DENMARK

CCPR A/33/40 (1978)

95. The Committee considered the initial report submitted by Denmark at its 54th meeting on 19 January 1978 (CCPR/C/SR.54).

96. The report was introduced by the representative of the State party who said that the initial report (CCPR/C/1/Add.4) concerned the general framework in which the rights covered by the Covenant were implemented and protected in Denmark. The additional report (CCPR/C/1/Add.19) was prepared following the receipt of the guidelines but related only, due to the shortage of time, to the implementation in Denmark of articles 1 to 7 and 17 to 22 of the Covenant. His Government hoped to cover the remaining articles in its next report.

97. The representative stated that, before ratifying the Covenants, his Government had introduced the necessary legislation in order to comply with the provisions of the Covenant, but reservations had been entered in cases where discrepancies had been identified between the Covenant and the existing legal situation in Denmark. Should the Committee question any aspect of Denmark's interpretation of various concepts of the Covenant, his Government would have to ascertain whether changes were required in its domestic practice.

98. It was noted with satisfaction that, in the second part of the report (CCPR/C1/Add.19), reference was made to the achievement of the right to self-determination by the people of Greenland and to the establishment of a Commission whose task included the submission of recommendations for a system of local autonomy in Greenland. The representative of Denmark was requested to provide up-to-date information on the work of that Commission.

99. Concerning the Covenant's impact on domestic Danish law, it was noted that the rule of interpretation which allowed the administrative authorities to adopt the interpretation that would best comply with existing treaty obligations did not amount to making it imperative for them to do so.

100. Information was sought on the application of the rule of presumption, namely, that the Danish courts should, where a new legal provision was clearly at variance with a provision of the Covenant, presume that it had not been the intention of the Parliament to pass legislation contrary to Denmark's international obligations. The representative of Denmark was asked whether legislative acts could be declared unconstitutional by the courts. This question was considered particularly important since, in Denmark, international law was not automatically binding unless it was incorporated in domestic law.

101. He was also asked whether the discrepancies between Danish legislation and the provisions of the Covenant which had been identified prior to ratification were the only ones that existed in that respect or whether there were others.

102. Some members expressed their interest in the Council on Equality established in Denmark with

a view to promoting equal status for men and women in all sectors of life. Further information was requested on the practical results of the activities of the Council and on the measures taken to ensure equality between men and women in the enjoyment of human rights. The representative of Denmark was asked if he could confirm that the only function of the Council was to promote equal status for men and women in areas that went beyond equality in the enjoyment of civil and political rights, it being presumed that those rights were already ensured in Danish law.

103. With regard to the right to life recognized under article 6 of the Covenant, it was noted that no death sentences had been carried out in Denmark since 1946. It was observed that Denmark had obviously done a great deal to combat infant mortality, maternal mortality or drug abuse, but it would be useful to stress that aspect of the right to life by providing additional information on the subject.

104. Interest was expressed in the fact that a Danish medical group carrying out research work to help Amnesty International in its efforts to put an end to torture. The representative of Denmark was asked whether corporal punishment was still permitted in Denmark and whether Danish law provided for the solitary confinement of prisoners and, if it did, for how long. Clarification was also requested on the situation with regard to communications between prisoners and counsel.

105. It was noted that no reference was made in the report to protection against unlawful attacks on an individual's honour or reputation by a State authority. Mention was also made of the Danish law which provided that searches could not take place "except under a judicial order, unless particular exception was warranted by statute". Further information on such exceptions was requested.

106. Clarification was sought in connection with article 18 of the Covenant which dealt with freedom of thought, conscience and religion. According to one member, the Danish law cited in the report did not seem to be consistent with freedom of religion. The representative was asked whether children who had no particular religion could, in fact, receive some other form of instruction to replace religious instruction. It was observed that Danish law did not deal with matters relating to freedom of thought and conscience and further information was requested on any legal provisions which Danmark intended to adopt in that connection in future.

107. As regards freedom of expression, it was noted that, although the Danish Constitution prohibited the introduction of censorship, it provided for a possible subsequent responsibility for the publication of certain statements by virtue of their substance. The representative was asked whether it would be consistent with the provisions of article 19 of the Covenant for the Danish Government, in accordance with the provisions of article 19 of the Covenant for the Danish Government, in accordance with the provisions of the Danish criminal code, to punish the distribution of pacifist material to soldiers. Further information was requested on the measures taken to ensure that all segments of the population were entitled to express their opinions on radio and television, which were Government institutions.

108. It was noted that Danish legislation provided for punishment against incitement to discrimination. The representative was asked whether the scope of that legislation really covered article 20, paragraph 2, which entailed the prohibition of racist organizations. Some members

referred to the Danish reservation to article 20 of the Covenant concerning war propaganda and wondered whether the Danish Government would continue to hold the view that that article limited the right to freedom of opinion or whether it intended to withdraw its reservation and bring its legislation into line with that provision of the Covenant.

109. With regard to the freedoms of assembly and of association, the representative was asked whether Danish law provided for restrictions on those freedoms other than those referred to in the report, whether the words "public peace" as used in Danish law had the same meaning as "public order" (ordre public) in article 21 of the Covenant, and whether military personnel were permitted under Danish law to participate in the political life of the country as members of recognized political parties.

110. The representative of Denmark commented on some of the observations and questions summarized in the preceding paragraphs. In the view of his Government, there were no discrepancies between the Covenant and Danish law other than those described in the initial report. Nevertheless, the question of other possible discrepancies would be given due consideration in the light of the comments made by Committee members. Denmark had attempted in good faith to fulfil its obligations under the Covenant by applying the rule of interpretation and the rule of presumption. It was possible to invoke before a court the provisions of the treaty or convention that were relevant to the case as had already been done on some occasions. He confirmed that the reference in the report to the Council established in Denmark to promote equality between men and women related to some extent to the International Covenant on Economic, Social and Cultural Rights, but that was done in response to the guidelines on reporting drawn up by the Committee. His Government would report in more detail at a later stage on the activities of that Council as well as on those of the Commission set up to prepare for local autonomy in Greenland. Detailed replies to the question asked in respect of articles 18, 19, 21 and 22 of the Covenant would be included in the next report of Denmark.

CCPR A/36/40 (1981)

78. The Committee considered the third part of the initial report of Denmark (CCPR/C/1/Add.51) covering articles 8 to 16 and 23 to 27 of the Covenant and containing further replies to questions raised by members of the Committee during the consideration of the first and second parts of the report, 7/ at its 250th, 251st and 253rd meetings on 22 and 23 October 1980 (CCPR/C/SR.250, 251 and 253).

79. Members of the Committee considered the implementation by Denmark of articles 8 to 16, then of articles 23 to 27 of the Covenant. They also raised questions relating to the first and second parts of the initial report. For convenience purposes, these latter questions and the answers thereto will be dealt with first in paragraphs 80 to 85.

80. Noting that the Covenant had not been incorporated into Danish domestic law, members asked whether, in Denmark, the Ombudsman had ever acted in a case where a citizen considered that the rights to which he was entitled under the Covenant had been violated and if not, whether the Government had considered broadening his powers with a view to increasing the effectiveness of the Covenant; whether such a citizen would have a remedy before a court or any other authority empowered to secure the implementation of the Covenant or to invoke it in support of a decision or opinion; whether the higher authorities had provided the subordinate authorities with detailed instructions to the effect that they were required to apply the Covenant in the exercise of their discretionary powers; whether the Danish Council on Equality of Status was a body designed to promote or protect equality and whether a person who considered that his equality of status had not been accepted could lodge a complaint with the Council or with some other body; and whether the Danish Government was not under an obligation to set up administrative bodies to assume responsibility for instituting legal proceedings on behalf of the victim of discrimination.

81. In his reply, the representative of the State party pointed out that any individual who considered he had suffered a violation of the rights conferred on him by the Covenant could request the competent authorities to decide whether their application of domestic law was in keeping with the interpretation of the relevant provisions of the Covenant, that, in construing domestic law, international instruments to which Denmark was a party constituted one of the points of reference and were taken into account for the interpretation of domestic law; that his Government's official position was that the public authorities were legally bound to exercise the discretionary powers vested in them with due regard to the terms of the international instruments ratified by Denmark; that his country had never considered the possibility of providing the Ombudsman with special powers

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7/ The first part of the initial report (CCPR/C/1/Add.4), which concerned the general framework in which the rights covered by the Covenant were implemented and protected in Denmark, and the second part (CCPRC/C/1/Add.19), which related to the implementation in Denmark of arts. 1 to 7 and 17 to 22 of the Covenant, were considered by the Committee at its 54th meeting on 19 January 1978 (CCPR/C/SR.54). For a summary of this discussion, see Official Records of the General Assembly, Thirty-third Session, Supplement No. 40 (A/33/40), paras. 95-110.

in that area; that although he himself did not recall any such case, it could be assumed that, under the Ombudsman Act, any incompatibility of which the Ombudsman had knowledge between domestic law and the international obligations entered into by Denmark could be taken up by him and notified to the competent authorities; that the Ombudsman was empowered to act even if no individual complaint had been submitted to him and that he could decide, on his own initiative, to inquire into any act or failure to act on the part of the administration; and that, in regard to the circulation of the text of Covenant, he knew of no specific measures taken by the administrative authorities, but there had recently been information meetings, organized jointly with the Directorate of Human Rights of the Council of Europe, in which private organizations took part. He informed the Committee that his Government would reply later to the questions raised regarding equality of status in Denmark.

82. Citing several provisions from the Danish constitution which, inter alia, sanctioned the Evangelical Lutheran Church as the established church which, as such, was supported by the State, members of the State, members of the Committee wondered whether the pre-eminent status accorded to this church was accompanied by privileges and whether it was prejudicial to the rights of persons having other religious convictions; whether the existence of an official religion might not jeopardize the freedom of religion laid down in article 18 of the Covenant; whether those provisions did not mean that a person who professed another religion could be constrained to make a personal contribution to the established church; and how Denmark reconciled the right to freedom of religion with the Danish law which only excused a child from receiving instruction in religious knowledge when the party having custody of the child declared in writing that he would himself provide the child with such instruction.

83. The representative replied that the prevailing opinion in Denmark was that the State had primarily a negative obligation to refrain from infringing upon the various freedoms guaranteed; that it was not positively bound to grant privileges to all or to each; that Danish law provided that the established church was financed by a special tax for which only members of that church were liable and that no one shall be liable to make personal contributions to any denominations other than the one to which he adheres; and the fact that the State provided, in public schools, a moral or religious education based on the Christian religion could not be considered as discriminatory, provided that such education was not compulsory for the children of parents who adhered to different philosophies.

84. Members of the Committee wondered whether the Danish Constitutional Act did not restrict to "citizens" the rights provided for under articles 21 and 22 of the Covenant. Questions were asked as to what was meant by the term "unlawful purposes" which would warrant the dissolution of associations under that Act; what kind of association could be declared unlawful; and whether any association had been so declared.

85. The representative stated that the word "citizens" which appeared in the Constitution was to be understood and interpreted as referring to any person present in the national territory and, consequently, to foreigners; that an act deemed unlawful for an individual was likewise unlawful for an association but that the prevailing view in the jurisprudence of Denmark was that the legislature was sovereign and could decide that an object which might be freely pursued by an individual might not be so pursued by an association. However, in fact, since the beginning of the

twentieth century, there had been only two cases in Denmark of an association having been prohibited by a judicial decision.

86. With regard to article 9 of the Covenant, it was pointed out that this article covered all forms of interference with personal liberty including that which ensued from administrative or judicial decisions taken on a variety of grounds, such as health, public order or military discipline. Information was requested on the legal safeguards available to persons deprived of their liberty, including those who fell outside the scope of criminal proceedings. Noting that, under Danish law, the police had to inform a person arrested "as soon as possible" of the charges against him, one member wondered whether this expression meant in fact "at the time of arrest" as was required by the Covenant. Questions were also asked as to whether it was possible for the person under arrest to call upon the services of a lawyer during the crucial early stages of his detention; whether a detainee placed in isolation was prevented from communicating with his lawyer; and whether there were any provisions for moral compensation, in addition to material compensation in cases of unlawful arrest or detention.

87. In connection with article 10 of the Covenant, clarification was requested on what appeared to be a contradiction between one statement in the report that "a decision for isolation can be made only by a law court " and another statement that, if warranted by special circumstances, the principal of the relevant institution might decide that a prisoner should be temporarily subject to solitary confinement. Information was also sought on the length of time for which a person could be held in solitary confinement; on whether the practice had ever been questioned on the grounds that it constituted cruel or inhuman treatment or punishment; and on the remedies that were available to prisoners if the prison authorities violated prison regulations.

88. Commenting on article 13 of the Covenant, members of the Committee requested clarification on the provisions of the Danish law under which an alien could be expelled if he had engaged in "activities of a hostile character", had committed civil offences, did not have sufficient means to support himself, or if it was presumed that he intended on entry to commit criminal offences. It was also asked what rules of procedure were applied when an administrative act involving an order for expulsion was challenged and whether the individual concerned could have an oral hearing or could only make representations in writing; what formalities there were for the issue or renewal of work permits for aliens; and what formal instructions were given to security and police forces at Danish airports in connection with the entry of aliens some of whom were faced with a discretionary refusal by the authorities to grant them entry. Information was also requested on the work of the Committee set up to revise the legislation relating to the admission of aliens into Denmark.

89. With reference to article 14 of the Covenant, information was requested on the measures designed to ensure independence of the judiciary, particularly on the rules regarding the appointment of judges, their tenure of office and disciplinary measures during their term of office. Questions were asked to whether the prosecuting authorities in Denmark were free to decide not to pursue a case before the courts for various reasons, even if they considered the person concerned to be guilty. Commenting on the right of a person to defend himself through legal representatives of his own choosing, members asked what experience had prompted the introduction of the rule that a defence counsel chosen by the accused could be rejected by the court, and whether a foreign lawyer would be permitted to plead in the Danish courts to defend a person accused of a criminal offence.

Information was also requested on legal aid in Denmark and on whether there was a backlog of cases in the courts which might affect the right of the accused to be tried without undue delay and, if such were the case, what measures were envisaged to speed up proceedings.

90. As regards article 23 of the Covenant, one member pointed out that, as traditionally conceived, the family was based on marriage, and that, in some countries, however, it was becoming increasingly common and socially acceptable for persons who were not married to live together and to have children. He wondered whether such couples constituted families within the meaning of article 23 of the Covenant in the light of current experience in Denmark and, if so, whether they enjoyed the right "to protection by society and the State" recognized in respect of the family by this article, and whether they were so considered for the purposes of, inter alia, taxation. Questions were also asked as to whether Danish legislation expressly indicated that future spouses had to be of different sexes; whether church marriages, even if celebrated in a church other than the established church of Denmark, had the same legal status as civil marriages; whether in Denmark, the minimum age laid down for marriages was the same for both sexes; why if young people wished to marry before the age of 18 years, they had to obtain permission from the chief administrative authority rather than just the consent of their parents; what appeal procedure was available to the parents in case such marriage was authorized against their wish; what was meant by "adultery or any other act comparable to adultery"; and what the circumstances were in which in administrative decree could dissolve a marriage and what remedies were available to either spouse against an administrative measure which could be prejudicial to their interests.

91. Commenting on article 24 of the Covenant, members asked whether the provision that young persons may not be employed for more than 10 hours per day was not only excessive but also contrary to international norms on the subject; whether illegitimate children could inherit from their natural father and what measures were being taken to ensure that they were placed on an equal footing with legitimate children; and what the legal position was in the case of children born of stateless parents having regard to article 24, paragraph 3, of the Covenant.

92. As regards article 25 of the Covenant, it was noted that any Danish subject had the right to vote provided that he had not been declared incapable of conducting his own affairs. Questions were asked as to whether such an incapacity was decided by a judicial body, whether it was an ad hoc decision or whether it arose from the fact that the person concerned was in tutelage or under guardianship; and whether voting was obligatory or not. It was also asked what authority decided that, in the eyes of the public, a certain act committed by a person made him unworthy to be a member of the Folketing and what criteria were applied; how military posts and assignments could be considered to be a part of the civil service and whether access to such posts and assignments was actually forbidden to women. A question was also asked as to how the fact that executive power in Denmark was in the hands of a single family and the monarch could be invested with it only through inheritance and only if he or she was a member of the Evangelical Church could be considered compatible with articles 2 and 25 of the Covenant.

93. With reference to article 26 of the Covenant, it was noted from the report that equality before the law was considered to be an administrative rule, not a constitutional one. The representative was requested to clarify this point and to inform the Committee of cases in which the courts or administrative bodies had applied this principle. The question also arose as to whether the

Legislature was bound to respect the principle of equality when promulgating laws and whether, in the views of Denmark, there was any distinction between "equality before the law" and "equal protection of the law".

94. Commenting on article 27 in conjunction with article 1 of the Covenant, members sought information on the indigenous peoples of Greenland, on the teaching of their languages in schools in Greenland, on their access to higher education, on whether all the electors to the popularly elected bodies in Greenland had been indigenous or whether some of them had been Danish by blood, on the nature of the referendum on home rule, particularly whether an effective choice between home rule and independence were put to the people on the progress that was being made in implementing the right of the population of Greenland to self-determination, including their right to accede to independence, if they so desired, and on the German minority in North Schleswig.

95. Replying to questions raised by members of the Committee concerning the third part of the report, the representative of Denmark first expressed his appreciation for the critical observations that had been made, since it was important to have a dialogue on those areas where the Danish authorities might be in some doubt as to how best the provisions of the Covenant should be reflected in domestic law.

96. With respect to article 9 of the Covenant, he informed the Committee that, when his country had ratified the Covenant, it had taken the view that article 9 related only to arrests and detentions within the framework of the Administration of Justice Act. He pointed out that whereas section 2 of Article 71 of the Constitution contained a general provision establishing that a person could be deprived of his liberty only by due process of law, sections 6 and 7 of that Article were concerned solely with deprivations of personal liberty outside the field of criminal proceedings; that the Constitution provided for a special Board to be set up by Parliament to supervise the treatment of persons deprived of their liberty outside criminal proceedings and to which those persons might apply; that such persons might also address themselves to the Ombudsman, if the institution in which they were confined were operated by the central Government authorities; that the law did not provide for specific time-limits within which a person was to be brought before the court and that it was primarily the responsibility of the court to make sure that the police investigation was not unduly protracted; that it was sufficient for the individual who had been deprived of his liberty to demand that his case be brought before the court and the administrative authority concerned was then constrained to bring the case to court within the very narrow time-limits laid down; that, according to the Administration of Justice Act, a person who had been arrested was entitled to call upon the services of a lawyer; that in all cases of partial or total isolation the prisoner had the right to communicate freely with his lawyer; and that Danish law awarded compensation for mental suffering as well as for material damage in cases of unlawful arrest or detention.

97. As to questions raised under article 10 of the Covenant, the representative stressed that there was no contradiction between two statements in the report concerning decisions on isolation of prisoners and pointed out that a brief period of solitary confinement might be prescribed by the prison authorities as a disciplinary measure in the event of a breach of prison discipline; that a law court could decide that a person detained on remand should be isolated for a more protracted period with a view to ensuring that he was unable to hinder an investigation; and that while there were no absolute time-limits on solitary confinement in those circumstances, the court was required to review

each individual case every four weeks. Isolation in Denmark meant segregated treatment designed mainly to prevent the person concerned from taking part in the life of the prison community. He informed the Committee that there had recently been some discussion in Denmark as to whether solitary confinement in that sense was used too often and for excessively long periods and promised to transmit to the Committee some statistical information on the subject. He also stated that a person detained on remand might file a complaint about the treatment he had received with the officer in charge of the prison concerned or submit it to the central administrative authority in charge of prisons and that, if he had not received a positive reply or a final decision within two weeks after filing the complaint, he was entitled to file a further complaint with the local district court which then investigated the matter. There were no similar provisions for persons serving sentences, but they had the right to file a complaint with the administrative authority and also with the Ombudsman.

98. Regarding article 13 of the Covenant, the representative recalled that the report cited a large number of legislative provisions under which aliens could be expelled and noted that the article of the Covenant in question concerned only the procedure for expulsions and not the merits of a possible decision. He recognized that Danish law in that area was rather complicated and pointed out that it was being revised by a special committee established to look, particularly, into questions of competence in the matter of expulsion and of the monitoring of expulsion decisions. Denmark had no administrative tribunal as distinct from ordinary courts and the procedure was usually in writing. Nevertheless, an alien could request an oral hearing and had the option of presenting his case orally before a representative of the competent administration.

99. Concerning questions raised under article 14 of the Covenant, he indicated that all judges were appointed for life by the King on the recommendation of the Minister of Justice; that a judge could not be transferred or removed against his will except by a judicial decision; and that a Special Court of Revision, composed of three judges, was competent in the first and last instance in disciplinary matters. The Public Prosecutor's Office was entitled not to prosecute if it thought that there was insufficient evidence to obtain a verdict of guilty in court regardless of its own belief as to the person's guilt. The legislative provision allowing for the rejection of counsel chosen by an accused was based on the experience of the Federal Republic of Germany. A decision based on that provision could always be appealed to the Special Court of Revision and the single case hitherto involving that provision in Denmark ended in a decision not to reject the lawyer concerned. In every criminal case, all court costs including lawyers' fees were met out of public funds but the administration could try to recover the amount from the accused if he was convicted and the competent court would then establish what share of those costs should be borne by him. Free legal aid, including lawyers' fees, in civil cases could be granted on request, but if the beneficiary of the aid lost the case, he could be made liable for the lawyer's fees of the opposing party. In all cases, the criteria for the decision were the apparent merits of the action undertaken and the economic position of the person concerned. With regard to delays in court proceedings, he stated that there might be a small backlog at the appeal level and that there were occasional backlogs in civil cases. He pointed out that, in the event of a failure to act on the part of an administrative authority or of excessive delay, practice authorized an appeal to a higher authority or referral to the Ombudsman.

100. In connection with article 23 of the Covenant, he stated that the question of "common law

marriages" had recently been studied in Denmark, though not in the context of the Covenant; that a committee had been instructed to examine the need to provide a legal status for couples who were not married; that the law had recently been amended to take account of the existence of such "marriages" in a number of situations; that it was an established rule in Denmark that marriage could be contracted only between persons of different sexes; that although church marriage and civil marriage were both recognized and had the same legal status, the civil authority was responsible for ascertaining that all the conditions required to contract marriage were fulfilled and for delivering a document to that effect to the future spouses; and that a church marriage could be celebrated by a member of the clergy of any religious denomination provided that he had been duly empowered to do so by the Ministry for Church Affairs. The administrative authority was responsible for granting permission to marry two persons under 18 years of age as a requirement additional to parental consent or as a separate requirement in cases where parental consent was unjustifiably refused. Acts which might be considered as comparable to adultery would include sexual acts between persons of different sexes not amounting to full intercourse or similar acts between persons of the same sex. The representative explained the historical reasons for a marriage that could be dissolved by an administrative decree and stressed that for that to happen, the parties had to agree not only on the fact of desiring a separation or a divorce but also on the conditions thereof.

101. With respect to questions raised under article 25 of the Covenant, the representative stated that minors or persons who had been declared incapable by a judicial decision, for reasons of mental illness, for example, could not take part in elections to the Folketing; that it was the Folketing itself which decided that a person who had been convicted of an act which made him unworthy to be a member of the Folketing could not be elected; that in Denmark's opinion, a constitutional monarchy was not in contradiction with article 25 of the Covenant; and that the régime was essentially a parliamentary democracy and any decision by the King had to be countersigned by a Minister in accordance with the Constitution.

102. In connection with article 26 of the Covenant, he stated that the principle of equality before the law was not a constitutional principle and that it, therefore, could not limit the power of the Legislature; that it was, nevertheless, considered a general principle of Danish law; and that there was, in actual fact, no example of a law violating that principle, that, if a bill violating it was tabled, it would not be adopted by Parliament.

103. As regards article 27 of the Covenant, the representative indicated that the principle on which home rule for Greenland was based, was the safeguard of the unity of the Kingdom of Denmark in accordance with the 1953 Constitution which provided that Greenland was an integral part of the Kingdom of Denmark - a provision that had never been challenged. The Greenland Home Rule Act had been approved by 70 per cent of those voting, representing approximately 27,000 out of a total population of 45,000 persons (83 per cent of whom were Greenlanders, the rest being mainly Danes). Greenlandic was the principal language of Greenland and it was used for official purposes; cultural questions were within the competence of the Greenland authorities; Greenland had no university and the existing higher educational establishments were responsible for teacher training. There was no German minority problem in Denmark. An agreement had been concluded in that connection with the Federal Republic of Germany, and the social and cultural activities of the German minorities enjoyed the support of the Danish State.

CCPR A/43/40 (1988)

145. The Committee considered the second periodic report of Denmark (CCPR/C/37/Add.5) at its 778th to 781st meetings, held from 9 to 10 November 1987 (CCPR/C/SR.778-SR.781).

146. The report was introduced by the representative of the State party who said that his Government welcomed the opportunity afforded by the Committee's consideration of Denmark's second periodic report to continue its fruitful dialogue with the Committee as well as to maintain its awareness of its obligations under the Covenant in both the legislative and administrative fields. The representative also drew attention to the fact that his country had ratified the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 26 May 1987.

Constitutional and legal framework within which the Covenant is implemented

147. With reference to that issue, members of the Committee wished to receive information on any significant changes relevant to the implementation of the Covenant since the consideration of the initial report, the extent to which domestic law was consistent with the provisions of the Covenant and the means for ensuring such consistency, cases where the application of the "rules of interpretation and presumption" by the Danish authorities or the courts resulted in decisions favouring the provisions of the Covenant, factors and difficulties, if any, affecting the implementation of the Covenant and activities relating to the promotion of greater public awareness of the provisions of the Covenant and the Optional Protocol, including greater awareness among institutions and law enforcement officers. Members also wished to know whether domestic laws for the implementation of all the rights set out in the Covenant had been enacted, how a conflict between domestic laws and the Covenant would be resolved in cases where the rules of interpretation were not applicable, whether the text of the Covenant had been translated into Greenlandic, whether Danish courts had made it a practice to include in their decisions, where appropriate, a reference to the fact that the Optional Protocol provided for direct recourse to the Human Rights Committee, and whether the ombudsman was entitled to inquire into cases where an administrative authority might be in violation of a provision of Covenant.

148. Clarification was also requested as to the precise role of Danish courts in protecting human rights, in view of the extensive powers of the administrative authorities in that regard, the general rule laid down in article 63, paragraph 1, of the Constitution, particularly as it related to the right of appeal in cases involving the dissolution of political associations, and the reasons for certain Danish reservations to the Covenant, particularly article 14, paragraphs1and 7, and article 20. It was observed, in the latter connection, that the Committee was unanimously of the view that the prohibition of war propaganda was fully consistent with article 19 of the Covenant. With regard to Denmark's reservation to article 10, paragraph 3, one member wondered whether the Danish authorities had closely monitored the results of their policy of not segregating juvenile offenders from adults.

149. In his reply, the representative of the State party said that the only significant change relevant to the implementation of the Covenant that had occurred since the consideration of the initial report

was the passage of Act No 285 of 1982, relating to protection against dismissal on grounds of membership of an association. That law was enacted following a judgement by the European Court of Human Rights that the dismissal of an employee because of a "closed shop" agreement concluded after the employee had been engaged contravened article 11 of the European Convention on Human Rights.

150. As to the consistency of domestic laws with the provisions of the Covenant, he explained that, when the Danish ratification of the Covenant was under consideration, it was found that principles and rules similar to the provisions of the Covenant were to a large extent already in force in Denmark by virtue of the Constitution, of express statutory provisions and of general principles of Danish law. Special legislation had been passed in respect in respect of the few provisions of the Covenant where that had not been considered to be the case. Where Danish law or practice was not fully consistent with the provisions of the Covenant, as was the case in respect of article 10, paragraph 3, article 14, paragraphs 1 and 7, and article 20, paragraph 1 of the Covenant, Denmark had made reservations. In addition, special care was taken during the law-making process to ensure that new laws or administrative regulations were not in contravention of the provisions of the Covenant and Danish administrative authorities were under an obligation to exercise discretionary powers in such a way that administrative acts conformed with Denmark's international obligations, including the Covenant. Judicial authorities were also under an obligation to check whether Danish laws complied with the provisions of the Covenant.

151. Although there was no record in legal publications of the invocation or use in court decisions of the provisions of the Covenant, counsel for the defence had used the provisions of the European Convention on Human Rights in some court proceedings and, in such cases, the courts had, from time to time, used the European Convention directly by applying the rules of interpretation and presumption to ensure that Danish legislation complied with that Convention. In a hypothetical case of conflict between domestic law and the Covenant where the rules of interpretation could not be used, the courts would have to apply Danish law and it would then be the Government's responsibility to propose to change the statute in question to bring it into conformity with the Covenant. No such case had as yet arisen.

152. Replying to additional questions, the representative stated that his Government had not encountered any significant problems in implementing the provisions of the Covenant. Article 63, paragraph 1, of the Danish Constitution, was couched in broad terms and meant that, in any case involving an act by a public authority which directly affected persons or companies, the parties concerned could bring the matter before the courts. Under the Constitution, the courts were then obliged to determine the legality of the action taken by the authority concerned. The courts had also to determine the limits of any discretionary power of the authority. Article 78, paragraph 4, of the Constitution provided for direct and immediate appeal to the Supreme Court in cases of dissolution of a political association as an exceptional procedure because such dissolution was viewed as an extremely serious matter. Where Danish courts considered it appropriate to mention the various possibilities open to persons appearing before them under the provisions of various international human rights instruments, they would be obliged to do so. The Ministry of Justice often had occasion to provide information concerning such possibilities. Denmark continued to consider it preferable to treat juvenile offenders in the same institutions as adult offenders and therefore intended to maintain its reservation concerning article 10, paragraph 3, of the Covenant.

153. Referring to the dissemination of information concerning human rights and the text of Covenant, the representative explained that human rights issues were part of the curriculum in schools and universities, that the text of the Covenant was disseminated to individuals and groups largely through Amnesty International and the Danish Ministry of Foreign Affairs and that the translation of the Covenant into Greenlandic had not yet been completed. The establishment of a Human Rights Institute in Copenhagen had been a particularly important recent development in relation to the promotion of public awareness of human rights since its tasks were to include undertaking multidisciplinary research on human rights, disseminating information, including replying to questions from lawyers and journalists, establishing documentation centres and conducting human rights seminar on a regular basis.

Self-determination

154. With regard to that issue, members of the Committee wished to receive information on any recent developments regarding the transfer of responsibilities to the home rule Government of Greenland, the extent of autonomy actually exercised by the Government of Greenland vis-a-vis the central Danish authorities, particularly, how potential conflicts between legislative acts adopted by the legislative assemblies would be resolved, and the impact, in respect of equality before the law, of Greenland's withdrawal from membership of the European Community. Clarification was also requested as to whether the system of home rule in Greenland could be changed by a decision of the Danish Parliament, irrespective of the will of the residents of Greenland, and as to measures taken to ensure that Greenland legislation conformed to the Covenant. Members also wished to know what position Denmark had been taking in international forums with respect to apartheid and the right to self-determination of the people of Namibia and Palestine.

155. In his reply, the representative of the State party pointed out that, since 1 January 1987, two further areas of responsibility - housing and the planning and execution of infrastructural works - had been transferred to the home rule Government of Greenland. The transfer of the two remaining areas of responsibility - health and environment protection - was still a subject of negotiations between the Danish Government and the home rule Government. Other recent changes included the increase in the number of seats in Greenland's legislative assembly from 25 to 27, an increase in the number of seats held by the Inuit Atagatigiit party in that assembly from three to five and an increase in Greenland's indigenous population from 43,000 to 44,000.

156. The home rule Government of Greenland was empowered to make laws or to issue regulations, without any involvement whatsoever of the Danish Government, in all areas where full responsibility had been transferred to it. With respect to areas that were still within the competence of the Danish Government, the home rule authorities had to be consulted on any legislation or regulations that could affect the residents of Greenland. There had as yet been no cases of conflict between legislative acts adopted by the Danish Parliament and those adopted by the Greenland Legislative Assembly and such conflicts were unlikely to arise, since the acts of each legislature were applicable only within their own respective geographic boundaries. If such a legislative conflict were ever to arise, the courts would have to determine which legislature had the authority to legislate on the matter in question. Greenland's decision to withdraw from the European Community had indeed made it possible for the residents of Greenland to be treated differently from the rest of the Danish population, but that was a consequence of the will of Greenland's residents

themselves, expressed through a referendum. The Home Rule Act could, in fact, be repealed by the Danish Parliament at any time, but the passage of that Act had demonstrated the latter's commitment to home rule for Greenland and it was unlikely that that attitude would change. Responsibility for ensuring that Greenland's legislation was consistent with the Covenant rested with the authorities of Greenland in the first instance, but, in the last resort, the Danish Government would itself have an obligation to enforce the Covenant.

157. With reference to Denmark's position on the question of apartheid and the right to self-determination of the Palestinian and Namibian people, the representative explained that his country had worked actively for more than two decades in all the relevant international forums to translate its strong and unequivocal condemnation of South Africa's apartheid system into concrete action. Denmark, together with other Nordic countries, had adopted, in October 1985, a joint programme of action against apartheid , which had resulted in the implementation of a general Nordic trade embargo against South Africa and had repeatedly made clear, within the framework of European political co-operation, that apartheid was totally unacceptable and indefensible. Denmark had repeatedly condemned South Africa's illegal occupation of Namibia and strongly supported the Namibian people's right to self-determination. It supported granting immediate independence to Namibia on the basis of Security Council resolution 435 (1978) and recognized the United Nations Council for Namibia as representing the Namibian people until it gained independence.

158. Denmark also supported fully the right of the Palestinian people to self-determination and had expressed such support both in its bilateral contacts with the parties to the Middle East conflict and through declarations by the European Council, including in particular the Venice Declaration of 13 June 1980. Denmark's attitude to the Palestinian people's right to self-determination was further reflected in statements made by the European Council on more specific problems, such as the situation in the territories occupied by Israel.

Non-discrimination and equality of the sexes

159. With reference to those issues, members of the Committee wished to know how the provisions of article 2, paragraph 1, and article 26 of the Covenant were given effect, apart from laws and practices relating to non-discrimination on grounds of sex, whether the procedure provided for under Act No. 157 of 24 April 1985 had led to increased representation of women in public bodies, whether further departures from the Equal Treatment Act, in favour of women, were planned, whether citizens belonging to the Evangelical Lutheran Church enjoyed greater access to certain official posts than others in consequence of article 6 of the Constitution and whether, in the absence of provisions in the Danish Constitution guaranteeing equality before the law, the Parliament could adopt discriminatory legislation and what recourse would be available to individuals in such a case. Members also wished to receive additional information concerning the effectiveness and operations of the Equal Status Council, including the number and type of cases handled, the number of decisions rendered, the legal force of such decisions and the extent to which such decisions were translated into legislation or applied in practice.

160. Responding to the questions raised by members of the Committee, the representative of the State party said that his country had ratified the Convention on the Elimination of All Forms of Discrimination against women and that all discriminatory provisions against women had been

removed from Danish legislation. Women received professional treatment in the fields of education and employment and the Government had also introduced an action plan designed to promote equality in the ministries and administrative services. Act No. 157 of 1985, which expressed intentions rather than imposing obligations, had clearly helped to promote greater awareness and had increased the percentage of women on public bodies from 15.7 per cent to 30 per cent. Although the importance of the issue had not yet been fully grasped and the goal of 50 per cent female membership had not yet been achieved, public opinion was gradually changing in a positive direction. A pending amendment to the Equal Treatment Act would have the effect of enlarging the possibilities for extending preferential treatment of women. The requirement in article 6 of the Constitution relating to the Danish sovereign's obligatory membership of the Evangelical Lutheran Church, which was traditionally the religion of the State, was linked more to the function than the person of the sovereign.

161. The principle of equality before the law, together with a number of other fundamental principles, was not set forth in the Danish Constitution, which was rather brief. Nevertheless, that principle, as well as other unwritten principles, were commonly recognized as fundamental by judicial precedents. Violation of such principles by Parliament, while theoretically possible, was in practice unthinkable. Parliament was of course also required to respect Denmark's international obligations and the Ministry of Justice, to which all draft legislation was submitted, ensured that all laws were in conformity with fundamental principles of human rights. Section 266 (b) of the Danish Criminal Code specifically prohibited statements having the effect of threatening or humiliating a person by reason of his race, colour, or national or ethnic origin and, more generally, the Danish courts ensured full observance of article 26 of the Covenant.

162. The Danish Equal Status Council had been set up by the Prime Minister in 1975 and its establishment had been confirmed by the legislature in 1978 on the occasion of the promulgation of Act No. 161, which guaranteed women the same access to employment as men and complemented the 1976 Equal Remuneration Act. The Council, which was attached to the Prime Minister's Office, was responsible for promoting equality in all areas of society: the family, education, employment and training. The Council's decisions were not binding but had effects comparable to those of the decisions of an ombudsman.

Right to life

163. With reference to that issue, members of the Committee wished to receive information concerning regulations governing the use of firearms by the police and any appropriate information or views relating to article 6 of the Covenant and the Committee's general comments Nos. 6 (16) and 13 (24).

164. In his reply, the representative stated that under the relevant regulations issued by the Commissioner of Police, firearms could be used only to avert an attack on an individual or institution and only if other means had proved inefficient. A policeman who had made use of a firearm was obliged to submit a written report to the Commissioner of Police. The infant mortality rate in Denmark was among the lowest in the World.

Liberty and security of person

165. With reference to that issue, members wished to receive information on law and practice relating to preventive detention in both penal institutions and institutions other than prisons, or for reasons unconnected with the commission of a crime, as well as additional information relating to the implementation of article 10 of the Covenant, including details and statistics concerning the results achieved in reforming or rehabilitating prisoners and regarding recidivism. They also wished to know what the maximum period of pre-trial detention was, how quickly after arrest the person's family was informed, whether the administration of justice had in fact been speeded up as a result of the amendments to the Administration of Justice Act and the Bankruptcy Act, whether there was any maximum limit to consecutive solitary confinement in cases where a detainee's offence was punishable by imprisonment of six years or more or any limit to the imposition of repeated extensions of solitary confinement and whether the treatment of prisoners was consistent with the United Nations Standard Minimum Rules for the Treatment of Prisoners.

166. Members also requested clarification of the term "principle of dilution", mentioned in paragraph 61, of the report, and of the competence and responsibility of the National Board of Health in relation to medical experimentation or drug testing. They also wished to know whether a decision under the Mental Health Act to commit a person to a psychiatric institution could be taken by a single medical practitioner and whether such decisions could be appealed, whether court decisions imposing solitary confinement on detainees could be appealed, what the practice was with regard to compulsory isolation of persons with infectious diseases and what kind of tests or restrictions were applied to victims of acquired immunodeficiency syndrome (AIDS) and whether excesses committed by the police in the context of maintaining public order or in evicting illegal occupants of certain premises had been investigated.

167. Responding to questions raised by members of the Committee, the representative of the State party explained that, while the Administration of Justice Act did not prescribe any limit to the period of pre-trial detention, it did stipulate that the first period of pre-trial detention must not exceed four weeks and could only be extended to a maximum of four additional weeks at a time. Pre-trial detention was prohibited where it did not seem proportionate to the facts of the case and to the possible legal consequences if the accused were to be found guilty. Juvenile offenders between the ages of 15 and 18 were normally placed under supervision in social welfare institutions as a means of avoiding preventive detention. Section 68 of the Criminal Code provided that courts could commit criminally afflicted and mentally deficient persons to mental institutions when other expedients, such as additional psychiatric treatment, were considered inadequate. Institutionalization was resorted to by the courts only in about 20 cases annually. Detention in a psychiatric hospital for reasons unrelated to the commission of a crime could be recommended by a medical practitioner, with the concurrence of the institution's chief physician, in cases where the person concerned was deemed to present a danger to himself or to others. However, the person concerned could challenge the validity of that decision in the courts by applying to the appropriate administrative authorities. A new Mental Health Act, designed to improve the legal position of persons subjected to preventive detention in a mental institution, was currently under consideration in Parliament.

168. It was generally left to the accused to decide whether his family should be informed of his arrest, except in juvenile cases where the parents were informed automatically. While statistics were not available, the Danish Ministry of Justice considered that the amendments to the Administration

of Justice Act and the Bankruptcy Act, mentioned in paragraph 48 of the report, had served to reduce delays in bringing cases before the Supreme Court. However, in view of the steady increase in the number of cases presented to the Supreme Court, the Government was considering further amendments to the Administration of Justice Act. There was no limit to the maximum length of consecutive solitary confinement or to the imposition of repeated extensions of solitary confinement. However, the necessity for proportionality in that regard, as indicated in paragraph 56 of the report, meant that a maximum length existed de facto, depending on the circumstances in each case. Since the entry into force of Act No. 299 of 6 July 1984, the number of prisoners held in solitary confinement for a period longer than eight weeks had fallen steadily. Detainees being held in solitary confinement, who were mostly drug addicts charged with serious offences, could appeal to the courts for relief and the courts were obliged to rule on such appeals within two or three days.

169. In the view of the Government, the treatment of prisoners in Denmark was consistent with the United Nations Standard Minimum Rules for the Treatment of Prisoners, except for article 8 (d) of those rules. The exception resulted from Denmark's experience which showed that the treatment of offenders belonging to different age groups in the same institution was advantageous to younger and older alike. The "principle of dilution" referred to the integration of prisoners irrespective of sex and age, with the aim of creating living conditions in prisons resembling those of the outside world as far as possible. In the view of the Danish authorities, such integration served to minimize the negative effects of imprisonment, including dependence, apathy, anti-social aggressivity, diminished self-esteem and close identification with deviant behaviour. Prison rules and directives were accessible and known to detainees.

170. A list of eight contagious diseases had been drawn up and all necessary precautions had been taken to isolate persons with one of those diseases. AIDS was not considered to be an infectious disease and persons with AIDS were not subject to any restrictions. There was no compulsory screening test for AIDS and persons who were sero-positive could freely choose whether or not to receive treatment. Medical experiments and drug testing were the responsibility of the physicians and institutions concerned. Affected individuals were entirely at liberty to sue them for damages where appropriate. Groups or individuals who considered themselves to have been victimized by excesses committed by the police could file complaints with either the police or the Ministry of Justice. Allegations of police misconduct were investigated by local boards established within each administrative district and disciplinary or criminal sanctions were applied in appropriate cases.

Right to a fair trial

171. With reference to that issue, members of the Committee requested clarification as to whether the provisions of the Administration of Justice Act allowing for the rejection or removal of defence counsel by the courts and the last sentence of article 71, paragraph 3, of the Constitution were compatible with article 14, paragraph 3 (b), of the Covenant. Members also wished to know whether the Committee on the Administration of Justice had made any recommendations concerning reorganization, whether article 29 of the Administration of Justice Act, dealing with in camera judicial proceedings, was compatible with article 65, paragraph 1, of the Constitution and whether Denmark's reservation on article 14, paragraph 7, of the Covenant indicated that further action could be brought against a person who had already been convicted or acquitted of a crime.

172. In his reply, the representative explained that, in certain circumstances, such as when the protection of the interests of co-defendants so required or where there was risk that the course of justice would be obstructed, a court could reject a defence counsel chosen by the accused, but the defendant was then given the opportunity to choose another lawyer. Resort to that measure, which was consistent with article 14, paragraph 3 (b), of the Covenant, was an extremely rare occurrence. The provision of the Constitution that allowed for a departure in Greenland from the rule that persons taken into police custody had to be presented to a judge within 24 hours was justified by the special geographical and meteorological situation of Greenland, which made compliance with the rule impossible at times. However, once the material obstacles had been removed, the 24 hour time-limit had to be respected. The Committee on the Administration of Justice was expected to produce its recommendations within the next year. Although the Constitution specified that trials should be held in public, article 24 of the Administration of Justice Act allowed for certain exceptions to that rule, mainly in cases where the interest of third parties, such as witnesses, required that they should take place in camera. The legislature had made provision for the courts to nullify that article if it was held to be incompatible with the Constitution but, to date, no court had found that to be the case. While a person who had been acquitted could theoretically be brought to trial again, in practice that was done only in cases where new facts of substance had come to light.

Freedom of movement and expulsion of aliens

173. With reference to those issues, members of the Committee wished to know whether section 25 (2) (i) and (ii) of the Aliens Act was in conformity with the Covenant and whether there had been any actual expulsions under that section, what was the basis, referred to in article 24 (iii) of the Aliens Act, for expecting that an alien would commit further offences during the continued stay in Denmark and whether the appeal mentioned in paragraph 72 of the report had suspensive effect. Regarding refusal of entry, it was asked which authority was competent to decide upon the expulsion of prohibited aliens, whether such a decision could be appealed, even in the courts if necessary and whether such appeals had suspensive effect.

174. Responding to questions raised by members of the Committee, the representative of the State party said that some expulsions had, in fact, been carried out pursuant to section 25 (2) of the Aliens Act, but that expulsions under section 25 (2) (i) were very rare and section 25 (2) (ii) was not applied in cases where aliens were in possession of only a small quantity of hashish for personal use. Section 25 was in conformity with the Covenant since expulsion decisions were taken only after the provisions of sections 26 of the Aliens Act had been taken into account. The relevant criteria for deciding that an alien might be expected to commit further offences in Denmark were set out in article 24 (iii) of the Aliens Act and it was left to the criminal courts to decide, case by case, whether those criteria had been met. The fact of previous convictions and the number of offences with which the aliens were being charged were among the relevant considerations in the foregoing connection. The appeal mentioned in paragraph 72 of the report had automatic suspensive effect only when filed within a specified period of time by aliens who were subject to the rules of the European Economic Community, nationals of another Nordic country or holders of residence permits. However, the Minister of Justice had the option of giving suspensive effect to an appeal and often did so. Decisions to refuse entry to an alien were taken by the Directorate for Aliens and could be appealed before the Minister of Justice. Such appeals were referred to the ombudsman, who could apply to the Minister for suspensive effect while he examined the file.

Right to privacy

175. With reference to that issue, members of the Committee wished to receive information on legislation concerning the collection and safeguarding of personal data, the frequency of use of the techniques of eavesdropping and telephone tapping in a given year, the implementation of the procedure for assigning a lawyer in cases of surveillance, as mentioned in paragraph 92 of the report and on the measures other than telephone tapping used by the authorities, and it was asked whether court orders were required in all cases of encroachment on the principle of privacy. Members asked what means were available to individuals for ascertaining whether personal data relating to them was being stored and for verifying the accuracy of such data and whether such means were applicable to information collected both by State authorities and private entitles. Information was sought on the procedure used to obtain the consent of the individual to the collection of sensitive personal information and the purposes for which State authorities collected personal data on the entire population. It was also asked how the Danish public reacted to the computerized collection of personal data, whether the collection of such information did not militate against the presumption of innocence and how much information on civil service applicants was gathered without the individual's knowledge. One member, while agreeing on the need for gathering sensitive information in relation to the commission of crime, expressed doubt as to the necessity for collecting sensitive personal data relating to such matters as racial origin, political opinion, religious or other belief or sexual habits. He also voiced concern about the possibility of linkage among various data files, including the transferral of personal data across national borders and, in the latter regard, requested information concerning safeguards. Members also wished to know the circumstances under which children and young persons in institutions could be deprived of their right to visits and whether their correspondence was subjected to censorship.

176. In his reply, the representative stated that there were two laws in Denmark relating to the protection of confidential data, one of which dealt with data assembled by individuals or private enterprises and the other with data collected by the public authorities. The law on the private sector specified that private data users might collect personal data only to the extent that registration of such data was part of their normal business or professional activity. The collection of "sensitive" data was forbidden unless the data subject had given his consent and unless collection served legitimate purposes. Data relating to race, religious belief, colour, political, sexual or criminal matters, health, serious social problems or drug abuse were considered to be "sensitive". Such data could be communicated to a third party only with the consent of the personal concerned. A data surveillance authority was responsible for enforcing the relevant laws and had the right to inspect computerized files containing sensitive information which, in any case, had to be registered with the authorities. The linking of computerized files held by different companies was prohibited without the express permission of the surveillance authority, except in order to update names, addresses, etc. An individual had the right of access to information concerning him in computerized files held by companies or private individuals and to check their accuracy. Failure by companies to comply with requests for access rendered them liable to sanctions.

177. Regarding data collection and the establishment of data registers by public bodies, the guidelines were very precise. A data register could be established only with prior ministerial authorization and only information of unquestionable importance for the public authorities could be collected. Information of a political nature in respect of individuals was forbidden and "sensitive"

information could be collected only when necessary for the purposes of the register and could be disclosed to another public body only if absolutely necessary and with the agreement of the concerned individual. At the time of registration, the public body concerned had to notify the individual concerned, both that he was being registered and that he had right of access to his file for the purpose of correcting any data contained therein. Access was denied only to police files being used in connection with a criminal investigation or other confidential police files.

178. Personal data files were a delicate subject in Denmark, as elsewhere, and the Government attempted to meet any public concerns in that regard by taking adequate precautions. The Data Protection Act of 1978 was quite strict and had been made even more so by several recent amendments. Sensitive data were collected only in areas where they were specifically required, such as health and social welfare. Information flows across borders were governed by the relevant provisions of the European Convention on Human Rights. Authorization for linking was granted infrequently and mainly for the purpose of updating files. It was the general opinion in Denmark that the system of protection was effective and that there were few breaches of the rules either by private companies or the public authorities. In the case of applicants for civil service positions, regulations provided that police records should be checked to ascertain whether they had ever been convicted of a crime and the applicants' consent was sought for that purpose. Such consent could be refused but in such cases it was unlikely that the individual would receive the appointment.

179. The police were authorized to resort to bugging or telephone tapping only in connection with a criminal offence punishable by at least six years' imprisonment and only when such encroachment on privacy was of paramount importance to the investigation and did not cause an inordinate degree of humiliation and inconvenience. Lawyers assigned to act on behalf of individuals to whom technical surveillance techniques were being applied were prohibited from informing their clients of such surveillance, but could later argue in court that the relevant provisions of the Administrative Justice Act had not been properly observed. Court orders were required in all cases of telephone tapping except where urgent action was needed; in such cases, retroactive court authorization had to be sought within 24 hours of the installation of the device.

180. Children and young persons in institutions could be deprived of their right to visits or have their correspondence censored only if it were deemed absolutely necessary for the protection of their well-being. It was within the competence of the local social welfare committee to determine whether the connection between a child and its parents should be interrupted for a certain period of time. Normally, such committees took great care to safeguard the links between a child and its family and regarded any interference with family rights as a most serious matter.

Freedom of religion

181. With reference to that issue, members of the Committee wished to know what the consequences of the existence of an established Church in Denmark were, notably with regard to other religions, and what the status of the various other churches was, particularly the so-called "dissenting churches", whether article 4 of the Constitution was compatible with article 18 of the Covenant and whether Danish law contained any reference to the right not to profess any religion. They also asked whether religious bodies were subject to registration and, if so, on what grounds such registration could be refused, whether the State extended support, in practice, to churches other

than the established Church, whether there were any primary schools in Denmark which offered no religious instruction at all or instruction in the tenets of religions other than that of the established church, whether children in State elementary schools could receive, on request, instruction in religious faith other than the Evangelical Lutheran faith, whether the Evangelical Lutheran Church and other churches were financed out of taxes imposed by statue and whether the Danish authorities took any steps to curb possible excesses by certain religious sects.

182. In his reply, the representative of the State party explained that, while the Evangelical Lutheran Church was the established Church in Denmark and received State support, it was not a State Church and no one was expected to be a member of it or to make a personal contribution to any denomination unless he so desired. A member of the established Church could dissociate himself from it by a simple written petition or by joining another religious community. The Constitution did not preclude State support for other religious beliefs. Religious instruction in the public elementary schools was based on the concept of Christianity held by the established Church, but a child could be excused from religious instruction if his parents so requested. There were many private primary schools sponsored by various other religious denominations where instruction in other religious beliefs was offered. The Evangelical Lutheran Church was financed by taxes paid only by members of that Church. Other persons paid taxes to other religious communities or to none. Ministers of the established Church had the right to celebrate marriages but authorization to do so was normally also granted to the clergy of other denominations. Religious communities founded as associations were also exempt from tax.

183. Article 4 of the Constitution was in conformity with the Covenant in view of the fact that 85 per cent of the population of Denmark were members of the Evangelical Lutheran Church and had been for centuries. The practical consequences of that article were very limited and, since the established Church enjoyed only a few special legal privileges, its status posed no serious problems.

184. Danish law contained no reference to the right not to profess any religion but article 67 and 68 of the Constitution had been interpreted as including that right. Civil rights that had usually been associated with church membership - for historical reasons - were also available to persons not professing any religion. Religious bodies were no subject to registration, but where such bodies had been granted certain privileges that fact was duly registered. No special control was exercised over religious sects but the police would respond to complaints in the normal way.

Freedom of expression, prohibition of war propaganda and advocacy of national, racial or religious hatred

185. With reference to those issues, members of the Committee wished to receive information on article 19 in accordance with the Committee's general comment No. 10 (19). They also asked whether Denmark was giving any consideration to withdrawing its reservation to article 20, paragraph 1, of the Covenant, whether the scope of Act No. 572 of 19 December 1985 extended to fields of activity affecting public life other than private energy-supply enterprises and whether that Act also covered computerized information. Clarification was also requested of the definition of secrecy under Danish law as reflected in section 152 (3) of the Danish Criminal Code.

186. Referring, in his reply, to article 19, paragraph 2, of the Covenant, the representative pointed

out that the European Convention on Human Rights, to which Denmark was also a party, did not prevent States from requiring the licensing of broadcasting, television or cinema enterprises, nor did it exclude in any way a public television monopoly. In Denmark's view, the same interpretation also applied to the Covenant. However, arrangements had been made in recent years for local independent broadcasting and many such stations had begun operating. The reception of satellite television from foreign sources had also been authorized and the Government was building a long-distance transmission and distribution network. No restriction had ever existed on receiving ordinary foreign broadcasts, newspapers or other printed matter.

187. Denmark was not considering withdrawing its reservation to article 20, paragraph 1, of the Covenant because it considered that provision to be inconsistent with the right to freedom of expression. The scope of Act No. 572 only extended to documents since computerized data were covered by other legislation. The Act applied to various kinds of private enterprises and not only to the energy sector. Among the considerations mentioned in the Administrative Procedure Act on the need to observe secrecy "in order to safeguard public or private interests" were those of State security and defence, prevention, investigation and prosecution of criminal acts and information held by the public authorities on private individuals.

Freedom of assembly and association

188. With reference to those issues, members of the Committee wished to know whether there were any restrictions, in practice, on the right to freedom of assembly and association and whether Act No. 285 of June 1982 was compatible with article 22 of the Covenant and with ILO Convention No. 87 of 1948.

189. In his reply, the representative of the State party said that questions relating to the right to freedom of assembly and association seldom arose in his country. Act No. 285 of 9 June 1982 on protection against dismissal of workers on grounds of membership of an association had come before the courts several times and, in one major case, relating to the dismissal of eight employees of a bus company on the grounds that they were not members of the same union as their fellow bus drivers, the Supreme Court had found, on 24 October 1986, that the dismissals had been illegal and ordered the payment of compensation. The Act applied only to the private sector. No restrictions of any kind on the right to freedom of association of public sector employees was permitted. The provision of the Act authorizing political parties or religious bodies to restrict employment to their own adherents was considered reasonable.

190. While Act No. 285 had been adopted in order to bring Denmark into conformity with a judgement of the European Court of Human Rights affecting the United Kingdom, some doubts had arisen as to whether the provisions of the Act went far enough to meet the terms of the relevant international instruments. Accordingly, the Government had been considering what adjustments should be made. Any eventual changes in the Act would be brought to the Committee's attention in Denmark's third periodic report.

Equality of the spouses as to marriage, during marriage and at its dissolution

191. With reference to that issue, members of the Committee wished to know how disputes between

parents over the custody of children were resolved in Denmark, whether the parent not having custody had the right to regular visits and how that right was enforced and what distinctions existed between the powers of ministers of religion and mayors in respect of civil or religious marriages. They also requested additional information on the status of children born out of wedlock and procedures for preventing non-payment of maintenance in respect of children.

192. In his reply, the representative of the State party said that where there was a dispute between spouses regarding such issues as child custody and maintenance payments, it was not possible to obtain a divorce or separation except by court decree. Section 23 of the Custody Act provided for visiting rights to the parent not having custody of the child. Disputes between parents over visiting rights, if not resolved amicably, could be referred to the administrative authorities or the courts. The latter had various means at their disposal for enforcing decisions, including the imposition of a fine of varying severity and resort to the police authorities. The very possibility of legal action was usually enough to ensure that the recalcitrant parent complied with the relevant administrative decree. Marriages could be performed by both ministers of religion and mayors. One difference in their respective responsibilities was that the mayor was obliged to ensure, prior to the elaboration of either a religious or a civil marriage, that all requirements for contracting marriage had been met, whereas the minister of religion did not have that obligation. However, neither could celebrate a marriage if he knew of an impediment. There was no difference in the status of children born in wedlock or out of wedlock in respect of basic rights, such as civil and political rights and the right to inheritance, except that an illegitimate child born of a Danish mother automatically acquired Danish citizenship, whereas in the case of a legitimate child the normal rules of jus sanguinis applied.

Right to participate in the conduct of public affairs

193. With reference to that issue, members of the Committee wished to know whether there were any restrictions on the right of certain categories of persons to accede to public office, whether parliament, which had the right to decide on the validity of a person's election and his eligibility to sit in that body, took such decisions in plenary session or in committee and whether such decisions were taken on a case-by-case basis or in accordance with some general rules. It was also asked whether aliens actually availed themselves of opportunities to vote in local election and to be elected.

194. In his reply, the representative explained that there were no general restrictions on access to public office. In certain cases, however, the law provided that a person elected or appointed to public office had to be of Danish nationality. This was the case, for example, with respect to eligibility for elections to parliament, for service in the armed forces or the Home Guard or as members of a lay jury, and for appointment to the national civil service. The rule did not apply to service in local or regional government. A person who had been convicted of a serious offence punishable under the Criminal Code or by law was generally considered to be unfit to participate in public affairs. Thus, article 30 of the Constitution provided that a person "convicted of an offence which, in the eyes of the public, rendered him unworthy of being a member of the Folketing", was not eligible to stand for election to that body. In deciding whether or not a person was worthy of membership, the parliament treated each case separately and since such controversial situations were

rare it was difficult to say whether previous cases were viewed by parliament as established precedents. Aliens who were entitled to do so did participate and were elected to office in local elections.

Rights of minorities

195. With reference to that issue, members of the Committee wished to know whether there were any minorities in Denmark and, if so, whether any difficulties had been encountered in implementing the relevant provisions of the Covenant and whether the Danish Government considered it necessary to adopt positive measures to ensure the right of ethnic, religious or linguistic minorities to preserve and enjoy their own culture, practise their own religion or use their own language. They also asked whether the residents of Greenland, including the Inuit, were also accorded the preferential treatment given by the State to minorities, whether officials in Greenland had been associated with the preparation of Denmark's second periodic report, whether the German-speaking minority had the possibility of arranging for their children to be educated in the German language and, if so, whether German was the first or second language of instruction, whether the German-speaking minority could use German for official business and whether the people of the Faroe Islands enjoyed autonomy or desired home rule.

196. In his reply, the representative of the State party said that while there were ethnic, religious and sexual minorities in Denmark, all were equal before the law regardless of whether they were Danish nationals or aliens. Greenlanders living in southern Denmark were regarded as a minority and while they enjoyed equal rights they were often economically and socially disadvantaged and therefore had difficulty in integrating with the rest of the nation. Efforts were undertaken by the social services to assist that group. The law provided that the children of minorities could be educated in their own language at State schools provided that there were enough pupils (at least 10 or 12). Education in German was provided to the German-speaking minority, but the representative was unaware of the precise conditions under which such instruction was provided. Evening courses could also be provided to adults where teachers and adequate educational materials were available. Both children and adults had the opportunity to assemble at local cultural centres where cultural activities were organized for minorities. Greenland officials had taken part in the preparation of the report and had been consulted in connection with the additional information that had been requested by members of the Committee. It was hoped that a representative of Greenland would be present during the consideration of Denmark's third periodic report. The Faroe Islands had home rule since 1948 and enjoyed a broad degree of autonomy. The home rule system adopted for Greenland had in fact been modelled on that of the Faroe Islands.

General observations

197. Members of the Committee expressed appreciation to the Danish delegation for responding to their questions so open-mindedly and competently. The quality of the report and the additional information provided was highly satisfactory and the Committee's exchange of views with the delegation had been fruitful. Members hoped that the dialogue with Denmark would continue and that the information and clarifications that were still needed on certain points, including those relating to the existence of fundamental principles not set forth in the Constitution, the implementation of article 27 of the Covenant, and Denmark's reservations to some of the provisions

of the Covenant, would be provided in due course.

198. The representative of the State party said that his delegation had also felt that it had participated in a friendly dialogue and appreciated the fact that the Committee viewed human rights not only from the standpoint of violations, but also in terms of the progress and improvements that could be made in both human rights-related legislation and practice. He assured the Committee that its concerns and wishes would be brought to the attention of the Danish authorities and would be taken into account in preparing Denmark's third periodic report.

199. The Chairman, in concluding the consideration of the second periodic report of Denmark, also expressed his gratification at the continuation of the Committee's satisfactory dialogue with the State party and said that he looked forward to the consideration by the Committee of the third periodic report, which was due in 1990.

CCPR A/52/40 (1997)

55. The Committee considered the third periodic report of Denmark (CCPR/C/64/Add.11) at its 1533rd and 1534th meetings (fifty-eighth session), held on 22 October 1996, and at its 1556th meeting, on 6 November 1996, adopted the following comments.

1. Introduction

56. The Committee expresses its appreciation to the State party for its detailed and comprehensive report, which has been prepared in accordance with the Committee's guidelines, and for engaging, through a delegation with first-hand knowledge of the different subjects under discussion, in an extremely constructive dialogue with the Committee.

57. It notes with satisfaction that the information submitted in the report, and that provided by the delegation in reply to both written and oral questions, enabled the Committee to obtain a thorough view of Denmark's actual compliance with the obligations undertaken under the Covenant and the improvements implemented since the consideration of the second periodic report, in 1987. The Committee regrets, however that submission of the third periodic report, which was due in 1990, was considerably delayed.

2. Positive aspects

58. The Committee notes with appreciation the high level of achievement in respect for human rights in Denmark. Among the positive developments that have been realized since the consideration of the second periodic report, the Committee notes the ratification of the Second Optional Protocol to the Covenant, on the abolition of the death penalty, the revision of various legislative texts, the increased jurisdiction recently granted to the Ombudsman and the establishment at a national level of a number of human rights institutions - namely, the Danish Centre for Human Rights, the Equal Status Council and the Racial Equality Board - with a view to reinforcing protection of civil and political rights and promoting greater public awareness of the provisions of the Covenant and the Optional Protocols.

59. The publication by the Ministry of Justice of a new periodical on European Union law and human rights with a view to ensuring a wider knowledge of the interpretation and application of human rights provisions of international treaties in the Danish courts is welcomed. The organization, on a standing basis, of human rights training courses for members of the police and other law enforcement officials is also a positive development.

60. The Committee notes with satisfaction the measures adopted by the Danish Government to ensure that ethnic and linguistic minorities enjoy the rights set forth in the Covenant without discrimination.

61. The Committee commends the introduction of a new system to investigate complaints against the police and the increased funding for its operation. It looks forward to receiving the results of the new jurisdiction.

62. The Committee takes note of the declaration by the delegation to the effect that the text of the Covenant would shortly be translated into Greenlandic.

63. The Committee commends the legal and administrative measure taken to promote equal enjoyment of women's rights.

3. Factors and difficulties impeding the application of the Covenant

64. The Committee finds that there are no particular factors or difficulties which may impede the effective implementation of the Covenant's provisions by the Kingdom of Denmark, except for the continued maintenance of Denmark's reservations to certain provisions of the Covenant.

4. Principal subjects of concern

65. The Committee is concerned that the Covenant, unlike the European Convention on Human Rights, has not yet been given the status of domestic legislation, considering in particular that the Covenant guarantees a number of human rights which are not protected under the European Convention and that permissible restrictions are less broadly based.

66. The Committee notes that the reservations entered by Denmark upon ratification of the Covenant with respect to a number of provisions have an adverse effect on the full implementation of the Covenant. Consideration ought to be given to the withdrawal of some, or all, of those reservations.

67. The Committee further notes that the requirements referred to in article 9, paragraph 3, of the Covenant, are not fully met.

68. The Committee also expresses its concern at the methods of crowd control, including the use of dogs, employed by the police forces against participants in various demonstrations or gatherings which, on certain occasions, have resulted in serious injuries to persons in the crowds, including bystanders.

69. The Committee is concerned at the long delay in resolving the dispute arising from the claim for compensation by members of the indigenous minority of Greenland in respect of their displacement from their lands and loss of traditional hunting rights as a result of the construction of the military base at Thule. It is also concerned that the people of Greenland are not able to enjoy fully certain Covenant rights and freedoms, including those provided for in article 12.

70. The Committee regrets the paucity of information about the Covenant and its implementation in the Faroe Islands.

5. Suggestions and recommendations

71. The Committee recommends that the State party take appropriate measures to ensure the direct application of the provisions of the Covenant into domestic law.

72. The Committee also recommends that the Government review the continuing need for any reservation, with a view to withdrawing them.

73. The Committee suggests that further consideration and amendments be made to the regulations, last reviewed in 1992, concerning residence and other conditions for reunification of families both of alien immigrants and refugees so as to give effect more fully to articles 23 and 24 of the Covenant.

74. The Committee further recommends that consideration be given to the revision of the existing regulations concerning the length of pre-trial detention and of solitary confinement in accordance with the Committee's General Comment No. 8 (16) and its jurisprudence.

75. The Committee urges the Government to further the training of the police forces in methods of crowd control and of handling offenders, including those suffering from mental disorders, and to keep those issues constantly under review. The Committee recommends that the authorities reconsider the use of dogs in crowd control.

76. The Committee emphasizes that further measures should be taken to ensure that the provisions of the Covenant are more widely disseminated, particularly to members of the legal profession and the judiciary.

77. The Committee strongly recommends that the reporting obligations of the State party under article 40 of the Covenant be strictly observed and that the fourth periodic report be submitted within the time limit to be determined by the Committee.

CCPR A/56/40 (2001)

1. The Committee considered the fourth periodic report of Denmark (CCPR/C/DNK/98/4) at its 1876th and 1877th meetings (CCPR/C/SR.1876 and 1877) held on 20 October 2000, and adopted the following concluding observations at its 1888th meeting (CCPR/C/SR.1888), held on 30 October 2000.

A. Introduction

2. The Committee welcomes the timely submission of the State party's fourth periodic report and its detailed information on laws, practices and measures taken relating to the implementation of the Covenant. The Committee commends the State party for the thoroughness of the report, for following the Committee's guidelines on reporting and for addressing the Committee's concerns expressed in the previous concluding observations (CCPR/C/79/Add.68).

B. Positive aspects

3. The Committee commends Denmark for maintaining a high level of respect for human rights generally and for its obligations under the Covenant.

4. The Committee welcomes Denmark's efforts to educate its population, and in particular to train the police, in human rights. The Committee appreciates that following its third periodic report, Denmark changed the rules and practices on the use of police dogs in crowd control. The Committee notes with appreciation Denmark's new rules on examination of complaints concerning the police, and will welcome information on the results of the new procedures in Denmark's next periodic report (art. 9).

5. The Committee notes the high level of respect for gender equality in Denmark and the measures taken to achieve full equality where this has not been achieved (art. 3).

6. The Committee commends Denmark for developments in the provision of legal training in Greenland, the promotion of Greenland's financial independence and the support for Greenland Houses in Denmark. The Committee will welcome further information in these respects in Denmark's fifth periodic report. The Committee also welcomes Denmark's initiative in translating the Covenant into Greenlandic (art. 27).

7. The Committee welcomes the amendment to the Danish Criminal Code to prohibit advocacy of national or racial hatred (art. 20).

C. Principal subjects of concern and recommendations

8. The Committee is concerned about the full protection in Denmark of individual rights under the Covenant. The Committee notes that Denmark has set up a body to consider the incorporation into domestic law of several human rights treaties, including the Covenant (CCPR/C/79/Add.68, para.11).

The State party should take any steps necessary to ensure that all rights under the Covenant secure full protection in Danish law. It should inform the Committee about the measures taken and the success of such measures.

9. The Committee continues to be disappointed that Denmark has not decided to withdraw any of the reservations entered upon its ratification of the Covenant.

Denmark should continue to consider withdrawing some or all of its reservations to the Covenant (CCPR/C/79/Add. 68, para. 12).

10. The Committee regrets the delay in resolving the claim for compensation by the members of the Thule community in Greenland in respect of their displacement from their lands and the loss of traditional hunting rights on account of the construction of the military base at Thule (CCPR/C/79/Add.68, para.15). The Committee is concerned over reports that the alleged victims in the Thule case were induced to reduce the amount of their claim in order to meet the limitations set in legal-aid requirements; the Committee wishes to be informed on this matter.

The Committee notes the Danish delegation's undertaking to provide information on the outcome of the Thule case (arts. 2 and 27).

11. The Committee is concerned that it has not received further information on the implementation of the Covenant in the Faeroe Islands (CCPR/C/79/Add.68, para.16).

The State party should include such information in its next report. It should also inform the Committee concerning the implementation of the right of self-determination for the population of the Faeroe Islands (art. 1).

12. The Committee is particularly concerned about the wide use of solitary confinement for incarcerated persons following conviction, and especially for those detained prior to trial and conviction. The Committee is of the view that solitary confinement is a harsh penalty with serious psychological consequences and is justifiable only in case of urgent need; the use of solitary confinement other than in exceptional circumstances and for limited periods is inconsistent with article 10, paragraph 1, of the Covenant.

Denmark should reconsider the practice of solitary confinement and ensure that it is used only in cases of urgent necessity.

13. The Committee is concerned that persons whose rights under the Covenant are violated have an effective remedy in all cases.

Denmark should ensure, in particular, that in order to secure the victim's right to a remedy, the Covenant may be invoked before Danish authorities and courts (art. 2).

14. Issues of equality and non-discrimination (arts. 3 and 26):

(a) The Committee expresses concern that despite continuing efforts by the State party, as noted in

paragraph 5 above, there remain areas of discrimination against women, notably in respect of employment in the public and private sectors and in applications for asylum.

Denmark should provide information on measures taken to address these matters in its next report.

(b) The Committee is concerned about reports of discrimination against ethnic minorities.

Denmark should ensure equality of treatment for ethnic minorities. In particular, in view of information that there continue to be occurrences of racial discrimination, for instance in restaurants and nightclubs, the Committee recommends that measures be taken to prevent such discrimination. It requests further information on these matters.

(c) Denmark should provide additional information with respect to equality between

National Church members and members of other religions, and between members of religions and non-believers, in respect of financial subventions, educational costs and special taxes.

15. The Committee notes that, under the Aliens Act, article 40c, the Immigration Authorities may require DNA testing of an applicant and the persons with whom the applicant claims family ties on which a residence permit is to be based.

DNA testing may have important implications for the right of privacy under article 17 of the Covenant. Denmark should ensure that such testing is used only when necessary and appropriate to the determination of the family tie on which a residence permit is based (art. 23).

16. The Committee notes that asylum-seekers in Denmark are often restricted or discouraged from choosing a residence in specific municipalities or from moving from one municipality to another.

Denmark should ensure that any such measures are applied in strict compliance with article 12 of the Covenant.

17. The Committee notes that asylum-seekers are entitled to have the assistance of legal counsel. The State party should provide information as to the stages of the application procedures at which legal assistance may be had, and whether the assistance is free of charge at all stages for those who cannot afford it (art. 13).

D. Dissemination of information about the Covenant

18. Denmark's fifth periodic report should be submitted by 31 October 2005. That report should be prepared in accordance with the revised guidelines adopted by the Committee (CCPR/C/66/GUI/Rev.1) and should give particular attention to the issues raised in these concluding observations. These concluding observations and the next periodic report should be widely disseminated in Denmark.