INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

CCPR

Distr.
GENERAL

CCPR/C/SR.301
24 July 1981

ENGLISH
Original: FRENCH

HUMAN RIGHTS COMMITTEE

Thirteenth session

SUMMARY RECORD OF THE 301st MEETING

held at the Palais des Nations, Geneva,
on Tuesday, 21 July 1981, at 10.30 a.m.

Chairman: Mr. MAVROMMATIS

CONTENTS

GE.81-16565

The meeting was called to order at 10.40 a.m.

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

Initial report of Norway (supplementary information) (CCPR/C/1/Add.52)

1. At the invitation of the Chairman, Mr. Dolva (Norway) took a place at the Committee table.

Article 6 of the Covenant

2. Sir Vincent EVANS noted from the report under consideration that the death penalty had now been completely abolished in Norway, since after the earlier repeal of the rules concerning the death penalty in peacetime, the rules concerning the death penalty in wartime and war-like situations had been repealed in 1979. He would like to know whether the latter rules had been abrogated by a unanimous vote in the Storting or whether some members of the Assembly had been opposed to their repeal.

3. Mr. DOLVA (Norway) said that the abolition of the death penalty had deeply divided opinion in Norway. In Parliament, opinion had been divided according to political views. Those who favoured abolition had won by only a narrow margin.

Article 7 of the Covenant

4. Mr. PRADO VALLEJO pointed out that in the third paragraph on page 2 of the Spanish version of document CCPR/C/1/Add.52, the word "reitró" should be replaced by "retiró". He had the impression that remand in custody and solitary confinement were not governed by strict rules in Norway. For instance, the Spanish version of paragraph 1 of the text concerning article 7 of the Covenant stated that prisoners detained in custody should be kept in solitary confinement as long as was necessary for the purpose of such detention. The same paragraph stated that persons detained in custody might be permitted the company of other inmates if continued solitary confinement was not required by the prosecuting authorities. He would like to know whether there were rules to ensure that remand in custody and solitary confinement were not used at the discretion of the authorities.

5. Paragraph 3 of the text stated that the inmate might be entirely or partly removed from the company of other inmates, if deemed necessary for disciplinary, security or similar reasons. He would like to know what the similar reasons might be. According to the same paragraph, a period of solitary confinement in excess of one month had to be notified to the Prison Board. He asked whether that meant that the mere fact of notifying the Prison Board enabled the prison authorities to subject an inmate to solitary confinement in excess of one month.

6. Mr. TARNOPOLSKY said that solitary confinement might constitute a cruel punishment in some circumstances. It was therefore difficult to understand why it might be deemed necessary to have recourse to it for reasons other than discipline, security or a prisoner's health. Paragraph 2 of the text concerning article 7 of the Covenant stated that a convicted person who was to be imprisoned for more than six months might be kept in solitary confinement in the early stages of his imprisonment. It seemed hard to justify such a measure. Paragraph 5 of the same text indicated that 10 to 15 per cent of prisoners were in solitary confinement. That seemed a high proportion, especially since most of the prisoners in question were remanded in custody. He would like to know why persons remanded in custody should be subjected to solitary confinement and what reasons other than those of discipline, security or the prisoner's health justified solitary confinement.

7. Lastly, he would like to know whether in Norwegian law the question had ever been raised of proportionality between the punishment and the offence, on the grounds that a disproportionate punishment was a cruel punishment, and whether there were any legal decisions on the question.

8. Mr. DIEYE asked whether a prisoner kept in solitary confinement on the decision of the prison authorities could appeal against such a measure to the judicial authorities or whether the measure could be contested only at the administrative level. He would also like to know whether the prison administration was responsible to the Ministry of Justice or the Ministry of the Interior. If it came within the purview of the Ministry of Justice, it could no doubt be supervised more closely by the judicial authorities.

9. In many countries, there were penal enforcement judges who were able to supervise what happened inside prisons, and particularly the activities of prison governors. He would like to know whether there were penal enforcement judges in Norway.

10. Mr. DOLVA (Norway) explained that the Norwegian prison system was administered by the Ministry of Justice, in which there were departments with special responsibility for prison questions. The decisions taken by the prison authorities, particularly in respect of solitary confinement, could in every case be referred to the higher administrative authorities. If a prison governor decided to place a prisoner in solitary confinement, his decision could be referred to the Prison Board, which was part of the Ministry of Justice. Prisoners were informed of their right to refer measures concerning themselves to the Ministry of Justice. The right of prisoners to receive visitors or correspondence could give rise to legal proceedings. The court before which the case was brought gave a decision on the matter. Decisions taken by the prison administration could be appealed against if they had not been taken in conformity with the law.

11. Any measure of remand in custody could be appealed against in court. The court pronounced judgement and determined the duration of remand in custody or took a decision in favour of release.

12. With respect to the question whether solitary confinement might constitute cruel treatment in some circumstances, it could be held that that kind of danger was averted by the fact that any decision relating to solitary confinement could be brought before the higher authorities or be the subject of an appeal.

13. He had no knowledge of casebook decisions concerning proportionality of punishment and offence. Norwegian legal tradition had a strong tendency to ensure that punishment was in proportion to the offence. The Norwegian Government had submitted a paper on general issues arising out of criminal law to Parliament. Pursuant to the deliberations in Parliament, the issues would be examined by a recently formed criminal law commission.

14. In Norway, the number of prison inmates in proportion to the total population was fairly low; in Europe only the Netherlands had a lower proportion. Paragraph 5 of the text concerning article 7 of the Covenant stated that 10 to 15 per cent of prisoners were in solitary confinement, most of whom were remanded in custody. The courts frequently had complaints in that regard and therefore had to determine whether there were reasonable grounds for preventing a particular prisoner from receiving visitors and correspondence. A person might be remanded in custody, and possibly kept in solitary confinement, if it was feared that leaving him at liberty might jeopardize the quest for evidence in the inquiry concerning him. The conditions for solitary confinement were set out in pages 2 and 3 of document CCPR/C/1/Add.52. The initial period of solitary confinement was two weeks. A commission had recently published proposals concerning the possible amendment of the existing provisions, but the Norwegian Government had not yet taken a decision in that regard.

15. Paragraph 2 of the text concerning article 7 of the Covenant stated that a convicted person who was to be imprisoned for more than six months might be kept in solitary confinement on arrival to enable the prison administration to acquire knowled of his background and general circumstances. It was merely a possibility and not an automatically applied rule. In some cases, the prison authorities might have good reasons for making use of that possibility.

16. The reasons why a prisoner might be placed in solitary confinement were set forth in paragraph 3 of the text relating to article 7 of the Covenant. He did not think that he was able to provide any further explanations on that point.

17. Mr. LALLAH inquired of the representative of Norway the extent to which public officials at all levels were informed of the obligations devolving upon Norway under the international human rights instruments.

18. Mr. TARNOPOLSKY said that he was glad to know that only a small proportion of Norwegians were in prison. He was still concerned, however, about the fact that some prisoners, most of whom were being remanded in custody, were kept in solitary confinement. In such a situation, could those persons at least communicate with their lawyer?

19. Mr. DOLVA (Norway) said that persons who were remanded in custody always had access to their lawyer. They were free to choose their lawyer, but only officially appointed defence counsel enjoyed certain privileges. If the defence counsel selected by the accused was not officially appointed, another defence counsel was appointed. A person in solitary confinement received constant attention from the supervisory staff and medical staff of the prison.

20. In reply to Mr. Lallah, he said that in Norway, as in other countries, it was possible to detect a growing awareness concerning the country's international obligations in human rights questions; the information media kept public opinion informed, with particular emphasis on certain key groups such as the police, the armed forces and the prison authorities. Two years earlier, a Human Rights Commission had been established in Norway to provide contacts between the Government, the political parties and various non-governmental organizations such as the Red Cross and Amnesty International. The function of the Committee, to which all kinds of tasks had been assigned, was primarily to promote information and education in human rights. The situation was therefore steadily improving.

21. Mr. ERMACORA said that, since the problem of solitary confinement was a matter of some importance in the countries of western Europe, he would like to have some explanations not on the system itself, but rather on the ways in which it was applied. He asked whether there had been many appeals to the ombudsman or to the competent authorities concerning solitary confinement, whether persons in solitary confinement staged hunger strikes and whether there were terrorists among those in solitary confinement in Norway, as in other western European countries. Was the light left on 24 hours a day in the cells of such prisoners? Were they entitled to listen to the radio or watch television and could they take exercise outside their cells?

22. Mr. PRADO VALLEJO drew attention to the fact that the third and fifth paragraphs on pages 10 and 11 seemed to imply that detention in custody could last up to 25 years. What exactly was the situation? Which authority decided whether detention in custody was to last more than four weeks?

23. The CHAIRMAN pointed out that the period of 2 to 25 years to which Mr. Prado Vallejo had referred related to the statute of limitations, not to the length of legal proceedings. The confusion was perhaps the result of an error of translation.

24. Mr. DOLVA (Norway), replying to Mr. Ermacora, said that, fortunately, there was no problem of terrorism in his country and that it had therefore been unnecessary to increase the severity of the penitentiary system. There had been isolated cases in which prisoners had staged hunger strikes, but the hunger strikers had always been kept under intensive medical care. Solitary confinement had given rise to many complaints to the competent authorities. For instance, when the "ombud" had taken up his post, he had received more complaints about the prison system than about any other area of public administration; the number of such complaints was now, however, on the decline. There had, moreover, been no reports of any serious problems relating to solitary confinement or abuses in that area. Nevertheless, it was a matter that had to be kept under review. A recently established commission was now reviewing Norwegian prison legislation with a view to bringing it into line with emerging new trends. The light was not kept on constantly in prison cells and prisoners were simply closely watched. Unless otherwise indicated as a result of the investigations carried out, even prisoners in solitary confinement could listen to the radio and watch television. They could also take at least one hour of exercise a day.

25. He admitted that there was no rule fixing a maximum period for detention in custody, which was, however, always subject to the approval of the judicial authorities. For example, when a case was being heard, it was not necessary to set a time-limit for detention in custody because, at any time during the trial, the accused could ask to be released. It was only in serious cases that detention in custody could last six months or one year.

26. Mr. SADI drew attention to the reference to the "moderating effect" that adult offenders could have on young offenders (page 4). Under the Covenant, however, young prisoners and offenders must be separated from adults. He wondered how Norway reconciled its international obligations in that respect with the practice it had adopted.

27. Mr. TARNOPOLSKY said that he would like to know the results of the recently published survey referred to in the second paragraph on page 4.

28. Sir Vincent EVANS, referring to the words "only the young criminal offenders with the heaviest charges against them are sent to prison" (page 4), pointed out that, in many countries, juvenile deliquency was a serious problem and that parents were often considered responsible for it. He asked what Norway was doing to avoid sending juvenile offenders to prison and whether parents were held responsible for offences committed by their children and had to pay fines.

29. Mr. DOLVA (Norway) informed the members of the Committee that the Government of Norway had made a reservation to article 10, paragraphs 2 and 3, concerning the separation of juvenile and adult offenders. In Norway, experience had shown that such segregation was beneficial and the independent survey undertaken on behalf of the Ministry of Justice by a qualified Norwegian criminologist had confirmed that the Norwegian practice was quite valid. Indeed, in prison society, adult offenders could show juvenile offenders that, if they obeyed the rules, they would continue to benefit from the liberal treatment which they received under the system.

30. Referring to the question raised by Sir Vincent Evans, he said that, with the support of public opinion, the Norwegian authorities considered that there were more effective ways than imprisonment of putting young offenders back on the right track. For example, social welfare agencies at the municipal level were sometimes entrusted with responsibility for, and the care of, young criminals. Despite the problem of the lack of funds, solutions other than prison were always given priority.

31. Although it was true that parental responsibility was sometimes crucial, the Norwegian authorities were of the opinion that, instead of penalizing families, it was better to help them to lead normal lives. It was only in civil law that parents might have to pay fines for the damage caused by their children ("torts"). He added that, as a result of the adoption, in the spring, of a new act on parents and children, a new post of "ombud" to deal with matters relating to the education and development of children had been introduced.

32. Mr. SADI asked whether it would be possible for the Norwegian authorities to transmit to the Committee the results of the survey on the separation of juvenile and adult offenders.

33. Mr. DOLVA (Norway) said that, if the Committee so wished, the Government of Norway would provide the documentation requested.

34. Mr. HANGA, referring to article 13 of the Covenant, asked whether the review of Norwegian legislation on expulsion which had been in process at the time of the submission of the initial report had been completed. At that time, he had asked, in connection with article 14 of the Covenant, whether there were any special courts in Norway for the settlement of labour, social, financial, tax and administrative disputes. Norway's supplementary report had a great deal to say about labour disputes, but made no reference to the other types of dispute. He wondered whether that meant that such disputes were tried by the civil courts. He would also like to know whether, if proceedings went on for extremely long periods, the accused could ask for them to be speeded up.

35. Mr. PRADO VALLEJO said that he would like to know why an officially appointed defence counsel had more rights than the defence counsel chosen by the accused.

36. Turning to article 18 of the Covenant, he wondered whether the predominance of the Evangelical Lutheran Church might not be tantamount to discrimination against other religions. The report stated that "the Church of Norway occupies a special position by virtue of its relationship to the State and the fact that its status is protected by the Constitution". What form did that "special position" actually take?

37. Since religious instruction, which was compulsory in primary schools, could be given only by teachers belonging to the Evangelical Lutheran Church, and members of other religious communities were not authorized to teach their religions, that too might be said to amount to discrimination. On what terms could the other churches receive financial and economic assistance from the State, as did the official Church? Was there not also discrimination in the fact of deciding that no one could be a church official or a chosen representative of a church if he did not belong to the State Church?

38. Referring to article 100 of the Constitution, which provided that freedom of expression did not include freedom to express contempt of religion, he asked whether that prohibition related only to the State religion. If, moreover, as stated on page 20 of the report, "certain other forms of influencing public opinion to the detriment of the interests of the community" were prohibited, what body decided when the interests of the community were being jeopardized? Might not there be grounds for saying that that would pave the way for arbitrariness and hence, an infringement of the right of freedom of expression?

39. Since article 100 of the Constitution also provided that it was prohibited to incite hatred of the Constitution, he would like to know who decided whether hatred of the Constitution had been provoked and what form such hatred took, for it was possible for a person to wish to change the Constitution of his country and to act accordingly. Under democratic régimes, people were entitled to criticize the laws and the Constitution of their country. He therefore regarded those prohibitions as an infringement of the right of freedom of expression.

40. Mr. LALLAH asked whether there were any exceptions to article 88 of the Constitution, which provided that "the Supreme Court shall pronounce judgement in the final instance".

41. Since article 14, paragraph 3 (b), of the Covenant provided that everyone charged with a criminal offence was entitled "to communicate with counsel of his own choosing", he found it surprising that, in Norway, a distinction should be made with regard to the choice of defence counsel and he would like to know why such a distinction was made.

42. Mr. TOMUSCHAT, referring to the question of the resumption of cases, wondered whether, in article 415, paragraph 1, of the Criminal Procedures Act, which stated that a case could be resumed "when by reason of his own subsequent confession or other subsequently produced evidence ...", the words "other subsequently produced evidence" did not constitute too broad an exception to the principle embodied in article 14, paragraph 7, of the Covenant, which provided that "no one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted".

43. Mr. ORTEGA, noting that it was stated on page 6 of the report that "the independence of the courts is only applicable to their judicial functions" and that "When the courts perform purely administrative tasks, the judges are subject to instructions from the appropriate administrative authority in accordance with the same principles as civil servants within the government administration", said that he would like to know whether, in practice, such action by the courts or the administrative authority did not jeopardize the independence of the judicial authority in the exercise of his purely judicial functions.

44. With regard to the non-retroactivity of laws provided for in article 97 of the Norwegian Constitution, he asked whether any exception could be made to that principle in Norway in cases where the retroactive effect of a law would benefit an offender, in accordance with article 15 of the Covenant.

45. Mr. DOURI, noting that the report often referred to draft laws, said that it would be interesting to know what stage those drafts had reached and, in particular, whether or not the new Criminal Procedures Act had entered into force. He would also like to know whether the military tribunals were special courts, whether the same rules were applicable to them as to the ordinary courts as far as independence was concerned, and whether an accused person was free to choose his own defence counsel.

46. Mr. DOLVA (Norway), replying to the question relating to article 13, said that a royal commission had been set up to deal with that matter and that, although its work had not yet been completed, it soon would be.

47. Referring to article 14, he said that special courts were quite rare in Norway. Financial, tax and administrative disputes were settled by the ordinary courts. The case of social security was somewhat special in that there was a "social security court", whose decisions could be contested in the ordinary courts.

48. In reply to the question of the remedies available to anyone who complained about the excessive length of criminal proceedings against him, he said that, in the normal exercise of their functions, unduly protracted proceedings were rare in the Norwegian courts and that such a case was quite unlikely to arise. If such a case should arise, however, the complainant could bring it before the ordinary courts.

49. In reply to Mr. Lallah's question concerning the Supreme Court of Justice, he said that there were exceptions, but very few. At the time of the introduction of the system of trial by jury in Norway, it had been asked whether that provision of the Constitution might not be jeopardized. It had been decided that the jury's verdict could not be appealed against but that the Supreme Court was competent to rule on the legality of the proceedings.

50. The principle of the independence of the courts had a solid basis in his country's legal practice. Cases in which the courts exercised functions other than judicial ones were very rare, with the result that the problem of the independence of the judges did not really arise.

51. Although article 97 of the Constitution provided that laws could not have any retroactive effect, that was a general principle which did not apply in the case referred to in article 15 of the Covenant, namely, the case of a law providing for the imposition of a lighter penalty by which offenders could benefit.

52. Although the revision of the General Code of Criminal Procedure had taken a great deal of time, the Norwegian Parliament had just adopted it and it should enter into force shortly.

53. With regard to free choice of defence counsel, he explained that the law-makers' main concern had been to protect the interests of an accused person by ensuring that the defence counsel he chose was competent. If the authority objected to the defence counsel chosen, the accused could choose another; the authority did not force any choice on him. A refusal officially to appoint as defence counsel the defence counsel chosen by the accused could also be explained by the desire to safeguard the public interest in, for example, a case where a defence counsel was caught clandestinely transmitting letters to the accused. It could also be for political reasons. There was, in his view, nothing in those provisions that was not in keeping with the provisions of the Covenant.

The meeting rose at 1.15 p.m.