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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 40 OF THE COVENANT

Second periodic reports of states parties  
due in 1986

Addendum

NORWAY \*/

[4 January 1988]

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\*/ For the initial report submitted by the Government of Norway, see CCPR/C/1/Add 5; for its consideration by the Committee, see CCPR/C/SR 77 to SR.79 and the Official Records of the General Assembly, Thirty-third session, Supplement No 40 (A/33/40), paragraphs 227-257 For the supplementary report provided by Norway following consideration of the initial report, see CCPR/C/1/Add.52; for its consideration, see CCPR/C/SR 301 and SR.302 and the Official Records of the General Assembly, Thirty-sixth session, Supplement No. 40 (A/36/40), paragraphs 337-379

SECOND PERIODIC REPORT OF NORWAY UNDER ARTICLE 40 OF THE  
COVENANT ON CIVIL AND POLITICAL RIGHTS

1 The second periodic report of Norway is submitted in pursuance of Article 40, paragraph 1 (b) of the International Covenant on Civil and Political Rights and the Human Rights Committee's decision on periodicity (CCPR/C/19/Rev 1) It contains information on the measures adopted and the progress made in the enjoyment of the rights recognized in that instrument, the aim being to complete the information required by the Committee under the Covenant in accordance with the guidelines adopted in July 1981 (CCPR/C/20)

2 To facilitate the examination of part II of the report, reference is made to the initial report of Norway (CCPR/C/1/Add 5), to the supplementary report (CCPR/C/1/Add 52) and to the summary records of the Committee relating to the Norwegian reports (CCPR/C/SR 77, SR 78, SR 79, SR 301 and SR 302) The texts of Acts referred to in the oral reply (SR 79) concerning the initial report and in the supplementary report were enclosed as Annex B Nos 1-30 to Add 52 ("Annex B No ") References to pages of Add 5 and Add 52 relate to the English version

3 A draft of the present report has been submitted to the Norwegian Government's Advisory Committee on Human Rights (cf SR 301, para 20) This Committee, which has 18 members, was established on 7 May 1980 on the initiative of the Ministry of Foreign Affairs, and its members are appointed by that Ministry The Committee is composed of Members of Parliament from various political parties and representatives of government ministries and non-governmental organizations, as well as researchers in the field of human rights In practice, the Committee has served as a contact forum for the pooling of information and for consultation and co-ordination

4 According to its terms of reference, the Committee may take up general problems and current issues It is to contribute to the dissemination of information on human rights, for instance by organizing seminars or stimulating research The Committee may comment upon drafts of Norwegian reports under international human rights conventions In practice, a sub-committee of about five members has been set up to examine the drafts, its membership varying according to the contents of the draft at issue

Part I General

5 Information on the general framework within which the civil and political rights recognized in the Covenant are protected in Norway is contained in Add 5 Part I and SR 79 paragraphs 2 to 5 As mentioned in SR 79, paragraph 3, the Covenant may be invoked before the courts and will indeed be a relevant source of law of considerable weight in the interpretation and application of Norwegian law Some examples are given below Furthermore, a specific section of an Act may explicitly state that the provisions of that Act shall be applied in conformity with international law (cf for instance paras 62 and 66 below)

Part II Information in relation to each of the Articles  
in Parts I, II and III of the Covenant

Article 2

6 In 1977 the Government submitted a White Paper on Human Rights (Report No 93 to the Storting (Parliament) (1976-77) Norway and the international protection of human rights) A copy in English is enclosed (Annex I) According to one of its conclusions (Chapter VII 2 3 p 35), the Government intended to consider whether it could support general information activities concerning human rights This might be effected by means of press and information activities, as well as through support for research and teaching

7 As a follow-up the Ministry of Foreign Affairs gave financial support to a project which was to study the most appropriate kind of research, teaching and information relating to human rights, the most suitable organization of these activities and how to co-ordinate them with international initiatives In the report on the project (NOU 1981 43), it was proposed that a human rights institute be set up This idea was favourably received and, following discussions of a financial and organizational nature, the Norwegian Institute of Human Rights was opened on 1 January 1987 Reference is made to Annex II: "The Norwegian Institute of Human Rights - An Introduction", which gives an account of the background, purpose and organization of the Institute Dissemination of information is one important measure to ensure that effect is given to the rights recognized in the Covenant The establishment of the Institute should consequently be seen in light of Article 2, paragraphs 1 and 2, of that instrument

8 Information on measures adopted to prevent discrimination based on sex, race or other status (cf Article 2, para 1) will be given below under Article 3, Article 20, paragraph 2, and Articles 26 and 27

9 The Government recently submitted a Bill to Parliament proposing a new system relating to the investigation of alleged criminal offences committed by members of the police or the prosecuting authorities (OT prp nr 13 (1986-87)) A person claiming that he has been subjected, for instance, to police violence has reported to the police who have investigated the case under the responsibility and instructions of the Public Prosecutor ("statsadvokaten") As a matter of principle, it has been felt that "the police should not investigate the police", as this system may lead to uncertainty as to whether such investigation is carried out in an objective and efficient manner To dispel any doubts the Government proposed that independent committees be in charge of such investigations A new subsection of Section 67 of the Criminal Procedure Act of 22 May 1981 now reads as follows (inserted by Act No 53 of 12 June 1987, not yet in force)

"In cases concerning the reporting of senior officials or officers of the police or the Prosecution Authority for having committed an offence in the course of their duties, the King may decide that the investigation shall be headed by special investigative bodies in accordance with specific rules The same applies when the prosecuting authority finds that there is a suspicion that an offence has been committed in the course of duty which requires that investigation be instituted in respect of a person as mentioned in the first sentence or when a suspected person

himself requests that an investigation be instituted. The Public Prosecutor shall decide whether to prosecute on the basis of the recommendation of the investigative bodies when the question of prosecution does not come under the King in Council or under the Director General of Public Prosecutions "

10 According to the Bill, each committee will be composed of three members, appointed by the King in Council. The chairman will have qualifications that are equivalent to those of a judge in the Supreme Court; one member must have experience as a counsel in criminal cases; and one member must have experience in investigating criminal matters. There will be at least one committee in each of the nine districts in which there is a Public Prosecutor.

11 A committee will start its work as soon as a claim is submitted that a criminal offence has been committed by a member of the police force or the prosecuting authority in the course of duty. It may instruct the police as to how to conduct the investigation. Witnesses will normally be questioned by the committee itself. On the basis of its investigation, the committee will submit its report to the Public Prosecutor, who will decide whether there are grounds for bringing an indictment.

12 No mention was made in the Bill of the Covenant or other international human rights instruments, but it may nevertheless be viewed in the context of Article 2, paragraph 3 (a), relating to "an effective remedy notwithstanding that the violation has been committed by persons acting in an official capacity".

13 The obligation "to give effect to the rights" also raises the question of free legal aid. Act No 35 of 13 June 1980 relating to Free Legal Aid replaced previous laws and regulations and established the principle that this responsibility should rest with the State and not with the municipal authorities at the county level. The system would still be based on two arrangements: free legal advice (before a case is brought before the courts) and free legal counsel (i.e. lawyers' fees and court costs in connection with a lawsuit). The current text of the Act is enclosed (Annex III).

14 The income of the person concerned determines whether he is eligible for free legal aid (cf. Section 8). According to current regulations, free legal aid is granted to private individuals whose net income is

- under NOK 60,000 without dependants
- under NOK 70,000 with one dependant
- under NOK 80,000 with several dependants (e.g. spouse and children)

It is also a requirement that the person's net assets amount to less than NOK 100,000. His gross income must not exceed NOK 120,000. This is normally based on the latest tax assessment (1 USD = ca. NOK 6.70 as per July 1987).

15 In pursuance of Section 9 of the Act, the Ministry of Justice may determine the amount of the client's own contribution ("egenandel"). According to the regulations, the client must pay a part of the lawyer's fee if the client's net income exceeds NOK 40,000. This limit is raised by NOK 10,000 for persons who actually support a spouse or others, and when account is to be taken of the financial circumstances of the spouse or

others For clients who support both a spouse and children, the limit is NOK 55,000 Again the amount is based on the net income at the latest tax assessment A fixed charge of NOK 600 and a proportional charge of 20% of the total costs are payable by the client The proportional charge is to be computed on the basis of the difference between the lawyer's fee and the basic fixed charge

16 Experience has shown that the expenditures per annum have been considerably higher than the estimates made when the Act was passed In 1983, for instance, the operation of the legal aid scheme amounted to NOK 63,694,942, i e NOK 14 million more than was envisaged for that year This was due partly to an increase in the lawyers' fees as fixed by the State, and partly to the fact that the service granted in each case was generally more extensive than envisaged Furthermore, the client's own contribution reduced public expenses less than was originally estimated For these reasons the material conditions for granting legal aid were somewhat restricted by Act No 97 of 21 December 1984, which entered into force on 1 February 1985 Free legal advice is now given in certain kinds of cases when it is necessary and reasonable that the public treasury grant such assistance (cf Sections 13 and 18) As regards legal counsel, it has been added in Section 18 that particular regard shall be paid inter alia to the personal circumstances and welfare of the client

17 Since 1 August 1981, anyone who has been a victim of rape (or attempted rape) has the right to a lawyer, cf Chapter 9 (a) of the Criminal Procedure Act (cf Annex V) The police shall inform the injured party (in practice the woman) of this right The counsel is paid by the public treasury The Court will appoint the lawyer desired by the complainant unless this would lead to a considerable delaying of the case or the circumstances otherwise make it advisable (Section 107 (b)) The counsel shall look after the complainant's interests in connection with the investigation and main hearing of the case He shall also give her such additional assistance and support as is natural and reasonable in connection with the case The lawyer shall be notified of and entitled to be present at the interrogation of the complainant by the police and the court He may protest against questions that are not relevant or that are put in an improper manner Reference is made to Section 107 (c)

18 The purpose of the system introduced in 1981 is to reduce the psychological effects of rape etc by assisting the complainant during the investigation and court proceedings There is reason to assume that the number of cases reported to the police is less than the real figure for incidence of rape, and that many women hesitate to contact the police because the investigation of matters of such a sensitive nature may be experienced as difficult and even painful From the point of view of the Covenant the system of lawyers for persons who are the victims of rape may be viewed as a step to give effect to Article 7 (cf Article 2, para 2)

### Article 3

19 Act No 45 of 9 June 1978 relating to Equal Status between the Sexes entered into force on 15 March 1979 Reference is made to SR 79, paragraph 8, and Annex B No 29 A new provision (Section 21) was added by Act of 12 June 1981 relating to the representation of both sexes in all public committees In terms of the Covenant this amendment should probably be seen in connection with Article 25 The current wording of Section 21 is enclosed (Annex IV)

20 According to Section 21, any public body setting up committees, boards etc shall make an effort to ensure the greatest possible equality as regards the representation of both sexes. The committees shall consist of women and men, and if they are composed of at least four members, there shall be at least two members of each sex. The enforcement of these requirements at the municipal and county level is left with the Ombud for Equal Status between Men and Women, who receives reports about the committees set up. On that basis the Ombud may express an opinion to the appointing or electing body, as to whether or not the requirements under Section 21 have been observed. Private individuals being of the opinion that there is, in a concrete case, a non-compliance with Section 21 may also address the Ombud. He does not, however, have to enter into an assessment of the composition of the committee in question.

21 At central government level (i.e. committees set up for instance by the King in Council or by a Ministry), it is the responsibility of the Ministry of Consumer Affairs and Government Administration to enforce the Act according to provisions similar to those contained in the Act.

22 When the Act relating to Equal Status between the Sexes was passed, a new provision was inserted in Section 1 of the Marketing Control Act of 16 June 1972

"An advertiser and anyone who creates advertising matter shall ensure that the advertisement does not conflict with the inherent parity between the sexes and that it does not imply any derogatory judgment of either sex or portray a woman or man in an offensive manner."

The inclusion of this provision implies that advertisements which may be regarded as a breach of the principle of equality are under the surveillance of the Consumer Ombudsman, as prescribed in Chapter 3 of the Marketing Control Act. When he becomes aware of dubious sales and advertising methods he shall negotiate and seek to reach a solution on the basis of a voluntary agreement. If this proves impossible, the Consumer Ombudsman may submit the matter to the Marketing Council and demand that an injunction be issued against the methods in question.

#### Article 4

23 There is nothing to report on in connection with this provision. See Add 5, page 3, SR 77, paragraph 37, SR 78, paragraphs 1 and 17, SR 79, paragraph 10 and Annex B No 16.

#### Article 6

24 As stated in SR 79, paragraph 11, Add 52, pages 1-2 and SR 301, paragraphs 2 and 3, the death penalty has been abolished not only in peacetime, but in wartime and war-like situations as well. On 28 April 1983 Norway signed Protocol No 6 to the European Convention on Human Rights concerning the Abolition of the Death Penalty, which prohibits capital punishment in peacetime. The Protocol will be ratified in the course of autumn 1987/spring 1988 when Parliament has consented to ratification.

25 As regards the problems referred to in SR 77, paragraph 5, and SR 79, paragraph 12, the following supplementary information may be given

<u>Infant mortality</u> (1985)	<u>Male</u>		<u>Female</u>	
	Number	%	Number	%
Under 1 year	286	1 1	166	0 8
Between 1 and 4 years	56 )		41 )	
"    5    "    9    "	35 )	0 6	30 )	0 4
"    10   "    14   "	46 )		18 )	
<u>Life expectancy</u> (1984/85)	Men	72 8 years	Women	79 5 "

As regards criminality, 36 cases of wilful murder were investigated in 1985, whereas 34 persons were convicted. There were 14 incidents of negligent murder, and 16 cases were under investigation in 1985

26 Since 1980, there has been a sharp increase in the number of people killed and injured in traffic accidents in Norway, and accident prognoses up to the year 2000 have been alarming. To check this trend, the Government allocated NOK 9,500,000 in the autumn of 1986 for an extraordinary police campaign against traffic accidents

Large-scale police control of the roads combined with a consistent response to traffic offences resulted in a considerable reduction in the average speed all over the country, to the level of five years ago. A positive change was registered in the traffic picture. Studies showed that, as a result of the police efforts, accidents involving personal injury were reduced by about 700. It was also calculated that, without the campaign, there would have been 20 more fatal accidents

In 1987, the Government allocated NOK 21,500,000 for the police's traffic efforts. Considerable funds have been earmarked for nationwide and local traffic campaigns. Thus far the police effort has received considerable media coverage, which has in turn reinforced the effectiveness of the campaign

#### Article 7

27 Reference is made to Add 5, page 3, SR 77, paragraphs 6, 27 and 38, SR 78, paragraphs 5 and 12, SR 79, paragraph 13, Add 52, pages 2-3, SR 301, paragraphs 4-16. See also paragraphs 9-12 above

28 On 9 July 1986 Norway ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. No amendment of internal legislation was necessary before its ratification. The Government also recognized the Committee's competence under Articles 21 and 22

29 The term "torture or cruel or degrading treatment or punishment" is not employed as such in Norwegian legislation. But the general provisions of the Penal Code of 22 May 1902 are applicable also to acts which may possibly fall within the scope of Article 7. By way of illustration, mention may be made of the Supreme Court judgement of 4 May 1984 (Norsk Retstidende (Rt)) 1984, pages 581 et seq), according to which a policeman was fined NOK 1,000

under Sections 228 (assault, cf para 30 below) and 325, subsection 3 (improper conduct of a civil servant during the performance of his official duty) He had, while in charge of the police station, struck a person in custody four or five times after the latter had spit in his face

30 Section 228 of the Penal Code reads as follows

"Anyone who commits violence against another's person or otherwise harms him bodily, or is accessory thereto, shall be punished for assault by fines or imprisonment up to six months

If the assault has resulted in injury to body or health or considerable pain, imprisonment for up to three years may be imposed, but up to five years if death or serious injury results

If an assault is retaliated with another assault or provoked by a previous assault or offence against honour, punishment may be omitted Public prosecution shall not be initiated except at the request of the victim unless the offence has resulted in death or prosecution is required in the public interest "

Section 229 provides for imprisonment for up to three years (or in grave cases up to eight years) in cases of infliction of bodily injury The rule concerning public prosecution is the same as that in Section 228, fourth paragraph

31 It is difficult to determine the incidence of violence and other kinds of maltreatment of spouses or cohabitants ("samlivspartner") There is reason to believe that official statistics do not give the full picture, particularly because the injured party (in practice usually the woman) hesitates to report to the police And even if the police are informed of the offence, it is not uncommon that the woman is unwilling to initiate public prosecution or withdraws her request once investigation has been initiated Even if the prosecuting authorities may nevertheless decide to pursue the case because it is "required in the public interest", experience shows that such cases are seldom brought before the courts The Government therefore recently submitted a Bill to Parliament proposing new provisions relating to public prosecution in cases of maltreatment of a present or former spouse or cohabitant, cf Ot prp nr 79 (1986-87)

32 According to the bill, the prosecution of assaults or injuries committed against spouses (cohabitants) will no longer depend upon a request by the victim or upon public interest, but will be subject to "unconditional" public prosecution ("ubetinget offentlig påtale") This implies that irrespective of an initiative on the part of the victim, the prosecuting authorities will issue an indictment unless they consider, on the basis of an overall assessment, that there are particularly strong reasons that militate in favour of not pursuing the matter

33 The same change is proposed in respect of the maltreatment of children In many ways this group is particularly vulnerable, and it is important that society in its legislation demonstrate that offences against children are extremely deplorable The proposed addition to the fourth paragraph of section 228 of the Penal Code reads as follows



"If the offence is committed against a former or present spouse or cohabitant of the offender, however, public prosecution shall unconditionally be initiated. The same applies if the offence is committed against a child of the offender or a child of the offender's spouse or cohabitant."

A similar amendment is proposed to Section 229 of the Penal Code

34 The Bill does not contain reference to any human rights instruments. In the context of this report, the proposed reform may, however, be viewed in the light of legislative measures aimed at ensuring the effective observance of the prohibition of cruel, degrading and inhuman treatment, cf. Articles 2 and 7.

35 The rules regarding contact with other inmates and use of single rooms have been amended in relation to the account given in Add 52.

The general rule that persons remanded in custody are to be kept in single rooms for the first 14 days has been dispensed with. In a circular of 10 October 1985 issued by the Central Prison Administration, Section 82 of the Prison Regulations was amended to read as follows:

"Inmates shall be permitted to have contact with fellow inmates in accordance with the provisions of Section 53.

Inmates who have not yet been sentenced by a court to imprisonment shall be permitted to have contact with other inmates only if the police consent thereto. The same applies to inmates who are subject to a court injunction prohibiting them from receiving visitors or sending and receiving letters.

Such measures as are mentioned in the last sentence of Section 53 7 shall be taken by the police.

Inmates are not allowed to be outside the closed-in area of the prison without special supervision. They may not be granted day release (for the purpose of studying or working) furlough, etc."

The wording of the first paragraph implies that persons who are remanded in custody shall have the same right to contact with other inmates as convicted persons.

36 In amendments to the regulations, the conditions for restricting an inmate's contact with others were tightened, at the same time as Section 53 was made less discretionary. A decision to restrict or prohibit an inmate's general right to contact with other inmates may now be made only when this is necessary because of prison staff or facilities, when the inmate himself so desires, or when an inmate has a negative influence on the other inmates. Apart from this, an inmate's right to contact with other inmates may be restricted when this is necessary to preserve peace and order in the prison. Inmates may be excluded from contact with others when this is necessary in order to prevent bodily harm or considerable damage to property, to prevent criminal acts, to reduce a particular danger of escape, or to prevent serious deterioration or disturbance of the contact between the inmates. Any measures that are instituted shall be kept under continuous review and must not be

continued any longer than necessary. An inmate who has been excluded from contact with other inmates shall be visited several times a day by a prison officer. He shall also be attended to by a physician as soon as possible after the measure has been implemented, and at regular intervals thereafter.

37 The use of security cells (not mentioned in Add 52) is a coercive measure, and is governed by "Rules concerning the use of coercive measures and weapons", laid down by Royal Decree of 22 April 1960. These rules were amended and made more stringent by Royal Decree of 25 January 1985. Security cells may be used to prevent bodily injury, considerable damage to property or serious disturbance of the facility. As far as possible, the use of security cells shall be decided by the director of the prison. The prison doctor shall be consulted in advance if possible. In all cases, he shall be notified as soon as possible so that he can give advice as to how the matter should be dealt with subsequently. Like other coercive measures, security cells may only be used when absolutely necessary, and when other, less severe measures have been tried in vain or would obviously prove inadequate. Security cells, or so-called "bare cells" are used relatively seldom in practice.

#### Article 8

38 Section 14 of the Act of 27 February 1932 relating to temperance committees and measures (cf. Add 5 concerning Article 8 and SR 79, para 15) is not applied in practice.

#### Article 9

39 Reference is made to Add 5, pages 4-5, SR 77, paragraphs 12, 20, 28 and 38, SR 78, paragraph 13, SR 79, paragraphs 16-17, Annex B, Nos 3 and 30 to Add 52 and SR 301, paragraphs 18 et seq.

40 Since the examination of Norway's supplementary report, the Act of 1 July 1887 (with subsequent amendments) relating to Judicial procedure in Criminal Cases has been replaced by Act No 25 of 22 May 1981 (the Criminal Procedure Act), which entered into force on 1 January 1986. Excerpts of the Act which are relevant to Articles 9 and 14 of the Covenant are reproduced in Annex V of the present report.

41 The new provisions relating to arrest ("paqripelse") and custody in remand ("varetektsfengsling"), cf. Sections 171 to 191 in Annex V, are generally the same as previously (cf. Sections 228 to 245 in Annex B, No 3). Consequently, it is always up to a court to decide whether a person should be kept in custody. The decision of a court of first instance may be brought before the Court of Appeal and finally decided by the Appeals Selections Committee of the Supreme Court. Sections 171 to 174 stipulate the material grounds for arrest and custody (Section 184), and the Act also contains detailed provisions relating to the procedure to be followed in these cases.

42 Some amendments should be highlighted in relation to Article 9, paragraph 1.

- Section 171 now states that a person may only be arrested or remanded in custody provided that he is suspected of having committed an offence carrying a penalty which is more severe than six months' imprisonment. Previously there was no explicit requirement relating to the maximum penalty prescribed for the offence.

- Section 174 establishes the principle of proportionality as a condition of detention (former Section 228 i f ) It is now explicitly stated that persons under 18 years of age shall not be arrested (or remanded in custody, cf Section 184), unless this is especially necessary ("saerlig pakrevd")

- According to the 1887 Act, arrest was effected "pursuant to decision by the court, or, if this cannot be waited for without risk, an order from the prosecuting authority" In practice, almost all decisions on arrest were taken by the prosecuting authority During the preparatory legislative work it was felt that this discrepancy between the wording of the Act and current practice should be eliminated Section 175 now provides that arrest shall be decided by the prosecuting authority, unless the suspected person is abroad and a request is to be made for his extradition, or if the circumstances otherwise so indicate ("eller dersom forholdene ellers tilsier det") Consequently, the prosecuting authorities will have the responsibility in cases of arrest, whereas the court will have the competence to review their decisions when deciding (normally the next day, cf below) whether a person shall be remanded in custody

- If the court decides that the person concerned shall be remanded in custody, it shall fix a period which shall be as short as possible, not exceeding four weeks, unless the nature of the investigation or other special circumstances so require, cf Section 185 The time-limit may be prolonged for new periods of four weeks If the prosecuting authority requests a prolongation, it shall indicate when the investigation will be terminated The accused has the right to be present also during the court hearing relating to the question of prolongation

- In conformity with the 1887 Act, Section 187 (a), provides that a person who has been deprived of his liberty shall be released as soon as the court or the prosecuting authority finds that the grounds for custody cease to exist or when the stipulated time-limit expires

43 It follows from Section 177 that a person who is arrested shall be informed, at the time of his arrest, of the reasons therefore, cf Article 9, paragraph 2 Reference is also made to Section 184 (a), under which the court shall inform the accused of the charge and the implications of the prosecuting authorities' request that he be placed in custody A decision to this effect shall contain reasons, cf Section 184 second paragraph

44 In relation to Article 9, paragraph 3, it should be noted that the person concerned shall be brought before the court as soon as possible and as far as possible the day after he is arrested, cf Section 183 If he has not been brought before a judge the following day, the reasons for this shall be entered in the court records According to the provision, Section 149 of Act No 5 of 13 August 1915 relating to the Courts of Justice does not apply, i e that the court shall also meet on Saturdays This was not general practice under the 1887 Act

45 According to Section 181, the prosecuting authority may decide not to arrest the person concerned provided that he promises to appear in person before the police at specified times or not to leave an assigned place of abode He may consent to handing over his passport, driving licence etc His promise and consent shall be given in writing The suspect may bring the

maintenance of measures imposed according to this provision before the court. Under Section 188, the court may order the measures stipulated in Section 181. It may also decide that deprivation of liberty shall be substituted by the furnishing of security through deposit of money etc.

46 As regards the right of the accused to have a defence counsel and his right to communicate with the latter when he is remanded in custody, see the information submitted under Article 14.

47 In SR 79, paragraphs 15 and 17, mention was made of Chapter 33 (not 32) of Act No 6 of 13 August 1915 relating to Judicial Procedure in Civil Cases, which was enclosed as Annex B, No 8.

Chapter 33 was inserted into the Act in 1969 and gives the courts wide competence to control administrative decisions concerning deprivation of liberty and other enforcement measures. The provisions are applicable in respect of decisions taken in pursuance of

- Act of 29 April 1961 relating to Mental Health Care (cf Annex B, No 21). Examples: Committal to hospital without the patient's consent or refusal of a request to be discharged from hospital;
- Act of 17 July 1953 relating to Child Welfare (cf Annex B, No 18). Example: Decision to assume custody of a child and to remove it from its home,
- Act of 26 February 1932 relating to Temperance Committees and Measures to Prevent the Use of Alcohol and Other Intoxicating and Tranquillizing Substances (cf Annex B, No 12). The competence under this Act is seldom used in practice.

48 Given the importance of cases relating to deprivation of liberty, Chapter 33 contains provisions which depart from the general rules of procedure and extend the competence of the courts. The court shall as far as possible expedite the case (Section 477). An appeal against a decision of the District or City Court shall be lodged directly with the Supreme Court (Section 485). The courts may try all aspects of the case and shall not be bound by the parties' contentions or allegations (Section 482). The State shall cover all costs in the case (Section 483). A Supreme Court judgement of 12 June 1981 (Rt 1981, pp 171, et seq), in which reference is made to Articles 7, 9 and 10 of the Covenant, is enclosed (Annex VII) as an example of the judicial control provided for in Chapter 33.

49 Before the person concerned takes advantage of the judicial control provided for in Chapter 33, he may appeal to a higher administrative authority in conformity with Chapter VI of the Public Administration Act of 10 February 1967 (cf Annex B, No 24). Under the Mental Health Care Act, a special system of review has been set up. Decisions taken by the Medical Superintendent are subject to review by a Board of Inspection. The Board is composed of a judge, a doctor and two other members (Section 8). In this context it is of particular importance that the Board may reverse decisions of the Medical Superintendent concerning compulsory committal of a person to hospital or refusal to discharge him. If the Board agrees with the Superintendent that the person shall be deprived of his liberty, the patient may bring the case to court in accordance with Chapter 33 (cf Article 9, para 4).

50 According to available statistics, there were approximately 5,600 compulsory committals in 1979 (of a total of 13,300 admissions), and approximately 3,300 compulsory committals in 1984 of a total of 10,700

In 1976, the Board of Inspection reviewed 76 cases. In 1984 the figure was 160, whereas 348 cases were reviewed in 1986. The percentage of decisions that are reversed has remained fairly constant (10-12%)

51 In connection with Article 9, paragraph 5, it should be noted that the provisions relating to compensation in criminal cases in Annex B, No 30 have entered into force (see para 79 below). Compensation for unlawful deprivation of liberty in other cases will be decided upon in accordance with general principles of compensation. There are few cases in which the courts have found that the committal to or retention in mental hospital was unlawful and consequently decided that compensation should be granted.

#### Article 10

52 See Add 5, page 5, SR 77, paragraphs 6 and 38, SR 79, paragraph 18, Add 52, pages 4-5, SR 301, paragraphs 18 and 26-33

53 A new section (Section 30 (a), cf Annex VII B) providing for measures for discovering drug abuse in the prisons was added to the Prison Act by the Act of 8 June 1979. These provisions apply both to persons remanded in custody and to convicted prisoners.

If there are concrete reasons for suspecting an inmate of having used an intoxicating or tranquillizing substance, the prison director may decide that a urine test, a breath test, or other examination may be performed which does not involve any appreciable risk or discomfort to the inmate. If particular conditions in the facility so indicate, the director may decide that urine specimens shall be taken of the inmate, either as spot checks or on a regular basis. Before such specimens are taken, the consent of the Central Prison Administration shall be obtained if possible. Spot checks and regular checks are resorted to very infrequently. In addition to the tests prescribed in Section 30 (a), of the Prison Act, a considerable number of "voluntary" urine specimens are taken every year. Such tests are taken on the basis of agreements made with the inmates in connection with the granting of certain benefits, e.g. furlough.

54 If there is particular reason to suspect an inmate of having taken an intoxicating or tranquillizing substance, the director may, after having consulted a physician, decide that the inmate shall be given a physical examination or be subjected to some other measure in order to find the substance. If it is possible from a practical point of view, the consent of the Central Prison Administration shall also be obtained. The examination may only be performed by health personnel. If the inmate refuses to allow himself to be examined, the director may decide that he is to be placed in a single room under supervision until it can be determined whether he has taken drugs.

A record shall be kept of all examinations and measures decided by the director in accordance with Section 30 a, of the Prison Act, and the Central Prison Administration shall be notified immediately of all such measures.

55 As regards the treatment of persons who are deprived of their liberty in connection with mental health care, the tendency in the 1980s has been towards more decentralized psychiatric care. This has involved the closing down of large institutions and the establishment of more facilities for caring for patients in their own community. A better standard of living, more specialization in the various treatment units and more personnel have made it possible to improve treatment facilities for those patients who have been admitted to institutions.

#### Article 11

56 During the examination of Norway's initial report, one member of the Committee noted that the report made no reference to Article 11, which he assumed was being observed (SR 77, para 12 1 f). This assumption is correct. Imprisonment as a result of inability to fulfil a contractual obligation ('qjeldsfengsel') was abolished by the Act of 3 June 1874.

#### Article 12

57 This provision has been dealt with in Add 5, page 5, SR 77, paragraph 38, SR 78, paragraph 14 and SR 79, paragraph 19. The texts of relevant legislation are contained in Annex B, Nos 5 (a) (Act of 18 August 1914 relating to Defence Secrets), 14 (a) (Act of 7 March 1940 relating to Admittance to certain areas), 19 (the Aliens Act of 27 July 1956) and 25 (Royal Decree of 9 February 1968 relating to zones in Norwegian waters which are prohibited for foreign non-military ships).

58 In a Bill relating to the admittance and sojourn of foreigners (cf para 62 below) which was recently submitted to Parliament, an amendment relating to the scope of a work permit may be viewed in light of Article 12. According to the present regulations and practice under the Aliens Act of 1956, the first work permit obtained only applies in the Police District in which it is granted. Even if an alien may travel to other parts of the realm, it follows from the work permit that he only has the right to reside in that district. According to Section 7 of the Bill, however, a work permit will entitle the alien to reside anywhere in the entire realm, unless restrictions are laid down in conformity with the draft Act or regulations issued in pursuance of that Act. According to the travaux preparatoires, aliens having permission to work on fixed installations (for instance drilling platforms) in the North Sea will not automatically be given the right to reside in Norway. The right freely to choose one's residence may also be restricted for reasons of national security, but such restrictions are seldom applied in practice.

#### Article 13

59 Reference is made to Add 5, page 5, SR 77, paragraph 38, SR 78, paragraphs 6 and 14, SR 79, paragraph 20, SR 301, paragraphs 46 and 53 as well as Annex B, Nos 19 (Aliens Act of 27 July 1956), 22 (Act of 22 June 1961 relating to the Ombudsman for Administration) and 24 (Public Administration Act of 10 February 1967).

60 It follows from the information submitted to the Committee that an alien may only be expelled in pursuance of a decision made in accordance with the Aliens Act. In accordance with the Public Administration Act, Sections 16 and 17, he is entitled to submit reasons against his expulsion. Under

Chapter VI of that Act he may lodge an appeal with a higher administrative authority. The alien has the right to be represented by a lawyer or another person at all stages of the administrative proceedings. He may also bring the case before the Ombudsman and the courts.

61 When the police decide that an alien shall be expelled, the question arises whether he may stay in the country while his complaint is being considered by a higher administrative authority or even during court proceedings. According to Section 20 of the Aliens Act, a complaint has a postponing effect if it is lodged within 48 hours after the alien was acquainted with the decision. In other cases the question of suspensive effect is decided according to the Public Administration Act Section 42 (cf Annex B, No 24). This implies that the subordinate instance, the appeals instance or other superior agency (i.e. the Ministry of Justice) may decide that the administrative decision shall not be implemented until the time-limit for appeal has expired or the appeal has been decided. If the alien intends to bring the case before the court, the above-mentioned organs may delay the implementation until final judgement has been rendered. An alien facing an administrative decision to the effect that he must leave Norway may also request the court to order that he be allowed to stay in the territory as an interim measure as long as the case is pending before it. The court may issue such an order ("midlertidig forføyning") provided that the alien's claim to stay seems to be well-founded ("qjøres sandsynlig", cf Sections 262 and 248 of the Act of 13 August 1915 relating to the Enforcement of Civil Claims).

62 As mentioned in SR 79, paragraph 20 and SR 301, paragraphs 34 and 46, the Aliens Act has been studied by a committee which submitted its report in 1983 (NOU 1983 47). On that basis the Ministry of Justice has prepared a Bill which was submitted to Parliament in Spring 1987 (Ot prp no 46 (1986-87)). These documents refer to international instruments and Section 4 of the Bill reads as follows:

"The Act shall be applied in conformity with the international rules by which Norway is bound when the purpose of the said rules is to strengthen the position of aliens."

As indicated in paragraph 6 above, this provision implies that for instance the Covenant will be a legal argument of decisive relevance and weight before Norwegian courts. According to its travaux préparatoires, the Act shall be set aside by the courts if its implementation will lead to a result which is incompatible with Norway's international commitments.

63 The provisions of Chapter 5 of the Bill relate to the refusal of entry and expulsion of aliens, whereas Chapter 6 regulates the procedure and the question of suspensive effect of appeal proceedings. The sections which are relevant under Article 13 of the Covenant are reproduced in Annex VIII to the present report.

#### Article 14

64 This provision has been dealt with in Add 5, pages 5-6, SR 77, paragraphs 6, 13, 20, 28, 29 and 38, SR 78, paragraphs 4, 6 and 14, SR 79, paragraph 21, Add 52, pages 5-12, Annex B, Nos 3 and 30, SR 301, paragraphs 34, 40-43, 45, 47-50, 52-53, SR 302, paragraphs 1-6.

65 As mentioned in paragraph 40, the Criminal Procedure Act of 22 May 1981 has replaced the Act of 1887 (with subsequent amendments) Moreover, in pursuance of Section 82 the King in Council has issued a Royal Decree of 28 June 1985 (which entered into force on 1 January 1986) relating to the organization of the Public Prosecution Authority ('pataleinstruksen' - hereinafter referred to as "the Decree") Relevant provisions of the Act and the Decree are enclosed in Annex V and VI, respectively

66 According to Section 4 of the Act, its provisions shall apply subject to such limitations as are recognized in international law or which derive from any agreement made with a foreign State This provision reiterates the principle set out in Section 5 of the 1887 Act and implies inter alia that article 14 of the Covenant is directly applicable to criminal proceedings

67 As mentioned in Add 5, page 5, the principle of presumption of innocence (Article 14, para 2) is an integral part of customary law

68 Section 8-1 if the Decree provides that prior to the police interrogation, a suspected person shall be informed of the nature of the case and of any charge against him, cf Article 14, paragraph 3 (a), and that he is not obliged to make a statement Section 90 of the Act contains a similar rule when the accused attends the court for the first time As regards the right to information in cases of arrest and custody in remand, reference is made to paragraph 43 above According to Section 2-8 of the Decree, a decision as to whether to prosecute shall be translated into a language which is comprehensible to the person charged Furthermore, documents shall be translated at the expense of the public treasury to the extent required to look after his interests In case of disagreement between the counsel and the Prosecution Authority, the question may be decided by the Court Any interpreting required during the police interrogation and conversations between the accused and his defence counsel are also paid for by the State

69 There is no explicit general provision in Norwegian law that is worded as Article 14, paragraph 3 (b) However, it follows from the unwritten principle of contradiction (audiatur et altera pars) and specific provisions that the accused shall have adequate time and facilities for the preparation of his defence Before the police interrogation he shall be informed of his right to be assisted by a defence counsel, who has the right to be present during the questioning of him (Sections 8-1 and 8-4 of the Decree) If he is arrested, he has the right to consult with the counsel before the court hearing relating to custody in remand When he is in custody, he is entitled to uncontrolled oral and written communication with an officially appointed defence counsel (Section 186 of the Act)

70 The lapse of time until the determination of the charge, cf Article 14, paragraph 3 (c), may vary according to the complexity of the case, the work-load of the police, the defence counsel and the court etc Section 275 of the new Act emphasizes that the Court shall as soon as possible (normally within two weeks) fix the time and place of the main hearing

71 As regards Article 14, paragraph 3 (d), the person charged has the right to be present during the court hearing, cf Section 280 of the Act If he is not present, the main hearing may nevertheless take place (Section 281) if the Prosecution does not propose more than one year of imprisonment, provided that he has consented that the proceedings take place in his absence, he has



escaped or has no valid reason to be absent. However, in the last-mentioned situation the case may be re-opened if it is likely that he had valid reason and that he cannot be blamed for not having informed the court in due time (Section 282). When the court finds that the case must be dismissed or that the person charged must be acquitted, the main hearing may always take place in spite of his absence (Section 281).

According to Section 284, the Court may decide that a person charged shall leave the room when there is special reason to believe that another accused or a witness will not make a complete statement in his presence. The person charged shall then be informed of the proceedings conducted in his absence (Section 245). As regards proceedings in the Supreme Court (cf. Add 52, p. 9), reference is made to Section 353.

72 The right of an accused person to be defended through legal assistance of his own choosing is stated in Section 94 of the Act and Section 8-1 of the Decree. Reference is also made to Section 102 of the Act, which provides that the Court shall normally appoint as "official" defence counsel the person chosen by the accused. (The system of officially appointed defence counsels and its underlying reasons were explained in SR 301, para. 53.) Section 94 also provides that the person charged shall be informed of his right to legal assistance of his own choosing. On this point the bill refers to Article 14, paragraph 3 (d) of the Covenant (Ot, prp no 35 (1978-79), p. 130).

73 The right to a defence counsel at the public expense was extended with the new Act. According to the 1887 Act, there was an exception from this right in cases of misdemeanors ("foreseelser"), i.e. offences for which the penalty may not exceed three months. This general exception has now been repealed. The rather detailed rules regulating when the accused must have a counsel (and therefore does not have to cover the expenses) are reproduced in Annex V (Sections 96-100).

74 Sections 265 to 267 regulate the right of the person charged to submit evidence, such as witnesses, cf. Article 14, paragraph 3 (e). He also has the right to examine, or to have examined, the witnesses against him, cf. the unwritten principle of audiatur et altera pars.

75 The right to an interpreter in court hearings, cf. Article 14, paragraph 3 (f), follows from Section 135 of the Act of 13 August 1915 relating to the Courts of Justice.

76 Section 8-2 of the Decree contains general rules about the way in which the police interrogation shall be conducted. It shall take place in a suitable manner in order to obtain a coherent account of the matter to which the charge relates. The accused shall be given an opportunity to refute the grounds on which the suspicion is based and to plead the circumstances that tell in his favour. In particular, promises, false information, threats or coercion must not be used, cf. Article 14, paragraph 3 (g). A similar provision applies to the court's investigation, cf. Section 92 of the Act.

77 As regards Article 14, paragraph 4, reference is made to the information submitted under Article 24 below. Moreover, the new Criminal Procedure Act explicitly states that persons under 18 years of age should not be subject to arrest - or custody - (cf. para. 42 above). Chapter 13 of the Act now contains an extensive set of rules relating to personal examination and mental

observation ('personundersøkelse og mentalobservasjon') The Decree supplements these provisions (cf Chapter 14) and contains special rules for the police interrogation of suspected persons under the age of 18 (Section 8-3)

Taking the country as a whole, the use of personal examinations has gone down somewhat in recent years In 1986, a total of 926 personal examinations were carried out Of those examined

31	4%	were between the ages of 14 - 17
39	7%	-----'----- 18 - 20
13	7%	-----"----- 21 - 22
4	9%	-----"----- 23 - 24
10	3%	were 25 or more

78 In Add 5, page 6 and Add 52, page 11, information was given relating to the Norwegian reservation to Article 14, paragraph 5, viz the Norwegian system of appeal in criminal cases According to the new Criminal Procedure Act the system remains basically the same

79 The right to compensation in connection with prosecution (cf Article 14, para 6) was extended by the new Criminal Procedure Act (cf para 49 above and Sections 444 to 446 in Annex V)

80 The Norwegian reservation to Article 14, paragraph 7 has been dealt with in Add 5, page 6, SR 77, paragraphs 6 and 20, Add 52, pages 11 and 12, SR 301, paragraph 42, SR 302, paragraphs 1 and 3-6 Sections 389 to 393 of the new Criminal Procedure Act are based on the same principles as the former provisions relating to resumption of cases

#### Article 15

81 Reference is made to Add 5, page 6 In SR 301, paragraphs 44 and 51 a question was raised concerning legislative amendments whose retroactive effect would be to the benefit of an offender It should be added that Section 3 of the Penal Code of 22 May 1902 is the relevant provision Its second subsection reads as follows

"The penal provisions in force at the time of decision in a particular case apply when they are more favourable to the accused than the penal provisions in force at the time of the commission of the act Provisions which enter into force after adjudication shall, however, not apply in case the decision is appealed or resumption requested "

#### Article 16

82 Under Norwegian law everyone has legal capacity In principle, the legal existence of a person commences at birth However, the unborn child is protected in various ways

- According to Act No 50 of 13 June 1975 relating to abortion (Annex IX), the foetus is protected in the sense that induced abortion after the twelfth week may only take place provided that specific conditions are met (cf Section 2) A committee composed of two doctors decides in consultation with the mother whether abortion shall

take place (Section 7) Wilful abortion or complicity thereto may be punished by fines or imprisonment for up to three months (Section 13) unless more severe penal provisions are applicable, such as Section 245 (Annex X) of the Penal Code, according to which up to three years' imprisonment may be imposed In aggravating circumstances the maximum penalty is 6, 15 and even 21 years

- According to Section 71 of the Inheritance Act of 3 March 1972, only persons who are alive or have been procreated have the right to inherit However, a testator may to some extent decide that an unborn person (who is not procreated) may have the right of inheritance provided that one of his parents has been born or procreated when testator dies
- A child not yet born at the time of the supporter's death may receive compensation

#### Article 17

83 This provision has been dealt with in Add 5, page 7, SR 77, paragraphs 21, 30 and 39, SR 78, paragraphs 4 and 14, SR 79, paragraphs 22 and 23, Annex B Nos 6, 6 (a) and 28, SR 302, paragraphs 18, 37, 44, 49, 51 and 55

84 Act of 9 June 1978 relating to personal data registers etc aims at protecting information on personal matters The Act includes general provisions concerning the relevance of data that may be registered, the individual's right to be informed and the duty to correct erroneous information The Act also lays down a duty to obtain permission for the establishment of personal data registers which are to utilize electronic aids or to include certain sensitive information The authority to give or deny permission lies with a separate institution, the Data Inspectorate, which was established by this Act, and which also has other functions relating to the use of personal data registers The text of the Act is enclosed (Annex XI)

85 Under Section 145 (Annex X) of the Penal Code anyone who unlawfully ("uberettiget") opens a letter or any other closed document, or who breaks into another's locked depository may be punished by fines or imprisonment for up to six months If injury is caused through unauthorized knowledge acquired thereby, or the felony is committed for the purpose of unlawful gain, imprisonment up to two years may be imposed The original wording of that provision did not take account of the problems relating to data protection However, in 1979 an additional sentence was inserted in Section 145

"The same applies to anyone who unlawfully obtains access to the contents of a sealed communication or record which is ordinarily only accessible by means of special connecting equipment, play-back equipment, transillumination equipment, reading devices or the like "

It has been felt that this formulation does not adequately reflect the legislator's concern to deal with illegally obtained access to data banks Consequently, in a bill recently submitted to Parliament (Ot prop no 35 (1986-87)) a reformulation of Section 145 is proposed The relevant passage reads as follows

'The same applies to anyone who by breaking a seal or in a similar manner unlawfully obtains access to data or software that is stored or transmitted by means of electronic or other technical means "

86 Section 145 (a) concerns listening to and recording conversations between other people (Annex X)

87 The Provisional Act of 17 December 1976 No 99 relating to Access to Telephone Monitoring in the Investigation of Violations of the Legislation on Narcotics was enclosed as Annex B No 28 The incidence of telephone monitoring in the period 1980-1986 was as follows:

Year	Number of cases	Number of telephones
1980	66	120
1981	76	176
1982	172	252
1983	174	258
1984	178	255
1985	204	313
1986	254	396

88 The Act was amended by the Act of 7 June 1985, and its applicability was prolonged until the end of 1990 (cf Annex XII) According to Royal Decree of 13 December 1985, the amendments entered into force on 31 December 1985, and a supervisory board was set up to keep a check on the handling of cases relating to the interception of telephone conversations during the investigation of violations of the legislation on narcotics The Board is appointed in pursuance of Section 7 of the Act and is composed of three members and an alternate It is chaired by a Supreme Court Justice, and the other members are an attorney-at-law, a journalist and a university professor of law

89 The Board's terms of reference are further prescribed in the regulations of 19 January 1979, as subsequently amended by the Decree of 13 December 1985 The Board is to check that the use made by the police of telephone tapping and other forms of interception of telephone conversations falls within the scope of legislation and instructions (Section 12 of the regulations) The use of interception shall be limited as much as possible In this connection the Board shall particularly bear in mind the need to ensure the legal protection of the individual ("den enkelte rettssikkerhet") It may act ex officio, as a result of reports regularly submitted to it by the police and the Director General of Public Prosecutions, or on the basis of complaints from individuals claiming that they are subject to illegal interception (Section 13) The Board informs the individual whether or not his complaint gives reason for criticism of the police (Section 15) It submits an annual report to the Ministry of Justice and may at any time report on specific cases relating to telephone monitoring Excerpts of the regulations relating to the activities of the Committee are reproduced in Annex XII

- It should be noted that the Act now also covers telex and similar equipment for telecommunication

90 In the Bill (Ot prp no 60 (1984-85)) it was proposed that the provisional Act should now become permanent. The Parliament's Standing Committee on Justice agreed in principle that keeping provisional acts in force for long periods of time should be avoided. Nevertheless, it was felt that the applicability of the provisional Act should be extended by five years. On the basis of the experience gained by the Supervisory Board, it will then be decided in 1990 whether the Act should become permanent.

#### Article 18

91 Reference is made to Add 5, page 7, SR 77, paragraphs 21, 30 and 39, SR 78, paragraphs 7 and 14, SR 79, paragraph 24, Add 52, pages 12-18, Annex B, Nos 17, 23 and 26, SR 302, paragraphs 7-17 and 19-28.

92 There are no changes as regards the State church system in Norway. The report concerning the relationship between the Church and State (NOU 1975 30), cf Add 52, page 14 and SR 302, paragraph 22, was submitted for comments to a large number of organizations and institutions. The majority were of the opinion that the present system should be maintained, and in its report to Parliament (St meld no 40 (1980-81)) the Government concluded that the relationship between Church and State should be maintained for a period which may be reasonably foreseen. However, some reforms within the church should take place, cf below. In Parliament this conclusion was accepted.

93 By the Act of 8 June 1984, new provisions were inserted into Act No 1 of 29 April 1953 relating to the Organization of the Church of Norway (Annex B, No 17). A new central organ, the Church Meeting ("Kirkemøtet"), was instituted. It is composed of representatives from the Church of Norway and meets once a year. According to Section 54 of the Act, the Church Meeting will discuss matters relating to the general interests of the Church and promote co-operation within the Church. It elects the Church Council ("Kirkeradet"), which meets five times a year. It prepares matters for the Church Meeting and works between the sessions of the Church Meeting in conformity with its instructions (Section 55). By the Act of 19 June 1987, a new organ, the Church Doctrine Board ("Laerenemnda") was set up, which, on request from the Government, the Church Meeting or a bishop, shall give its comments on matters concerning the Evangelic Lutheran teachings.

- The creation of these new organs has increased the independence of the State Church in relation to the State, particularly in confessional matters.

94 Act No 30 of 6 June 1975 relating to Kindergartens etc has been amended. Section 1 now reads

"The purpose of this Act is to ensure that children are provided with favourable opportunities for development and activity in close co-operation with the children's home.

The kindergarten shall assist in giving the children an upbringing that is consistent with Christian values.

Private kindergartens may adopt by-laws prescribing that the second paragraph shall not apply.

The second and third subsections were added by Act No 27 of 27 May 1983. The amendments were related to the fact that the majority of the municipalities had already adopted a clause concerning Christian values for municipal kindergartens. This was viewed as an indication that most people wanted kindergarten activities to be based on Christian values. This is in keeping with the central role played by Christian values in Norwegian society, as reflected by the broad-based support enjoyed by the national church and the inclusion of a provision concerning Christian values in the legislation relating to the primary and lower secondary school. Inasmuch as the duty of the kindergarten is to assist the parents in bringing up their children, caution must be exercised when determining how the kindergarten is to convey values. The main emphasis is to be placed on a simple introduction to Christian traditions as they are manifested during the major Christian festivals. Furthermore, central Christian ethical principles, such as charity, responsibility, tolerance, considerateness, equality and forgiveness shall find expression in the kindergartens' activities.

#### Article 19

95 See Add 5, page 7, SR 77, paragraphs 31, 39 and 48, SR 78, paragraphs 8 and 15, SR 79, paragraph 24, Add 52, pages 19-21, Annex B, No 2, 4, 5, 14 and 27, SR 302, paragraphs 29-36 and 38-41

96 The former Act of 24 June 1933 relating to Broadcasting (cf Annex B, No 14) has been replaced by Act No 36 of 13 June 1980, which has been subsequently amended. The relevant provisions of the Act are enclosed (Annex XIII). According to Section 1 the Norwegian Broadcasting Company (NRK) has a monopoly, but the King may in special circumstances (subsection 4) grant permission to other persons to perform broadcasting. This possibility also existed under the 1933 Act. However, since 1981-82 it has been used not only in connection with special arrangements, but permission was also granted on a trial basis to a limited number of organizations etc. This was given an explicit statutory basis by the insertion of a new subsection 5 in Section 1 in 1984.

This pilot project has been expanded considerably since September 1984. Broadcasting rights were granted to 381 local radio stations in 103 districts, and to 128 local television stations in 39 districts. Licences were also granted to newspapers, organizations (cultural, religious, political, etc), schools, local radio associations and municipalities. All the licences concern broadcasting within a specifically defined area, generally a municipality.

97 These activities are subject to licensing conditions laid down by the Ministry. According to these conditions, the broadcasts shall not be in contravention of Norwegian law. Further, the broadcasts shall comprise programmes of local interest. Advertising is not allowed. An editor shall be appointed who is responsible for the broadcasts. The Ministry may adopt sanctions against violations of the licensing conditions. The sanctions may be imposed in the form of a warning, the suspension of a licence for a certain period of time, or the revocation of a licence.

From 1 September 1984 to 1 August 1987, eight local radio stations have been suspended for one month for violating licensing conditions. The stations received a warning before their licences were suspended. In most cases, the

station had violated the ban on advertising. No licences have been permanently revoked. In addition to this, 24 holders of local radio licences have received warnings for violations of the licensing provisions. Most of the warnings concern violations of the ban on advertising. A few of them have to do with violations of technical provisions.

98 The Complaints Committee for radio and television programmes (cf para 99) deals with matters concerning the Norwegian Broadcasting Corporation (NRK) and local broadcasting alike. In the period 1982-86, the Committee dealt with 13 cases concerning local radio programmes. In seven of these cases, the Committee ruled in favour of the complainant. When the Committee rules in favour of the complainant, the holder of the licence concerned is under an obligation to read out the Committee's statement in its broadcasts. The local radio stations also have a separate Committee on Ethics, which deals with violations of the local radiostations' self-imposed ethical guidelines. In the period 1985-86, the Committee on Ethics dealt with five complaints.

99 As under the previous Act, NRK is subject to control by a Council ("Kringkastingsradet"). It consists of 25 members, of whom 14 are elected by Parliament and 11 are appointed by the King. The Council shall discuss and make statements concerning the guiding principles of the programme activity in NRK (Section 12). Moreover, a Complaints Committee ("Klagenemnda") has been set up, which on the basis of complaints may investigate whether a person has been subject to improper treatment by a programme transmitted by NRK or whether there has been an invasion of privacy. It may also decide whether decisions made by NRK in a case concerning the rectification of incorrect information are in conformity with good conduct (Section 15).

100 Although it is not explicitly stated, it remains a prime principle under the new Act as well that NRK shall be independent, objective and non-partisan. Any member of the Council may take up a programme which in his view was biased, and discussions in the Council will serve as guidelines for future activities within the institution.

In the period 1982-85, the Complaints Committee considered 11 complaints against NRK. Four of these were concerned with improper treatment, two with invasion of privacy, and one with the handling of a case concerning a settlement and improper treatment. One complaint was dismissed because the issue was outside the jurisdiction of the Committee.

The complainant's claim was upheld in four of the cases. In two of the cases, the Committee ruled in favour of the complainants who claimed that a television programme had invaded their privacy because their former husbands had allowed themselves to be interviewed on private matters. In another case, the Committee found that the complainant had been improperly treated because NRK had, in a news broadcast, revealed the person's position and workplace in connection with his being charged with an indecent act.

101 By Act No 31 of 24 May 1985, Section 211 of the Penal Code relating to pornography was amended. In the new text, an attempt is made to be more precise as to the concept of "obscene" in that provision and it is specified that also scenes of a sexual nature which may be 'humiliating' should be regarded as "obscene" within the meaning of Section 211. The current wording of Section 211 is enclosed (Annex X).

102 A new Section 382 (Annex X) was inserted into the Penal Code by Act No 31 of 24 May 1985 According to that provision it is an offence to sell or lease films or videogrammes which include scenes of gross violence Such scenes may have negative effects on young persons Penal provisions alone cannot eliminate the problem, but it is important that the authorities take a firm position on the speculative use of violence as entertainment, thereby contributing to the forming of attitudes in this field

#### Article 20

103 This provision has been dealt with in Add 5, pages 8 and 9, SR 77, paragraphs 7, 22, 31 and 39, Annex B, No 4, SR 79, paragraph 25, SR 302, paragraphs 31 and 41

104 Information relating to the Norwegian implementation of the prohibition of national, racial and religious hatred has been submitted under the International Convention on the Elimination of All Forms of Racial Discrimination Reference is made in particular to the sixth, seventh and eighth periodic reports of Norway (CERD/C/76/Add 2, CERD/C/107/Add 4 and CERD/C/132/Add 5, respectively), which contain case law under Section 135 (a) of the Penal Code

#### Article 21

105 See Add 5, page 8, SR 77, paragraphs 32 and 39, SR 78, paragraph 15, SR 79, paragraph 4, Add 52, pages 21-22, Annex B, No 13 and SR 302, paragraph 45

106 Applications for a permit to hold a demonstration are not in practice refused, although the police regulations contain a provision providing for such refusal By way of illustration, the following information, concerning the last few years, was obtained from the three largest cities in Norway:

- Oslo: Approximately 200 permits each year No refusals, but if necessary because of traffic conditions or security, applicants may be requested to change the time or place of the demonstration
- Bergen: Approximately 200 permits each year No refusals
- Trondheim: Approximately 10 permits each year No refusals

#### Article 22

107 Reference is made to Add 5, page 8, SR 77, paragraphs 23, 32 and 39, SR 78, paragraph 15, SR 79, paragraph 24, Add 52, pages 22-25, Annex B, No 20, SR 302, paragraphs 45 and 52

108 In Add 52, page 24, Section 55 A of the Act relating to Worker Protection and the Working Environment was cited This provision now reads as follows:

##### "Engagement

The employer may not demand, when advertising vacant situations or in any other way, that applicants supply information concerning their political, religious or cultural views or whether they are members of any labour



organizations Neither may the employer effect measures to obtain such information by other means These provisions are not applicable if such information is justified by the nature of the post or if the objective of the activity of the employer in question includes promotion of a particular political, religious or cultural view and the post is essential for the fulfilment of the objective In cases where such information will be required, this must be stated when advertising the vacancy "

109 Section 55 A was amended because the Government wanted to make the formulation more precise and to reduce the area of discretion concerning the criteria for demanding information about political, religious or cultural views from applicants to certain positions

#### Article 23

110 See Add 5, page 8, SR 77, paragraphs 14, 24, 33, 40 and 46, SR 79, paragraphs 26-27, Annex B, Nos 11 and 18, SR 302, paragraphs 45 and 52

111 As mentioned in SR 79, paragraph 26, it may be said, in broad terms, that the aim of social legislation, including the extensive social security legislation, is to protect the family and children Act No 7 of 8 April 1981 relating to children and parents (the Children Act) should be seen in this perspective The text of the Act is enclosed (Annex XIV) A main purpose of the Act was to the extent possible to introduce identical provisions for all children, irrespective of whether their parents were married or not The distinction between children born "in wedlock" and "out of wedlock" has now been abolished Other major objectives of the reform have been to strengthen the child's right to make decisions itself, and to increase its influence on the parents' decisions relating to its status Moreover, the ties of both parents to the child have been strengthened The Children Act may be viewed in connection with Article 23, paragraphs 1 and 4 (and Article 24)

112 The conditions for entering into marriage, cf Article 23, paragraph 2, are stipulated in the Marriage Act of 31 May 1918 (with subsequent amendments), of which excerpts are enclosed (Annex XV) According to Section 1, persons under 18 years of age may not enter into marriage without the consent of the parents and permission from the King (in practice the County Governor) In cases of refusal from the parents, an appeal may be lodged with the County Governor (Section 4) Persons declared incapable of managing their own affairs ("umyndiggjorte") may marry with the consent of their guardian (Section 3), whereas persons of unsound mind require permission from the King (Section 5) Bigamy is prohibited (Section 9), as well as marriage between close relatives (Sections 7 and 8), and such marriages may be declared null and void by a court decision It is for the person solemnizing the marriage to ascertain that the conditions for entering into marriage are fulfilled

113 Although it is not expressly stated in the Marriage Act, it has been interpreted to the effect that marriage may only be entered into by persons of different sexes

114 The Marriage Act also stipulates that a marriage shall be declared null and void in certain circumstances where the intending spouses have not given their free and full consent, cf Article 23, paragraph 3 (see Sections 31-35 in Annex XV)

115 Spouses have the same rights and responsibilities as to marriage, during marriage and in the event of its dissolution, cf Article 23, paragraph 4 No distinction based on sex is made in the Marriage Act, the Children Act or the Act of 20 May 1927 relating to property relationship between spouses (Annex B, No 11) In cases of dissolution, legislation and practice are based on the principle that the interests of any children are of paramount importance

116 With regard to the questions raised in SR 77, paragraph 46, it should be noted that the status of a person marrying an alien will remain unchanged An alien marrying a Norwegian will always obtain a residence permit, provided that the spouses are actually living together When a foreigner marries an alien residing in Norway, he or she will be granted a residence permit, provided that the resident is capable of supporting his/her spouse

#### Article 24

117 See SR 77, paragraphs 7, 14, 24 and 40, SR 78, paragraph 15, SR 79, paragraphs 26-28, Annex B, No 18

118 Act No 5 of 6 March 1981 relating to the Commissioner for Children entered into force on 1 September that year The Act is enclosed (Annex XVI) The purpose of the Act is to contribute to the promotion of the interests of children in society (Section 1) The Commissioner is appointed by the King for a period of four years (Section 2) The duty of the Commissioner is to promote the interests of children vis-a-vis public and private authorities He may act ex officio or on request (Section 3 i f ), and may express his views on any matter falling within his terms of reference (Section 5)

119 By Act No 11 of 6 February 1987, a new provision was added to the Children Act, prohibiting the use of violence in the upbringing of children However, also prior to the adoption of this new provision it followed from the general rules of the Penal Code that such use of violence was illegal A new paragraph has been inserted between the second and third paragraph, which reads as follows

"The child must not be subjected to violence or otherwise treated in such a way as to injure or threaten its physical or mental health "

120 By Act No 51 of 12 June 1987, Section 46 of the Penal Code was amended and the minimum age of criminal liability was raised from 14 to 15 years The Act has not entered into force Section 46 will read as follows:

"No one may be punished for an act committed before he has completed his 15th year "

121 It should also be noted that Section 55 of the Penal Code prohibits imprisonment for 21 years as regards offenders under the age of 18 and contains special rules concerning the possibility of depriving young offenders of their liberty:

"For criminal acts committed before the age of 18 years, imprisonment in terms of item 2 of the first paragraph of Section 17 may not be imposed, and the penalty within the same category may be reduced below the minimum specified for the act or, when circumstances so indicate, to a milder category

In a case brought before the court by the prosecuting authority, the court may when the convicted person is under 18 years of age at the date of judgement refrain from imposing a penalty and in the judgement leave it to the Municipal Welfare Board to take measures in accordance with the provisions of the Child Welfare Act '

122 In practice, the great majority of young offenders are not deprived of their liberty, but are taken care of by Child Welfare Boards This is illustrated by the following statistics concerning 14-year-olds

	Transfer to Child Welfare Board	No indictment issued ("pataleunnlatelse")	Writ of optional fine ("forelegg")	Fine	Sentence not fixed ("straffutmaling utsatt")
1980	568	7	-	2	5
1981	583	2	-	-	17
1982	502	7	3	1	8
1983	532	9	6	1	8
1984	475	17	11	1	15
1985	465	13	18	1	12

	Suspended prison sentence ("betingetfengsel")	Suspended prison sentence and fine	Imprisonment	Imprisonment and suspended prison sentence
1980	24	-	3	1
1981	22	-	3	-
1982	10	-	1	7
1983	20	4	3	3
1984	15	1	1	3
1985	17	1	1	3

123 It follows from the figures above that the authorities try as far as possible to avoid placing young offenders in prison However, in some cases (for instance extreme recidivists) there is no alternative According to available statistics, on average 1 16 young offenders aged 14 and 15 are deprived of their liberty every week Normally, they are only deprived of their liberty for a few days

124 As regards measures in pursuance of the Child Welfare Act (Annex XVII), the following may be noted

As regards children who are not under the care of a Child Welfare Board, schemes involving contact persons are the measures used most frequently (19%) Other preventive measures, such as kindergarten placement, schemes to relieve the parents, and treatment by a physician/psychologist, account for approximately the same share (20%) Nine per cent receive supervision in their homes, and 7% get financial assistance

Forty per cent (5 28) of all children subject to child welfare measures are under the care of the Child Welfare Board. Twenty-eight per cent are placed in foster homes, 5% live in orphanages, and 7% attend special schools, etc. The primary reason for taking over the care of a child is poor conditions in the home, but measures may also be taken on the basis of a child's own difficulties, e.g. if the child has committed an offence etc. It may also be necessary to take over the care of children who do not receive the care or treatment they need, or who are without someone to provide for them.

125 According to Article 24, paragraph 2, every child shall be registered immediately after birth. Section 1 of the Children Act is in conformity with that requirement (cf Annex XIV).

126 Act No 1 of 29 May 1964 relating to personal names ("personnamn") complies with the second requirement of Article 24, paragraph 2. The relevant provisions are enclosed (Annex XVIII).

127 Annex B, No 15 contained Section 1 of the Nationality Act of 8 December 1950, cf Article 24, paragraph 3. In connection with the adoption of the Children Act, that provision was amended. It is still based on the principle of jus sanguinis and now reads as follows:

"A child acquires Norwegian nationality at birth where:

- (a) the mother is a Norwegian national;
- (b) the father is a Norwegian national and the child is born in wedlock;
- (c) the father is deceased, but was a Norwegian national and married to the mother of the child when he died.

Foundlings who are found within the country are considered Norwegian nationals until information to the contrary is forthcoming."

#### Article 25

128 Reference is made to Add 5, pages 8-9, SR 77, paragraphs 7, 14 and 46, SR 79, paragraph 29, SR 302, paragraphs 46 and 54.

129 The constitutional framework for the right to vote has already been submitted to the Committee, see in particular Article 49, et seq of the Constitution (Annex B, No 1). On 17 January 1980, Article 53 *litra e* was repealed. It provided that the right to vote should be lost in the case of any person who was declared incapable of managing his or her own affairs. The amendment was made mainly because there is no direct connection between the legislation regulating a court's decision that a person is incapable of managing his affairs and his ability to understand the implications of voting. At the same time, a third subsection was inserted into Article 50, which reads as follows:

"Rules may be laid down by law concerning the right to vote of persons otherwise entitled to vote who on Election Day are manifestly suffering from a seriously weakened mental state or a reduced level of consciousness."

Previously it had been assumed in constitutional doctrine and practice that the vote of persons suffering from a severe mental disorder could be rejected. The new provision introduces an explicit legal basis which is supplemented by Section 41 second subsection of the Act relating to Elections (cf below). Section 41 is enclosed (Annex XIX)

130 Annex B, No 1 also contained Article 63 of the Constitution, which regulates the duty of a representative elected to Parliament to accept election. By the amendment of 27 July 1984, the possibility to refuse to accept the result of the elections was widened, but this does not affect his right to be elected, cf Article 25, paragraph 25 (b). Reference is made to Annex XX

131 Previously, the provisions governing elections were found in three Acts, which have now been replaced by Act No 3 of 1 March 1985 relating to Elections to Parliament, to the County and to the Municipalities. The basic system of election remains the same. The purpose of the 1985 Act was to provide rules that were as uniform as possible for all elections.

132 Groups may register as political parties by applying to a notary public in Oslo. The application shall be signed by members of the party's steering committee and must be submitted by 31 March of the year the election is to take place.

The application must be accompanied by a statement bearing the signatures of 3,000 persons who are eligible to vote in General Elections. Foreign nationals may not sign such declarations, even if they satisfy the conditions for voting in local elections (cf para 134).

General Elections (to the parliament) shall be held every fourth year and be concluded by the end of September. Municipal council and county council elections shall be held in all the municipalities in Norway on the same day in September, every fourth year. Municipal council and county council elections are held half way between General Elections.

In each municipality, there shall be an election committee, made up of the board of aldermen, which is responsible for preparing and carrying out the election. There is a corresponding county election committee in each county. The election committees are responsible inter alia for the census. They shall also consider list proposals, be in charge of counting the ballots and take care of the practical matters in connection with elections.

133 All Norwegian nationals resident in Norway who have attained the age of 18 at the latest by 31 December in the election year are eligible to vote in all elections. Norwegian nationals resident abroad are eligible to vote if they have ever been registered in the Norwegian Population Register as having been resident in Norway. Thus, Norwegian nationals who were born and brought up in another country are not eligible to vote in Norwegian elections.

In order to exercise his voting right, a person must be registered in the population census as being eligible to vote. This also determines where one has the right to vote.

In order to be eligible for election to Parliament, a person must have the right to vote in General Elections, and have resided in Norway for at least 10 years. Anyone who is registered in the population register as being resident in the municipality/county in question is eligible for election to the municipal council/county council.

134 Unlike Article 25, the right to vote and be elected is not restricted to citizens under Norwegian law. By Act of 8 April 1983, all foreign nationals - and not, as previously, only Nordic nationals - were granted the right to vote in local elections, and were made eligible for election to local government at the municipal and county level, provided that they have had permanent residence in Norway for at least three years prior to the elections and otherwise fulfil the general criteria applicable to Norwegian citizens.

135 In SR 77, paragraph 46, information was requested concerning the number of men and women, respectively, employed at supervisory level in the civil service. According to the statistics available as of 1 October 1986, 8,253 Government civil servants had positions as head of division or higher. Seven hundred and forty six (9%) of these were women. 5.7% of these women had part-time positions, whereas 1.5% of the men holding these positions worked part time.

#### Article 26

136 See Add 5, pages 2 and 9, SR 77, paragraphs 33 and 42, SR 79, paragraph 30, SR 302, paragraphs 47 and 54. As regards sexual and racial discrimination, reference is made to the information submitted above under Article 3 and Article 20, paragraph 2.

137 Sections 135 (a) and 349 (a) have been submitted to the Committee in Add 5, pages 9-10 and Annex B, No 4. By Act No 14 of 8 May 1981, these provisions were supplemented by a prohibition against discrimination based on homosexuality. The provisions as amended are enclosed (Annex X). Section 135 has been applied in a Supreme Court judgement (Rt 1984, p 1359, cf Annex XXI).

#### Article 27

138 Information relevant to this provision has been submitted under the International Convention on the Elimination of All Forms of Racial Discrimination, cf references in paragraph 104 above. See also Add 5, page 9, SR 77, paragraph 33, SR 79, paragraph 31 and SR 302, paragraphs 43, 48 and 50.

139 Recently, the Government submitted a bill to Parliament concerning the Act relating to the Sameting (Sami Assembly) and other Sami legal matters (Ot prp no 33 (1986-87)). The object of the Act will be to ensure that the Sami population of Norway may perpetuate and develop its language, culture and community life. The Bill was based on the report of the Committee on Sami Legal Matters (NOU 1984:18). The Act was passed on 12 June 1987, but has not entered into force. The text of the Act is enclosed (Annex XXII).

140 The Bill deals with the principles which, in the opinion of the Government, ought to be included in the future formulation of Sami policy measures. It is pointed out that the Sami culture must be maintained and

further developed This entails a departure from previous policy of assimilation Active initiatives are required to ensure the continued survival of Sami culture It is a national responsibility for the authorities to ensure that the Sami people are given the means necessary to perpetuate and further develop their culture so that they can continue to live as a separate ethnic group

141 Protecting the Sami culture is not only a national responsibility Norway also has an international responsibility based on commitments undertaken in relation to international law The Bill supports the interpretation of the Covenant which implies that States accept the responsibility to contribute positively to enabling ethnic minorities to maintain and advance their language and culture

142 According to the Bill, the preservation and strengthening of the Sami culture cannot be achieved through the efforts of the authorities alone It is primarily the Sami people themselves who must point out their needs, formulate measures and generally assume responsibility for the protection of the Sami culture This means that schemes have to be established which ensure Sami participation in issues of importance to the Sami culture Against this background a Sameting is to be established (Section 1-2) by and among the Norwegian Sami population, which will replace the present Norwegian Sami Council The sphere of activity of the Sameting will comprise all matters which affect the Sami population (Section 2-1) The Sameting will take over the advisory authority presently held by the Norwegian Sami Council, and shall otherwise have authority as prescribed by statute or other means The Sameting will take over the advisory authority presently held by the Norwegian Sami Council, and shall otherwise have authority as prescribed by statute or other means The Sameting shall be elected by direct elections (Section 2-3) held among the Sami people who have registered in a separate electoral register (Sections 2-5 and 2-6) Sami people from all parts of the country are entitled to participate in this election

143 In this manner, the reform seeks to ensure that the elected members of the central Sami body would be representative of the Norwegian Sami population as a whole Members of the Norwegian Sami Council have been appointed by the Government

144 A majority of the Committee on Sami Legal Matters had also proposed that a new provision be inserted into the Constitution:

"It is incumbent on the Government authorities to take the necessary steps to enable the Sami population to safeguard and develop their language, their culture and their societal life "

The follow-up of this proposal will be discussed in Parliament

145 The Committee on Sami Legal Matters is now discussing the legal situation in respect of land and water in Northern Norway (Finnmark)