CCPR

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Distr
GENERAL

CCPR/C/1/Add 5
6 April 1977

Original ENGLISH

HUMAN RIGHTS COMMITTEE
Second session

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

Initial reports of States parties due in 1977

Addendum

NORWAY

[22 March 1977]

I By way of introduction, a brief account will be given of some basic factors operative in the implementation by Norway of commitments undertaken under international law

In principle the relationship between Norwegian municipal law and international law may be described by the catchword dualism International law is binding on Norway, but not in Norway In the event of any conflict between the two systems of law, Norwegian courts shall in principle apply Norwegian municipal law As a point of departure it is assumed that a special act of implementation is required in order that rules of international law shall become applicable in Norway (the "Principle of transformation") At the same time it is held that in cases where Norwegian law is ambiguous, Norwegian courts may well come to the same result as that required by international law, by presuming that municipal law conforms to international law or by interpreting municipal law in such a manner that it fulfils the requirements laid down in international law

However, in many instances a mechanism has been employed in Norway referred to as "the ascertainment of normative harmony" ("passive transformation") a study of Norwegian law, for the purpose of comparing it with the requirements prescribed in a treaty, may lead to the conclusion that Norwegian law is actually already in conformity with the treaty in question No special act of transformation is then required This mechanism was, inter alia, employed in connexion with Norway's ratification of the International Covenant on Civil and Political Rights

Whether normative harmony in fact exists, is ascertained partly by examining the existing statutory rules - partly by taking into account the unwritten precepts or principles which form part of municipal law, the following of which have particular significance in the field of human rights

1 The so-called "principle of 'legality'" means that the authorities must be empowered by statutory law adopted by the National Assembly (the "Storting") in order to intervene in the sphere of legal rights of citizens The imposition of new burdens, a more stringent application of existing obligations or the deprivation of rights thus require authorization in statutory law It should be noted that this principle protects all individuals without regard to race, sex, language, etc

2 Furthermore, it should be noted that, according to Norwegian law, the courts are competent to try the exercise of discretionary powers of the public administration When deciding a case, the administrative authorities must not base themselves on materially irrelevant considerations Furthermore, the decision must not be manifestly unreasonable Finally, the administration must observe the so-called "principle of equal treatment under the law" by virtue of which discrimination of an arbitrary nature must not take place Any private individual may claim before the courts that the administration has not observed these principles In addition he may claim that the principle of "legality" has been violated or that the public authorities have failed to observe the statutory rules which bind them

The precepts and principles mentioned above must be borne in mind when examining the fulfilment of the requirements imposed by the Covenant on Civil and Political Rights on municipal law It will often be impossible to demonstrate as a matter of "visual" fact that these obligations are fulfilled, in spite of the fact that the solutions required by the Covenant indisputably form integral parts of Norwegian municipal law

II Comments on individual articles

Comments on individual articles will mainly be made to the extent factors and/or difficulties have occurred affecting the implementation of the various rights which are not deemed to be sufficiently covered by the information contained in the preceding introductory remarks

In the absence of statements to the contrary, it is the assertion of the Norwegian Government that Norwegian municipal law is fully compatible with the provisions of the Covenant according to their letter and spirit

Article 2

Norwegian law satisfies the requirements described in para 3 Anyone who feels his rights have been violated, may take legal action before the courts In this connexion it should be noted that Norwegian courts are empowered to decide whether an act of legislation is constitutional They are also, as mentioned above, competent to try whether an administrative decision is duly authorized by statutory law and whether the exercise of discretionary powers, upon which a decision is based, is lawful If the claim is upheld, the administrative decision will be rendered invalid and restitution/compensation ordered, as the case may be

In addition there are the remedies of, respectively, appeal to a superior administrative authority and appeal to the Storting's Ombudsman for the Public Administration Further to this it should be noted that abuses may obviously give rise to political sanctions (for example criticism in the Storting) Nor should the function of the press as a watchdog be overlooked, note in this respect legislation providing for public access to official documents As regards para 3, litra a, in particular, the Norwegian Penal Code contains special provisions against certain offences committed by civil servants (cf sections 324 and 325 of the Penal Code, a translation into English of which is enclosed)

Article 4

The special legislation which, in the event of a state of public emergency, might be applied falls within the scope drawn up by article 4 As regards the relationship between Norwegian law and article 6, para 4, see below

Article 6

Norwegian law does not fully conform to the requirement in para 4 prescribing that anyone sentenced to death shall have the right to seek pardon or commutation of the sentence According to section 242 of the Military Criminal Procedures Act of 29 March 1900 No 2, there are no legal remedies against judgements rendered by the Courts Martial and, according to section 243, a Court Martial's sentence of death shall be carried out immediately Furthermore, according to section 208 of that Act (cf section 211), the ordinary military courts may, in wartime and subject to specific conditions, decide that a sentence of death shall be carried out irrespective of the normal rules of appeal procedure According to section 18 of the Military Criminal Procedures Act and section 14 of the Act of 15 December 1950 No 7 relating to Emergency Measures in Wartime, the King may in certain instances decide that the High Court (Criminal Division) shall act as the court of final instance so that the right of appeal ceases to apply

The reason for these special provisions is that it may well happen that, in a wartime emergency, the Supreme Court will be cut off from contact with certain parts of the country or that for other reasons it may prove impossible to get appeals dealt with by the Supreme Court within a reasonable space of time

Before Norway ratified the Covenant, due consideration was given to the question of amending Norwegian legislation on these points However, it was instead decided to make a reservation in respect of para 4, and the legal situation remains the same today

Capital punishment may not be imposed under normal conditions, but military legislation does contain certain such provisions, but always as an alternative punishment to deprivation of liberty

Article 7

Norwegian law meets the requirements of the Covenant Although there is no express provision with the same content as that prescribed in article 7, the second sentence of Article 96 of the Constitution - ("Interrogation by torture must not take place") - partly covers the provisions of article 7 Furthermore, the above-mentioned principle of "legality" provides protection against all the malpractices in question

Article 8

As regards para 3, it should be noted that the issue concerning the Norwegian system requiring dentists to undertake a compulsory civilian tour of duty was brought before the European Human Rights Commission some time ago (cf the European Convention for the Protection of Human Rights and Fundamental Freedoms, article 4, paras 2 and 3) The appeal was dismissed as "manifestly ill-founded" It is felt that the Covenant must be interpreted in a like manner

Mention should also be made of the form of compulsory labour, considered to be in conformity with the Covenant, and which, in pursuance of section 14 of the Act of 26 February 1932, No 1 relating to Temperance and Temperance Committees, may be imposed, inter alia, on persons who are committed to a treatment centre This question was discussed before Norway ratified the Covenant and it was found that such work comes under the excepting provision contained in subpara c, litra i, even if the deprivation of liberty in this case is not ordered by an authority which is defined as a court of law in Norwegian terminology Morever, compulsory labour is imposed solely as a curative measure.

Article 9

Norwegian law is in conformity with paras 1 - 4 The Constitution contains in its Article 99 a basic legal principle in this context "No one shall be arrested and committed to prison except in the cases determined by statutory law and in the manner therein prescribed" Further to and in addition to this provision, full protection is afforded to the individual by statutory law The standard rules of criminal procedure are particularly important in this connexion

On the other hand the relationship of Norwegian law to para 5 has been the subject of some discussion There appears to be some doubt as to how stringent the requirements of this paragraph actually are On the one hand, it is quite clear that Norwegian law does not grant any general and unconditional right to compensation for deprivation of liberty in all cases where it proves that such deprivation cannot be justified and upheld However, the Norwegian authorities assume that the Covenant does not prevent domestic law from stipulating specific terms and conditions for the award of compensation According to Norwegian law, the State incurs a certain degree of absolute liability in cases of unwarranted prosecution (section 469 of the Criminal Procedures Act) Having served a penalty for a crime in respect of which the convicted person is subsequently acquitted by court judgement, such a person has an unqualified right to compensation In cases of unwarranted detention in custody, the right to compensation is unconditional only if "the evidence put forward to establish his perpetration of the act is rebutted" The courts may award compensation in respect of "a substantial loss of personal welfare" in other instances where prosecution is discontinued (declared nolle prosequi) In addition a civil servant incurs a certain liability for negligent conduct for which the State stands as guarantor

In the Bill for a new Criminal Procedures Act which is due to be submitted to the Storting during the spring session of 1977, it is proposed to extend the right of the accused to compensation, inter alia it shall be sufficient, in respect of detention in custody, that it be made plausible that the accused has not committed the act in question, and the court's powers to award compensation in other cases shall not be restricted to the concept of "substantial loss of personal welfare"

For cases of deprivation of liberty outside the scope of criminal proceedings there are no special rules for compensation However, civil servants are liable for negligence under the terms of the law of torts and for whose acts it is assumed that the State normally shall be held responsible (cf Chapter 2 of the Act of 13 June 1969 No 26 relating to Compensation in Certain Circumstances)

The Norwegian authorities are of the opinion that Norwegian law is consistent with the requirements of the Covenant However, the situation will be further improved when the amendments proposed in the Bill for a new Criminal Procedures Act take effect

Article 10

Norwegian law meets the requirements laid down in paras 1 and 2, litra a

On the other hand, Norway has tabled a reservation in respect of para 2, litra b and para 3 The reason is partly that a certain amount of shared activity and recreation is considered necessary on practical grounds, and partly some doubt as to the advisability of keeping young offenders strictly segregated from adult offenders No changes are envisaged to bring the Norwegian arrangements into line with those prescribed by the Covenant

Article 12

Reference is made to the general comments in Chapter I of this report The provisions restricting freedom of movement, cf for example section 33 of the Penal Code and certain provisions in the Aliens Act, are clearly within the scope of para 3

Article 13

Norwegian law fulfilled the requirements of the Covenant at the time of Norway's ratification and no amendments have been introduced since then

Article 14

Para 1 The relevant Norwegian provisions in this respect are partly Article 96 of the Constitution ("No one may be punished except according to a court judgement"), and partly the standard rules of procedural law Norwegian law is consistent with the requirements of the Covenant

Para 2 The principle of "In dubio pro reo" is not enacted into statutory law, but forms indisputably an integral part of Norwegian customary law

Para 3 Of the minimum guarantees enumerated in para 3, it is only the one under litra d which may seem somewhat problematical seen in relation to Norwegian law

According to the existing procedure the accused is not summoned to, or informed of, the appeal proceedings before the Supreme Court Although the Act does not prohibit him from being present, there may be some doubt as to whether the existing arrangement accords with the Covenant As mentioned above, the Criminal Procedures Act is at present undergoing revision, and it is for the moment not possible to predict with certainty what the result will finally be in this particular context The proposal is hardly likely to go any further than to state that the accused "insofar as it is possible" shall be notified of the court hearing

Another issue of interest in connection with litra d was discussed in a judgement of the Supreme Court, referred to in Norsk Retstidende (The Norwegian Case-Law Journal) of 1974, p 935 The Supreme Court found that the right of the accused to be present during court hearings was a party right and that if the accused is mentally disturbed, this party right devolves upon the guardian and the guardian only, cf section 98 of the Criminal Procedures Act No error, it was held, was therefore committed when the guardian, and not the mentally disturbed person, was present in the preventive detention case against him The Supreme Court took the view that this result did not conflict with article 6 of the European Convention on Human Rights

The person concerned subsequently lodged an appeal with the European Commission on Human Rights The appeal was recently declared inadmissible

Norwegian law does not at the present time conform to the provision under litra d in respect of the accused being entitled to be notified of his right to avail himself of legal assistance However, such a provision will be proposed in the Bill for a new Criminal Procedures Act The reason why no reservation in this respect was made by Norway at the time of ratification was that, on the basis of an interpretation of article 2 of the Covenant, it was assumed that a certain deviation from the Covenant was permissible at the time of ratification, particularly in view of the fact that work on the new legislation was underway and that amendments were expected to be enacted into law relatively soon

Para 5 This paragraph raises a number of problems of interpretation

According to the Norwegian Criminal Procedures Act no appeal may be lodged before the Supreme Court in respect of the assessment of evidence in connexion with the question of guilt, so that there is no remedy providing for a full review of cases which commence in the High Court (Criminal Division) Nor is there in respect of cases tried before the District and City Courts any unqualified right to have the assessment of evidence in connexion with the question of guilt reviewed by a higher instance, since a new hearing before the High Court depends in some cases on the consent of the Select Appeals Committee of the Supreme Court In the future, according to the Bill for a new Criminal Procedures Act, such consent will always be required for a new hearing

The Norwegian Government made a reservation in relation to para 5 upon ratification, since there was some doubt as to whether the Covenant allows for the procedures referred to above

Para 7 The main precepts of Norwegian criminal procedure are in conformity with para 7 However, according to Norwegian law there is a certain possibility of instituting a resumption of the case to the disadvantage of the convicted person In the Bill for a new Criminal Procedures Act it is proposed that this procedure be retained It is not clear whether the Convention aims at prohibiting a resumption in such instances, but to be on the safe side Norway reserved herself in respect of para 7 upon ratification

Article 15

Article 97 of the Constitution ("No law must be given retroactive effect") and section 3 of the Penal Code are in conformity with article 15 It should be noted that Article 97 has been interpreted to the effect that the prohibition against retroactivity is absolute in the field of penal law

Article 17

Norwegian law does not contain any general provision which expressly upholds the right of the individual to privacy, family, home and correspondence

Article 102 of the Constitution ("Search of private home shall not be made except in criminal cases") is rather fragmentary, but reference is made to the principle of "legality" previously referred to, and it should also be noted that statutory law provides protection for the individual In particular, mention should be made of section 145 of the Penal Code concerning opening of mail, section 145, litra a concerning monitoring private conversations and section 390 concerning the violation of another person's privacy by making public information concerning personal or domestic affairs Furthermore, it is considered that Norwegian law provides a certain degree of non-statutory protection to privacy

The Act of 24 June 1915 No 5 regulates the right to monitor postal and telegraphic dispatches and telephone conversations. It should also be noted that on 17 December 1976 a provisional Act was adopted granting the authorities the right to monitor telephone conversations in the course of an investigation of violations of the legislation on narcotics The Prison Act of 12 December 1958 No 7 contains rules on the right of prison inmates to receive visits and to send and receive mail

The rules prescribed in the Penal Code on defamation of character and the general legislation on family law should also be noted in this connexion.

Norwegian law is consistent with the obligations under Article 17

Article 18

Article 2 of the Constitution establishes the principle of the right to religious freedom On the other hand we do not have equality of religion in Norway since the Evangelical-Lutheran Church is the national church of Norway This constitutional provision protects anyone who is in Norway and comprises all varieties of philosophies, including that of not having any religion whatever The Constitution is supplemented by the Act of 13 June 1969 No 25 relating to Religious Congregations, etc , where the principle of freedom of religion is further defined In addition, section 135, litra a and 349, litra a of the Penal Code prohibit any discrimination on account of a person's religion, i a (see enclosure)

Article 19

Freedom of the press and freedom of expression in general are prescribed in Article 100 of the Constitution To undertake a detailed interpretation of this rather complicated provision would lead too far in this context Existing limitations on freedom of expression are clearly covered by the exception in para 3. The provisions in the Penal Code on defamation of character on pornographic material, together with a licensing system for audiovisual media - such as radio and TV - should be noted in this connexion It is also assumed that the Norwegian requirements for a permit for the public showing of cinematographic films are covered by this exception

Article 20

A Bill prohibiting war propaganda was submitted to the Storting some time ago so that Norway could conform to the requirements of para 1 The Storting rejected the Bill It did not disagree with the principle involved, but felt that such a statutory provision might lead to unfortunate results, partly out of consideration for the principle of freedom of expression, partly because it would be difficult to carry out in practice The Norwegian Government therefore tabled a reservation in relation to para 1 when ratifying the Convention

In 1970 two new provisions were enacted in the Norwegian Penal Code, sections 135, litra a and 349, litra a (see enclosure) The reason was that Norway was about to ratify the International Covenant on the Elimination of All Forms of Racial Discrimination Section 135, litra a, which is of particular interest in this connexion, is considered to be consistent with the requirements prescribed by para 2 of Article 20 The provision is rarely applied in practice However, it may be mentioned that convictions in pursuance of section 135, litra a have occurred and only recently the Supreme Court has upheld a conviction in a case concerning racial discrimination

Article 21

Norwegian law does not contain any general rule expressly establishing the principle of the right of assembly The second paragraph of Article 99 of the Constitution provides a limited form of protection However, in this context, too, the principle of "legality" should be borne in mind

The right of assembly may be said to form an integral part of Norway's political system and the few restrictions which do exist are well within the scope of Article 21

Article 22

The right to freedom of association is not embodied in the Constitution, nor do we have any general rule establishing this principle in any act of legislation Nevertheless, this right must be considered to be a general principle of law, although with certain restrictions (cf for example section 330 of the Penal Code enclosed herewith)

It may be noted that on the part of Norway the Covenant is interpreted in such a manner as not to accord to all trade union bodies the right of negotiation, etc

The requirements of Article 22 are met by Norwegian law

Article 23

Also the requirements prescribed in this article must be considered fulfilled The article is construed so as not to bar provisions prohibiting certain categories of persons from marrying, such as the insane, mentally deficient, etc

Article 25

Litra c gives rise to certain comments Originally, Article 92 of the Constitution prescribed that only persons who confessed to the Evangelical-Lutheran religion could be appointed to higher posts in the State administration This

requirement has in the course of time been abrogated to the point where it currently applies only to members of the clergy and to teachers on the theological faculties Since the rights embodied in Article 25 of the Covenant shall apply "without unreasonable restrictions", it is assumed that the restrictions referred to above do not conflict with the Covenant

Article 26

This provision is not quite clear Presumably, it must be understood to mean that it establishes the principle of equal treatment and that any departure from that principle must have objective grounds It must also be sufficient that such a principle forms the basis for legislation, and not itself be the subject of legislation in the form of explicit general statutory rules against discrimination The latter approach would involve major problems of a legal-technical nature if such rules were to be of a substantive nature

Reference is also made to the general comments in Chapter I of this report, i e on the principle of equal treatment under the law, as well as to the comments on Article 2, para 3

Finally, it should be noted that it is possible that certain unwritten principles of equal treatment do exist as an integral part of constitutional law, observations to this effect have at any rate been expressed by the Supreme Court in a number of cases However, there are to date no examples of any act of legislation having been declared unconstitutional with reference to such principles

Article 27

From a purely legal point of view, Article 27 does not elicit much in the way of comment apart from the fact that upon ratifying the Convention it could not be seen that the provision would cause any difficulties as far as Norway was concerned Certain factors may, nevertheless, be of interest in this connexion, as regards the Lapps and Gypsies, reference is made to Norway's third periodic report under Article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination, which is contained in document CERD/C/R 78/Add 7

Extracts from the Norwegian General Civil Penal Code

A Felonies against law and order

Section 135 a (cf section 349a below)

Anyone who threatens, insults or exposes any person or groups of persons to hatred, persecution or contempt on account of their religion, race, colour or national or ethnic origin by means of a public utterance or by other means of communication brought before, or in any other way disseminated among, the general public, shall be punished by fines or imprisonment up to two years

Anyone who incites to, or aids and abets in, the commission of an offence referred to in the first paragraph, shall be punished in the same way

B Misdemeanours committed in public service

Section 324

Any civil servant who intentionally omits to perform an official duty, or who otherwise intentionally violates his official duties, or who, in spite of warnings, shows carelessness or negligence in the performance of such duties, shall be punished by fines or loss of office

Section 325

Fines shall be imposed as punishment upon any appointed civil servant who

1 shows gross lack of judgement in his duty, or

2 performs any act which is forbidden to him because of his position, or

3 is guilty of improper conduct towards any person during the performance of his official duty, or

4 is guilty of improper conduct towards any of his superiors or subordinates in connexion with his service, or

5 behaves outside the service in a manner which will render him unworthy of, or which will destroy, the confidence or esteem necessary for his office

In case of repetition or under extremely aggravating circumstances, the punishment may be loss of office

C Misdemeanours against the public authorities

Section 330

Anyone who establishes or, participates in, an association which is prohibited by law, or whose aim is the commission or promotion of offences, or whose members commit themselves to unconditional obedience to someone, shall be punished by fines, detention or imprisonment of up to three months

If the purpose or the association is to commit or promote the commission of felonies, imprisonment of up to six months may be imposed

D Misdemeanours against law and order

Section 349a (cf section 135 a above)

Anyone engaged in gainful activity and who, on account of a person's religion, race, colour or national or ethnic origin, refuses such a person goods or services on such terms as are applicable to others, shall be punished by fines or imprisonment up to six months

Anyone who, on such grounds as are referred to in the first paragraph, refuses a person admittance to a public performance or display or any other public gathering on such terms as are applicable to others, shall be punished in the same way

Anyone who incites to, or aids and abets in, the commission of an offence referred to in the first or second paragraphs, shall be punished in the same way