilities in a manner that is consistent with the convention's goals.

#### The principle of non-discrimination in key human rights conventions

The core human rights conventions require that Member States implement the principle of non-discrimination in their national law and practice. This obligation is enshrined in the CEDAW (Article 2), CERD (Article 5) and CRPD (Article 5). Similarly, the obligation is enshrined in other human rights conventions that Norway is committed to: the UN's International Convention on Civil and Political Rights (Article 26), the UN's Convention on Economic, Social and Cultural Rights (Article 2), the European Convention on Human Rights (Article 14), the UN Children's Convention (Article 2) and the Council of Europe's Framework Convention for the Protection of National Minorities (Article 4).

<sup>17</sup> CERD/C/NOR/CO/19-20, 11 March 2011

<sup>18</sup> Committee on the Elimination of Discrimination against Women: General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (United Nations: 2010)

The implementation of the principle of non-discrimination includes a duty to counteract the underlying causes of discrimination, such as negative stereotypes and prejudice that consider any groups or individuals as inferior. This applies explicitly to discrimination motivated by ethnicity, religion, gender and disability. In addition, the four latter UN conventions each contain a non-exhaustive list of discrimination grounds, supplemented with a catch-all category that may also include other grounds of discrimination that are not listed. This means that Member States in practice are committed to counteract the harm caused by hate speech motivated by sexual orientation, gender expression, gender identity and age.

### **1.5 Norwegian law**

Norwegian law prohibits certain types of hate speech either through being unlawful under various provisions of the Criminal Code, or through the victims being given the opportunity to seek civil damages for the offence.

The Criminal Code contains provisions that protect against serious hate speech (§ 135 a), threats (§ 227), harassment (§ 390 a), defamation (§§ 246 and 247) and violation of privacy (§ 390). Some types of hate speech may be punishable by themselves or in combination with other behaviours under these provisions.

The Compensation Act § 3-6 provides for compensation for certain types of defamation and violation of privacy.

Norwegian anti-discrimination legislation<sup>19</sup> protects against harassing remarks directed against one or more specific persons on the grounds of gender, disability, ethnicity (including national origin, colour, descent, language), sexual orientation, gender identity and gender expression. Harassment is defined as acts, omissions or statements that are or are intended to be offensive, intimidating, hostile, degrading or humiliating. In the workplace, protection also extends to harassment on the grounds of age, political views, and membership in an employee organisation.

The Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal enforce anti-discrimination legislation, but are not authorised to award compensation, even if a violation of the law is demonstrated. The victims of such harassing remarks may seek compensation by taking the matter to court, but very few do this in practice. This is probably due to the emotional stress and the risk of having to pay their own and their opponent's legal costs.

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<sup>19</sup> Gender Equality Act of 2013, § 8, Discrimination Act on Sexual Orientation 2013 § 8, Discrimination and Accessibility Act of 2013 § 8, Discrimination Act on Ethnicity 2013 § 9, Working Environment Act of 2005 § 13-1, paragraph 2.

## 1.6 The government's strategy and plans

As described above, hate speech has extensive and serious consequences for both individuals and groups who are affected, and for society per se. Meanwhile, the government's efforts to limit and counteract the extent of hate speech have been very modest. Public attention has up to now been primarily associated with discussions on the borderline between criminal hate speech and the protection of freedom of speech. This may partly explain why we as a society have, to such a small extent, discussed and taken seriously the harm of hate speech. Another, and perhaps equally important reason is that the government has for a long time believed that the harmful effects of hate speech would be neutralised by democracy and freedom of speech itself. Thus, no one has seen the need for government intervention.

In 1996, the Government appointed a commission tasked with fundamentally rethinking the position of freedom of speech in Norwegian society. In the report of the commission<sup>20</sup>, it was argued that society is best served by undesired speech such as hateful or discriminatory speech, being released to public debate because, as the commission itself said: "We can talk about the public sphere as a place of cleansing and airing out."<sup>21</sup>

The belief that hateful and discriminatory speech would be cleansed, i.e., countered, through public debate held, to some extent, great sway with the government. In the parliamentary report on amendments to the Constitution's § 100<sup>22</sup>, the government argues that there should be room for the intensification of the protection against discriminatory and hate speech in a new constitutional provision. The ministry also pointed out that the cleansing process which the commission describes does not always work.<sup>23</sup> Nevertheless, the ministry endorsed the commission's approach to how society can best deal with hateful and discriminatory speech: "As far as possible, discriminatory attitudes are combatted through undesired speech being expressed publicly and refuted."<sup>24</sup>

The Ombud notes that the perspectives described above are being increasingly challenged by both actors in the non-governmental sector and at the government level. Hate and discriminatory speech is defined as a democratic problem, also in the last report on the status of freedom of speech in Norway.<sup>25</sup> Voices that advocate actively opposing hate speech, point out that hate speech intimidates people from participating in public debate. That is, it restricts other people's real freedom of speech and functions as a barrier against factual and knowledge-based public debate.

20 NOU 1999: 27 Freedom of expression should take place

21 Ibid., p. 34 (p.38 of the online version).

22 Report to Parliament no. 26 (2003-2004) Amending the Constitution's § 100

23 Ibid., p. 72.

24 Ibid.

25 Status of freedom of speech in Norway: Freedom of speech in Norway: Attitudes and experiences in the population: Results from population survey 2014 (Oslo Fritt Ord Foundation, ISF, IMK, FAFO), pp. 39-45.

The desire for a more proactive approach to hate speech is also shared by the Oslo Police District which recommends that the government take measures to oppose lawful hate speech. In a report on hate crime, it was argued that “(a) closer look should be made at how people in Norway deal with hate speech that is not a violation of a criminally sanctioned standard<sup>26</sup>.”

### **1.6.1 Action plan measures against radicalisation and violent extremism**

In 2014, the Government put forth an action plan against radicalisation and violent extremism. The action plan concerns the most extreme form of hate crime and hate speech, and it aims to prevent recruitment to violent extremism. In the following we discuss some measures taken by authorities which are relevant in the work against hate speech.

#### *Reinforcement of police participation on the internet (initiative 24)*

The measure aims to strengthen the police’s preventive work against radicalisation and extremism.

#### *Reinforcement of civil society in efforts to prevent hate speech (initiative 25)*

The measure aims to implement meetings and informational efforts which will support groups in society which are particularly exposed to harassment and discrimination on the internet. For instance, the Ministry of Children, Equality and Social Inclusion allocated NOK 600 000 to the appointment of a campaign assistant for the Norwegian “Stop Hate Speech” campaign.

#### *Prevention of hate speech on the Internet (initiative 26)*

Wergeland Centre has been commissioned to translate Bookmarks,<sup>27</sup> which is a teaching manual developed by the Council of Europe’s No Hate Speech campaign. The teaching manual shall be offered as a training course for teachers and others enrolled in educational institutions.

#### *Increase knowledge on how children and young people can protect themselves against adverse experiences on the internet (initiative 27)*

The initiative aims to develop a module for reporting capabilities and privacy settings to better equip children and young people to notify when they experience adverse events online.

#### *Strengthened efforts against hate speech and radicalisation online (initiative 28)*

Media Authority operates a Safe Use centre working towards the safe use of digital media for children. The initiative aims to strengthen the preventive work against hate speech and radicalisation on the internet, by increasing children and young people’s knowledge about source criticism.

### **1.6.2 Other measures to prevent and combat hate speech**

In addition to the planned and implemented initiatives in the Action Plan against radicalisation and violent extremism, the government has implemented other measures in combating hate speech, harassment and discrimination:

<sup>26</sup> Hate crime: A discussion of the topic, a review of police reports in Oslo 2012. Strategic Staff, Oslo Police District. April 2013, p.13.

<sup>27</sup> Keen, Ellie og Mara Georgescu: Bookmarks: A Manual for Combating Hate Speech Online through Human Rights Education, (Council of Europe: 2014).

*Democratic preparedness against racism and anti-Semitism (Dembra)*

Dembra is an initiative in the Government's commitment in combating anti-Semitism, racism and undemocratic attitudes. Dembra is operated by the Norwegian Centre for Studies of Holocaust and Religious Minorities (HL-centre), which has been commissioned by the Norwegian Directorate for Education and Training to develop and implement a training program for schools to support efforts to combat anti-Semitism, racism and anti-democratic attitudes. The target group is school administrators, teachers and students enrolled in lower secondary schools and in upper secondary schools, with emphasis on lower secondary schools. This training is based on the school's own experiences, and provides specific methodological tools for teachers and school administrators to use in the school's day-to-day operations.

<http://www.hlsenteret.no/undervisning/dembra/>

### **1.7 Lack of a comprehensive strategy**

The Action Plan against radicalisation and violent extremism is, in the Ombud's opinion, both important and necessary to prevent some of the most serious forms of hate crime and hate speech motivated by anti-Western and Islam-hostile extremism. The Action Plan still omits hate speech that is not necessarily motivated by extremism, but that still affects many people. This includes hate speech motivated by prejudice and negative stereotypes against people with disabilities, national minorities, sexual minorities, people with a different sexual expression, people because of their gender mm. Such hate speech is far more widespread than hate speech that may be linked to extremism and radicalisation, but there is currently no comprehensive strategy to thwart it.

## **2 The Ombud recommends an action plan**

To ensure equal opportunities in participation in Norwegian society, the Ombud believes it is necessary for greater efforts to combat hate speech. The Ombud will not recommend measures that narrow the scope for freedom of speech. Instead, the Ombud wants greater efforts from both national and local authorities with an aim to develop a more comprehensive and long-term strategy to prevent and combat lawful hate speech.

The Ombud, therefore, recommends that the government prepare a comprehensive national action plan that addresses the full spectrum of hate speech, both legal and illegal, and covering all grounds that motivate such statements. Such a strategy is essential to combat and prevent hate speech and its harmful effects. Central to such an action plan would be the coordination of efforts from various arenas. In the following we recommend five main initiatives that in the Ombud's opinion are essential in order to succeed in a comprehensive work against hate speech. The list of recommendations is not exhaustive.

## Specific measures:

### 2.1 Research on the nature, extent and harmful effects of hate speech

**Challenge:** There is a paucity of Norwegian research on the nature, extent and harmful effects of hate speech. There is also a lack of knowledge concerning the various groups exposed to hate speech, those responsible for hate speech, as well as what measures can prevent and limit the extent of hate speech.

**Recommendation:**

- A. Increased funding for research on the nature, extent and harmful effects of hate speech, the characteristics of those who conduct hate speech, as well as what measures are necessary to prevent and combat hate speech.
- B. Allocation of funds for the preparation of an overview of knowledge of media experiences with initiatives to limit the extent of hate speech in public debate. The media experiences with initiatives such as moderation, full-name policy, etc. can be very useful for media who do not have experience with initiatives to limit the extent of hate speech.
- C. Representative national surveys are comprehensive and time-consuming projects. Because it is important that we in the near future manage to form a picture of the nature and scope of various types of hate speech, the Ombud wants a limited monitoring mechanism lasting for four months. Monitoring should pay special attention to the use of hate speech in political debates and to key opinion makers, as well as hate speech found in a few selected social media. Such a monitoring mechanism will contribute to the knowledge base which must be in place for the development of effective measures against the nature, extent and effects of various forms of hate speech.

### 2.2 Strengthened efforts in schools

**Challenge 1:** Hate speech is widespread among young people and affects many different groups, but hate speech is not systematically included in the work against bullying or other relevant education.

**Recommendation:** Hate Speech should be included in teaching that includes issues of democracy, equality and the use of digital media. Efforts on hate speech can also be linked to existing bullying programs, assuming that these expand to also include our knowledge on hate speech in particular.

The Ombud believes that services provided to schools through the Dembra project should be expanded to include other relevant grounds that motivate hate speech, such that these are given equivalent space to racism and anti-Semitism in the teaching.

**Challenge 2:** Those who teach children and adolescents about hate speech do not have the necessary knowledge about the phenomenon.

**Recommendation:** The Ombud asks the government to initiate a dialogue with the university college sector. Hate speech as a social phenomenon should be included as a component of teaching to ensure that students develop an understanding of the social perspectives related to technology and media development (safe use, privacy, freedom of speech), and that children and adolescents develop a thoughtful attitude to digital arenas<sup>28</sup>.

Teaching about hate speech as a social phenomenon may further be included as part of the instruction to ensure that students are able to stimulate understanding of democracy, democratic participation and critical reflection adapted to applicable grades<sup>29</sup>.

The Ombud believes it may be appropriate to consider expanding the Dembra target group to include teacher training at university colleges. Simultaneously, it must also ensure that the training program includes all exposed groups and that hate speech against these groups are given the same level of attention in the teaching as those of racism and anti-Semitism.

### 2.3 The government's obligation to actively promote equality

**Challenge:** Public authorities have today a duty to promote equality and prevent discrimination, especially in its role as service provider, policy maker and budget allocator. Working against prejudice and negative stereotypes is included in this obligation. The wording of this duty today-- to "work actively, purposefully and systematically"-- is, however, too general to be considered a useful tool for public authorities. The surveys conducted in connection with the Equality Commission's work (NOU 2011: 18) show that this duty is not followed up by the authorities. The Equality Commission therefore proposed a specification of the obligation.

**Recommendation:** The duty of public authorities in the law should be specified in greater detail by adding a sentence with the wording: *Public authorities should work against negative stereotypes and prejudice and promote fellowship and good relations between social groups, particularly in its role as a service provider, policy maker and budget allocator.*

### 2.4 Efforts to change attitudes

**Challenge:** There seems to be very low awareness in the population concerning responsible speech as a democratic value. Simultaneously, responsible speech is required for freedom of speech to be experienced as a reality for all groups in society.

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<sup>28</sup> Regulation on general plan for primary school teacher training programs for 1.-7. grade and 5.-10. grade

<sup>29</sup> Ibid.

**Recommendation:**

- A. An awareness campaign should be conducted to create greater knowledge and understanding in the public regarding the relationship between responsible speech and freedom of speech.
- B. Efforts to change attitudes towards hate speech, such as the Stop Hate Speech Campaign, should be strengthened.

**2.5 Strengthening of civil society working with hate speech**

**Challenge:** Civil society is an important player in the fight against hate speech and to support individuals and groups who are victims of hate speech. Because of the lack of resources, the work is characterized by short-sightedness, ad hoc solutions and lack of systematization of knowledge.

**Recommendation:** Organizations that have activities related to work against hate speech and/or that support those subjected to hate speech, should be given support to ensure longevity of this work, and to ensure that the knowledge obtained through this work is systematized and analyzed so that the results can later act as a basis for the development of initiatives.



## Part 2: Hate Crime

## 3 Hate crime

### 3.1 What is hate crime?

Hate crimes are criminal acts or criminal speech which express intolerance and discrimination, and that is contrary to the most basic democratic principles of our society, namely equality and non-discrimination. Hate crimes also inflict serious detrimental effects on the victim, the group that identifies with the victim and on society as a whole.

Hate crimes attack the very identity of the victim, and may have consequences far beyond the person or persons directly affected by the crime. The perpetrator sends signals to the group identifying with the victim that they should not feel safe. This in turn can prompt those identifying with the victim to change their behavior out of fear or a sense of exclusion.

There is very little research and empirical data on the harmful effects and extent of hate crime in Norway today. There is however reason to believe that (1) hate crime is a major problem in Norway, (2) there are many cases not being recorded and captured and (3) hate crime is inflicted upon many different targeted groups in society.

The Norwegian government is committed to effectively prevent and combat hate crime. In this part of the report we will attempt to elucidate why there are very few registered reports of this type of crime. Then we will present the Ombud's recommendations for action.

Hate crime is a phenomenon and not a specific type of criminal act. Hate crime is not a legal term, and there is therefore no universal definition of hate crime. The Oslo Police District, has, in the opinion of the Ombud, an appropriate definition of hate crime and what it should include. Oslo Police District defines hate crime as:

“[...] Criminal offenses wholly or partly motivated by negative attitudes to a person's actual or perceived ethnicity, religion, sexual orientation, gender expression and/or disability. Similarly, criminal offenses, motivated by negative attitudes, committed against persons whose political engagement involve the aforementioned categories.”<sup>30</sup>

Hate crime consists of two distinct elements: (1) a criminal offense that is (2) motivated by hatred or prejudice. Victims are selected on the basis of his or her actual or perceived group affiliation. Here it is important to emphasize that not all group affiliation is considered to be protected under hate crime legislation. There are great variations with regard to which groups are included in a country's definition of hate crime. The Ombud will not in this report address the question of which groups should be covered by the term, but will take as its point of departure those groups specifically mentioned in the Oslo Police District's definition, which largely corresponds with the targeted groups mentioned in the Norwegian Criminal Code § 135 a.

<sup>30</sup> Hate crimes: A discussion on the subject, an examination of reports in Oslo 2012. Strategic staff, Oslo Police District. April 2013, p. 19.

“Hatred” need not be a motivating factor in order for an act to be defined as a hate crime. In English it has become customary to refer to hate crime as “bias crimes” instead of “hate crime,” so as to emphasize that the motive for such crime does not require a sense of pure hatred against a group.

Hate crime differs from other types of crime because it is characterized by the  *motive* of the perpetrator, and  *the harmful effects* it has on the victim, group and community. Hate crime also has some similarities with other types of actions and speech which fall outside the discussion in this part of the report.

### **Anti-discrimination legislation**

Hate crime falls outside of the kinds of actions addressed in discrimination legislation which is not part of the criminal law, but governed by the civil law. The point of departure in discrimination legislation is whether or not a person or group is being treated less favorably than others because of their special group affiliation. Discrimination addressed in anti-discrimination legislation has similarities with hate crime, insofar that discrimination may be motivated by prejudice against a person or group that has a particular group affiliation. The important distinction between hate crime and discrimination is that discrimination does not usually constitute a criminal act.

### **Legal expressions of hate**

Hate crime also includes unlawful hate speech which is regulated in the Criminal Code § 135 a. Lawful hate speech which we discussed in Part 1 of the report, falls outside of the scope of the term “hate crime”.

## **3.2 International human rights and hate crime**

The United Nations Universal Declaration of Human Rights states: “recognition of the inherent dignity and of equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”<sup>31</sup>. The most important human rights instruments, such as the International Covenant on Civil and Political Rights (ICCPR), the UN Covenant on Economic, Social and Cultural Rights (UCESR), the European Convention on Human Rights (ECHR) do not discuss hate crime specifically. However, they all contain the basic principle of equality and non-discrimination. The principle obligates member states to ensure that their citizens have equal access to basic human rights.

Hate crime is in this context a violation of the principle of equality and non-discrimination; it limits the individual’s access to the enjoyment of human rights. Member states therefore have a positive duty to seek to prevent and combat hate crime.

In ECHR, the principle of equality and non-discrimination is set out in Article 14<sup>32</sup>. This provision basically regulates the relationship between the state and the individual. The state is however not only obligated itself to refrain from discriminating against its citizens, but is also obligated to ensure that individual citizen rights are not discriminated against or subjected to criminal acts because of one’s group affiliation. The state must do this by prosecuting hate crime including

<sup>31</sup> <http://www.fn.no/Bibliotek/Avtaler/Menneskerettigheter/FNs-verdenserklaring-om-menneskerettigheter>

<sup>32</sup> [https://lovdata.no/dokument/NL/lov/1999-05-21-30/KAPITTEL\\_emkn#KAPITTEL\\_emkn](https://lovdata.no/dokument/NL/lov/1999-05-21-30/KAPITTEL_emkn#KAPITTEL_emkn)

those committed by private individuals. The European Court of Human Rights (ECtHR) has in several of its decisions established that member states not only have an obligation to criminalize crimes motivated by hatred and prejudice, but that they also have a positive duty to effectively investigate and prosecute hate crimes<sup>33</sup>.

The UN Committee on the Elimination of Racial Discrimination has in recent years had a particular focus on hate crime and recommends that member states prepare a clear and transparent definition of hate crime. It is further recommended that member states should develop a strategy to combat racism in public discourse in a more efficient manner. The Committee has on several occasions criticized Norway for the underreporting of racially motivated hate crime and the lack of cases of hate crime in the courts. Furthermore, there is a lack of statistics on the number of reported hate crimes, investigations, prosecutions and convictions regarding acts of racism<sup>34</sup>.

### 3.3 Norwegian law and jurisprudence

#### The Criminal Code

Violations of the Criminal Code § 135 a are by definition hate crime, i.e. they involve criminal speech motivated by: (a) skin color or national or ethnic origin, (b) religion or belief, (c) sexual orientation or lifestyle, or (d) disability.

Criminal Code § 349 a punishes those who in occupational or similar business activity refuses a person goods or services on the terms applicable to others. This discrimination is punishable if the reason for denial of goods and services is the person's religion or belief, skin color or national or ethnic origin or sexual orientation or lifestyle, or disability. A similar provision in paragraph 2 applies to being denied access to a public performance or exhibition or other public gathering on the conditions that apply to others.

A motive of hate can also be an element of interpretation when assessing the violation of a criminal provision that does not otherwise regulate motives of hate. See the example from the Gulating Court of Appeal under case law below.

Furthermore, a motive of hate could be an aggravating circumstance giving rise to an enhanced penalty pursuant to Criminal Code § 232 and § 292. According to § 232 motives of hate include: religion or belief, color, national or ethnic origin, sexual orientation, and disability.

Criminal Code § 135 a is a complicated provision. It specifies the limit of speech that is not protected by freedom of expression, but rather treated as a punishable offence. The provision imposes several requirements for someone to be sentenced because of their speech. A person must willfully or through gross negligence publicly utter a discriminatory or hateful expression. Furthermore, the expression must threaten or insult someone, or promote hatred, persecution or contempt for someone because of their skin color or national or ethnic origin, religion or belief, sexual orientation or lifestyle, or disability. The case law reveals that the threshold is very high for expressions to fall within the scope of § 135 a,

<sup>33</sup> See example *Nachova v. Bulgaria* (Application numbers 43577/98 and 43579/98), *Seic v. Croatia* (Application number 40116/02).

<sup>34</sup> The UN Committee on the Elimination of Racial Discrimination (CERD) closing remarks, March 2011, recommendation nr. 21

and according to Norwegian case law § 135 a must be interpreted in light of free speech protections enshrined in the Constitution § 100 and ECHR article 10<sup>35</sup>. In practice, it is therefore only very serious infringements that are prohibited by § 135 a.

The new Criminal Code of 2005 will come into force during 2015. In the new Act, § 135 a will be continued in the new § 185 under the title *Hate speech* and § 349 a will be continued in the new § 186 under the title *Discrimination*. The provisions §§232 and 292 on enhanced punishment and aggravation are continued in the new § 77 which includes aggravated conditions for every punishable act.

### **Jurisprudence**

There have been very few hate crime cases in Norwegian courts. Since 1977, there have been about ten Supreme Court cases which have addressed hate speech under the Criminal Code § 135 a. Norwegian jurisprudence has determined that § 135 a should be interpreted restrictively because freedom of speech is an interpretive factor. Therefore, only very serious infringements are prohibited by § 135 a. There is nevertheless some indication that the threshold for punishing statements pursuant to § 135 a has been lower in the wake of the so-called Sjølie case<sup>36</sup>. For instance, it is presumed in the preparatory works to the Constitution § 100 and amendments to the Criminal Code § 135 a, that the threshold for punishment in cases of racist speech in general should be slightly lower than what was assumed in the Sjølie case<sup>37</sup>. Where the threshold should be is nevertheless still very unclear, because so few hate crime cases reach Norwegian courts. In Rt. 2012 p. 536, the Supreme Court mentioned the lawmaker's statements concerning threshold for punishment pursuant to § 135 a, but the Court stated that in the particular case, it was not necessary to draw such a boundary in general, since the defendant's utterances in that particular case were intended as harassment without any other purpose than to denigrate the victim based on his skin color.

As mentioned above, a motive of hate can also be an element of interpretation when assessing the violation of a criminal provision that does not otherwise regulate motives of hate. The following cases illustrate this:

In the Borgarting Court of Appeal judgment (RG 2012 343) a taxi driver was convicted under § 227 of the Criminal Code for threatening a gay couple with a shovel. The couple left the taxi after the driver had harassed them because of their sexual orientation. The Court of Appeal stated that it gave great weight to the fact that the prelude to the subsequent course of events was that the perpetrator had harassed the victims because of their sexual orientation.

In the Gulating Court of Appeal judgment (LG-2014-053294) a man was convicted under § 350 of the Criminal Code which punishes the inconveniencing of others through self-induced intoxication. The convicted person had made racist statements in an intoxicated state outside a nightclub. The statements were found to inconvenience others who were present.

<sup>35</sup> Rt. 2002 p. 1618 (Sjølie case).

<sup>36</sup> Ibid.

<sup>37</sup> See example Ot. prp. no. 33 (2004-2005) (Discrimination Act), pp. 186-189 and Ot. prp. no. 8 (2007-2008), p. 249.

### 3.4 Lack of a comprehensive strategy

Norway has never had a national action plan for combating hate crime. However, there have been several action plans affecting certain forms of hate crime. These action plans aim to combat racism and ethnic discrimination.

In the action plan<sup>38</sup> to promote equality and prevent ethnic discrimination 2009-2012 the government stated that “Norway also has challenges related to hate crime and hate speech directed against certain minority groups in Norway. Although the police receive few reports relating to hate crime, there is reason to believe that underreporting is large in numbers.” The action plan refers to the police’s function to tag reported crimes in the criminal case database concerning offenses motivated by hate and prejudice based on race / ethnicity, religion and sexual orientation. Of 66 proposed measures in the action plan, only one measure directly concerned hate crime. Initiative No.5 obligated the Ministry of Justice and Public Security to develop informational materials for relevant population groups about “the right to report cases of criminal racism and discrimination.” This action plan has not been followed up by a new action plan to promote equality and prevent ethnic discrimination.

As mentioned earlier, the government presented in 2014 *the Action Plan against Radicalisation and Violent Extremism*. As the government itself states in the action plan (p. 7), violent extremism is the most extreme form of hate crime. The initiatives in this action plan target hate crime motivated by extremism and in particular anti-Western and Islam-hostile extremism. As explained earlier, this action plan does not address hate crime motivated by prejudice against persons with disabilities, national minorities, sexual minorities, persons with a different gender expression mm.

### 3.5 Underreporting and inconsistency in registration practices; lack of statistics and knowledge about hate crime

The CERD Committee has in accordance with Article 4 of the Racial Discrimination Convention and its general recommendation no. 31<sup>39</sup> repeatedly asked Norway to submit statistics on hate crime, including the number of registered reported cases, dismissals, indictments and convictions. Such statistics would give the government insight into whether specific procedural stages and reactions handle hate crime in an appropriate manner. Although the government has never presented these statistics to the CERD Committee, the National Police Directorate has on their website posted statistics on the number of offenses motivated by hate based on race / ethnicity or religion:

<sup>38</sup> Action plan to promote equality and impede discrimination 2009-2012, p.5.

<sup>39</sup> Committee on the Elimination of Racial Discrimination, General recommendation 31 on the Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System, pkt 2 og 3.

<b>Number of reported cases on the basis of type of hate motive, 2010-2013</b>				
	2010	2011	2012	2013
Race / ethnicity	235	183	162	141
Religion Religion	44	35	39	41

The National Police Directorate simultaneously warns about underreporting and that registration of hate-motivated offenses represent several challenges, such that it is difficult to get an accurate picture of the situation. According to the Directorate's own population survey<sup>40</sup> from 2012, one percent of the population revealed that they have been victims of hate crimes (violence or threats because of religion, color, ethnicity, nationality, or sexual orientation). Only 38 percent of the victims said that they had reported the incident to the police. This is a surprisingly low percentage for hate crime. Percentages for the reporting of crime not involving motives of hate, were significantly higher. Although only 38 percent reported the offenses, this should in any case imply a much higher number of registered reports of crime involving motives of hate in the National Police Directorate statistics for 2012.

Norwegian police have registered the number of hate crimes reported since 2006, when "hate crime" became a separate category in the police criminal registry. Despite this, very different registration practices exist in different police districts. The Director General of Public Prosecution held a seminar on hate crime with all public prosecutor districts in 2012. In advance, districts were asked to prepare statistics on reported hate crime, positive indictment decisions and convictions in all cases where "hate crime motive" was tagged in the police criminal case database over the past three years. These statistics are not published and have not been analyzed thoroughly in order to suggest improvements in routines. The Ombud did however acquire access to the reports of the various public prosecutor districts. As far as the Ombud can see from the reports, there are large variations in how the various public prosecutor districts (and underlying police districts) register cases of hate crime.

The Ombud believes this inconsistency in registration practice can be explained by, among other things, the lack of a national and uniform definition of hate crime, and the lack of knowledge among police about hate crime. The lack of a clear definition affects, among other things, how procedures for registration works in practice, and the quality and content of the training on hate crime for police and prosecutors.

<sup>40</sup> The police national citizen survey 2012, pp. 64-68 (conducted by TNS Gallup on behalf of the National Police Directorate).

As mentioned initially, the Oslo police adopted in 2013 a definition of hate crime which is considered to be a major advancement compared with the definition used by the The National Police Directorate.

Oslo Police District defines hate crimes as:

*“[...] Criminal offenses wholly or partly motivated by negative attitudes to a person’s actual or perceived ethnicity, religion, sexual orientation, gender expression and / or disability. Similarly criminal offenses, motivated by negative attitudes, committed against persons whose political engagement is subject to the aforementioned categories.”<sup>41</sup>*

While the National Police Directorate defines hate crime as:

*“[...] Crime that has racist, xenophobic and homophobic motives, or that somehow is justified by prejudice against a person or group of persons on the basis of their actual or perceived group affiliation.”<sup>42</sup>*

The Ombud believes this improvement is reflected in the Oslo Police District’s definition and its clarification that the concept of hate crime also includes offenses that are “partially” motivated by protected grounds. In addition, the Oslo Police District’s explicit mention of the protected grounds (ethnicity, religion, sexual orientation, gender expression and disability) provides a better basis for procedural casework than the grounds used in the Police Directorate definition (racist, xenophobic and homophobic motives). The ever recurring debates about and confusion surrounding the term “racism” in the Norwegian debate illustrates in itself the benefit of using the term “ethnicity”. Furthermore, the use of the word “homophobic” can be misleading. Finally, there are significant advantages in the Oslo Police District’s explicit designation of the grounds *of religion, gender expression and disability*.

Moreover, there are no statistics on the number of indictments and convictions in cases of hate crime. In a meeting with the The Director General of Public Prosecution on 11 April 2014, the Ombud called for a list of such statistics. The Director General of Public Prosecution would examine whether it was possible to generate it. The Ombud has to this date not received such statistics.

Underreporting, inconsistency in registration practices and lack of knowledge about hate crime also mean that victims of hate crimes do not get the follow-up they need.

To the Ombud’s knowledge, the Oslo Police District is the only police district that created an investigation team for issues on hate crime. The group will investigate all cases of hate crime in the Oslo Police District that have been reported, and will acquire specialized knowledge and expertise regarding such crime. The Oslo Police District also has continuous training in hate crime for its staff to ensure competency regarding such cases.

<sup>41</sup> Hate crimes: A discussion on the subject, an examination of reports in Oslo 2012. Strategic staff, Oslo Police District. April 2013, p. 19.

<sup>42</sup> The National Police Directorate: Reported crime and criminal case procedures 2013: comment-ed STRASAK figures, p. 17.

### 3.6 Lack of focus on hate crime in police training

The Ombud believes that knowledge about hate crime and the consequences of hate crime must be included in the training of police students. In a meeting with the head of the Norwegian Police University College research project on hate crime, it was revealed that hate crime is to little or no degree a part of the existing curriculum at the Norwegian Police University College. The researcher believed that one explanation may be that there is very little Norwegian research on hate crime.

### 3.7 Inadequate cooperation with civil society

The Ombud has both through its advisory committee consisting of 14 organizations and through its other work, had several meetings about hate crime with civil society. Most organizations the Ombud has met, have expressed that hate crime is a widespread problem among their target groups. Several organizations have initiated their own measures to help victims to report hate crime. Common to organizations the Ombud has had contact with, is that they have too little resources to be able to work effectively against hate crime, and they experience that victims of hate crime, which they are in contact with, often lack confidence in the police and prosecuting authorities. Several organizations have initiated their own campaigns and whistleblower capabilities in order to reach victims of hate crime:

- National organization for lesbians, gays, bisexuals and transgender people (LLH) is one of the organizations that have a “I will tell” button on their websites<sup>43</sup>, where victims of hate crimes can report to LLH about their experiences.
- The Norwegian Centre against Racism has a “report racism” button on their website<sup>44</sup>, where victims of racially motivated violence or other events may notify.
- The Jewish Community has its own website<sup>45</sup> where one can report instances of anti-Semitism.

Despite that these organizations have mechanisms for recording experiences with hate crime, such information is not taken advantage of for research purposes.

### 3.8 Lack of research

As with hate speech, one of the main challenges of combating hate crime in Norway is that there is very little knowledge and research on the nature and extent of hate crime and the damage of such crimes.

<sup>43</sup> <http://www.ikkefinndegidet.no/index.php/no/>

<sup>44</sup> <http://www.antirasistisk-senter.no/meld-fra-om-rasisme/>

<sup>45</sup> [http://www.dmt.oslo.no/no/meld\\_fra\\_om\\_antisemittisme/](http://www.dmt.oslo.no/no/meld_fra_om_antisemittisme/)

## 4 The Ombud recommends an action plan

In the following we recommend eight main initiatives, that in the Ombud's opinion, are essential in order to succeed in a comprehensive work against hate crime. The list of recommendations is not exhaustive.

### 4.1 National standard for the registration of hate crime

**Challenge:** There is reason to believe that there is a significant underreporting of hate crime. It is the Ombud's opinion that this is, among other things, due to a lack of a common national standard for the registration of hate crime.

**Recommendation:** There should be developed a common national standard with clear instructions that ensures a uniform registration of hate crime.

### 4.2 Statistics on hate crime

**Challenge:** There are no official statistics on how reports of hate crime are followed up, either with regard to dismissals, indictments or convictions.

**Recommendation:** There should be implemented initiatives in order to effectively collect and publish statistics on hate crime, including the number of reported hate crimes, dismissals, indictments and convictions.

### 4.3 A clear and uniform definition of hate crime

**Challenge:** The absence of a clear national definition of hate crime prevents a consistent national registration practice in the various police districts.

**Recommendation:** There should be developed a clear national definition of hate crime. One should use the definition used by the Oslo Police District.

### 4.4 Police and prosecutor training

**Challenge:** Training about hate crime is sporadic and without clear national instructions in the various police districts.

**Recommendation:** Police and prosecuting authorities should get proper training about hate crime regularly. Training is essential for the police to be able to provide good assistance to victims of hate crime, and to develop a uniform practice with regard to registration of hate crime.

### 4.5 Raising awareness and police procedures

**Challenge:** Many of those subjected to hate crime do not notify the police. This means that victims of hate crime receive poor help, and that hate crime does not get registered.

**Recommendation:** The police must demonstrate to the public that they take hate crime seriously. The police must put in place procedures to ensure the proper follow-up of victims of hate crime and must ensure that the public is adequately informed about these procedures.

#### 4.6 Hate crime in teaching and the professional education of police

**Challenge 1:** There is no systematic teaching about hate crime in primary or secondary education.

**Recommendation :** Oslo Municipality has developed a curriculum on hate crime<sup>46</sup> for secondary school 1 and 2. The authorities should facilitate the development of a similar teaching program and integrate it into teaching at primary and secondary schools across the country. The teaching program should address hate crime in general, and not just the ones directly attributable to radicalisation and extremism.

**Challenge 2:** Hate crime plays little or no part in the curriculum at the Norwegian Police University College.

**Recommendation:** The government should ensure adequate education on hate crime in the study at the Norwegian Police University College.

#### 4.7 Strengthening of civil society working with hate crime

**Challenge:** Civil society has no resources to carry out comprehensive and long-term work against hate crime. The organizations that provide an ongoing possibility to register hate crime, lack the resources to systematize and analyze this documentation.

**Recommendation:** Monies should be allocated to a long-term and systematic projects so that civil society can assist victims of hate crime, register cases of hate crime and analyze documentation provided through registration.

#### 4.8 Research on the nature, extent and harmful effects of hate crime

**Challenge:** There is limited research on the extent, nature and consequences of hate crime in Norway. Lack of such knowledge makes it difficult to develop precise policy initiatives.

**Recommendation:** The authorities must allocate earmarked funds for Norwegian research which can address the abovementioned gaps of knowledge.

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<sup>46</sup> Radicalisation and extremism: teaching program for social subjects Vg1/Vg2 (SALTO: "Together for a safer Oslo") (Published by Oslo Municipality Educational Services, 2014). A large part of the teaching program involves hate crimes.

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