
Fact sheet 2: Equality in the Justice System

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Introduction

The principle of equality before the law is enshrined in several human rights declarations that have been ratified by Norway. Article 26 of the UN Covenant on Civil and Political Rights reads:

"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law."

We believe that all of Norway's judges would support this principle of equality before the law. The report "Norway – Equal Application of the Rule of Law?" (*"Norge – en rettsstat for alle?"*)¹ deals with the justice system's attitude towards persons with minority backgrounds, and is based on a survey carried out among lawyers. The survey, which was carried out in autumn 1999, shows that differences can arise between theory and practice as far as judges and other participants in the justice system are concerned.

This Fact Sheet deals with the main findings of the survey. In conclusion we recommend ways of ensuring equal treatment in the Norwegian justice system.

Why Concentrate on Discrimination in the Justice System?

Several organisations and individuals have alerted us to, and requested that we monitor the unequal treatment experienced by persons with minority background in the courts. The level of confidence in the justice system was, in our opinion, critically low in the minority community. It was therefore decided to record the extent to which their lack of confidence was reflected in actual discrimination and, if so – to record the extent of the problem. We chose lawyers as the participants in legal proceedings most likely to give accurate feedback about the problem. They have substantial experience and information about the experiences of ethnic minorities in Norwegian courts.

Fair and equal treatment before the courts, irrespective of ethnic background, skin colour and/or religious beliefs is crucial if the justice system is to secure the confidence of ethnic minorities. Successful integration is dependent on a clear demonstration that society is willing, in every respect, to accept and appreciate individuals of ethnic minorities as equals. Equal treatment before the law is essential in this connection.

The Nature and Extent of Discrimination in the Justice System

Of the 1300 lawyers who were sent the questionnaire regarding discrimination in the

¹ The report "Norway – Equal Application of the Rule of Law?" was published in May 2000 by the Centre for Combating Ethnic Discrimination and The Institute Against Public Discrimination.

justice system, 248 responded. Responses were sent in on a voluntary basis and it is possible that the sample is not representative of the 1300 lawyers surveyed. We believe, however, that the findings do provide an indication of what persons from ethnic minority backgrounds experience in the Norwegian justice system. It is important that the findings are taken seriously. We also believe that they form the basis for corrective action to ensure equal treatment for all in the justice system – irrespective of ethnic background.

Is a person's ethnic minority background relevant in court?

The majority of respondents thought that a party's ethnic background could have a negative effect on their treatment in court and/or the court's judgement. Skin colour and religious belief were also, by 125 and 67 lawyers respectively, regarded as circumstances that could have negative effect on the treatment of cases.

Factors such as ethnicity, skin colour and religious belief are not relevant to the question whether someone is guilty of committing an offence. The requirement for providing compelling evidence to prove that an offence has been committed needs to be satisfied, regardless of whether the accused is Ola from Oslo, or Ali who moved to Norway from Damascus 6 years ago. Nor should ethnicity play a part in the sentencing decision. The crime of rape is equally punishable regardless of the person who commits it. It is wrong for the judge to render a harsher sentence for Ali because he wants to send a message to young men of ethnic minority background that such behaviour is unacceptable. If this were the case, Ali would be sentenced more harshly *because* he is from an ethnic minority.

Nonetheless 82 respondents confirmed that they have experienced court judgements to be different from what could be expected in law where one of the parties is from an ethnic minority. A court judgement should be based on legal evaluation of the evidence. A party's ethnic background resulting in a milder or a

harsher sentence must be regarded as a grave threat to equal application of the rule of law.

Prejudicial statements made in court

Participants in court proceedings have different roles. Defence lawyers and prosecution authorities argue their respective cases and the judge should, on the basis of the arguments presented, render a decision. A total of 97 respondents said that they have experienced prejudicial statements, about persons with ethnic minority backgrounds, made during court proceedings. The feedback also suggests that such statements come from all participants, with more or less the same frequency. When an accused with minority background experiences that the judge makes statements prejudicial to persons of an ethnic minority, the accused will clearly lose confidence in the judge's ability to issue a judgement based solely on the evidence.

It is not the prosecution's duty to ensure that the accused is found guilty. Rather, the prosecution's duty is to put forward the facts, and provide the relevant evidence, in a neutral way. Having done this, it is the court's duty to decide whether an offence has been committed or not. Statements made by the prosecution, which are knowingly prejudicial to persons of an ethnic minority, are an unacceptable abuse of the position of prosecutor, and highly unethical.

Communication and legal safeguards²

The right to be heard is a basic principle in Norwegian legal practice. When persons with little or no Norwegian language skills are a party to a criminal case, a translator should be used so that such a party can explain his version of events and is able to follow what is being said in the proceedings. In practice the need for fair treatment before the law can sometimes be overlooked, as the system puts far too much emphasis on efficiency and financial considerations.

104 of the 248 lawyers responded that they had experienced situations in which the use of a

² "Legal safeguards", a term approximately equal in meaning to *rettsikkerhet*.

translator was regarded as problematic. 35 respondents said that they had experienced conflicts with judges over the use of translators and 27 said that they had experienced the translator not being able to carry out his work satisfactorily because the judge was impatient to move on with the proceedings. The quality of translation has, according to 100 lawyers, led to a threat to legal safeguards. The findings of our survey indicate that there is a need for measures, which ensure the use of translators in instances where they are needed and which ensure the quality of translators.

Discrimination as a legally relevant element in a case

A case may sometimes contain ethnic discrimination as a legally relevant element. 66 lawyers said that it would be more difficult to win a case if the discrimination element were pursued in court. 81 respondents said that they would choose to argue the case without putting any weight on the discrimination element. 102 lawyers replied "Don't know" to the question whether they would choose to argue a case on the basis of a relevant discrimination element if there were an alternative ground that could be used. Our experience is that lawyers advise clients against pursuing the discrimination angle of their case.

The Way Forward – Recommended Initiatives

Legal education and training

We are of the opinion that legal issues regarding ethnic discrimination should be included as a mandatory part of the legal education in Norway. The aim is for all law students to get an introduction to substantive and procedural

rules governing ethnic discrimination, together with an understanding of the ethical and socio-legal issues involved. There should also be a greater emphasis on ethics in the legal education so that this aspect is developed together with legal skills, rather than being largely ignored, as is the case today.

Post-qualification training

The Lawyers Training Centre³ should design and offer a course on ethnic discrimination, along the lines of other post-qualification courses being offered to lawyers. Judges and prosecutors should also be provided with special training initiatives. Judges and prosecutors wield an enormous amount of power, vested in them by the authorities. It is therefore extremely important for such officers to perform their duties without discriminating against ethnic minorities. They should also be aware of the substantive legal issues concerning discrimination.

Recruitment of lay judges

There are currently very few lay judges with ethnic minority backgrounds in the Norwegian justice system. One reason could be that qualified persons from ethnic minority backgrounds are not being reached through the established channels for recruiting. Lay judges are currently being recruited mainly via lists of members from political parties, most of which have very few ethnic minorities. Our impression is that many people from ethnic minorities are engaged in voluntary organisations, and the authorities should consider using membership lists from such organisations in addition to the channels being used today. An increase in the number of lay judges from ethnic minorities would lead to increased confidence in the justice system among persons with ethnic minority backgrounds. This would also contribute to an increase in the extent to which persons are being "judged by their peers", a notion that is one of the main reasons for having lay judges in the justice system in the first place.

Attitudes of lay judges

The use of lay judges has firm grounding in the Norwegian legal system. This ensures that people without formal legal training participate in the court decision on the same level as legally trained judges. Lay judges are not in a position to take advantage of the post-qualification training outlined above. Unacceptable attitudes to minorities held by lay judges should be

³ The Lawyers Training Centre – *Juristenes Utdanningsenter*.



covered by initiatives directed at the general public at large.

Guidelines for the use of translators

As mentioned above, the use of competent translators where necessary, is critical for maintaining ethnic minorities' legal safeguards. On this basis, and based on our survey pointing to the inadequate use of translators and the use of incompetent translators, we recommend that a set of guidelines for the use of translators be drafted. Such guidelines should indicate, e.g., when a translator should be used and what qualifications are required of translators selected to appear before the courts.

Ethical guidelines for judges

When participants in a legal proceeding make disparaging remarks about ethnic minorities, the judge should intervene. This is necessary to show all parties that such remarks are unacceptable and irrelevant to the court's decision.

Human rights in Norway

The principle of "equality before the law" is a basic human right, which has not been fully investigated by the Centre's survey. The findings of our survey do, however, form the basis for further research. We believe the Human Rights Institute⁴ should include discrimination in the justice system as a topic for future research. It is desirable that the Department of Justice and/or The Norwegian Research Council⁵ contribute to the financing of such research.

Brief Facts

- The Centre for Combating Ethnic Discrimination was established as a public office in 1998.
- The staff (6 persons) provides legal aid to individuals who suffer from discrimination on the basis of their religious belief, skin colour or national/ethnic origin.
- The Centre documents the nature and extent of discrimination in Norway.
- The Centre can propose measures and work proactively with preventing and prohibiting discrimination.
- The Centre co-operates with other parties in preventing discrimination.
- The Centre operates nation-wide.

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⁴ Human Rights Institute – *Institutt for menneskerettigheter*.

⁵ Norwegian Research Council – *Norsk forskningsråd*.

