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ON CIVIL AND
POLITICAL RIGHTS**



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SUMMARY RECORD OF THE 79TH MEETING

Held at Headquarters, New York,
on Thursday, 13 July 1978, at 10.30 a.m.

Chairman: Mr. MAVROMMATIS

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The meeting was called to order at 11.20 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT: INITIAL REPORTS OF STATES PARTIES DUE IN 1977 (continued)

Norway (CCPR/C/1/Add.5) (continued)

1. At the invitation of the Chairman, Mr. Dolva (Norway) took a place at the Committee table.
2. Mr. DOLVA (Norway), replying to questions put by members of the Committee concerning the system for implementing the Covenant in Norway, said that the general ways in which international obligations were transformed into Norwegian law were explained in his Government's report (CCPR/C/1/Add.5); the Covenant had not in itself been enacted as Norwegian law but, before ratifying it, the Norwegian authorities had ascertained the normative harmony between the Covenant and internal Norwegian legislation. The report also explained the attitude of the Norwegian courts, which tended to harmonize internal Norwegian law and the rules of international obligations binding upon Norway either by presuming that municipal law conformed to international law or by interpreting municipal law in such a manner that it fulfilled the requirements laid down in international law. With regard to the view expressed by one member of the Committee that the presumption of conformity had to be absolute and the interpretation had to be obligatory in order to ensure the implementation of the Covenant in all cases, he said that the rules concerning presumption and interpretation were not of that nature in Norwegian law, but it was the opinion of the Norwegian Government that that was not necessary according to the Covenant. What was important was that municipal law really was in conformity with the Covenant.
3. The answer to the question whether the rules of the Covenant could be invoked before the courts, the administration and the Ombudsman was that they might very well be involved, in which case they would be a help in interpreting the relevant municipal rules and, according to the circumstances, as internationally binding rules in the field of human rights, would be given considerable weight in that respect. It might, however, be emphasized that, in the view of the Norwegian Government, there would as a matter of principle be a basis in municipal law in order to protect all the rights contained in the Covenant.
4. The principle of legality referred to in the report, even though it was part of the unwritten law, was generally considered to be of a constitutional character. As such, it might be invoked by citizens before the administrative authorities and the courts, which were equally bound to comply with it. The answer to the question whether citizens might also invoke that principle in cases where they wished to prevent the authorities from carrying out specific actions which were considered to be illegal was yes. With regard to the scope of the principle of legality and the exact meaning of the term "legal rights" as used in the report, he believed it could be said that that principle would apply generally in the field of human rights.

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(Mr. Dolva, Norway)

Freedom of association had been mentioned as an example, and he agreed that the principle of legality in that field implied that, as long as there were no legal provisions to the contrary, the right to form associations was free. He would reply to the question concerning the importance of the principle of legality in relation to exceptional measures when dealing with article 4.

5. Several members had asked for more information about the Ombudsman. In Norway, that institution had been created by an Act of 22 June 1962, the full title being the Storting's Ombudsman for the Public Administration. The Ombudsman's task was to ensure that in the public administration no injustice was done to individual citizens. He acted on behalf of the Norwegian parliament, according to the Act and specific instructions given by the parliament, and he reported back to the parliament every year. Although the Ombudsman's area of competence encompassed human rights matters, it must be said that the main concern underlying the introduction of the Ombudsman in Norway had been to improve the guarantees for the citizen vis-à-vis the increasing power of the administration in modern society. His task was to ensure the general rule of law and fair administration in that field, and he held a very strong position in Norway, even if his opinions were not formally binding on the administration. Not only theoretically but in practice, the Ombudsman represented an effective means of redress for citizens who felt that the administration had not treated their case in a proper way. Human rights questions were within his competence in so far as they were handled by the public administration, and in that respect the Ombudsman had great importance as a supplement to the enforcement of rights by the courts. For many people, it would in fact be easier to have recourse to the Ombudsman than to the courts. However, recourse to the Ombudsman did not prevent a citizen from bringing his case before the courts afterwards.

6. With regard to the questions raised concerning the implementation of article 2 of the Covenant, he said that in Norway there existed fairly extensive systems for free legal aid and free legal advice to ensure that individuals were not prevented from defending their rights before the courts, even if they lacked the necessary money. The system was currently under revision with a view to improving it even further. Under the existing rules, a person was entitled to free legal advice if his income did not exceed 28,000 kroner, or about \$US 5,000, a year. The amount was higher if he had a family, and in special cases free legal aid could be granted irrespective of the amounts fixed in the regulations.

7. He fully agreed with the comment that it was important not only to have a legal remedy, but also to ensure that justice was obtained without undue delay. As a general rule, that was not a problem in Norway in either civil or criminal matters. In 1976, the average duration of civil cases dealt with by the courts of first instance which had not been appealed to higher courts had been 232 days. The average duration of remand in custody in the same year had been 19 days in cases where the person had been released without serving a sentence of imprisonment in connexion with the period of custody.

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8. With regard to article 3 of the Covenant, he said that equal rights for men and women were a reality in Norway and no special legislative measures had been enacted in connexion with the ratification of the Covenant. In 1977 women had constituted 31 per cent of the total number of State employees, and 24 per cent of the representatives elected in the general elections of that year had been women, as had 15.4 per cent of the representatives elected in the 1975 local elections. In the spring of 1978, the Storting had passed an Act on equality between the sexes, which was likely to enter into force on 1 January 1979. The Act contained a general clause prohibiting different treatment of men and women because of their sex and laid down specific rules concerning employment, remuneration, education and membership in associations of certain kinds. The Act instituted an Ombud and a Board for the implementation of its provisions. In dealing with a case of alleged breach of the Act, the Ombud should try to obtain voluntary acceptance of the Act but, failing that, he might bring the case before the Board, which could take binding decisions.

9. With reference to matrimonial régimes between spouses, the rules in the Act of 20 May 1927 provided mainly for two kinds of régimes. The principal régime according to the law was a joint estate régime, but the spouses might choose a régime of separate estates. In both cases, the equal rights of the spouses were respected. The main principles under both régimes were 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.

10. With regard to article 4, he said that provisions allowing for derogations from ordinary legislation were contained in Act No. 7 of 15 December 1950. In time of war, or if there was a threat of war or the sovereignty or security of the Kingdom was in danger and if, as a result, it would be dangerous to postpone a decision, the King - and under specific circumstances also some other administrative authorities - might take decisions of a legal nature and might even derogate from existing legislation. That could, however, be done only for the purposes specified in the Act, and Norwegian authorities, when exercising their competence under the Act, must take into account international obligations such as the Covenant. Lastly, if the derogation from ordinary legislation was founded on the Act of 1950, the principle of legality was respected. The 1950 law had been enacted in order to avoid the necessity of having recourse to unwritten rules concerning emergency situations.

11. In connexion with article 6, he said that the 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. The Norwegian reservation might then be withdrawn. He might add that, since the existing rules concerning the death penalty applied only in war and warlike situations, no death penalty had been imposed in Norway since the trials following the Second World War. The statement in the Norwegian report that capital punishment was always an alternative punishment to deprivation of liberty meant that, in cases where capital punishment might be applied, it was never the only reaction possible; the court would always have the possibility of applying deprivation of liberty instead of capital punishment.

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(Mr. Dolva, Norway)

12. With regard to the questions raised in connexion with article 6, paragraph 1, concerning the right to life, he said that infant mortality in Norway was among the lowest in the world, approximately one per 1,000 for children under 1 year of age. According to official statistics, only 20 sentences for murder had been passed in Norway in 1976. Lastly, there were very strict rules concerning the use of fire-arms by the police forces, and as a general rule the police were not equipped with fire-arms when on duty.

13. Referring to article 7, he said that any information concerning the use of solitary confinement would be given in an additional report. Prison inmates could use the same remedies as other citizens in order to initiate legal proceedings or to address themselves to the Ombudsman or other authorities for protection against abuses as described in article 7. Where medical and other scientific experiments were concerned, guarantees were provided by professional ethics, the penal rules protecting personal integrity and the professional control exercised by the authorities, and that was not generally felt to be a problem in Norway. However, a case reported in the press concerning the treatment of a mentally retarded child had drawn attention to the problem and had resulted, inter alia, in a revision of certain rules concerning the use of physical means of coercion in institutions. There was no jurisprudence in Norway concerning the sale of human tissues. According to prevailing practice, donors of human tissues for transplantation or other purposes should not be given any monetary inducement.

14. With regard to article 8, he said that Norway had ratified the ILO Convention regarding forced labour. Referring to the dentist case brought before the European Commission of Human Rights, which had dismissed the appeal as manifestly unfounded, he said that the possibility of imposing compulsory service for dentists no longer existed in Norway. The possibility of such service under the temporary Act No. 11 of 21 June 1956 had expired on 30 June 1973. According to that Act, dentists could be obliged to serve in a post in the official dental service for normal remuneration for up to 12 months as part of the process of completing their professional studies. That obligation had applied only to posts which had been vacant after normal advertising of vacancies, and the system had been deemed necessary in order to provide the population with needed dental care.

15. As for the obligation to work incumbent on persons who were committed to a treatment centre in accordance with Act No. 1 of 26 February 1932 relating to temperance and Temperance Committees, it was the opinion of the Norwegian Government that that was covered by the rules in article 8, paragraph 3 (c) (i), of the Covenant as work "normally required of a person who is under detention in consequence of a lawful order of a court". Even if the Temperance Committee was not formally a court of law according to Norwegian legal terminology, 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. Under section 8 of the 1932 Act, the Committee had a judge as President when deciding compulsory detention in a treatment centre, and the client had substantially the same rights as before an ordinary court, including the right to be present and to be assisted by a lawyer. In addition, the client had specific facilities for

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bringing the case before the ordinary courts according to the rules of chapter 32 of the Civil Procedure Act, No. 6, of 13 August 1915. The fact that that was a curative measure was mentioned in the report as an additional argument explaining the background for the relevant rules.

16. With regard to article 9, he said 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, especially the conditions for custody, in section 240, which ensured that the deprivation was not arbitrary. The bill for a new Criminal Procedures Act would be placed before the parliament later in the year and the conditions for obtaining compensation, amended as stated in the report, would then be proposed. As for the form of compensation, Norwegian law merely provided for the payment of a sum of money. There were no provisions regarding, for instance, publication of the decision of acquittal as a means of redress, as mentioned by one member of the Committee. On the other hand, that possibility was not excluded if it was deemed appropriate.

17. The report also mentioned cases of deprivation of liberty outside criminal proceedings. The Norwegian authorities had understood article 8 to cover all cases of deprivation of liberty, including cases of deprivation of liberty pursuant to health legislation such as Act No. 2 of 28 April 1961, concerning psychiatric health wards, and the 1932 Act relating to temperance and Temperance Committees. In all such cases the provisions of article 9, paragraph 4, were complied with, since a specific procedure was provided for such cases in chapter 32 of the Civil Procedure Act.

18. With regard to article 10, he had noted the statements made in the Committee to the effect that the rules in the Covenant were not incompatible with some common measures for youths and adults and that the Covenant merely aimed at avoiding mixing them without taking due account of age. However, at the time of ratification the Norwegian authorities had found it necessary to make reservations to article 10, paragraphs 2 (b) and 3, in so far as the obligation to keep accused juveniles and juvenile offenders segregated from adults was concerned. An attempt would be made to obtain more information about the exact meaning of the provisions, but for the time being he was not in a position to suggest that the reservation could be withdrawn.

19. With respect to article 12, he said that in Norway the right to liberty of movement existed according to the principle of legality as long as there were no specific rules to the contrary. The relevant legal text specifying the possibilities of restricting liberty of movement would be sent to the Committee.

20. Referring to article 13, he said that the safeguards concerning a decision ordering expulsion were found in the Aliens Act of 27 July 1956, especially section 20, and the Administration Act of 10 February 1967. There would always be a possibility of appeal to a higher administrative authority, and in some cases such an appeal would automatically have the effect of preventing expulsion from

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being carried out as long as the appeal was under consideration. In other cases the administration had the option of giving the appeal such an effect, and that was regularly done according to administrative practice in the cases governed by the Covenant. The rules in that field were under revision, and the committee concerned was expected to report by the end of 1978 or early in 1979.

21. The many questions raised concerning article 14 would be answered in writing.

22. With regard to article 17, one member of the Committee had drawn attention to the last sentence of the second paragraph of the report and had pointed out that the Covenant provided for comprehensive protection of the right to privacy and not only protection to a certain degree. When read in its entirety, the report made it clear that in the opinion of the Norwegian authorities the protection given according to Norwegian law fulfilled the obligations under the Covenant. However, as stated in the introductory remarks in the report, it was difficult to demonstrate that as a matter of visible fact.

23. As for the possibilities of opening mail and monitoring telephone calls, the Act of 24 June 1915 had been amended in 1950, and the specific regulations under the Act dated from 19 August 1960. Such measures 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 and only when the person in question was suspected of committing serious offences specified in the Act. Telephone monitoring might, in accordance with similar rules, be performed in connexion with drug offences under a temporary Act of 17 December 1976. Under that Act, court permission could not be given for more than two weeks at a time and permission given by the prosecuting authority was not valid for more than 24 hours. The temporary Act would be in force until the end of 1978, pending permanent legislation in the matter.

24. Questions concerning articles 18, 19 and 22 would be answered in writing.

25. There were at present no plans for waiving the reservation concerning article 20.

26. With regard to articles 23 and 24, it could be said, in broad terms, that all Norwegian family and social legislation, including extensive social security legislation, had the aim of protecting the family and children. One member of the Committee had pointed out that the fact that women, to a larger extent than previously, wished to continue their previous occupation or take up a new one during their marriage, while their children were small, represented a challenge to the family and to society. The Norwegian authorities were aware of that, and they tried to create conditions in which the choice of how to organize family life could be taken within the family on the basis of full equality. In order to achieve that end, 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 and some progress had been achieved, but much remained to be done.

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27. It was true that a child might in some cases need to be protected against his family, and in Norway, as in other countries, it was possible for the authorities to take over the care of the child and provide for his fostering outside his original home. However, that was done only as the ultimate solution after the failure of other measures, including extensive help to the family, and there were specific procedural rules for such cases, which could be found in sections 16-19 of the Children Care Act, No. 14, of 17 July 1953.

28. With regard to article 24, paragraph 3, the Norwegian authorities were of the opinion that the legislation in Act No. 3 of 8 December 1950, section 1, which was based on the principle of nationality through descent, was compatible with the Covenant.

29. In connexion with article 25, he said that the guarantee for every citizen to participate in the conduct of public affairs lay primarily in the universal right to vote. There was no Berufsverbot in Norway regarding access to public service. 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.

30. One member of the Committee had asked what was meant by the term "objective grounds" used in the report with reference to article 26. It was difficult to say anything more specific than that unequal treatment must have an acceptable reason which was justifiable, having due regard to the aim of the Covenant and the circumstances of the particular case.

31. A divergence between the English and French texts of article 27 had been pointed out. The Norwegian report had been drafted in English and used the word "Gypsies", not "nomades".

32. Further information concerning the Norwegian reservation to the Optional Protocol would be provided at a later stage, and the texts of the legal provisions to which he had referred in answering questions raised by members would also be transmitted to the Committee.

33. The CHAIRMAN thanked the representative of Norway for the lucid manner in which the questions put by members of the Committee had been answered. The Committee noted with appreciation the willingness of the Government to provide further information in writing and to supply the Committee with the texts of the relevant legal provisions.

The meeting rose at 12.05 p.m.