

## NORWAY

### CCPR A/33/40 (1978)

227. The Committee considered the initial report (CCPR/C/1/Add.5) submitted by Norway at its 77<sup>th</sup>, 78<sup>th</sup> and 79<sup>th</sup> meetings on 12 and 13 July 1978 (CCPR/C/SR.77, 78 and 79).

228. The representative of the State party stated that the report had been transmitted before the adoption by the Committee of its general guidelines for reporting under article 40 but that his Government was prepared to supply any additional information that might be required.

229. Commenting on article 2 of the Convention, members of the Committee acknowledged that the dualistic method adopted by Norway for fulfilling its obligations under international treaties, including the Covenant, was admissible and legitimate under that article. They wondered, however, whether the provisions of the Covenant could be invoked for the purpose of interpreting the provisions of the domestic legislation and as a standard for the administrative authorities, especially in the exercise of discretionary powers; whether the “principle of legality” was a constitutional one or simply a rule of customary law, how that principle was put into practice and what the term “legal rights of citizens” mentioned in that context, really meant. What remedies were available to individuals claiming that a statutory provision was in conflict with a fundamental right? In that connection, members of the Committee expressed great interest in the institution of the ombudsman and requested more information on his role in protecting individual rights and freedoms and particularly whether the provisions of the Covenant could be invoked before, and applied by, him directly.

230. Members of the Committee noted the lack of information in the report on article 3 of the Covenant and requested information on any legislation that might be in existence to ensure equal civil and political rights for man and women, and on machinery, if any, that might have been set up to enforce it.

231. Information was sought on the circumstances under which a public emergency could be invoked, and any exceptional measures which could be taken accordingly, as a reason for derogating from the Covenant on the basis of the provisions of article 4, and on the significance of the term “special legislation” used in the report in that connection.

232. Members of the Committee noted that, as regards article 6, the report only explained the reservation of Norway with respect to paragraph 4 of that article without indicating specific measures relating to the protection of life. They asked whether the death sentence had ever been pronounced in the post-war period and, if it had been, how many times, by which court and for what crimes. Clarification was requested on the statement in the report to the effect that capital punishment was always an alternative punishment to deprivation of liberty.

233. As regards article 7, it was noted that no mention had been made of the procedures that had been established to ensure that the prohibition against torture was respected in all cases. Information

was requested concerning the treatment of prisoners in solitary confinement and on whether there were any rules in Norway regarding medical and scientific experiments on individuals.

234. One member expressed his misgivings concerning the Temperance Committees referred to in connection with article 8 and inquired into the circumstances under which compulsory labour could be imposed as a curative measure and whether Norway had ratified the ILO Convention No. 105 concerning the abolition of forced labour. <sup>7/</sup>

235. In respect of article 9 of the Covenant, information was requested on the standard rules of criminal procedures referred to in the report; on the circumstances, outside the scope of criminal proceedings, in which an individual might be deprived of his liberty; on the time-limit for prosecution of an accused, the maximum length of time for which individuals could be detained without trial and the conditions governing the granting of bail. One member commented that the assumption of the Norwegian authorities, referred to in the report, that the Covenant did not prevent domestic law from stipulating specific terms and conditions for the award of compensation for deprivation of liberty, seemed inconsistent with the provisions of article 9, paragraph 5.

236. With respect to article 10 of the Covenant, further details were requested concerning the procedures for trial and treatment of juvenile offenders. As to the reservation expressed in the report regarding paragraph 3 of that article, it was noted that the purpose of the paragraph was not to exclude common activities for juveniles and adults but merely to ensure recognition of the special situation of juveniles.

237. Further information was requested on the laws referred to in the report relating to article 13 of the Covenant. What legal safeguards and remedies were available for persons threatened with expulsion and did the expulsion take effect immediately or only after an individual had exhausted all available remedies?

238. Commenting on article 14 of the Covenant, members of the Committee asked whether every effort was made to ensure the application of the principle of equality before the law; whether there were any specialized tribunals which dealt with labour disputes or financial, social and administrative matters; how the independence and impartiality of the judiciary was ensured and whether or not the press and public could be excluded from a trial. Members also asked for information on any legal remedies that might be available for defendants when judicial proceedings dragged on excessively; why an accused person was not summoned to or informed of appeal proceedings and whether that practice was considered to be consistent with his right to be tried in his presence; whether any procedure existed for the provision of legal assistance; and whether there were any restrictions on an individual's choice of a lawyer. It was noted that Norwegian law provided for monetary compensation to individuals who had been wrongly convicted of crimes and the question was asked whether any form of moral compensation existed there, as it did in many

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<sup>7/</sup> International Labour Organisation, Conventions and Recommendations, 1919-1966 (Geneva, 1966), p. 891. For wording of footnote, see resolution 2920 (XXVII).

other countries. With reference to the Norwegian reservation to paragraph 7 of article 14, information was requested concerning cases under which it was possible to institute a resumption

of a case to the disadvantage of an already convicted individual.

239. As regards article 17 of the Covenant, it was noted that the Norwegian legislation regulating the right to monitor postal and telegraphic dispatches and telephone conversations enacted in 1915, would seem to be out of date, in view of technical developments since that time. Information was therefore sought concerning the contemporary case law relating to the right to privacy. The representative of Norway was also asked whether judicial permission was needed for monitoring private correspondence and telephone conversations and whether the individuals concerned were informed that they were under surveillance.

240. Commenting on the statement in the report to the effect that equality of religion did not exist in Norway, members of the Committee inquired into the legal or political implication of that situation: what were the precise privileges enjoyed by the national church in Norway? Were all taxpayers, regardless of their religious conviction obliged to pay for the upkeep of that church? Was any religious instruction compulsory in Norwegian schools? What was the situation with regard to the treatment of conscientious objectors?

241. Members of the Committee requested more information concerning the freedoms provided for in articles 19, 21 and 22 and, in particular, on any restrictions imposed thereon. The representative was specifically asked whether the broadcasting media were a Government monopoly, whether all sectors of the population were afforded an opportunity to present their views and whether the Norwegian authorities registered the legal political activities of the citizens.

242. With reference to the reservation entered by Norway in respect of article 20 of the Covenant on the ground that its provisions might be contrary to the freedom of expression, it was noted that that freedom was already subject in Norway to a number of restrictions and it would be only logical to impose similar restrictions on war propaganda which would, moreover, be in keeping with contemporary norms of international law.

243. As regards articles 23 and 24 of the Covenant, members of the Committee requested information regarding measures adopted to protect the family and children, to ensure equality of rights and responsibilities of spouses, and to deal with the problems of the children of working mothers. Information was sought on the law governing the treatment of individuals who married foreigners and the rights of residence of spouses not possessing Norwegian nationality.

244. Members of the Committee asked how Norwegian law guaranteed the equal right to participate in public affairs under the terms of article 25 of the Covenant, whether the members of certain political parties were excluded and whether any special procedures existed to enable an individual to appeal against unreasonable restrictions in that respect.

245. The representative of Norway, commenting on the observations and questions summarized in the preceding paragraphs, stated that the principle of legality even though it was part of the unwritten law, was generally considered to be of a constitutional character and that, as such, it could be invoked before the administrative authorities and the courts, which were equally bound to comply with it. Replying to a question concerning the scope of that principle and the exact meaning of the term "legal rights", he indicated that that principle would apply generally in the field of human

rights. The rules of the Covenant could be invoked before the courts, the administration and the Ombudsman and would thus be a help in interpreting the relevant municipal rules. He explained the legal base and functions of the Ombudsman whose competence encompassed human rights but whose main concern had been to improve the guarantees for the citizen via-à-vis the increasing power of the administration in modern society.

246. Replying to questions under article 3 of the Covenant, the representative stated that equal rights for men and women were a reality in Norway and gave some statistics to prove his point. He added that in the spring of 1978, the Storting had passed an act on equality between the sexes, which was to enter into force on 1 January 1979. The Act instituted an Ombud and a Board for the implementation of its provisions.

247. As regards article 4 of the Covenant, he explained the provisions allowing for derogations from ordinary legislation as contained in Act No. 7 of 1950 and stated that Norwegian authorities, when exercising their competence under that Act, must take into account international obligations such as the Covenant, and that if the derogation from ordinary legislation was found on that Act, the principle of legality was respected.

248. Commenting on questions under article 6 of the Covenant, the representative pointed out that his Government had recently decided, in principle, to abolish the death penalty and intended to present a bill to that effect to the Parliament in the near future. No death penalty had been imposed in Norway since the trials following the Second World War. The statement in the report that capital punishment was an alternative to deprivation of liberty meant that, in cases where capital punishment might be applied the court would have the possibility of applying deprivation of liberty instead.

249. Replying to a question under article 7 of the Covenant, he stated that, where medical and other scientific experiments were concerned, guarantees were provided by professional ethics, the penal rules and the professional control exercised by the authorities.

250. As regards article 8 of the Covenant, he pointed out that the obligation to work imposed by the Temperance Committees was covered by article 8, paragraph 3 (c) (i), of the Covenant. He added that even if the Temperance Committee was not formally a court of law according to the Norwegian legal system, it had an independent position and was bound by formal procedural rules to such an extent that it must be considered as a court according to the Covenant. The fact that the obligation to work was a curative measure was mentioned in the report as an additional argument explaining the background for the relevant rules. Norway had ratified the ILO Convention regarding forced labour.

251. Replying to questions under article 9 of the Covenant, he pointed out that the term “standard rules of criminal procedure” used in the report meant the whole set of rules contained in the Criminal Procedure Act, which set out in detail the conditions for deprivation of liberty. The Norwegian authorities had understood article 9 to cover all cases of deprivation of liberty, including cases pursuant to Act No. 2 of 1961 concerning psychiatric health wards and to the 1939 Act relating to temperance and Temperance Committees.

252. Referring to questions under article 13 of the Covenant, the representative stated that the safeguards concerning a decision ordering expulsion were found in the Aliens Act of 1956 which stipulated the possibility of appeal to a higher administrative authority. In some cases, such an appeal would automatically have the effect of preventing expulsion from being carried out as long as the appeal was under consideration. However, he added, the rules in that field were under revision.

253. Replying to some of the questions put to him under article 14 of the Covenant, the representative stated that, as a general rule, justice was obtained in Norway in either civil or criminal matters without undue delay and gave some statistics to that effect. A fairly extensive system for free legal aid and free legal advice existed in Norway to ensure that individuals were not prevented from defending their rights before the courts, even if they lacked the necessary financial means. He confirmed that Norwegian law merely provided for monetary compensation to individuals who had been wrongly convicted of crimes but that the possibility for moral compensation was not excluded if it was deemed appropriate.

254. As regards article 17 of the Covenant, he said that opening mail and monitoring telephone conversations might be ordered only by a court or, in urgent matters, by the prosecuting authority. In the latter case, the measure must immediately be reported to the court. Such measures could be ordered only when they were deemed necessary for national security reasons or when the person in question was suspected of committing serious offences specified in the Act.

255. Commenting on questions under articles 23 and 24 of the Covenant, the representative pointed out that all Norwegian family and social legislation, including extensive social security legislation, had the aim of protecting the family and children. In order to solve the problems of working mothers, efforts were being exerted, *inter alia*, to make institutions providing full-time or part-time child care widely available. Legislation had been passed on that subject, some progress had been achieved, but much remained to be done. As to the equality of rights and responsibilities of spouses, he stated that two kinds of régimes existed in his country, a joint estate and separate estates, and spouses might choose either of them. The main principle under both régimes was that both spouses had a duty to contribute to the common household and that, subject to some special rights protecting the interests of the other spouse, they had an independent right to dispose of their own part of the estate.

256. Replying to questions under article 25 of the Covenant, he said that the guarantee for every citizen to participate in the conduct of public affairs lay primarily in the universal right to vote. Anyone who claimed to have been refused a public post on non-objective grounds, such as political views, had the possibility of bringing the case before the courts for redress if an appeal to higher administrative authorities did not give satisfaction.

257. The representative of Norway informed the Committee that replies to unanswered questions would be furnished to the Committee in writing.

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337. At its 301<sup>st</sup> and 302<sup>nd</sup> meetings, on 21 July 1981 (CCRP/SR.301 and 302), the Committee examined the supplementary report submitted by Norway (CCPR/C/1/Add 52) containing replies to the questions raised during the consideration of the initial report (CCPR/C/1/Add.5). 8/ The various points were dealt with in succession.

338. The first point concerned the implementation of article 6 of the Covenant. In this connection, one member of the Committee asked whether in 1979 the Norwegian parliament had repealed the rules on the death penalty in wartime and war-like situations unanimously or whether some members of parliament had opposed the repeal.

339. The representative of Norway replied that abolition of the death penalty had deeply split public opinion in his country. In parliament the division had been determined by political considerations and abolitionists had only just carried the day.

340. The following point related to preventive detention and solitary confinement in Norway in connection with the implementation of article 7 of the Covenant. Referring to the information given in the supplementary report, some members of the Committee wished to know whether there were rules in Norway to ensure that preventive detention by the authorities was not discretionary. In particular, they noted that a prisoner could be wholly or partially deprived of the company of other prisoners if that was deemed necessary for disciplinary, security or similar reasons; they asked what those similar reasons could be and whether a mere notification to the Prisons Board allowed the prison authorities to put a prisoner in solitary confinement for more than one month. One member of the Committee pointed out that the provision whereby a prisoner sentenced to more than six months' imprisonment could be kept in solitary confinement at the beginning of his term seemed difficult to justify. Noting that 10 to 15 per cent of prisoners in Norway, mainly prisoners on remand, were kept in solitary confinement, members of the Committee asked why prisoners remanded in custody had to be subjected to that régime; whether the question had ever been raised in Norwegian law of fitting the punishment to the crime; whether prisoners held in solitary confinement on the decision of the prison authorities could appeal to the judicial authorities against that decision; whether such decisions could be appealed at the administrative level only; whether the prison administration came under the Ministry of Justice or the Ministry of the Interior; whether there were visiting magistrates in Norway with powers to supervise what took place in prisons; to what extent public officials were aware of Norway's obligations under international human rights instruments; and whether a prisoner in solitary confinement could nevertheless have access to his lawyer. As regards the solitary confinement procedure, it was asked whether solitary confinement was the subject of many applications to the Ombudsman or the competent authorities; whether persons in solitary confinement went on hunger strike; whether persons accused of terrorism were kept in solitary confinement; whether the light was on in the cells 24 hours of the day; and whether

8/ The initial report by Norway was examined by the Committee at its 77<sup>th</sup>, 78<sup>th</sup> and 79<sup>th</sup> meetings, on 12 and 13 July 1978; see CCPR/C/SR.77, 78, and 79 and Official Records of the General Assembly, Thirty-third session, Supplement No. 40 (A/33/40), paras. 227-257.

prisoners in solitary confinement had the right to listen to the wireless, watch television or take exercise outside their cells.

341. The representative of Norway replied that any remand in custody depended on the decision of the court, which gave a ruling on it and either fixed the length of the remand or ordered the release of the prisoner. The reasons other than disciplinary or security reasons for placing a prisoner in solitary confinement were the safety or health of the prisoner himself or the risk of his having an unfavourable effect on his fellow prisoners. The representative explained that a convicted prisoner who was to remain in prison for more than six months could be placed in solitary confinement on arrival at the prison in order to enable the prison administration to obtain information about his past history and general background, but that the rule was not applied automatically. Also, one of the reasons why a prisoner on remand could be placed in solitary confinement was so as not to prejudice the results of inquiries being made about him.

342. The representative of Norway went on to say that Norwegian legal tradition showed a strong tendency for making the punishment commensurate with the offence; that any decision on solitary confinement could be laid before the superior administrative authorities with a view to being appealed in the courts; that the prison system was administered by the Ministry of Justice; and that information services kept public opinion informed of Norway's international human rights obligations and that prison authorities in particular were the subject of information on that point. He said that persons on remand always had access to their lawyer and that a person held in solitary confinement was the subject of constant attention from the supervisory and medical staff of the prison establishment. The Ombudsman had received more complaints about the prison régime than about other spheres of public administration, but the number of applications concerned was tending to drop. There were isolated cases of hunger strike and the strikers were subject to intensive medical supervision. As far as terrorism was concerned, that problem does not at present exist in Norway and it was therefore unnecessary to make the prison régime any stricter. Prisoners were simply the subject of careful supervision and the light was not kept on in the cells the whole time, and even prisoners in solitary confinement had the right to listen to the wireless, watch television and do at least one hour's exercise each day.

343. On the subject of the segregation of juvenile offenders from adult offenders in connection with the implementation of article 10 of the Covenant, reference was made to the moderating effect which adult offenders, according to the information supplied by Norway, could have on juvenile offenders. It was recalled in this connection that, under the Covenant, accused juvenile persons and juvenile offenders should be separated from adults; it was asked how Norway reconciled its international obligations with its prison régime and whether the results of the survey by the Norwegian Ministry of Justice on the segregation of juvenile offenders from adult offenders could be made available. It was also asked what measures were taken by Norway to avoid juvenile offenders being sent to prison and whether parents were liable for offences committed by their children and for payment of fines.

344. Answering questions by members of the committee, the representative of Norway remarked that his Government had entered a reservation concerning article 10 (2) and (3) of the Covenant which referred to the segregation of juvenile offenders from adults. Experience in Norway, which had been confirmed by an investigation by the Ministry of Justice, showed that in prison society adult offenders might be able to persuade juveniles that they would have continued to enjoy the privileges to which they were entitled if their conduct had been good.

345. He also said that in the treatment of juvenile delinquents in Norway measures other than criminal penalties were always given priority. For instance, municipal bodies were sometimes given responsibility for young criminals; the Norwegian authorities made every effort to encourage sound family relationships; under the civil law parents might exceptionally be required to pay for damage caused by their children; and a new post of ombudsman for education and child development had recently been established.

346. Turning to article 13 of the Covenant a member of the committee asked whether Norwegian legislation regarding expulsion, which had been under review when the initial Norwegian report was presented, had been amended subsequently.

347. The representative of Norway explained that a royal commission was studying the matter. Its work was not yet completed but the commission's report should be published in about a year's time.

348. With regard to article 14 of the Covenant and in particular court proceedings, questions were asked with regard to the status of the draft legislation mentioned in the report and in particular whether the new criminal procedure act had been enacted, whether military courts were special courts, whether the rules regarding independence applicable to them were the same as those applying to ordinary courts, whether social, financial, fiscal and administrative cases were tried by the civil courts, whether the accused had the right to such speedier trial in cases where proceedings were unduly protracted, and whether there were exceptions to article 88 of the Constitution, under which the Supreme Court pronounced judgement in the final instance. Noting that according to the report the independence of courts was only applicable to their judicial functions and that when the courts performed purely administrative tasks the judges were subject to the instructions of the competent administrative authority in accordance with the same principles as civil servants, a member of the Committee asked whether in practice such actions by the courts or the administrative authority did not impair the independence of the judiciary in the exercise of its strictly judicial functions. With regard to the non-retroactivity of laws, which is laid down in article 97 of the Norwegian Constitution, a member also asked whether in Norway the principle could be waived in the case of a law whose retroactive effect was favourable to an offender, as was provided in article 15 of the Covenant. Other members of the Committee asked why only the officially appointed defence counsel had, as seemed to be suggested in the report, the rights guaranteed by the Covenant, and not the counsel chosen by the accused himself. Commenting on the question of the resumption of criminal proceedings, a member of the Committee noted that article 415 (1) of the Criminal Procedures Act provided that a case could be resumed by reason of, among other things, subsequently produced evidence he asked whether this provision did not represent an unduly broad exception to the principle laid down in article 14 (7) of the Covenant that no one was liable to be tried or punished for an offence for which he had already been finally convicted or acquitted.

349. Replying to the questions concerning article 14 of the Covenant, the representative of Norway informed the Committee that the Norwegian Parliament had adopted the new General Code of Criminal Procedure on 27 May 1981 and that the Code would enter into force in about a year's time. He also explained that there were no military courts in time of peace and that the rules concerning the independence of the courts and the safeguards for the protection of the accused were strictly applied even in wartime. He also mentioned that special courts such as the labour court were few in Norway and that financial, fiscal and administrative cases were heard by the ordinary courts. In



social security matters there was, however, a body that performed the functions of a court and was known as the Social Security Tribunal; its decisions could be appealed to the ordinary courts. The representative of Norway also said that unduly protracted criminal proceedings were not common in Norway but that if the case arose the accused could complain to the ordinary courts. There were very few exceptions to article 88 of the Constitution: the question had arisen when trial by jury was introduced in Norway and it had been decided that the jury's verdict was final but that the Supreme Court had jurisdiction to consider the legality of the proceedings.

350. With regard to the independence of the courts he pointed out that the administrative matters in which judges performed non-judicial functions were of such a kind (e.g. registration) that the question of the independence of judges did not arise. He also explained that although article 97 of the Norwegian Constitution provided that laws could not have retroactive effects, under the penal code the principle did not apply in the case of a lighter penalty to which article 15 of the Covenant referred. With regard to the accused's right to a free choice of defence counsel, he explained that the legislation was concerned only partly to safeguard the interest of the accused, inasmuch as the advocate selected by the accused must be competent, and partly the public interest, in cases where, for example, defence counsel might have been caught clandestinely passing letters to the accused. If the authorities objected to the advocate chosen, the accused could of course select replacement. With regard to the resumption of prosecutions, he noted that the matter was the subject of a formal reservation by his Government. To the mind of Norwegian legislators, it was inconceivable that a person accused of a criminal offence could not be charged again on the basis of fresh and apparently incontrovertible evidence.

351. Concerning article 2 of the Covenant, questions were asked as to whether the Norwegian courts gave weight in practice to the provisions of the Covenant when construing national enactments, as had been stated during the discussion of the initial report of Norway. It was also recalled that according to the initial report by Norway a comprehensive system was in existence to cover the case of persons whose rights had been infringed, enabling them to complain to the competent administrative or judicial authorities. In this connection a question was asked as to what concrete steps could be taken by persons who were denied a passport or by aliens who were denied a resident's permit in spite of close family connections in the country.

352. In reply the representative of Norway confirmed that the Covenant and other international human rights instruments could be taken into account by the courts and there were an increasing number of instances in which that had been done. The remedies available to individuals, who considered themselves unjustly treated, were initially brought to the administrative authorities and in the last resort to the courts; there was also the possibility of a recourse to the Ombudsman. That applied also to the case of an alien, whose application for a residence permit had been refused and any close family connections would, of course, be taken into account by the authorities.

353. One member of the Committee said he was still not entirely clear as to the exact meaning of the Norwegian reservation to the Optional Protocol in regard to the implications of a previous examination of a communication from an individual. It was asked as to whether an individual, whose communication had been declared inadmissible by the European Commission, could still apply to the Human Rights Committee under the Optional Protocol.

354. The representative of Norway replied that an attempt had been made in part III of the supplementary report to explain in greater detail the Norwegian reservation to the Optional Protocol. His Government was aware that other matters might arise in connection with that reservation but was not prepared to go further at the present time.

355. Several questions were asked concerning article 17 of the Covenant. In Norway's initial report mention was made of the provisional Act of 17 December 1976 granting the authorities the right to monitor telephone conversations in narcotics cases. The representative of Norway had then stated that the temporary Act in question would be in force until the end of 1978, pending permanent legislation on the matter. The members of the Committee wished to know whether the Act was still in force and, if not whether any legislation on the subject had been enacted. With reference to the above-mentioned Act, one member of the Committee, recalling that court permission for telephone tapping could not be given for more than two weeks at a time, while permission from the prosecuting authority was not valid for more than 24 hours, asked about the present position in regard to telephone tapping. It was also asked, how did the Norwegian legislation deal with the right to privacy in regard to data-processing?

356. The representative of Norway replied that the provisional legislation on telephone tapping had been extended to 1980 and had now been further extended. As to the data-processing, an Act had been adopted on 9 June 1978 relating to data banks containing personal particulars and a comprehensive system had been devised for the protection of sensitive information, including obligatory registration of the relevant data banks. Private individuals had the right to check the data recorded on them, with a right of access to the administrative authorities and to the courts.

357. With reference to freedom of thought under article 18 of the Covenant, it was noted that in Norway this article was treated as though it concerned only freedom to exercise a religion. In fact, it was pointed out that, article 18 was much broader and covered not only freedom of religion but also freedom of thought and conscience, as well as freedom not to have a religion or indeed to hold anti-religious views. Clarification was, therefore, requested on the scope of application of this article. Welcoming the recognition in Norwegian Constitution of the right to hold a philosophy not based on religion, further clarification was sought on whether nazism, fascism and racism could be held to constitute philosophies and therefore claim protection under the above-mentioned constitutional principle; whether those ideas were considered as being protected by the concept of freedom of thought and whether there was any legislation on the subject. It was also asked to whether Norway was a party to the international conventions directed against those evils.

358. On the question of conscientious objectors to military service, it was noted that the provisions of Norwegian law made it possible to grant exemption from military service where there was a reason to show that a recruit could not "do military service of any kind without coming into conflict with his deep personal convictions". In this connection, it was asked on which exact grounds recruits were exempted from military service, what was the procedure in the matter, dealt with the question and what was the number of individuals annually admitted to perform a service of a civilian nature.

359. Additional information was requested as to which religious communities had registered in order to receive financial support; whether there were any communities which had not so registered;

what was the objective of registration and what particular advantages did a religious community lose by not registering. Recalling that registered religious communities had certain functions recognized by law, such as the right to solemnize marriages, it was asked if, for example, a Moslem religious community which applied for registration, would be allowed to perform all those functions and whether there was a prerequisite that a community should have a minimum number of members before the powers in question were conferred upon it. With reference to the Constitution of Norway under which anyone over 15 years of age may join or resign from the Church of Norway, but due account shall be taken of the views of children over 12 years of age, clarification was sought as to what was the practical effect of views of a child over 12 but below 15, since it was only at the age of 15 that freedom of choice existed.

360. It was noted from the report that the education of children included religion as a subject but that the parents of a child could request that their child be exempted from religious instruction when they themselves did not belong to the Church of Norway. That provision, it was stated did not appear to be compatible with the concept of freedom of conscience and religion, which should be granted on equal terms to all and not be made to appear as an exception.

361. In connection with the original constitutional requirements that only persons of Lutheran faith could be appointed as senior State officials had been gradually done away with, it was inquired whether a non-Lutheran could become a senior official in Norway and how many such officials there were. Referring to article 2, paragraph 2, of the Norwegian Constitution which provided that half of the members of the Government must profess the official religion of the State, it was asked whether that constitutional provision did not run counter to article 25 (c) of the Covenant, which stated that every citizen must have the right and the opportunity to have access, on general terms of equality to public service in his country, as well as to the provisions of article 2 (1) under which each State party undertook to ensure to all its citizens the rights recognized in the Covenant without distinction of any kind, including religion.

362. Questions were asked as to whether a person who claimed that a particular public post had been refused to him on grounds of his religion could seek redress from the courts and, if so, what form the redress would take.

363. Replying to the questions raised in the Committee, the representative of Norway agreed that the situation would be much clearer if a clear-cut distinction had been made between Church and State. However, that had not been the experience of Norway throughout a long and historical tradition. The resulting situation was not, however, incompatible with freedom of religion. The representative pointed out that 94 per cent of the population were members of the evangelical Lutheran Church and it was felt that human rights were safeguarded provided other religions and philosophical associations were given adequate financial support to enable them to fulfil their functions. He also agreed with the statement that article 18 of the Covenant was not concerned only with religion and referred to a well-known book on the Norwegian Constitution, where strong arguments had been put forward in favour of interpreting paragraph 2 of the Constitution as protecting views both in favour of and against religion.

364. Turning to the freedom of thought, the representative of Norway pointed out that the Norwegian Penal Code contained far-reaching rules against the public expression of fascist and

naïst sentiments. However, it was felt that a line had to be drawn between the need to suppress such ideologies and the right to freedom of expression. The representative confirmed that conscientious objection to military service existed in Norway, subject to certain conditions. Applicants must have non-violent moral convictions preventing them from bearing arms or joining the armed forces. In 1980, 2,000 persons had applied for registration as conscientious objectors, and only about 169 had not been accepted. The Ministry of Justice was responsible for deciding whether an application was valid or not. If an application was rejected and the applicant still declined to do his military service, the State took him to Court to prove that he did not fulfil the requirements for exemption. Exempted persons performed civilian service instead of military services. A Royal Commission had recently proposed that the relevant legislation should be revised. As to the principle that financial support should be given to unregistered religious and non-religious communities, it had recently received statutory force, with the result that the advantages of registration had been diminished and the position of communities which objected to registration on principle had been improved. Concerning the question asked with regard to relations between children and the Church, the representative stated that children belonged to the State Church if their parents were also members. Anyone over 15 years of age could join or resign from the Church of Norway.

365. The relationship between State and Church was reflected in the nation's educational system. Under the provisions of Act No. 26 of 13 June 1969 relating to the Basic School, schools must give their pupils "a Christian and moral upbringing", an equal aim was also to further the spiritual freedom and tolerance of pupils, to promote knowledge of basic Christian values, the common cultural heritage, equality of man and international responsibility. Even though nominally 94 per cent of the population professed the State religion, the real picture in Norway was that of a strongly pluralistic State, and there was certainly no overwhelming pressure on other believers. On the subject of religion and official career, the representative stated that no statistics were available on the religious beliefs of civil servants, but it was most unlikely that membership or non-membership in the official church had any bearing on career prospects. The rule that at least a certain number of the members of the Government must be of the State Church had originated in the requirement that only members of the State Church could participate in governmental consideration of matters relating to that Church. In the Norwegian Government's view such a situation could not be deemed to be an unreasonable restraint on access to public service.

366. As regards article 19 of the Covenant, members referred to section 100 of the Norwegian Constitution which stated that "no person shall be punished for any writing, whatever its contents may be, which he has caused to be printed or published, unless he wilfully and manifestly has either himself shown or incited others to disobedience of the laws, contempt of religion or morality of the constitutional order". It was asked whether it would be considered contempt of religion to urge the separation of Church and State or of the constitutional order to advocate a Republic; what test was applied for the purpose of section 135 of the General Civil Penal Code, whereby anyone who endangered the general peace by publicly insulting or provoking hatred of the Constitution or any public authority was guilty of an offence since a breach of the peace was more often not so much a question of the intensity of the insult as of the extraordinary sensitivity of the listener. As regards the use of the term "contempt of religion or morality" in the same section of the Constitution, questions were raised as to whether "religion" meant the State religion, or included other religions, particularly those which were registered; whether if a person advocated revolution or advocated

abortion, that would constitute contempt of religion; whether, if a person advocated living together of couples outside of marriage, that would amount to contempt of morality. With respect to the Norwegian Broadcasting Corporation, the only body controlling broadcasting in Norway, information was sought on whether it also had the objective of propagating the State religion, and according to which criteria were the members of the Board appointed.

367. In reply to the questions raised in relation to section 100 of the Constitution, the representative of the State party explained that he had agreed with the members of the Committee who had found the formulation of this section open to question and criticism. The Norwegian Constitution dated from 1814, and there was extreme conservatism as to the question of modernizing it. That conservatism, however, was counterbalanced by the need to interpret the Constitution in the light of changed circumstances and more modern standards. Furthermore, the section of the Constitution which had retained the Committee's attention did not say that freedom of expression had to be restricted on the grounds of religion and morality, but that there might be such restrictions. Other legislation lay down the extent to which religion and morality or other values were protected. The Penal Code contained more effective rules on that matter.

368. The representative also stressed that the restrictions on freedom of expression allowed by the Constitution presented no hindrance to public discussion of reforms on any subject whatsoever, including the separation of State and church. A person could take any view he wished on abortion, living together and the other matters raised in the Committee. There was some restriction as to the form one could use to express those views, such as legislation on insults and limits concerning the use of violence. However, even someone advocating revolution on a theoretical basis could do so. If a practical danger was involved, it would be up to the authorities to act.

369. Concerning the questions that had been put with respect to paragraph 135 in the General Civil Penal Code, which "punishes anyone who endangers the general peace by publicly insulting or provoking hatred of the Constitution or any public authority ...", the representative agreed that the formulation, dating from 1902, gave rise to questions. However, he knew of no case where that paragraph had been used in modern times.

370. In reply to questions concerning the Norwegian Broadcasting Corporation, the representative stated that it was indeed a monopoly, but there was awareness in Norway of the need for broadcasting to have a neutral and pluralistic content. One of the functions of the members of the Board was to guarantee that neutral and pluralistic approach. The appointments of the Board members, who served in a personal capacity, were the subject of much debate in Parliament every year, showing that the matter had engaged public opinion.

371. On article 20 of the Covenant a question was asked as to why, since all religions, including Christianity, prohibited war, Norway, a country having a State religion, had no law banning war propaganda and whether the Storting which had rejected a bill outlawing war propaganda, had not acted counter to the State religion and, therefore, against the Constitution.

372. Replying to the question raised, the representative of Norway explained that if Norway could have eliminated war simply by enacting legislation that would have been done. Unfortunately, that was not a realistic approach. He assured the Committee that Norway had made and would continue

to make every reasonable effort to further the cause of peace.

373. With respect to article 22 of the Covenant, the representative was asked whether labour contracts in Norway were concluded by trade unions, in both the public and private sectors. In reply, the representative explained that the right to negotiation and collective bargaining was guaranteed both in the public and private sectors and trade unions were parties to such collective agreements.

374. As regards article 23, paragraph 4, of the Covenant, which requires that, in the case of the dissolution of a marriage, provision be made for the protection of children, questions were asked as to whether any laws existed in Norway permitting the State to take over custody of children in extreme cases. Referring to the role of the Ombudsman in connection with the implementation of the provisions of the Act of 1 January 1979, relating to equality between the sexes, it was asked whether the rules relating the remuneration for employment were based on the ILO criterion of equal pay for work of equal value.

375. In reply to the questions raised, the representative of Norway explained that the social services in his country were empowered to take children into care, in order to protect them against abusive treatment or violence on the part of their parents. Such a drastic solution of the problem was obviously only a last resort and every effort was made to enable the family to cope with its own problems. As regards the equality between the sexes he said that problems of equal remuneration formed one of the principal categories of complaints referred to the Ombudsman. The wording of the Act of 1 January 1979 on equality between the sexes was that men and women in the same employment should receive equal remuneration for work of equal value, as recommended by the ILO.

376. With reference of article 25 of the Covenant, it was noted that article 58 of the Norwegian Constitution laid down the number of deputies that any Norwegian region might elect to the Storting. A question was asked as to whether the distribution of elected representatives was periodically revised to take account of population movements so as to avoid the possibility of discrimination in favour of certain areas.

377. The representative of the State party explained that the Constitution laid down very precise rules in regard to the geographical distribution of seats in the Storting. The distribution had been amended many times in the light of population movements. There was a definite bias in favour of rural populations but that was not a matter of discrimination but of deliberate Government policy. In the northern area of Finmark, for example, with its very low population density, the number of electors per deputy would be about one third of the corresponding figure for the capital.

378. With reference to article 27 of the Covenant it was asked as to what had been done in Norway to protect the right of Lapps or Samis to enjoy their own culture, religion and language, and whether there had been consultation with Sweden, Finland and the USSR, where there presumably were members of the same ethnic origin, regarding the treatment and protection of that group. Attention was also drawn to the close connection between articles 27 and 26 of the Covenant, since a member of a minority group outside his own part of the country was entitled to protection under article 26 of the Covenant not only against governments but also against private individuals. Questions were

asked as to what redress was available for a Sami who was the object of discrimination.

379. The representative of Norway in reply said that both the Government and the general public had become more conscious of their responsibilities towards ethnic minorities since the submission of the initial report. The existence of important problems concerning the Sami minority which amounted to between 20,000 and 30,000 was brought to public notice in spectacular fashion by the planned construction of a large hydroelectric plant in Sami territory but even before that various measures had been taken by the Government to protect the Sami minority and to promote Sami culture. As far as ratification of ILO Convention No. 107 on indigenous peoples was concerned, the representative of Norway stated that it had not been favoured originally by representatives of the Sami people. In the light of changed circumstances, however, a Royal Commission has now been appointed to consider the rights of this minority to land and water and its legal position in general. The Commission would listen to representatives of groups within this minority, local authorities and lawyers and would prepare a separate report on the need for the constitutional protection of those minority groups and also a report on the ratification of ILO Convention No. 107. Norway was collaborating with other countries in the Nordic Council on matters relating to common ethnic minorities. The protection of members of minority populations outside their areas was fully covered by the law.

## CCPR A/44/40 (1989)

51. The Committee considered the second periodic report of Norway (CCPR/C/42/Add.5) at its 844<sup>th</sup> and 847<sup>th</sup> meetings, held from 26 to 27 October 1988 (CCPR/C/SR.844-847).

52. The report was introduced by the representative of the State party, who reaffirmed his Government's willingness to continue its fruitful dialogue with the Committee. He noted that a new practice of consulting the Government of Norway's advisory Committee on Human Rights on the content of reports relating to human rights before their final submission to the various United Nations treaty bodies had been adopted. Referring to new developments that had occurred since the submission of the report, the representative drew special attention to the insertion in the Norwegian Constitution of a new article 110 (a) relating to the responsibility of the Norwegian authorities *vis-à-vis* the Sami people, and to the ratification of Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms. He also pointed out that the Royal Decree of 18 December 1987, providing for the investigation by independent committees of reported cases of police violence, and the Royal Decree of 28 June 1985, relating to the organization of the Public Prosecution Authority, had entered into force.

### Constitutional and legal framework within which the Covenant is implemented

53. With reference to that issue, members of the Committee wished to receive information on the mechanisms employed in Norway to harmonize, in the event of conflict, the Covenant and domestic law; on the cases where the Covenant had been directly invoked before the courts; and on the role of the Covenant, if any, in the interpretation and application of Norwegian law. In this connection, they enquired about the meaning of the statement in paragraph 5 of the report that "the Covenant ... will indeed be a relevant source of law of considerable weight in the interpretation and application of Norwegian law". It was also asked whether it was necessary for the individual complainant to invoke the Covenant or whether the court itself was obliged to do so; whether the idea of a bill of rights to be included in the Constitution of Norway and by which the courts would be bound had ever been considered; and whether, in view of the growing number of international human rights instruments, the responsibilities of the courts in respect of the process of harmonizing domestic law with international treaties was not becoming too heavy a burden.

54. Additionally, members of the Committee requested information on factors and difficulties, if any, affecting the implementation of the Covenant and requested more details about the activities of the Norwegian Institute of Human Rights and of the Government of Norway's Advisory Committee on Human Rights. It was asked, in the latter regard, whether a draft of the report had been submitted to the Institute of Human Rights for comment; what the nature of the relationship was between the Institute and the Advisory Committee; what comments the Advisory Committee had made on Norwegian draft reports under international human rights instruments; and whether Norway's reservations to the Covenant had been considered by the Advisory Committee. It was also asked whether the Government intended to withdraw any of its reservations.

55. Referring to activities relating to the promotion of greater public awareness of the provisions of the Covenant and the Optional Protocol, members wondered whether copies of decisions of the



Human Rights Committee under the Optional Protocol were available to judges; whether it had been considered useful to hold seminars for judges on this matter and to provide information relating to human rights instruments to the police and other security personnel; whether the Norwegian Department of Education had taken steps to provide material for schools in connection with human rights education; and whether consideration of the Norwegian report by the Human Rights Committee would be reflected in the media.

56. Responding to the questions raised by members of the Committee, the representative of the State party explained that the machinery used to prevent conflicts between international instruments on human rights and Norwegian domestic law involved ascertaining that domestic law was consistent with a Convention before it was ratified. If, despite such precaution, a conflict arose, the necessary steps would be taken and, in particular, the courts would interpret domestic regulations in such a way as to correspond to the requirements of the international instrument. However, if a conflict arose between an international obligation and a domestic provision after the provision had been interpreted- although no such conflict had so far arisen in Norway - the domestic provision would prevail. International instruments on human rights could be invoked by a person before the courts and had been mentioned in some 20 Supreme Court decisions. No violation of the Covenant had thus far been found by the courts. Regarding the reference in paragraph 5 of the report to the Covenant as a source of law, the representative noted that the Covenant was also used by the courts as a basis for legal arguments. While the Norwegian Constitution was old and had seldom been changed, it was supplemented by unwritten principles that the Supreme Court had set out in its decisions and in the interpretation of which the international instruments played a significant role.

57. Replying to other questions, the representative explained that the Norwegian Institute of Human Rights, which had been established on 1 January 1987, had the task of contributing to the realization of human rights through research, studies, documentation and information; through co-operation with international agencies, organizations and research centres; and by providing opportunities and support for foreign scholars. The Institute was undertaking four research projects relating to the United Nations system, the Council of Europe, East-West co-operation and human rights and development. Particular attention was being paid to the dissemination of information regarding human rights through the publication of basic materials and the organization of seminars and workshops. The Government of Norway's Advisory Committee on Human Rights, established in 1980, was chaired by an official of the Ministry of Foreign Affairs and included among its members representatives of non-governmental organizations and Members of Parliament. It was intended to reflect on general human rights issues and to provide a forum in which governmental and non-governmental organizations could exchange views on human rights issues.

58. Referring to the dissemination of information concerning human rights, the representative explained that the subject of human rights had been introduced in school curricula; that the text of the Covenants had been translated into Norwegian; and that there was growing awareness of the Covenant in the legal profession, including among judges who had easy access to the texts. Various initiatives had been undertaken to teach human rights to law enforcement officials, including the preparation of a textbook on the relationship between the police and human rights. Courses had also been held for lawyers.

#### Self-determination

59. With regard to that issue, members of the Committee wished to know what Norway's position was in relation to the right to self-determination of the Namibian and Palestinian peoples and what measures the Government had taken to prevent public and private support for the apartheid régime of South Africa.

60. In his reply, the representative of the State party said that his Government recognized the right to self-determination of the Palestinian people and had stated that position over the years at the United Nations and recently, with other Nordic foreign ministers, at a meeting held in August 1988. It had also recognized the right to self-determination of the Namibian people and had called for Security Council resolution 435 (1978) to be implemented. As to the prevention of public and private support for the apartheid régime in South Africa, the Norwegian Parliament had enacted a law, in March 1987, prohibiting economic relations with South Africa and Namibia.

#### Non-discrimination and equality of the sexes

61. In connection with that issue, members of the Committee wished to know in which respects the rights of aliens were restricted as compared with those of citizens; what the activities and functions of the Ombudsman for Equal Status between Men and Women were; and whether the procedure provided for under the Act of 12 June 1981 relating to the representation of both sexes in all public committees had led to increased representation of women in public committees. In addition, it was asked what rules governed the administration of a couple's communal assets and whether a married woman had the right to apply to the courts without her husband's consent.

62. In his reply, the representative of the State party said that, although it was not explicitly set forth in the Constitution, aliens were entitled to legal protection on the same footing as Norwegian citizens. However, aliens could not be appointed to higher-level government posts and there were some limitations on their rights to social security, the acquisition of real estate, establishing businesses and exploiting water resources. The new Aliens Act, which had not yet entered into force, contained a new general clause on equality, which stated that aliens had the same rights and duties as Norwegian citizens unless express provision had been made to the contrary. While certain special measures to assist aliens in enjoying their rights had already been taken, such as providing access to education, providing Norwegian language training and helping with housing problems, further steps of an economic and social nature were still necessary.

63. The Ombudsman for Equal Status between Men and Women had general responsibility for enhancing non-discrimination and equality of the sexes. Individuals or groups could complain to the Ombudsman in cases of sexual discrimination, and some 1,000 such cases were dealt with annually. Roughly 1 per cent of such cases were ultimately referred to the appeals board. The representation of women in some public committees had increased but the desired representation might not be achieved until some of the older committees renewed their membership.

64. Replying to other questions raised by members of the Committee, the representative stated that spouses could generally act independently before the courts and in all other areas of life and that they generally managed their own assets.

#### Right to life

65. With regard to that issue, members of the Committee wished to receive necessary additional information on article 6 of the Covenant in accordance with the Committee's general comments Nos. 6 (16) and 14 (23). They wondered that the regulations governing the use of firearms by the police were; whether firearms had been used recently and, if so, under what circumstances; whether any deaths had resulted from such use; and whether investigations had been made and, if so, what the findings had been. Inquiries were also made about the number of persons found guilty of wilful murder and about four cases of police violence. It was also asked whether Norway intended to take measures to regulate the transport and dumping of toxic waste.

66. In his reply, the representative emphasized the importance attached by his Government to the Committee's general comments Nos. 6 (16) and 14 (23). In particular, Norway endeavoured to contribute to the adoption of measures aimed at reducing the existing gap between arms spending and resources for development and advocated the conclusion of a comprehensive-nuclear test-ban treaty. Police officers were generally not armed in the normal course of their duties and used firearms only in exceptional circumstances. In the extremely rare cases where persons had been wounded, an investigation had always been conducted. The four complaints of police violence were not connected with the improper use of firearms, but with rough treatment during arrests. The small amount of nuclear waste in Norway was stored in special storage bins on home territory.

#### Treatment of prisoners and other detainees

67. With reference to that issue, members of the Committee wished to receive clarification of the meaning of section 228 of the Penal Code relating to the omission of punishment for assault that had been provoked by a previous assault or an offence against honour. They also wished to know whether any independent committees had been established pursuant to section 67 of the Criminal Procedure Act of 22 May 1981 and, if so, what the results of their activities had been; why investigations into police misconduct were still in the hands of the police themselves; what the most common complaints against members of the police had been and whether they also related to acts of violence; and what had been the result of any investigations to which such complaints had given rise.

68. Members of the Committee also wished to know whether there were any time-limits governing resort by prison authorities to solitary confinement or the use of security cells; whether there were any safeguards against the abuse of such practices by prison authorities; and whether inmates had any recourse against the imposition of such measures. As regards detention in mental institutions, clarification was requested as to whether a compulsory committal decision was automatically reviewed by the Board of Inspection or only upon specific application for review.

69. In addition, further information was sought regarding time-limits for preventive detention; the circumstances under which the presentation of an arrested person before a judge might be delayed; the placing under special observation of persons suspected of having taken certain substances; the composition and functions of bodies responsible for monitoring prison establishments; the actual practice in respect of appeals against possible abuses by prison staff; measures taken in Norway to compel debtors to meet their obligations; the difference between "arrest" and "custody on remand"; and the legal remedies for members of the armed forces convicted of disciplinary offences.

70. In his reply, the representative of Norway explained that article 228 of the Penal Code was not automatic and only applied to cases where there had been an immediate reaction of an impulsive nature to provocation and where the damage caused was not more serious than that resulting from the original assault. A system of investigating committees had been established in December 1987 to supervise the persons conducting the investigation so that any possible abusive practices on the part of the police could be avoided. That approach had been preferred since investigations required a significant infrastructure and considerable resources and skills, which the police already possessed. Detention in security cells was aimed at preventing a detainee from committing acts of violence against others or causing material damage or serious disturbance in the prison establishment. Resort to that coercive measure could be ordered by the director of the prison on the advice of the prison doctor. There was no time-limit for such detention but reports to the Ministry of Justice had to be made when they exceeded two weeks. All prison inspections were carried out by a prison committee. Prisoners could always file a complaint through administrative channels with the Ombudsman or before the courts. Security detention cells had been used 468 times in 1987.

71. Regarding preventive detention, the representative said that the possibility of setting a time-limit on remand in custody had been considered but was not retained since it was felt that too many exceptions would have had to be made. However, the Code of Penal Procedure had strengthened protection against the risk of prolonged remand in custody and, in any case, the period of detention could not exceed four weeks. An arrested person had to be handed over to the prosecutor's department within 24 hours following arrest and any delays had to be explained in writing. Compensation in criminal cases was set in accordance with the loss of earnings suffered and was often increased to take account of other harm deriving from detention. A new law relating to detention during military service had been enacted in the spring of 1988.

72. Responding to other questions, the representative stated that all prisons and police cells came under the authority of the Ministry of Justice and that the parliamentary Ombudsman and the courts also had the possibility of exercising supervision over prison conditions. Complaints from prisoners were submitted to a Prison Board and prison committees were able to visit prisons without prior announcement to observe living conditions. In cases of compulsory committal, an application for a review could be addressed to the Board of Inspection, which played an active role by verifying the validity of the decision. There had been a decrease in the number of persons in mental hospitals. The number of cases where compensation had been granted was low, owing to the fact that the Public Prosecutor's Office instituted proceedings only after due consideration. The representative also stated that an inmate was placed in a cell when he had taken drugs and refused to undergo a medical examination.

#### Right to a fair trial

73. With regard to that issue, members of the Committee wished to receive further information on any circumstances under which a court might decline to appoint the person chosen by the accused as the "official" defence counsel. In addition, they wished to know whether it was obligatory to have an officially appointed defence counsel; how a detainee could communicate with his lawyer; what the average lapse of time until judgement in criminal cases was; and whether steps were taken to ensure that the detainee was present at his trial. They also wished to receive information on the legal aid system in Norway.

74. In his reply, the representative of the State party explained that the lawyer chosen by the accused was retained as the “official” defence counsel, except in rare cases where it was considered that the choice of the accused might lead to long procedural delays; where the lawyer selected had previously supplied prohibited articles to a detainee client; or where, in cases involving State secrets, there were good reasons for believing that the lawyer in question was not trustworthy. Normally, the lawyer chosen by the prisoner was not challenged unless he was handling too many cases to enable him to plead the client’s case within a reasonable period of time. Officially appointed counsels were chosen from a pre-established list, but a detainee could change lawyers if he so wished. Lawyers were free to visit their clients in prison whenever they wished. The average lapse of time until judgement was two or three months and never more than one year. Concerning the detainee’s presence at his trial, the representative noted that a detainee who had to leave the courtroom for any reason was entitled to be fully informed of subsequent deliberations and of all testimony.

75. Responding to questions relating to the provision of legal aid, the representative explained that the increase in the income requirement had been due in part to compensation for inflation; that there had not been a great increase in the number of persons receiving legal aid; and that in addition to free legal aid there were also insurance schemes guaranteeing payment of court fees, particularly home insurance policies, most of which provided cover for legal costs.

#### Freedom of movement and expulsion of aliens

76. With reference to that issue, members of the Committee wished to receive information on the current status of a bill relating to the admission and sojourn of foreigners and necessary additional information on the position of aliens in Norway, in the light of the Committee’s general comment No. 15 (27). Members also inquired about the situation of the refugees in Norway and asked what their origins were and whether they could acquire Norwegian nationality.

77. In his reply, the representative explained that the Aliens Act had been adopted in 1988, but would not enter into force until certain regulatory provisions had been clarified. Immigration had been limited in Norway since 1975 and was only authorized in the case of family reunification or of refugees. The Constitution applied equally to aliens and Norwegian citizens. An increasing number of refugees and asylum seekers had arrived in the country over the past years; this had created problems and made it necessary to set up new structures. In this context, the representative gave details about the number and origin of aliens residing in Norway, and about the measures taken in favour of immigrants both in the economic and cultural fields.

#### Right to privacy

78. With reference to that issue, members of the Committee wished to know whether the Data Inspectorate had ever denied permission for the establishment of personal data registers; whether the list of categories of “sensitive information” that might be included in data banks was exhaustive; what the precise definition of “personal data” was; whether the new bill regarding illegally obtained access to data banks had been enacted; how many complaints had been made by individuals

covering alleged violations of their right to privacy; and what types of private bodies were licensed to compile and maintain information in data banks. Members also asked whether telephone interception was authorized for any reason other than for investigation of violations of narcotics legislation and whether private homes could be searched in cases other than criminal cases, in particular in connection with public health. Necessary additional information on article 17 in accordance with the Committee's general comment No. 16 (32) was also requested.

79. In his reply, the representative of Norway stated that Norwegian legislation was fully in keeping with the provisions of article 17 of the Covenant; that any interference with privacy or correspondence had to be authorized by law; that persons who had to be searched or medically examined at the request of a public authority were searched or examined by members of the same sex; and that specific articles of the Penal Code guaranteed the defence of the individual's honour and reputation. There had been a number of cases where the Data Inspectorate had refused applications for permission to establish personal data registers.

80. Responding to other questions, the representative of the State party explained that telephone conversations could also be intercepted on grounds of national security; that article 102 of the Constitution regarding inspection of premises had been interpreted as not applying to public health and fire inspections, which were covered by a number of other legal provisions; and that the bill amending section 145 of the Penal Code had actually entered into force.

Freedom of religion and expression: prohibition of propaganda for war and incitement to national, racial or religious hatred

81. With regard to those issues, members of the Committee wished to know what procedures existed for legal recognition, authorization or tolerance of various religious denominations; whether Norway's system of state religion was compatible with the principle of non-discrimination on religious grounds; what measures had been taken to ensure that all shades of political opinion were reflected by the media, and whether the jurisdiction of the Complaints Committee extended to that matter; whether any consideration was being given by the Government to withdrawing its reservation to article 20, paragraph 1, of the Covenant; and whether the advocacy of national, racial or religious hatred had been prohibited by law, in accordance with article 20, paragraph 2, of the Covenant.

82. In addition, it was asked at what age a child could decide whether or not he wished to receive religious instruction; whether teachers were given guidelines for conveying Christian traditions; whether members of the Council of State who professed the official religion of the State could participate in deliberations concerning other religions while members who did not profess the official religion could not participate in discussions relating to the official Church; what the situation would be if the King happened to be a free-thinker, an atheist or a Catholic; and whether there was State funding of education and, if so, what measures were taken to ensure that no discrimination occurred.

83. Some members also wondered how access to government-held documents was ensured; whether there had been an increase in the number of cases where individuals were suing the media and whether there were any plans to amend the legislation in this field; what the composition of the

Norwegian Broadcasting Corporation (NRK) was; whether any measures were in force to prevent the concentration of media power in the hands of a few persons; what the procedures and conditions for granting broadcasting and television licences were; and how complaints about radio and television were dealt with. In addition, it was asked whether conscientious objectors who did national or alternative service in accordance with Norwegian law received the same pay and had the same length of service as those doing military service.

84. In his reply, the representative of the State party explained that there were no procedures for legal recognition, authorization or tolerance of religious denominations and stressed that there was no contradiction between the existence of a state church system and the Covenant's provisions. The requirement of membership of the Evangelical Lutheran Church affected only a very limited subsector of the population and in no way restricted the freedom of religion of the general population. Everyone was free to adopt and profess the religion or belief of his choice and financial support was given to religious communities. A number of measures relating to press freedom had been taken, including the issuance of certain new regulations by NRK; the liberalization of the former state monopoly on local broadcasting; the provision of financial support to newspapers; and the establishment of a specialized institution for providing loans to newspapers. The Government of Norway did not envisage withdrawing its reservation to article 20, paragraph 1, of the Covenant. The advocacy of national, racial or religious hatred had been prohibited by law in accordance with article 20, paragraph 2, of the Covenant.

85. Responding to various other questions raised by members of the Committee, the representative explained that parents could withdraw their children from religious teaching at any age and the child himself could opt out of Christian teaching at school, if he was not a member of the state Church, at the age of 15. All members of the Government took part in decisions on budgetary questions relating to both the state Church and religious minorities and on questions concerning religious teaching in schools. All private schools received the same level of state support and religious societies received financial support from the State corresponding on a percentage basis to that received by the state Church.

86. In addition, the representative noted that conscientious objectors performing civilian national service duties received the same payment and related social benefits as those received by military servicemen; that an Act of 19 June 1970 provided for the right of access to all documents of a general nature possessed by state, country and municipal authorities subject to certain exceptions provided by law; and that politicians had to accept a substantial amount of criticism before they could reasonably argue that their honour or reputation had been violated. The various press organs were controlled by many different groups and there was a reasonable balance between the various shades of opinion. The Broadcasting Council's composition also reflected a wide variety of views.

#### Protection of family and children, including the right to marry

87. With reference to that issue, members of the Committee wished to receive additional information on the type of activities carried out by the Commissioner for Children in promoting the interests of children and wished to know whether there had been any cases of children being subjected to physical maltreatment and, if so, what measures had been taken to prevent such violations of the rights of children. In addition, it was asked whether the elimination of any

distinction between marriage and cohabitation might not lead to a situation in which men and women would be encouraged to cohabit rather than marry; what procedure was followed to obtain permission for persons of unsound mind to marry; what the consequences of raising the age of criminal liability from 14 to 15 had been; what procedure was followed for the rehabilitation of young offenders; and whether slaps and spanking were prohibited practices in Norway.

88. In his reply, the representative of the State party noted that everyone was able to address himself to the Commissioner for Children, who had handled a total of 4,066 complaints during the period 1981-1986. The Minister of Justice had taken several initiatives regarding the problem of children who had been victims of incestuous acts or sexual abuse by their parents or other relatives; at Norway's initiative, the Council of Europe had set up a committee of experts to look into the matter. When Parliament adopted the Act of 8 April 1981 aimed at the elimination of discrimination between children born in and out of wedlock, the great majority of its members had in mind the best interests of the child. Authorization to marry was given to persons of unsound mind in the name of the King by the Minister of Justice in order to ensure that the persons concerned were fully informed of the legal consequences of the marriage. Regarding the changing of the minimum age of criminal liability, the Act amending the Penal Code had not yet entered into force, for it remained to be seen what measures might be taken in the interest of young offenders to save them from having to serve prison terms. Slaps and spankings were prohibited in principle.

#### Right to participate in the conduct of public affairs

89. With regard 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 and what had been the experience in applying provisions relating to the right of foreign nationals to vote in local elections and to hold local office.

90. In his reply, the representative of the State party clarified the various requirements to be elected to the Norwegian Parliament and local Councils, to hold public office and to sit on a court. Sixty-one thousand foreign nationals had been entitled to take part in the local elections in 1987 and some of them had been nominated and elected on the lists of the major political parties.

#### Rights of minorities

91. With reference to that issue, members of the Committee wished to know what difficulties had been encountered by the Government in implementing in respect of the Sami the provisions of article 27 of the Covenant and what was the status of the draft Act "relating to the Sameting (Sami Assembly) and other Sami legal matters". If already established, what activities had the Sameting undertaken thus far? They also wondered what criteria had been applied in drawing up the electoral register and whether the Act contained provisions making it possible to distinguish between Samis and non-Samis.

92. In his reply, the representative of the State party highlighted various provisions of the Act relating to the Sameting of 12 June 1987 and explained that this Act provided for the Sami people of Norway themselves to elect an Assembly whose sphere of activity would comprise all matters affecting the Sami population. The first election would be held in September 1989 and registration



in the separate electorate register would begin in January 1989. It had often been difficult in the past to determine the Sami's own priorities and it was hoped that the Sami Assembly would be able to resolve that problem.

#### General observations

93. Members of the Committee expressed appreciation to the delegation of Norway, placing particular emphasis on the detailed and complete answers given by the delegation to the Committee's questions. They also praised the high quality of the report, which had contributed to the usefulness of the dialogue with the Committee. Members expressed satisfaction with Norway's effort to improve the protection of fundamental rights and freedoms and its readiness to pursue such efforts. However, some members regretted that no bill of human rights had been incorporated into Norway's legal system.

94. The representative of the State party stressed that his Government attached high importance to its dialogue with the Committee. Norway was aware that there was always room for improvement in the human rights situation - a fact that was well demonstrated by the second periodic report itself, which described a number of new measures aimed at promoting human rights that had been adopted since the submission of the initial report.

95. In concluding the consideration of the second periodic report of Norway, the Chairman also thanked the delegation for having participated in an extremely fruitful dialogue with the Committee.

## CCPR A/49/40 (1994)

84. The Committee considered the third periodic report of Norway (CCPR/C/70/Add.2) at its 1270<sup>th</sup> to 1272<sup>nd</sup> meetings, held on 21 and 22 October 1993, and adopted 22/ the following comments:

### 1. Introduction

85. The Committee welcomes the timely submission of the third periodic report of Norway. The report contains detailed information on laws and practices relating to the implementation of the Covenant and is in full conformity with the Committee's guidelines. The Committee appreciates that the State party has envisaged both the report and the dialogue with the Committee as an unbroken continuation of the examination of the initial and second periodic reports. The Committee is also grateful for the oral responses provided by the high-ranking delegation and considers that the dialogue with the State party has been most fruitful and constructive.

86. The Committee thanks the State party for the core document (HRI/CORE/1/Add.6), drawn up in accordance with the consolidated guidelines for the initial part of States party reports to be submitted under the various international human rights instruments (HRI/1991/1).

### 2. Factors and difficulties affecting the implementation of the Covenant

87. The Committee notes the emergence in certain parts of the population of Norway of a trend towards intolerance against foreigners, particularly asylum-seekers and migrant workers. With this exception, the Committee notes that there are no important difficulties affecting the implementation of the Covenant in Norway.

### 3. Positive aspects

88. The Committee takes note, with particular appreciation, of the level of achievement in the respect of human rights in Norway. Among the positive developments that have been realized since the consideration of the second periodic report in 1988, the Committee notes, *inter alia*, the ratification of the Second Optional Protocol to the Covenant on the abolition of the death penalty and the efforts undertaken with regard to the promotion of greater public awareness of the provisions of the Covenant and the Optional Protocols, particularly in the area of human rights education in schools and universities and through the organization of training courses for members of the police and other law enforcement officials. While noting that it is still not possible to appeal against the reversal by the Court of Appeal of an acquittal by a lower jurisdiction, the Committee also appreciates the efforts made towards the withdrawal of Norway's reservation in connection with article 14, paragraph 5, of the Covenant.

89. The Committee notes with satisfaction that independent investigative bodies have been set up to inquire into complaints of offences by members of the police and that their reports have been

—————~~22/~~ At its 2582<sup>nd</sup> meeting (forty-ninth session), held on 29 October, 1993.

followed up by a number of prosecutions. It further commends the devolution of responsibility to the Sami Assembly (Sametinget) with regard to matters affecting the life and culture of members of the Sami community and notes with satisfaction that the Sami language may be used in contacts with public bodies and before the courts.

90. With respect to equality and non-discrimination, developments relating to the granting to foreigners of the right to vote in local elections and to hold local office, as well as legislative steps relating to the registration of partnership of the same sex, are welcomed by the Committee. The continuing improvements in the legal and de facto equality of women and the strengthened measures against domestic violence and sexual abuse of children were also noted with satisfaction.

#### 4. Principal subjects of concern

91. Despite efforts undertaken with regard to the status of the Covenant within domestic law, the Committee regrets that the opportunity has not been taken to fully incorporate the provisions of the Covenant into the Constitution, or otherwise to confer on it a higher status than ordinary legislation. The Committee also notes that certain obsolete laws still exist in Norway, in particular with regard to penal sanctions against defamation.

92. The Committee expresses its concern over the vagueness of the criterion of "compelling social considerations", under which a foreign national's right to choose his or her place of residence may be restricted, and its conformity with article 12 of the Covenant.

93. The Committee emphasizes that article 2 of the Constitution, which provides that individuals professing the Evangelical-Lutheran religion are bound to bring up their children in the same faith is in clear contradiction to article 18 of the Covenant.

94. The Committee notes that the authorities have included multicultural issues in education, but is concerned that they have approached these issues only by reference to articles 2 and 26 of the Covenant. This gives a narrow interpretation of article 27 of the Covenant relating to the rights of persons belonging to minorities. The Committee has observed, in this regard, that the rights conferred under article 27 of the Covenant on individuals who are members of a minority avail all such individuals on a State party's territory and must not, as enjoined by article 2, paragraph 1, of the Covenant, be restricted to nationals.

#### 5. Suggestions and recommendations

95. The Committee recommends that further measures be adopted to repeal outdated provisions in the Constitution or in laws relating to the freedom of conscience and religion or the freedom of expression and bring them into line with the provisions of the Covenant.

96. The Committee recommends that a careful study of the recently enacted amendment to the Criminal Procedure Act be undertaken with regard to the scope of article 14, paragraph 5, of the Covenant, with a view to withdrawing the reservation made in that connection.

97. The Committee recommends that the laudable efforts already made in connection with the

promotion of greater public awareness of the provisions of the Covenant and the Optional Protocols be further pursued.

## CCPR A/55/40 (2000)

66. The Committee considered the fourth periodic report of Norway (CCPR/C/115/Add.2) at its 1785th and 1786th meetings (CCPR/C/SR.1785 and 1786) held on 19 October 1999 and adopted the following concluding observations at its 1796th meeting, held on 26 October 1999.

### 1. Introduction

67. The Committee welcomes the timely submission of the State party's fourth periodic report and its detailed information on laws, other measures and practices relating to the implementation of the Covenant. The Committee also appreciates the further information about developments in the implementation of human rights in Norway subsequent to the submission of the report. The Committee expresses its appreciation for the constructive and open dialogue it had with the Norwegian delegation.

### 2. Positive aspects

68. The Committee commends the State party for its generally positive record in the implementation of the provisions of the Covenant. It notes with appreciation the extensive legislative activity and other measures that have been taken for the promotion and protection of rights recognized under the Covenant since the examination of the third periodic report.

69. The Committee welcomes the adoption of the Human Rights Act under which the Covenant has been directly incorporated into the legal system of Norway and the fact that it prevails over conflicting statutory provisions (art. 2).

70. The Committee also welcomes both the appointment of a new Minister for Development and Human Rights and the new practice of the Government in presenting comprehensive annual reports to the Storting (Parliament) on the implementation and monitoring of human rights. The Committee looks forward to receiving information in future reports on the Plan of Action which is to be forwarded to the Storting on 10 December 1999, and the measures which will be recommended to further enhance the protection of human rights in Norway (art. 2).

71. While noting that the unemployment rate for immigrants is still substantially higher than for the rest of the population, the Committee commends the new legislation and the Plan of Action, both seeking to promote equality in the labour market (art. 26).

72. The Committee appreciates the steps taken to increase the number of women in the judiciary, in politics, and in leading positions both in public institutions and in the private sector, and other measures taken to combat traditional gender concentration in certain professions (arts. 3 and 26).

73. Noting that the Lund Commission uncovered many instances of unlawful telephone-monitoring, the Committee welcomes Law No. 73 of 1999 which after its entry into force on 1 January 2000 will afford the right to compensation to victims, and a general right to

seek information about oneself contained in the records and registers of the Police Security Service (art. 17).

74. The Committee commends the State party for the new system which was implemented in 1998 with regard to the questioning of child victims of sexual abuse in judicial proceedings (arts.14 and 24).

75. The Committee takes note of the positive developments in the field of protecting and promoting the human rights of members of the Sami indigenous people, including the strengthening of the Sami Parliament, measures aimed at promoting the Sami language, the transfer of certain cultural institutions to the Sami themselves, as well as the ongoing legal reform related to lands and resources in Finnmark and other areas with a Sami population. The Committee welcomes the developments to ensure full consultation with the Sami in matters affecting their traditional means of livelihood (arts. 1 and 27).

### 3. Principal subjects of concern and recommendations

76. The Committee notes with concern that pre-trial detention in some cases is used for excessive periods of time. The Committee is also concerned at the extent to which the liberty of persons may be withdrawn by administrative detention. The Committee recommends that the enabling legislation and practice be reviewed with regard to both pre-trial and administrative detention, with a view to guaranteeing full compliance with all provisions of article 9 of the Covenant.

77. The Committee welcomes the partial withdrawal of the reservation to article 14, paragraph 5, but recommends that the State party consider a complete withdrawal.

78. The Committee reiterates its concerns over section 2 of the Constitution which provides that individuals professing the Evangelical Lutheran religion are bound to bring up their children in the same faith. Its inclusion in the Constitution is incompatible with the Covenant. The Committee therefore recommends that section 2 be modified to comply with article 18 of the Covenant.

79. The Committee recommends early action to review and reform laws relating to criminal defamation (art. 19).

80. With reference to the information in the report about alleged lack of proper reaction from law enforcement officials in cases of racial discrimination, the Committee recommends that the situation be thoroughly analysed and requests that further information be made available (art. 26).

81. The Committee remains concerned that while legislative reform work in the field of Sami land and resource rights is in progress, traditional Sami means of livelihood, falling under article 27 of the Covenant, do not appear to enjoy full protection in relation to various forms of competing public and private uses of land. Lawsuits by private landowners leading to judicial prohibition of reindeer-herding and high legal costs for the Sami are a particular concern in the absence of satisfactory legal aid.

82. As the Government and Parliament of Norway have addressed the situation of the Sami in the framework of the right to self-determination, the Committee expects Norway to report on the Sami people's right to self-determination under article 1 of the Covenant, including paragraph 2 of that article.

4. Dissemination of information about the Covenant (art. 2)

83. The Committee requests that Norway's fifth periodic report be submitted by 31 October 2004. 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. The Committee requests that these concluding observations and the next periodic report be widely disseminated in Norway.