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SUMMARY RECORD OF THE 251st MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 22 October 1980, at 3 p.m.

Chairman: Mr. MAVROMATTIS

later: Mr. PRADO VALLEJO

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Report of Denmark (CCPR/C/1/Add.19 and Add.51) (continued)

1. Mr. HOLM (Denmark), replying to questions raised by members of the Committee, maintained that, as far as article 11 of the Covenant was concerned (CCPR/C/1/Add.51, pages 5 and 6), the obligation to pay maintenance to a child or a spouse did not come under that article in view of the fact that it could not be regarded as a contractual obligation since it originated in the actual provisions of the law.

2. In connection with article 13 of the Covenant, he recalled that the Report (pages 8 to 11) cited a large number of legislative provisions under which aliens could be expelled and noted that that article of the Covenant in question concerned only the procedure for expulsion and not the merits of a possible decision. He recognized that, as some members of the Committee had emphasized, Danish legislation in that area was rather complicated. He also pointed out that the law in that area was being revised by a committee established for that purpose, and particularly to look into questions of competence in the matter of expulsion and of the monitoring of expulsion decisions. Its task would be to give an opinion on the broad discretionary powers which current legislation conferred on the competent administrative authorities. It had already reported on some of its work, which did not as yet include procedural aspects, however. The Government of Denmark did not deny that aliens in its territory were protected by the provisions of the Covenant and that the country's authorities must see to it that the decisions taken under their discretionary powers complied with that instrument and other relevant agreements to which Denmark was a party.

3. The legal procedure was governed by the general principles applicable to legal practice. Denmark had no administrative law distinct from other areas of law. The procedure was usually in writing. Nevertheless, an alien could request an oral hearing and had the option of presenting his case orally before a representative of the competent administration. With regard to the acquisition of Danish nationality, he referred to pages 24-26 of the report.

4. With respect to the independence of the judiciary, he said that judges were appointed by the King on the recommendation of the Minister of Justice. All judges were appointed for life, until the age of retirement. Their impartiality was guaranteed by article 64 of the Constitution. Furthermore, a judge could not be transferred or removed against his will except by a judicial decision. Annex 1 to document CCPR/C/1/Add.19 contained a diagram of the Danish judicial system in which there was a reference to the existence of the Special Court of Revision, composed of three judges, and competent in first and last instance in disciplinary matters.

5. The principles applicable in Denmark provided that all legal proceedings were public and oral wherever possible. His Government had, nevertheless, entered a reservation, which it maintained, regarding the requirement of a public hearing

set out in article 14, paragraph 1 of the Covenant (CCPR/C/1/Add.51, page 12). That paragraph provided for closed hearings solely in order to protect "the interest of the private lives of the parties", whereas Danish law protected the private lives of the witnesses also and therefore provided fuller protection than did the Covenant.

6. He pointed out that, in Denmark, judicial oversight of administrative decisions was within the competence of the ordinary courts, just as it was in Ireland, Norway or the United Kingdom for example. There was no administrative judicial system parallel to the civil or criminal system. The ordinary courts might hear any proceeding to set aside a decision or to seek damages, where appropriate. In the event of a failure to act on the part of an administrative authority or of excessive delay, practice authorized an appeal to a higher authority or referral to the Ombudsman, although there was virtually no case law in that area.

7. As for paragraph 2 of article 14 of the Covenant (CCPR/C/1/Add.51, page 12), Danish legislation was similar in that respect to Norwegian legislation. The Public Prosecutor's Office could shelve a case if it thought that there was insufficient evidence to obtain a verdict of guilty in the court concerned, regardless of the person's actual innocence or otherwise. Similarly, it was entitled to enter a nolle prosequi if the accused had pleaded guilty in court and accepted the court's conditions for a relinquishment of prosecution.

8. With respect to paragraph 3 of article 14 of the Covenant (CCPR/C/1/Add.51, pages 12-14), he said that the legislative provision allowing for the rejection of a defence counsel chosen by an accused was based on the experience of the Federal Republic of Germany. He explained that the decision was taken by the court competent to decide on the substance of the case and that it could always be appealed to the above-mentioned Special Court of Revision, which in those circumstances was supplemented by a barrister and a professor of law. The case law consisted of a single case only involving that provision, a case which, incidentally, had ended in a decision not to reject the lawyer concerned and thus did not require the intervention of the Special Court.

9. He said that, in every criminal case, all court costs, including lawyers' fees, were met out of public funds. Nevertheless, the administration could try to recover the amount from the accused if he was convicted, the competent court then establishing what share of those costs to be borne by the party concerned. The court usually decided that an individual found guilty was liable for the whole of the costs. It would then be up to the authorities to judge whether the decision could be executed and the amounts in question recovered, in the light of the economic position of the person concerned.

10. The case of fees for an interpreter hired for a trial was slightly different. The general rule was that all necessary expenses incurred in conjunction with the trial should be paid in the same manner. A few years previously, however, the question had arisen as to whether interpreting costs constituted necessary expenses. The Copenhagen Court, which had dealt with the case, had decided, in accordance with the case law of European Courts, that such costs should in no circumstances be borne by the accused. That decision has since become the official jurisprudence of the Ministry of Justice.

11. The system of free legal aid in civil cases was slightly different again. Requests for aid were examined by the regional administrative authority and the granting of free legal aid exempted the person from paying court costs and his lawyer's fees. Nevertheless, if the beneficiary of the aid lost the case, he could be made liable for the lawyer's fees of the opposing party. In all cases, the criteria for the decision were the apparent merits of the action undertaken and the economic position of the applicant.

12. In connection with article 15 of the Covenant (CCPR/C/1/Add.51, pages 15-16), he explained that, in spite of the Constitution's silence on the point, it was an established principle of Danish law that criminal legislation must be exempt from any retroactive effect. He also pointed out an error in the translation of article 3 of the Danish Criminal Code on page 15 of the, original English, text of the Report. The word "sentence" in the seventh line should be replaced by the word "judgement".

13. Finally, in connection with article 16 of the Covenant (CCPR/C/1/Add.51, page 16), he said that the administrative authorities were obliged to assign to any individual confined because of insanity or mental deficiency a person to assist him and act on his behalf. In accordance with general legislation concerning legal capacity, every insane or mentally deficient individual could have a permanent representative appointed by an explicit legal decision.

14. The CHAIRMAN invited the members of the Committee to ask questions about the application of articles 23-27 of the Covenant, on the understanding that they could, of course, also refer to other articles if they so desired.

15. Mr. PRADO VALLEJO said, with reference to the additional information communicated by Denmark (CCPR/C/1/Add.19) that he would like some clarifications.

16. First of all, he would like to know, in connection with article 1 of the Covenant, what progress was being made in implementing the right of the population of Greenland to self-determination and full autonomy. Secondly, he asked what was covered by the expression "offences against the Constitution", that were subject to the death penalty, which the Covenant, incidentally, under its article 6, tended to abolish. Thirdly, he noted, in connection with the inviolability of dwelling enshrined in the Danish Constitution, that the application of that principle could be suspended in certain cases, such as to allow the administration access to documents which were ordinarily kept by private individuals. He wondered how that suspension could be implemented in practice.

17. Fourthly, he wondered whether the status of the Evangelican Lutheran Church, as the established church or, in other words, the existence of an official religion, might not jeopardize the freedom of religion laid down in article 18 of the Covenant. Citing the provision of article 68 of the Danish Constitution, he also wondered whether it did not mean a contrario that a person could be constrained to make a personal contribution to the established church or to his own denomination. Fifthly, he would like to know, in connection with article 19 of the Covenant, what were the "substantial economic interests of public character" (article 109, paragraph 1, of the Criminal Code) which might give rise to the suspension or restriction of the right to freedom of expression and in what circumstances that suspension or those restrictions could be put into effect. Finally, he noted that Denmark reaffirmed the reservation it had made to article 20 of the Covenant and that, consequently, it was not opposed to war propaganda. While reservations were, of course, acceptable, they should not undermine the very essence of the Covenant, to which the domestic law of States parties should gradually conform.

18. Mr. BOUZIRI began by pointing out that his question on the remedies available to foreigners who were refused entry into Denmark had not been answered.

19. In connection with article 3 of the Covenant, he asked, with reference to the first paragraph on page 42 of document CCPR/C/1/Add.51, what were the fields in which Danish law guaranteed a wider measure of equality of men and women than was provided for in the Covenant and was tending towards providing still further guarantees. In his opinion, that statement was in contradiction with the reference in the previous paragraph to existing disparities between men and women which hampered access to employment and vocational training.

20. He agreed with the comments made by Mr. Prado Vallejo regarding the exercise of the right to freedom of religion in Denmark and asked what was meant by the expression "religious bodies dissenting from the established church" (article 69 of the Constitution, page 12 of document CCPR/C/1/Add.19). He would also like to know how Denmark reconciled the right to freedom of religion with the provisions of section 5 of the Elementary School Act (page 13 of document CCPR/C/1/Add.19) which, inter alia, excused a child from receiving instruction in religious knowledge when the party having custody of the child declared in writing to the principal of the school that he would himself provide the child with such instruction.

21. In connection with article 23 of the Covenant, he said that he was puzzled by the right, which he considered improper, enjoyed by the chief administrative authority under the Marriage and Dissolution of Marriage Act to authorize the marriage of a person under 18 years of age by overruling the refusal of the parents to grant their consent (CCPR/C/1/Add.51, page 16). He wondered what appeal procedure was available to the parents in such a case, and to whom they could appeal. He also considered improper the power of the chief administrative authority to determine, in the event of a disagreement between the parents, the amount to be paid in maintenance to the children of a marriage following a separation or divorce (CCPR/C/1/Add.51, page 21). Still in connection with the Marriage and Dissolution of Marriage Act, he asked what was to be understood by the expression "any other act comparable to adultery" (CCPR/C/1/Add.51, page 20).

22. In connection with article 24 of the Covenant, he considered that the ten hours of work which a young person could be required to perform, as appeared from chapter 10, section 60, paragraph 2, of the Working Environment Act (CCPR/C/1/Add.51, page 23), to be not only excessive but also contrary to international legislation on the subject.

23. With regard to article 27 of the Covenant, he associated himself with the comments made by Mr. Prado Vallejo concerning Greenland. He inquired whether the final sentence of the second paragraph on page 33 of document CCPR/C/1/Add.51 did not mean that the population of Greenland was not entitled to accede to independence even if it so desired. With reference to the popularly elected bodies in Greenland (CCPR/C/1/Add.19, page 3), he would like to know what they were, on what basis they had been elected and whether the indigenous population of Greenland was politically mature. He also asked what had been the point of the referendum on Greenland home rule (CCPR/C/1/Add.51, page 53), since the population had not had a choice between independence and home rule. He wanted to know whether all the electors had been

indigenous or whether some of them had been Danish by blood, whether some of those who had voted yes (12,756) had not been in favour of independence and, likewise, whether those who had voted no (4,703) had not included some who were in favour of independence and who were not satisfied with the home rule status. In any case, he would like to know who the indigenous peoples of Greenland were, how many of them there were, what their way and conditions of life were and what languages they spoke, and whether there were any of them who wanted independence. In general, he wanted further information on Denmark's position regarding the right to self-determination and on the efforts which its Government was making in favour of the exercise of that right, particularly in Africa, the Middle East and Asia.

24. Mr. TARNOPOLSKY said, with reference to article 25 of the Covenant, that he was surprised at the final provision of paragraph 29, subparagraph 1, of the Constitution (CCPR/C/1/Add.51, page 26). With regard to paragraph 30, subparagraph 1, of the Constitution (CCPR/C/1/Add.51, page 27), he wondered who decided that, in the eyes of the public, a certain act made a person unworthy to be a member of the Folketing and what criteria were applied. Furthermore, noting that "the Act does not apply to military posts and assignments" (CCPR/C/1/Add.51, page 31, second paragraph), he wondered how such posts and assignments could be considered to be part of the civil service and whether access to military posts and assignments was actually forbidden to women.

25. In connection with article 26 of the Covenant, he asked whether a few examples could be given of judicial decisions on the implementation of the principle of equality before the law, on which Danish legislation was based. Furthermore, he would like to know whether in Denmark, there was a distinction between "equality before the law" and "equal protection by the law".

26. Lastly, in connection with article 27 of the Covenant, he associated himself with the questions asked by Mr. Bouziri and also requested some information on the teaching of indigenous languages in schools in Greenland and on the indigenous population's access to higher education.

27. Mr. HANGA asked whether, in Denmark, church marriage had the same legal status as civil marriage and whether the minister of religion could, like the mayor of the district, ascertain that the future spouses met the requirements to contract marriage. Some codes required that future spouses had to be of different sexes and he wondered whether that condition was expressly indicated in Danish legislation or whether it was simply understood. Since the free and full consent of the parties was one of the conditions for marriage in Denmark, the question arose whether a marriage could be annulled in the event of constraint or of mistaken identity.

28. With regard to the situation of children, he wanted to know whether illegitimate children could inherit from their natural father and what measures were being taken to ensure that they were placed on an equal footing with legitimate children.

29. In connection with article 25 of the Covenant, he noted, on page 26 of the report (CCPR/C/1/Add.51), that any Danish subject had the right to vote provided that he had not been declared incapable of conducting his own affairs. He would like to know whether such incapacity was the result of a decision by a judicial body and whether it was an ad hoc decision or whether it arose from the fact that the person concerned was in tutelage or under guardianship.

30. According to the report (CCPR/C/1/Add.51, page 27), the suffrage in Denmark was general and direct and, according to the Constitution, the ballot was secret. It would be interesting therefore to know whether voting was obligatory or not.

31. He noted in the report (page 29) that a person was not eligible for election to the local government councils if he had been "convicted of an act which in the general opinion makes him unworthy of being a member of a local government council". He would like to know what authority determined the unworthiness, or whether it was a matter of fama publica.

32. Lastly, he inquired whether the German minority in North Schleswig enjoyed the support of the Danish State in the preservation of its culture and traditions.

33. Mr. GRAEFRATH said he noted that Denmark was a constitutional monarchy in which the royal power was hereditary and in which the King or Queen had a decisive power in the matter of legislation, while being invested with the executive power. The question had already arisen as to whether the fact that, in some countries, a citizen by naturalization could not be President of the Republic was compatible with article 25 of the Covenant. He asked how the fact that the executive power in Denmark was in the hands of a single family and the monarch could be invested with it only through inheritance and provided that he or she was a member of the Evangelical Lutheran Church could be considered compatible with articles 2 and 25 of the Covenant.

34. Mr. SADI said he wondered why, in Denmark, the minimum age laid down for marriage was the same for both sexes, whereas in general, for reasons based on medical considerations, the minimum age for women was lower than that for men. He also wondered why the minimum age for marriage had been fixed at 18 years and why, if young people wished to marry before the age of 18 years, they had to obtain permission from the chief administrative authority rather than just the consent of their parents.

Mr. Prado Vallejo took the Chair

35. The information given on page 25 of the report (CCPR/C/1/Add.51) with regard to the nationality of children seemed to indicate that Danish legislation made a distinction between men and women, a distinction which was found in many countries. He would like to know whether the representative of Denmark considered that such a distinction was a legitimate one in the light of the Covenant.

36. Mr. PEDERSEN (Denmark), replying to the questions concerning Greenland, drew attention to the information given on pages 32, 33, 52 and 53 of the report (CCPR/C/1/Add.51). In 1953, the new Danish Constitution had determined that Greenland was to form an integral part of the Kingdom of Denmark. That decision had never been challenged. When, in 1975, the Commission on Home Rule in Greenland had been established, it had been decided that the Commission's work would be based on the principle that home rule for Greenland would safeguard the unity of the Kingdom of Denmark. The Commission had included seven members of the Greenland Provincial Council, so the integration of Greenland into the Kingdom of Denmark had been fully supported by the people of Greenland. In the 1978 referendum, the Greenland Home Rule Act had been approved by 70% of those voting, representing approximately 27,000 out of a total population of 45,000 persons (83% of whom were Greenlanders, the rest being mainly Danes. The home rule system, set forth in an annex to the Danish report, showed that Greenlandic was the principal language of Greenland and that it was used for official purposes. Cultural questions were, of course, within the competence of the Greenland authorities.

37. On account of the small number of its inhabitants, Greenland had no university. The existing higher educational establishments were responsible for teacher training. University education was, however, provided in Denmark with the support of the Danish Government.

38. There was no German minority problem in Denmark. An agreement had been concluded in that connection with the Federal Republic of Germany, and the school and cultural activities of the German minorities enjoyed the support of the Danish State, which paid 35% of the costs of the German schools. The replies to a number of the questions put regarding the German minorities and Greenland were to be found in the memorandum which the representatives of Denmark intended to distribute to the members of the Human Rights Committee. His Government was currently preparing, for the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, a report on the ethnic minorities in Greenland. That report could also be distributed to members of the Committee.

39. Lastly, he was intending to forward, to the Secretariat for distribution to members of the Committee, a report on the equality of the sexes in Denmark.

40. Mr. DIEYE said that he, too, would like to know what was meant by "adultery or any other act comparable to adultery" (CCPR/C/1/Add.51, page 20), particularly since very precise proofs of adultery were usually required in legal systems.

41. In Denmark, the dissolution of a marriage was obtained either by administrative decree or by judgement (page 19 of the report). He asked the representative of Denmark for some further information on the circumstances in which an administrative decree could dissolve a marriage and the remedies available to either spouse against an administrative measure which could be prejudicial to their interests.

42. He also asked whether marriages celebrated by ministers of religion other than ministers of the established church in Denmark had the same legal status as marriages celebrated by ministers of the established church.

43. Lastly, he would like to know whether a person naturalized by decree enjoyed immediately the same rights as a person who had acquired Danish nationality through jus soli or jus sanguinis, or whether such a person was subject to certain incapacities for a specific period of time.

44. Mr. KOULISHEV said he noted, in connection with article 26 of the Covenant, that neither the Danish Constitution nor Danish legislation made any specific mention of the general principle of equality before the law. That gap was made good by the fact that the principle of equality before the law was considered to be a general principle of Danish law and by the fact that article 26 of the Covenant was regarded as having been incorporated into Danish domestic law. The principle could therefore be applied by the courts and administrative bodies. He wondered if the representative of Denmark could cite some cases in which the courts or administrative bodies had applied the principle, either as a general principle or as a principle set forth in the Covenant.

45. Mr. TOMUSCHAT said he wondered whether article 1, paragraph 2, of the Danish Nationality Act, as amended in 1978, which provided that every foundling found in the Realm of Denmark should be regarded as a Danish national until evidence to the contrary was produced, could not be applied to children born of stateless parents. He understood that the latter did not acquire Danish nationality. He would like to know what was their legal position and whether their situation could be regarded as compatible with article 24, paragraph 3, of the Covenant, which stated that "Every child has the right to acquire a nationality".

46. He did not share Mr. Tarnopolsky's opinion regarding the construction to be placed upon article 26 of the Covenant. In his view, article 26 did not limit itself to establishing the equality of all persons before the law; there had also to be equality within the law. According to the Danish report (CCPR/C/1/Add.51, p.31), it would appear that equality was considered to be an administrative rule, not a constitutional one. He wondered whether there was, in Denmark, a constitutional principle of equality and whether the legislator was bound to respect the principle of equality when promulgating laws.

47. The status of the Evangelical Lutheran Church, which, under article 4 of the Constitution of the Kingdom of Denmark, "shall be the established church ... and, as such, shall be supported by the State," and articles 66 to 70 of the Danish Constitutional Act on the subject of religious freedoms might appear at first sight to be in contradiction with the Covenant on account of the discrimination which they established in favour of the established church. However, a careful reading of the Covenant revealed that the Covenant protected only natural persons - individuals - and not legal persons. Article 26, for example, provided that "All persons are equal before the law and are entitled without any discrimination ...". Likewise, the Optional Protocol to the International Covenant on Civil and Political Rights referred in article 1 to "individuals". Finally, the nature of the rights envisaged by the Covenant itself (articles 6 to 13) clearly showed that the persons protected by the Covenant were natural persons. On the other hand, equality before the courts (article 14), would be conceivable in the case of legal persons.

48. Nevertheless, a different reasoning could be applied to the guarantees provided for in articles 18, 21 and 22 of the Covenant. If associations founded by individuals were victims of discrimination, they could not, as such, be protected by the Covenant; but there would surely be an infringement of the right of individuals to associate freely with others, to form and join trade unions, for example, as provided for in article 22 of the Covenant. The Committee would need to be informed of the consequences of the pre-eminent status accorded to the Evangelical Lutheran Church, whether it was accompanied by privileges and whether it was prejudicial to the rights of persons having other religious convictions.

49. Sir Vincent EVANS said he wondered what construction should be placed upon article 23, paragraph 1, of the Covenant, which stated that "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State". As traditionally conceived, the family was based on marriage. In some countries, however, it was becoming increasingly common and socially acceptable for persons who were not married to live together and to have children. He wondered whether such couples constituted families in the meaning of article 23 and what the reply to that question would be in the light of current experience in Denmark. On the construction placed upon the word "family" would depend the implementation of the right "to protection by society and the State", recognized in respect of the family by article 23, paragraph 1. The question could have important consequences in unexpected fields, such as that of taxation: in some countries married couples were discriminated against as compared with couples who were not married. It was doubtful whether that was compatible with article 23, paragraph 1.

Mr. Mavrommatis resumed the chair.

50. Mr. HOLM said he would reply first of all to the questions put concerning marriage and divorce. In Denmark, separation and divorce could be obtained by administrative decree or by judgement, as indicated in the report. The intervention of the administrative authorities in such a field, which might appear surprising in the contemporary world, was to be explained by historical reasons. Under the Danish Constitution of 1645 the King had had the general power to grant derogations from the law. At a time when the conditions for divorce were extremely strict, the King could, under that general power, grant a derogation therefrom. The power of the administrative authorities in matters of separation and divorce was thus a vestige of that royal prerogative. Nevertheless, to obtain a separation or a divorce by administrative decree, the parties had to agree not only on the fact of desiring a separation or a divorce but also on the conditions thereof. If they did not agree, a judgement was required. The administrative authority was also responsible for fixing the amount of the maintenance money granted when a separation or a divorce took place - even though the actual decision on the grant of the maintenance was taken by the court - and for granting permission to marry to persons aged under 18 years - a power which had formerly been vested in the King - as a requirement additional to parental consent or as a separate requirement in cases where parental consent was unjustifiably refused. There was no lower age limit below which the administrative authority could not authorize marriage but in practice, the minimum age was a little over 15 years for women, the administrative authority also taking expert opinion into account.

51. Although church marriage and civil marriage were both recognized, as was indicated in the report (CCPR/C/1/Add.51, page 16), the civil authority (the mayor of the district) was responsible for ascertaining that all the conditions required to contract marriage were fulfilled and for delivering a document to that effect to the future spouses. The subsequent ceremony could be either civil or religious, depending on the wishes of the future spouses: in either case it would have the same legal status. A church marriage could be celebrated not only by the representative of the established church but also by a member of the clergy of any religious denomination provided that he had been duly empowered to do so by the Ministry for Church Affairs.

52. Although there was no specific legal provision to that effect, the rule that marriage could be contracted only between persons of different sexes was a firmly established one. One of the grounds for divorce was adultery and any other act comparable to adultery (Danish Marriage and Dissolution of Marriage Act, section 37). Acts which might be considered as comparable to adultery would include, for example, sexual acts between persons of diffent sexes not taken to full intercourse or similar acts between persons of the same sex. If a marriage had been contracted as a result of a mistake or under constraint, it could be declared to be null and void under a procedure for annulment, which differed from divorce or separation.

53. The right to vote and to be elected (article 25 of the Covenant) was dealt with on pages 26 et seq of the Danish report (CCPR/C/1/Add.51). Mr. Tarnopolsky had expressed surprise that the Danish Constitutional Act provided, in paragraph 29, that conviction or receipt of public assistance amounting to poor relief could entail disfranchisement. Mr. Tarnopolsky was right in suspecting that such a provision had not been incorporated into the legislation. In fact, as was indicated on page 28 of the same report, the General Elections Act contained no provision to the effect that persons who had been convicted or who were receiving public assistance would be deprived of the right to vote. It was an obsolete constitutional provision which had not been repealed. Under paragraph 30 of the Constitutional Act, a person who had been convicted of an act which made him unworthy to be a member of the Folketing could not be elected. It was the folketing itself that took the relevant decision (paragraph 23 of the same Act).

54. The phrase "provided that he has not been declared incapable of conducting his own affairs" in paragraph 29 of the Constitutional Act, meant that minors or persons who had been declared incapable by a judicial decision (for reasons of mental illness, for example) could not take part in elections to the Folketing.

55. Another question had concerned paragraph 31, subparagraph 1, of the Constitutional Act, the text of which was given on page 27 of the Danish report in the following form: "The members of the Folketing shall be elected by general and direct ballot". It had been asked whether the ballot was thus not a secret one. He could assure the Committee that, in the Danish text of the Danish Constitutional Act, of which he had two copies before him, it was clearly stated that the ballot was "general, direct and secret". The absence of the word "secret" in the English text was undoubtedly a printing error.

56. The principle of equality before the law (article 26 of the Covenant) was not expressly stated in the Constitutional Act or in any other law; it was, nevertheless, considered a general principle of Danish law (page 31 of the report). The report indicated that the principle served, in particular, to restrict the exercise of discretionary powers by administrative authorities, central and local. It had been asked whether that was a constitutional principle which could limit the power of the legislator. The answer was that it could not, in the sense that the Parliament was sovereign, except in those matters where there was a constitutional provision, and the principle of equality before the law was not one of them. The fact that the principle of equality before the law was considered to be a general principle of Danish law meant that there was, in actual fact, no example of a law violating that principle and that if a bill violating the principle was tabled, it would not be adopted by Parliament. It had also been asked whether the courts had the power to declare that a law was invalid because it ran counter to the principle of equality before the law. The courts considered that they were empowered to refuse to enforce a law which was unconstitutional, and when a case had arisen the view had been taken that, if the principle of equality had been flagrantly violated, the case would have to be referred to the Supreme Court. In general, equality before the law was a firmly established principle of legal policy. When bills were sent to the Ministry of Justice for examination before their submission to Parliament, their conformity with the principle of equality before the law was investigated with particular thoroughness. Furthermore, article 26 of the Covenant had mandatory force for Denmark.

57. It had been asked whether the existence of an established church did not run counter to freedom of religion (article 18 of the Covenant). In Denmark that question had been studied in some depth, not only in connection with article 18 of the Covenant but also in connection with article 9 of the European Convention on Human Rights, which dealt with freedom of religion. The prevailing opinion in Denmark was that the State had, in that respect, primarily a negative obligation to refrain from infringing the various freedoms guaranteed; it was not positively bound to grant privileges to all or to each. Even the fact that the State provided, in public schools, a moral or religious education based on the Christian religion could not be considered as discriminatory, provided that such education was not compulsory for the children of parents who had different philosophies of life or different ethnics.

58. With regard to the privileges enjoyed by the established church, he pointed out that the report submitted by Denmark in 1977 (CCPR/C/1/Add.19) reproduced articles 67 to 78 of the Danish Constitutional Act on the subject of religious freedoms. He drew the Committee's attention to article 68 of that Act, whereby

"No one shall be liable to make personal contributions to any denominations other than the one to which he adheres". To ensure respect for that provision Danish law provided that the established church was financed by a special tax for which only members of that church were liable. In that connection, it should be borne in mind that the vast majority (89 or 90%) of the inhabitants of Denmark were members of the established church.

59. In Denmark's opinion a constitutional monarchy was not in contradiction with article 25 of the Covenant. The régime was essentially a parliamentary democracy, and any decision by the King had to be countersigned by a minister, as provided for in article 14 of the Constitution.

60. Replying to the questions put by Sir Vincent Evans as to whether the traditional construction or a broader one was to be placed on the word "family" (article 23 of the Covenant), he said that the question of "common law marriages" had recently been carefully studied in Denmark, though not in the context of the Covenant. A committee had been instructed to examine the need to provide a legal status for couples who were not married - a status which would govern relations between the parties themselves and vis-à-vis the children born of the union. Thus under Danish law, the mother of a child born out of wedlock automatically obtained custody of the child. The law had recently been amended so as to permit in certain circumstances - which would cover the case of "common law marriages" - the father to obtain such custody. Account was also taken of the existence of such "marriages" in a number of situations: for example, the law required that a judge should declare himself incompetent where his wife was one of the parties to a case, that provision was construed as also applying where one of the parties was not the judge's wife but a woman who was living with him.

61. It would also be useful to know whether the protection against arbitrary or unlawful interference with privacy, family and home, as guaranteed by article 17 of the Covenant (and by article 8 of the European Convention on Human Rights) also extended to such common law marraiges. The question called for further study.

The meeting rose at 6.15 p.m.