



**International covenant  
on civil and  
political rights**

Distr.  
GENERAL

CCPR/C/NOR/2004/5  
3 December 2004

Original: ENGLISH

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HUMAN RIGHTS COMMITTEE

**CONSIDERATION OF REPORTS SUBMITTED BY  
STATES PARTIES UNDER THE COVENANT**

**Fifth periodic report**

**NORWAY\***

[18 November 2004]

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\* This report is issued unedited, in compliance with the wish expressed by the Human Rights Committee at its sixty-sixth session in July 1999.

The annexes to the report submitted by the Government of Norway may be consulted in the secretariat's files.

GE.04-45049 (E) 310505

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## **Introduction**

1. The fifth periodic report of Norway is being submitted in accordance with Article 40, paragraph 1 b, of the International Covenant on Civil and Political Rights and with the request of the Human Rights Committee in its concluding observations on Norway's fourth periodic report to submit the report by October 2004 (CCPR/C/79/Add.112).
2. To facilitate examination of the report, reference is made to Norway's previous periodic reports: the fourth periodic report, submitted in 1997 (CCPR/C/115/Add.2); the third periodic report, submitted in 1992 (CCPR/C/70/Add.2); the second periodic report, submitted in 1988 (CCPR/C/42/Add.5); the initial report, submitted in 1977 (CCPR/C/1/Add.5); and the supplement to the initial report, submitted in 1979 (CCPR/C/1/Add.52). During the preparation of this report, due regard has been paid to the guidelines regarding the form and content of periodic reports from States parties (CCPR/C/66/GUI/Rev.2) and the concluding observations of the Human Rights Committee on Norway's fourth periodic report (CCPR/C/79/Add.112).

## **INFORMATION IN RELATION TO EACH OF THE ARTICLES IN PARTS I, II AND III OF THE COVENANT**

### **Article 1**

3. In its concluding observations of November 1999 on Norway's fourth periodic report, the Human Rights Committee stated that it expected Norway to report on the Sami people's right to self-determination under Article 1 of the Covenant, including paragraph 2 of that article ((CCPR/C/79/Add.112) paragraph 17).
4. Article 110 a of the Norwegian Constitution reads:

“It is the responsibility of the authorities of the State to create conditions enabling the Sami people to preserve and develop its language, culture and way of life.”

In 2002 the Norwegian Government presented a white paper to the Storting (the Norwegian parliament) on its policy towards the Sami people (Report No 33 (2001-2002) to the Storting). The white paper discusses how to apply the concept of self-determination to the Sami people, and the Government is currently undertaking consultations with the Sameting (the Sami Parliament) with a view to reaching a common understanding on this issue. One of the topics that should be discussed is the establishment of procedures on how to consult the Sameting or, where appropriate, Sami interests in dealing with Sami issues. The goal of the process is to establish and clarify the roles and obligations of the Government and the Sameting in dealing with issues that directly affect the Sami population and to strengthen the partnership to the benefit of the Sami culture and the Sami society. A working group has been established to prepare a proposal on how to involve the Sameting and to strengthen its influence whenever consideration is given to legislative or administrative measures that may affect the Sami population in Norway.

5. Information on the status of the Sami people is provided under the discussion of Article 27.

## Article 2

### **The status of the Covenant in domestic law**

6. By the Act of 21 May 1999 No 30 relating to the strengthening of the status of human rights in Norwegian law (the Human Rights Act), the Covenant and its two protocols were incorporated into Norwegian law together with the Covenant on Economic, Social and Cultural Rights and the European Convention on Human Rights with additional protocols. In 2003, the Convention on the Rights of the Child was also included. According to Article 3 of the Act, the provisions of the conventions mentioned in the Act are to take precedence over any other legislative provisions that conflict with them. (The background to the Act is described in Norway's fourth periodic report, paragraphs 6 to 10. A translation of the Act is enclosed as Appendix 1.)

7. To raise awareness of the Act, the Ministry of Justice distributed a circular shortly after its adoption to all courts of law, government agencies, municipal authorities, police districts, the prosecuting authority, the Norwegian Lawyers' Association and others. The circular contains the text and a short description of the Covenant and a list of sources providing more information, such as the General Comments of the Human Rights Committee. A copy of the circular is enclosed as Appendix 2.

### **The 1999 Plan of Action relating to Human Rights**

8. In December 1999, the Norwegian Government presented a white paper to the Storting entitled *Focus on Human Dignity, a Plan of Action for Human Rights* (Report No 21 (1999-2000) to the Storting). The plan of action is a follow-up to the United Nations World Conference on Human Rights in Vienna in 1993, which called on the governments of all States to develop national plans of action. An English translation of the plan is enclosed as Appendix 3.

9. The plan describes the human rights situation in Norway and the administrative, legislative, economic and educational measures that should be carried out to improve the implementation of human rights in Norway. This section concludes with a review of special priority areas, including discrimination and racism, Sami political issues, national minorities, asylum and immigration law, remand in custody and the time required to deal with criminal cases, social and health care, the disabled, children, women, family life, homosexuals and lesbians, freedom of religion or belief, freedom of expression, adult education, the status of victims of crime, and biotechnology issues.

10. International human rights efforts, and the role Norway should play in these efforts, are also covered. International organisations and monitoring mechanisms are described. One chapter is devoted to human rights dialogues. The principles for such dialogues are outlined, and some of the dialogues are described in detail. The role of human rights in development co-operation is also discussed. The Government's international human rights efforts focus in particular on the protection of groups such as children, the disabled, internally

displaced persons, women, human rights defenders, minorities and indigenous peoples, and on the promotion of specific human rights, such as the prohibition of capital punishment, the prohibition of torture, fundamental standards of humanity, the elimination of racism and discrimination, freedom of religion and belief, the right to education, the right to development, the rule of law, freedom of expression and labour standards. In addition to the efforts in the above-mentioned fields, special priority areas in connection with children, capital punishment, women, racism, freedom of religion and belief, torture and lesbians and homosexuals are assigned under the plan.

11. The plan of action includes a sequential presentation of the measures to be implemented in the field of human rights during the five-year period it covers. The following are the 10 most important measures:

- The Government will put forward proposals regarding the further implementation of four core human rights conventions in Norwegian law;
- The Government will strengthen the protection of human rights in Norway by more effectively following up the recommendations of international monitoring mechanisms. This applies, for instance, to remand issues;
- The Government will put forward a bill prohibiting ethnic discrimination;
- The Government will establish a national institution for human rights in Norway;
- The Government will carry out a large-scale campaign to provide information, instruction and education in the field of human rights in Norway;
- The Government will establish a resource centre for the rights of indigenous peoples;
- The Government will co-operate with writers' organisations to actively support their scheme to provide refuge for writers who are victims of persecution;
- The Government will strengthen its human rights dialogues;
- The Government will establish a pilot project for the development of new arrangements for reporting on, monitoring and verifying the role of business and industry in relation to respect for human rights;
- The Government will strengthen the human rights dimension of development co-operation.

Most of these measures have been implemented, and will be described in more detail under the relevant articles.

### **Human rights education and research**

12. When preparing the adoption of the Human Rights Act of 1999, the Storting's Standing Committee on Justice requested the Government to draw up a general plan of action to provide information, instruction and education with a view to protecting and promoting human rights in Norway. This plan was included in the plan of action for human rights described above (Report No 21 (1999–2000) to the Storting, chapter 4.5).

13. As part of the preparation of the plan of action, the Government carried out a preliminary review and evaluation of the way knowledge of human rights is disseminated in the educational system. The review showed that human rights appear to be covered quite satisfactorily in education legislation.

14. According to section 1-2 of Act of 17 July 1998 No 61 relating to primary and secondary education (the Education Act), primary, lower secondary and upper secondary education "shall further the equal status and equal rights of all human beings, intellectual freedom and tolerance, ecological understanding and international co-responsibility". Moreover, the Core Curriculum for primary, secondary and adult education in Norway states that human rights are part of the fundamental values of the school system. It should also be noted that the value-oriented, awareness-raising activities carried out in pre-school institutions, schools and other teaching institutions, although not directly related to human rights, can still be said to reinforce respect for human rights by drawing attention to some of the values on which human rights are based.

15. The plan of action indicates the Government's intention to strengthen training in the field of human rights in public educational institutions within the five-year period covered by the plan. Most of the specific measures announced in the plan of action have now been implemented, including:

- The introduction of democracy and human rights as a new optional subject in upper secondary school;
- The establishment and development of a website on human rights on the school network on the Internet;
- The provision of courses on human rights in continuing education programmes for primary and secondary school teachers (see below);
- The establishment of research fellowships in the subject of human rights in teacher education;
- The establishment of a national institution for human rights (see below).

16. The Ministry of Education has introduced a new curriculum for teacher training, which covers all teacher training programmes. The curriculum states that the students "shall acquire knowledge about international human rights as well as the rights of children across national

borders". According to the curriculum for the compulsory subject of Christian knowledge and religious and ethical education, the students "shall have a general knowledge of and be able to discuss the importance of international human rights conventions, for instance the Universal Declaration of Human Rights, UN conventions on human rights, the UN Convention on the Rights of the Child and the ILO Convention on Indigenous and Tribal Peoples in Independent Countries." According to the curriculum for the optional subject of civics, the students should be enabled "to provide education on social conditions in a multicultural and global perspective, with a special focus on human rights and principles of democracy".

17. As far as pre-school teacher training is concerned, the students should "acquire knowledge of national legislation concerning professional secrecy and protection of privacy, the legal foundation of preventive child care, the rights of children with special needs, UN conventions on human rights and the UN Convention on the Rights of the Child".

18. Study programmes concerning human rights are also offered at a number of universities and university colleges, ranging from short courses for upgrading qualifications to master's programmes. Human rights are included in law and political science programmes, and are also integrated into a number of other study programmes in higher education.

19. On 21 September 2001, a Royal Decree was issued establishing the Norwegian Institute of Human Rights (since 2003 the Norwegian Centre for Human Rights) as a national human rights institution in accordance with the Paris Principles. The Institute's core funding was also increased to enable it to address the domestic and international tasks relevant to its role as a national human rights institution. Under its terms of reference the Centre for Human Rights is to "monitor the state of affairs in Norway when it comes to human rights, and co-operate on an independent basis with corresponding research institutes, non-governmental organisations and national and international bodies in the field of human rights." It shall also promote human rights education. (The Royal Decree and the terms of reference are enclosed as Appendix 4.)

20. As part of a debate in the Storting in 1997 on restitution for the treatment in Norway of the economic liquidation of Norwegian Jews during the Second World War, it was decided to establish a centre for the study of Holocaust issues in Norway. The Holocaust Centre, which was established at the University of Oslo in 2001, has also been given a more general mandate to undertake research from a rights-based perspective on the situation of other minorities whose outlook on life differs from that of the majority population, with a special focus on children and young people.

21. Another centre dedicated to providing education and documentation on issues concerning prisoners of war, humanitarian international law and human rights has been established at Falstad, which was a German prison camp in Norway during the Second World War.

22. Apart from the Government's own efforts to promote human rights and human rights education, a number of non-governmental organisations are very active in this field. Most of these NGOs meet regularly in the Advisory Committee for Human Rights set up by the Ministry of Foreign Affairs, and in a working group on human rights education. In November 2003 the latter organised a conference on human rights education to discuss the status of such education

with among others the Norwegian Minister of Education and Research. As a follow-up to this conference the Ministry of Education is currently working on a strategic plan for active citizenship. The plan will concentrate on education in human rights and will also focus on the election turnout among young people. The plan is directed at pupils and adults in primary and secondary education, and is scheduled to be published in October 2004. The measures suggested in the plan are intended to further develop the efforts to promote active citizenship in the Norwegian school system.

### **Investigation of acts committed by members of the police and the prosecuting authority**

23. Reference is made to paragraphs 21 to 26 of Norway's fourth periodic report regarding specialised bodies to investigate cases against members of the police and the prosecuting authority (*SEFO*). The number of reports to these bodies has now stabilised at about 600 a year.

24. In 2003, the Government proposed replacing these special criminal investigation bodies with a new central unit (Proposition No 98 (2002-2003) to the Odelsting). The Storting approved the proposal, and the new unit is expected to be fully operative in 2005. The unit will not only investigate alleged offences by members of the police and the prosecuting authority, but will also decide whether a prosecution should be brought. The reform is the follow-up to a report by a committee set up by the Director General of Public Prosecutions in 2000 to evaluate the quality of investigations undertaken by the special bodies (*SEFO*). The committee concluded that the quality of the investigations was acceptable, but that there were marked differences between the various bodies in this respect. The competence of the new unit to decide on prosecution is intended to remove any suspicion that close ties between the prosecuting authority and members of the police in the same district could influence the decision on whether or not to bring a prosecution.

### **Legal aid**

25. Reference is made to paragraph 18 of Norway's fourth periodic report. As from 1 September 2003, the income limits that determine whether a person is eligible for free legal aid have been raised and the charge previously paid by the client has been eliminated. The gross income limit is now NOK 230 000 for a household of one.

### **Dissemination of Norway's report and the Committee's concluding observations**

26. In its concluding observations of November 1999 on Norway's fourth periodic report, the Committee requested that the concluding observations and the present periodic report be widely disseminated in Norway. In the Ministry of Foreign Affairs' Annual Report on Norwegian Efforts to Promote Human Rights of 1999, the 1999 examination of Norway by the Human Rights Committee was described and a summary given of the Committee's concluding observations was provided (see page 13, which is enclosed as Appendix 5.) In addition, the circular issued in connection with the adoption of the Human Rights Act (see above), provides information on how to find reports and concluding observations on the Internet (see page 33 of the circular).

### Article 3

#### Gender equality legislation

27. The Gender Equality Act of 1978 was amended by the Act of 14 June 2002, No 21. Most of the amendments relate to working life and the duty to promote equal status between women and men. The following are the most relevant to the enjoyment of the rights set out in the Covenant:

- The duty to facilitate equality between women and men has been extended to cover not only public agencies, but also private employers and employees' and employers' organisations;
- A new provision prohibiting sexual harassment and establishing that sexual harassment constitutes discrimination on the basis of gender has been introduced. ("sexual harassment" is defined as unwanted sexual attention that is offensive to the person subjected to it.)

28. The provisions of the 1978 Gender Equality Act relating to gender representation in publicly appointed boards and committees was amended by the Act of 19 December 2003 No 120. Each gender shall be represented by at least 40 per cent in publicly appointed boards and committees. Equivalent provisions apply to deputy board members. The Ministry of Children and Family Affairs may grant exceptions if particular circumstances make it clearly unreasonable to meet these requirements. The Act also amends the Limited Liability Companies Act and the Public Limited Companies Act, introducing a duty for companies to increase the number of women in their corporate boards to 40 per cent. The gender quota applies to all publicly owned enterprises and all public limited companies in the private sector, i.e. approximately 600 companies. The rules applying to public limited companies will not come into effect if the desired gender representation is achieved voluntarily in the course of 2005. At the beginning of 2004, 8.4 per cent of the board members of these companies were women.

29. The Government intends to put forward a bill in 2004 in which it proposes incorporating in Norwegian law the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) by amendment of the Gender Equality Act.

#### The present situation of women

30. During the 1970s and 1980s, women, including mothers of small children, have entered the labour market at nearly the same rate as men. In 2003, the work force participation among women aged 16-74 was 69.1 per cent, compared with 76.7 per cent among men. Overall, unemployment is rather low, and is lower among women (4 per cent) than among men (4.9 per cent). However, the labour market remains highly gender-segregated and two out of five women work part-time.

31. Women perform nearly 60 per cent of all unpaid housework and care-related work while men perform approximately 40 per cent.

32. Although Norway has long had more than 40 per cent women in government, female representation in elected bodies, i.e. the Storting and municipal councils, appears to have stagnated. Female representation exceeded 30 per cent for the first time in the Storting in 1985 and in municipal councils in 1990. The proportion of women has yet to reach 40 per cent in these two elected bodies. Norway does not have any legal provisions governing the gender balance in political parties or directly elected bodies.

33. Men constitute 84 per cent of all people in positions of power in Norway.

34. Even though there are more female students at universities and other academic institutions, women are in a minority among academic staff. Only 13 per cent of those holding full professorships are women. However, women lead several Sami academic institutions. These include the Sami High School, the Sami Centre at the University of Tromsø and the Nordic Sami Institute.

35. In sum, Norwegian women are well integrated into working and political life, the welfare system ensures that poverty is a relatively marginal phenomenon and single parents, mostly women, are ensured necessary public support. This does not mean, however, that there are no gender gaps and challenges to gender equality. The most important ones are related to the economic sphere, gender-based violence and the interface between gender and other forms of discrimination such as ethnic background, disability and sexual orientation.

36. In the labour market in Norway, there are major challenges related to the de facto gender segregated labour market and the high prevalence of part-time work among women, both voluntary and involuntary. The gender gap in time use in paid and unpaid work is an important factor in the gender pay gap and the gap in pensions between women and men. Therefore, the Government is focusing on gender equality within the family. Another challenge is to protect pregnant women against discrimination in the labour market. As noted above, there are still far fewer women than men in positions of power, despite the fact that many women have a high level of education and long experience. These gaps are more pronounced for disabled women and women with an ethnic background. Women's rights and the gender socialisation of children in some religious communities are another cause for concern and a challenge.

#### **Article 4**

37. There is nothing new to report under this article.

#### **Article 5**

38. There is nothing new to report under this article.

## Article 6

### Positive action taken to increase life expectancy

39. Infant mortality. As the following statistics show, there has been a continued decline in infant and perinatal mortality in Norway:

|  | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 |
|--|------|------|------|------|------|------|------|------|
| Infant mortality rate (deaths within first year of life per 1,000 live births)               | 4.1  | 4.1  | 4.0  | 3.9  | 3.8  | 3.9  | 3.5  | 3.4  |
| Perinatal mortality rate (stillbirths and deaths in the first week of life per 1,000 births) | 6.5  | 6.1  | 6.2  | 6.1  | 5.9  | 6.5  | 5.3  | 5.6  |

40. The figures showing the perinatal mortality rate in the years 1990-1995 in Norway's fourth periodic report were unfortunately incorrect. The correct figures are:

- 1990: 7.5
- 1991: 7.4
- 1992: 7.4
- 1993: 6.9
- 1994: 7.5
- 1995: 5.8

41. In order to reduce perinatal and infant mortality, the central authorities have continued the efforts described in paragraph 44 of Norway's third periodic report and paragraph 55 of the fourth periodic report to improve the care of expectant mothers and new-born babies. The following is an update on this situation:

- In 2000 (the last official statistics) the prevalence of maternal smoking at onset and at the end of pregnancy was 20.7 and 14.0 per cent, respectively;
- In the period 1993-1996, 36 of 56 maternity wards in Norway were designated as baby-friendly hospitals. Thus 77 per cent of Norwegian infants are born in designated hospitals. The Baby-Friendly Hospital Initiative aims at supporting and promoting breastfeeding. In 2004-06 the designated hospitals will be re-assessed. Non-designated hospitals will be encouraged to work towards designation;
- The Baby-Friendly Hospital Initiative was followed by a substantial rise in breastfeeding rates. National data (1998-99) show that 99 per cent of Norwegian mothers initiate breastfeeding, and that most infants (80 per cent) are still breastfed at

six months of age. The proportion of exclusively breastfed infants is relatively high during the first three months of life (> 70 per cent), but then rapidly declines. Revised national Norwegian infant feeding recommendations were issued in 2001, including a recommendation of exclusive breastfeeding the first six months of life;

- A national strategy for infant and young child feeding, based on the global strategy issued by World Health Organisation/UNICEF, is being developed. A first step in achieving the objectives of this strategy is the appointment of a national breastfeeding co-ordinator, in Norway called the National Breastfeeding Centre;
- The Norwegian nutritional authorities recommended in 1998 that women should take a daily folate supplement prior to and early in pregnancy to prevent neural tube defects. The recommendation has been followed up with information campaigns. Knowledge and use of folate have increased among women, but are still insufficient. Different measures are under consideration, including folate fortification of foods.

## **HIV and AIDS**

42. As of 31 December 2003 there were 2 793 reported cases of HIV infection in Norway: 1,950 men and 843 women. As of 27 July 2004 there were 120 new reported cases of HIV infections, 33 more than at the same time in 2003. As of the same time there were 832 reported cases of AIDS, 577 of whom have now died.

43. In 1996, the Ministry of Health and Social Affairs drew up a third plan of action to combat the HIV/AIDS epidemic for the period 1996-2000. The duration of the plan was extended by one year, until the December 2001, when the Minister of Health presented the current strategic plan "Responsibility and Consideration. A Strategy for the Prevention of HIV and Sexually Transmitted Diseases". The Strategic Plan is based on the principles of:

- Human rights;
- Gender equality;
- Equal access to good preventive information and follow-up for everyone in Norway as important factors in preventive measures;
- Broad participation and active co-determination in the formulation, implementation and evaluation of preventive strategies and measures; and
- The responsibility of the individual to protect him/herself from infection and refrain from infecting others, both in Norway and abroad. This applies particularly to persons suffering from HIV and other infectious diseases, as laid down in the Communicable Diseases Control Act and the Penal Code.

The Strategic Plan provides for basically the same framework and scope as the three previous plans of action, but it focuses more on women, men who have sex with men, and immigrants.

### **Traffic deaths**

44. The following statistics show the number of traffic deaths in recent years:

- 1997: 303
- 1998: 352
- 1999: 304
- 2000: 341
- 2001: 275
- 2002: 310
- 2003: 280

45. On average, 301 persons have been killed in traffic accidents each year during the last 10 years. Of these, on average 17 were children. This has led to a long-term road safety campaign, which sets out a “zero-vision”, i.e. reducing road accidents causing lifelong injury or death to zero. This vision is intended to be a common basis for road safety efforts among all the stakeholders: central government, local authorities, police, various organisations and, in particular, road users.

46. It should perhaps be noted in this connection that the Drunk-Drivers Programme has been introduced as a reaction for driving under the influence of alcohol and replaces custodial sentences. The programme combines education, treatment and supervision and is now available in all probation units in Norway.

### **Death caused by narcotic drugs**

47. There was a gradual increase in the number of deaths caused by narcotics from 1996 to 2001. In the period since 2001, drug-related deaths have decreased markedly. The following figures show deaths caused directly by the use of narcotics:

- 1996: 185
- 1997: 177
- 1998: 270
- 1999: 220
- 2000: 327
- 2001: 338
- 2002: 210
- 2003: 172

The average age of the persons who died was 35 (men) and 32 (women). The increased access for hard-core drug abusers to low-threshold health services and medically assisted rehabilitation with the use of methadone and other medication seems to have contributed to the decrease in drug-related deaths in recent years.

48. In April 2004, the Government put forward a bill on drug injection rooms (Proposition No 56 (2003-2004) to the Odelsting). The proposal is to establish drug injection rooms for a trial period of three years. The main purpose is to improve heavy drug addicts' life situation and their perception of their own personal dignity. Existing documentation differs as regards the effect of drug injection rooms on the number or outcome of overdoses, but it cannot be ruled out that such rooms reduce the number of deaths caused by overdoses. The effects of the drug injection rooms will be evaluated before the expiration of the three-year trial period.

### **Euthanasia**

49. As mentioned in paragraph 72 of Norway's fourth periodic report, euthanasia is prohibited under Norwegian law. In a bill put forward in 2004 proposing a new Penal Code (Proposition No 90 (2003-2004) to the Odelsting), it is proposed that euthanasia shall continue to be prohibited.

### **The Act relating to Control of Communicable Diseases**

50. A new Act relating to Control of Communicable Diseases was adopted on 5 August 1994 and came into force on 1 January 1995. The purpose of the Act is to protect the population from communicable diseases by preventing their occurrence, and preventing them from being spread among the population and from being brought into or out of Norway. The Act ensures that various authorities implement the measures necessary to control communicable diseases and co-ordinate their efforts to control such diseases. Furthermore it safeguards the legal rights of individuals who are affected by any measures taken to control communicable diseases pursuant to the Act. The Act authorises the municipal council and the health authorities to take measures to control communicable diseases that are hazardous to public health, for example to prohibit meetings, close establishments and isolate persons in geographically delimited areas for a certain period of time.

51. Since 1996 several regulations concerning communicable diseases have been issued. The regulations concerning the control of tuberculosis came into force in 2003 and provide for measures to prevent transmission of tuberculosis infection and the development of disease following infection. All municipalities and regional health enterprises shall have a tuberculosis control programme. The regulations set out an obligation for certain groups of people to undergo an examination for tuberculosis, for example refugees and asylum seekers. Persons from countries with a high prevalence of tuberculosis who intend to spend more than three months in Norway and are not exempted from work or residence permit requirements shall also undergo such examination.

52. In 2003 the Ministry of Health issued regulations establishing a national programme of vaccination against communicable diseases for children. The municipal health services offer this programme to the population free of charge.

53. In 2001 the Ministry of Health and Social Affairs issued the Norwegian National Influenza Pandemic Preparedness Plan. The plan was revised in 2003. The objective of the plan is to ensure that the necessary steps are taken to make it possible during a pandemic to:

- Reduce morbidity and mortality;
- Nurse and treat sick and dying patients at home and in hospital;
- Uphold essential community services;
- Provide continuous, necessary information.

### **Article 7**

#### **New penal provision against torture**

54. On 2 July 2004, a specific penal provision against torture was adopted as section 117a of the General Civil Penal Code. Section 117a prohibits a public official from causing injury or serious bodily or mental pain to a person in order to obtain information or a confession, in order to punish, threaten or coerce someone, or because of his or her religion, race, skin colour, sex, sexual orientation, lifestyle or national or ethnic origin. A person who commits torture is liable to imprisonment for a term not exceeding 15 years. Serious or grave torture resulting in death is punishable by imprisonment for a term not exceeding 21 years. This provision is based on the recommendations of the UN Committee against Torture. The acts covered by the provision were previously covered by the more general provisions on use of force, threats, bodily injury, abuse of power, etc., of the Penal Code.

#### **Prisons and police custody (pending trial)**

55. The Criminal Procedure Act was amended by Act of 28 June 2002 No 55, the main purpose of which was to reduce the overall use of solitary confinement and to strengthen judicial supervision. The amendment entered into force 1 October 2002.

56. According to the previous wording of section 186 of the Criminal Procedure Act, the court could by order decide that a person in custody should not be allowed to receive visits or send or receive letters or other consignments, or that visits or exchange of letters could only take place under police control. Based on such orders, the police were at liberty to decide whether the prisoner was to be held in solitary confinement or not. According to the revised section 186 and new section 186 a, the use of solitary confinement is now dependent on an explicit authorisation by a court.

57. Moreover, in order to ensure that solitary confinement is not used unless it is strictly necessary, solitary confinement may only be prescribed if there is an immediate risk that the person arrested will otherwise interfere with evidence in the case, e.g. by removing evidence or influencing witnesses or accomplices. In addition, solitary confinement may not be prescribed if it would be a disproportionate intervention in view of the nature of the case and other circumstances.

58. Furthermore, solitary confinement is subject to time limits set by the court. The time limit must be as short as possible and may not exceed two weeks. It may be extended by order up to two weeks at a time. If the nature of the investigation or other special circumstances indicate that a review after two weeks would be pointless and the person charged is more than 18 years of age, the time limit may be extended by four weeks at a time.

59. Maximum time limits for the use of solitary confinement have also been introduced. A prisoner shall not be held in solitary confinement for more than six consecutive weeks when the offence for which the person is charged could incur a sentence of less than six years' imprisonment. When the maximum sentence is more than six years' imprisonment, the prisoner may be held in solitary confinement for 12 consecutive weeks. In exceptional cases, the detainee may be held in solitary confinement for more than 12 weeks if necessitated by special circumstances. A detainee under 18 years of age may under no circumstances be isolated for more than eight consecutive weeks, regardless of the maximum sentence.

60. When a person has been remanded in custody pending trial and is subsequently convicted, the judgement shall stipulate that the whole of this period shall be deducted from the sentence. If a period in custody has been spent in complete isolation, a further deduction shall be made equivalent to one day for each 48-hour period commenced while the convicted person was subjected to complete isolation (cf. section 60 of the General Civil Penal Code).

61. Furthermore, the Government has been working on reducing the overall time spent on investigating and adjudicating criminal cases by means of new legislation, new routines, improving the qualifications of the staff, and developing and improving the relevant computer technology (more details are given under Article 14). These measures should have an impact on the time spent in pre-trial detention in general and solitary confinement in particular.

62. In order to reduce the time spent in police cells after arrest, the Norwegian Correctional Services have decided that prison accommodation shall be made available within 24 hours after a remand order is made, unless this is impossible for practical reasons. The enforcement of the rule and any violations shall be reported to the Norwegian Correctional Services each week.

63. Due to current problems regarding capacity in Norwegian prisons, several measures have been taken to increase capacity and ensure remand prisoners satisfactory conditions. Convicted prisoners are sometimes released a short time before they otherwise would have been in order to make prison cells available to other persons waiting to serve a sentence. The Correctional Services are seeking to increase the use of prisons with a lower security level and alternative ways of executing sentences outside prisons. Furthermore, Oslo Prison has now been renovated and all cells are in use. Bergen Prison has been extended, and 30 new cells for remand prisoners will be available from December 2004.

#### **Coercive measures in prisons during execution of sentences**

64. The Correctional Services may make use of security cells, restraining beds or other approved coercive measures in certain situations, e.g. to prevent a serious assault on or injury to a person. The use of such measures shall be reported to the regional prison authorities and/or the Norwegian Correctional Services.

65. The following figures indicate the use of coercive measures in Norway in recent years:

|      | Security cell | Restraining bed |
|------|---------------|-----------------|
| 1998 | 292           | 14              |
| 1999 | 302           | 18              |
| 2000 | 282           | 6               |
| 2001 | 359           | 16              |
| 2002 | 351           | 21              |

66. In the vast majority of cases, the use of security cells or restraining beds is limited to a period of less than 24 hours.

67. The Correctional Services may impose sanctions if prisoners breach the rules regarding peace, order and discipline or preconditions and conditions in or pursuant to the Execution of Sentences Act. However, solitary confinement has now been abolished as a sanction, mainly due to the detrimental effects this sanction may have on the person concerned.

#### **Protection of the integrity of persons in psychiatric institutions**

68. According to Act of 2 July 1999 No 62 relating to the Establishment and Implementation of Mental Care (the Mental Health Care Act, a translation of which is enclosed at Appendix 6), restrictions and coercive measures shall be limited to what is strictly necessary, and the patient's view of such measures shall as far as possible be taken into account. Only measures that have such a favourable effect that it clearly outweighs the disadvantages of the measure may be used (section 4-2).

69. Patients under compulsory mental health care may, without their consent, be placed under such examination and treatment as is clearly in accordance with professionally recognised psychiatric methods and sound clinical practice. Unless the patient has consented, no examination or treatment entailing a serious intervention may be carried out. However, the patient may be treated with medicine without his or her consent. Such medication may only be carried out using medicines registered in Norway and in commonly used doses. Medication may only be carried out using medicines that have a favourable effect that clearly outweighs the disadvantages of any side effects (section 4-4).

#### **Use of coercive measures towards mentally retarded persons**

70. As mentioned in paragraph 91-93 of Norway's fourth periodic report, the Storting, by Act of 19 July 1996 No 60, added a chapter 6A to Act of 13 December 1991 No 81 relating to Social Services. The chapter contained provisions relating to the rights of and the restriction and control of the use of coercion and force towards certain categories of mentally retarded persons. In order to ensure that an evaluation of the new legislation would take place, the Storting decided that the Act should only be in effect for a three-year period, which was subsequently extended for an additional two years.

71. Evaluation of the legislation showed that it has led to better control of the use of coercive measures and a greater recognition of mentally retarded persons' right to respect and self-determination. The use of coercive measures has been reduced in the five years the legislation has been in effect.

72. On the basis of the evaluation, the Storting by Act of 19 December 2003 No 134 added a permanent chapter 4A to Act of 13 December 1991 No 81 relating to Social Services,. According to chapter 4A, as was provided in the previous chapter 6A, coercive measures may only be applied when they are professionally and ethically justifiable. The interventions must go no further than is necessary for the purpose, and must be in proportion to the purpose to be achieved. Punishment or treatment that is degrading or detrimental to personal integrity is not permitted. The Act does not contain specific descriptions of the measures that may be used. It provides for a system of supervision. The provisions apply wherever health and/or social services are provided.

### **Sexual crimes**

73. The chapter of the General Civil Penal Code on sexual offences was revised by Act of 11 August 2000 No 76. The Act introduced gross negligence as an alternative *mens rea* requirement in the provision criminalising rape. Furthermore, the *actus reus* of the provision was broadened to include the commission of a sexual act by means of all forms of threats or violence, and the commission of a sexual act with any person who is unconscious or incapable for any other reason of resisting. Moreover, the minimum penalty for committing a sexual act with a child who is under 14 years of age was increased from one to two years' imprisonment. The commission of a sexual act with a person under than 18 years of age for payment was also criminalised.

### **Bullying and violence by fellow pupils at school**

74. One of the most frequent concerns expressed by children is how to prevent bullying and violence at school. This is a concern that Norwegian educational authorities take very seriously. A number of national campaigns against bullying have been launched, and in 2002 the Storting adopted an amendment to the Education Act whereby children were given increased protection against bullying (section 9a-3). According to the amendment, parents or pupils may request measures relating to the psychosocial environment at school (for instance measures against degrading treatment like racism, bullying or violence), and the school has to make a formal decision in the matter within a reasonable period of time.

### **Violence in close relationships**

75. In June 2004, the Government launched a plan of action on combating violence in close relationships (2004 -2006). The plan is a follow-up of the previous plan "Violence against Women", which was launched in 1999. Both plans of action focus on women who are subjected to domestic violence. The action plan is a joint project between various ministries. The purpose of the project is to bring different professions together in a joint effort to help the victims of

violence, the person perpetrating the violence and any children involved. Some measures are directed at disabled women. A survey will be conducted on the support offered by local authorities to disabled women who are subjected to violence. As from 2004, women's shelters will be eligible to apply for loans from the Norwegian State Housing Bank to rebuild and improve the shelters in order to accommodate disabled women seeking support and refuge at such a shelter.

76. In 1995 the Storting passed a specific Act that prohibits female genital mutilation (Act of 15 December 1995 No 74 on the Prohibition of Genital Mutilation). An action plan to combat genital mutilation was put forward in 2000. A national project against genital mutilation started in 2001 and will continue until 2004.

77. The principles set out in the 1999 Patients' Right Act, the Mental Health Care Act and the Health Personnel Act generally accord with the principles of medical ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment.

#### **Experimental treatment and clinical trials**

78. According to the principles set out in Act of 2 July 1999 No 63 relating to patients' rights, experimental treatment must be based on consent (chapter 4).

79. There is no general legislation governing medical and scientific experimentation (medical research) in Norway. The provisions relating to medical research are set out in a number of different acts and are partly unwritten. The regional ethical committees in Norway apply the principles of the Helsinki Declaration when examining clinical trials involving human beings.

80. Medical research involving the use of human biological material is covered by Act of 21 February 2003 No 12 relating to Bio-banks. According to this Act, the collection, storage and processing of human biological material for research purposes requires voluntary, express and informed consent by the donor, unless specific legal authority or another valid legal basis exists. Documentation of consent shall be available, and it shall be based on information concerning the purpose, methods, risks, discomfort, consequences and any other information of significance for the validity of the consent. The specific information required must be determined on the basis of an evaluation of risk factors, the sensitivity of the material, the vulnerability of the sample group, etc. A research bio-bank may only be established after a regional committee for medical research ethics has evaluated the matter.

81. For a research subject who is legally incompetent, physically or mentally incapable of giving consent or is a legally incompetent minor, informed consent must be obtained from the legally authorised representative in accordance with applicable legislation. When a subject considered legally incompetent, such as a minor, is able to give assent to decisions about participation in research, the researcher must obtain that assent in addition to the consent of the legally authorised representative.

82. Research on individuals from whom it is not possible to obtain consent, including proxy or advance consent, should be carried out only if the physical/mental condition that prevents the obtaining informed consent is a necessary characteristic of the research population and the research is necessary to promote the health of that population.

83. The Government has appointed a committee to look into the legislative aspects of medical research. The committee is to submit its report, containing proposed legislation relating to medical research, by 1 December 2005.

## **Article 8**

### **Trafficking**

84. The Norwegian Government regards trafficking in women and children as a grave violation of human rights. On 12 February 2003, the Government launched its first plan of action against trafficking in women and children. The plan contains measures to protect and assist victims, prevent human trafficking and prosecute the organisers. The plan will be implemented over a three-year period, and has a total budget of approximately NOK 100 million (approximately EUR 11.3 million).

85. Norway ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention Against Organised Crime, in September 2003. In this connection, the Storting adopted an updated provision on trafficking in persons (section 224 of the General Civil Penal Code).

## **Article 9**

### **The right to be brought promptly before a judge**

86. Section 183 of the Criminal Procedure Act was amended by Act 28 of June 2002 No 55. The time limit for bringing an arrested person who the prosecuting authority wishes to detain before a judge was changed from “as soon as possible and *as far as possible on the day after the arrest*” to “as soon as possible and *at the latest the third day after the arrest*”. The amendment was based partly on the wish to introduce an absolute time limit, and partly on the assumption that by being able to keep suspects in custody for up to three days, the number of cases where there will be a need for further detention will be brought down, i.e. the total use of detention will decrease. The relationship between such a reform and the right to be brought promptly before a judge was discussed thoroughly in the *travaux préparatoires*. The reform has not yet entered into force, pending the finalisation of regulations to ensure that it will not increase the time spent in police custody.

### **Deprivation of liberty in connection with mental health care**

87. The conditions for deprivation of liberty in connection with mental health care are set out in chapter 3 of the 1999 Mental Health Care Act (cf. Appendix 6), which has replaced the 1961 Act relating to Mental Health Care. The purpose of the new Act is to ensure that mental health care is applied and implemented in a satisfactory manner and in accordance with the fundamental principles of the rule of law. The purpose is also to ensure that the measures set out in the Act are based on the needs of the patient and respect for human dignity (section 1-1).

88. Compulsory mental health care may be applied in respect of a person with a serious mental disorder if this is necessary to prevent the person concerned from:

- Having the prospects of his or her health being restored or significantly improved considerably reduced, or it is highly probable that the condition of the person concerned will significantly deteriorate in the very near future; or
- Constituting an obvious and serious risk to his or her own life and health or those of others, on account of his or her mental disorder.

89. Compulsory mental health care may only be applied when voluntary mental health care has been tried to no avail, or when it is obviously pointless to try the latter. Even though the conditions of the Act are otherwise satisfied, compulsory mental health care may only be applied when, after an overall assessment, this clearly appears to be the best solution for the person concerned, unless he or she constitutes an obvious and serious risk to the life or health of others. When making this assessment, special emphasis shall be placed on how great a strain the compulsory intervention will entail for the person concerned.

90. Compulsory mental health care may not be applied unless a physician has personally examined the person concerned in order to ascertain whether the conditions of the Act relating to such care are satisfied. If the person concerned refuses such an examination, the chief municipal medical officer may, on his or her own initiative or at the request of another public authority or the closest relative of the person concerned, decide that a personal examination shall be carried out by a physician in order to elucidate the matter. If necessary, the person concerned may be fetched and examined by force and with the assistance of another public authority.

91. A public authority or the closest relative may, on the basis of this medical opinion, request that the person concerned should be placed under compulsory mental health care. On the basis of the request and the medical information and opinions presented, the responsible mental health professional is authorised to decide whether the person concerned shall be placed under compulsory mental health care. Before a decision is made, the person for whom commitment to compulsory mental health care has been requested shall undergo a personal medical examination at the responsible institution. The decision of the responsible mental health professional and the basis for the decision shall immediately be recorded.

92. An administrative decision to impose compulsory mental health care may only be made and implemented if the institution responsible is professionally and materially capable of offering the person in question satisfactory treatment and care.

93. Before an administrative decision is made, the person directly concerned by the case shall be given an opportunity to state his or her opinion. The right to state an opinion applies inter alia to the question of the application of compulsory mental health care and which institution is to be responsible for the care. The closest relative of the person concerned and any public authority directly involved in the case are also entitled to state their opinion.

94. When a person is placed under mental health care pursuant to the Mental Health Care Act, he/she is entitled to appeal the decision to a supervisory commission. The provisions on the supervisory commission are set out in chapter 6 of the Act. The supervisory commission is

autonomous in its activity. It shall make decisions in matters that have been specially assigned to it and shall insofar as possible also carry out such supervision as it deems necessary for the welfare of the patient. It may take up cases on its own initiative or in response to a request by the patient, the patient's closest relative or the staff. If the commission finds circumstances to which it wishes to draw attention, it shall take the matter up with the responsible mental health professional and, as the case may be, the chief county medical officer. Compulsory mental health care shall be terminated after one year unless the supervisory commission approve prolongation (section 3-10 last paragraph). Every third month, the patient shall be examined in order to ascertain that the basic requirements for keeping the person under compulsory mental health care are still present (section 4-9).

95. A lawyer who is qualified to serve as a judge shall chair the supervisory commission and it shall otherwise consist of a physician and two other members, all of whom shall have personal deputies. One of the permanent members shall have been under mental health care or be a close relative of a current or former patient, or be a person who has represented the interests of patients in his occupation or function.

96. When a person is placed under compulsory mental health care, notification shall be sent to the supervisory commission, together with a copy of the supporting documents. The supervisory commission shall as soon as possible ascertain that the correct procedure has been followed, and that the administrative decision is based on an assessment of the fundamental criteria set out in the Mental Health Care Act.

97. The Government gives high priority in its policy to reducing the use of coercion.

#### **Detention of offenders deemed dangerous**

98. There have been significant amendments to the General Civil Penal Code by Act 17 January 1997 No 11, which came into force on 1 January 2002, relating to offenders who are deemed dangerous. Some of the amendments relate to offenders who are not liable to a penalty for reasons mentioned below, some of them relate to sane offenders. For both categories of offenders the amendments have the effect that the court plays a more active role in the decision-making than under the previous system, that the offender has the possibility of having the sentence reviewed more frequently, and that the sentence should be adjusted to the offender's needs.

99. A person who was psychotic or unconscious at the time of committing the act shall not be liable to a penalty. The same applies to a person who at the time of committing the act was mentally retarded to a high degree.

100. When it is deemed necessary for the protection of society, an offender who is not liable to a penalty because of a psychosis or unconsciousness, shall be transferred to compulsory mental health care, cf. chapter 5 of the Act relating to mental health care (cf. Appendix 6). An offender who is not liable to a penalty because of mental retardation shall receive a sentence of compulsory care in a unit set up for this purpose. A decision concerning such transfer shall be

made by a court order, and the transfer may only be effected when the offender has committed or attempted to commit a serious breach of the law impairing the life, health or liberty of other persons, and there is an imminent risk that the offender will again commit such a breach. The amendment means that persons who are not liable to a penalty will not be placed in prison, but receive suitable care during the sentence.

101. The person convicted, his next-of-kin, or the person professionally responsible at the institution that is treating the convicted person, may apply for remission of the penalty. The prosecuting authority shall submit the case to the District Court, which will make a judgement in the matter. The hearing of the case shall be accelerated. Application may not be made for remission of the penalty until one year after the transfer order or a judgement denying remission is legally enforceable. The prosecuting authority may at any time decide to remit the penalty. No later than three years after the last legally enforceable judgement has been passed, the prosecuting authority shall either decide to remit the penalty or bring the case before the District Court, which will decide whether the penalty shall be continued.

102. The same amendment introduced a new penalty aimed at offenders deemed so dangerous that a sentence for a specific term is insufficient to protect society (preventive detention). Previously, such an offender could be sentenced to imprisonment and preventive measures concurrently.

103. When passing a sentence of preventive detention the court shall determine a term that should generally not exceed 15 years and may not exceed 21 years. On application by the prosecuting authority the court may, however, extend the fixed term by up to five years at a time. A minimum period of preventive detention not exceeding 10 years should also be determined.

104. Release before the expiry of the period of preventive detention shall be effected on probation with a probation period of from one to five years. When the convicted person or the prison and probation service applies for release on probation, the prosecuting authority shall submit the case to the District Court, which will make a judgement in the matter. The hearing of a case concerning release on probation shall be accelerated. If the prosecuting authority consents to a release on probation, the prison and probation service may decide on such a release. The convicted person may not apply for release on probation until a year has elapsed after the sentence of preventive detention has been passed or a judgement denying release on probation is legally enforceable.

### **Imprisonment of foreign nationals**

105. The legal framework applicable to the detention of foreign nationals is the Immigration Act, Act of 24 June 1988 No 64 (enclosed at Appendix 10), and the Immigration Regulations of 21 December 1990. Section 37 of the Immigration Act relates to detention for identification purposes and section 41 to detention for the purpose of implementing decisions (see below). These provisions were amended both in 1999 and in 2002.

106. A total of 235 foreign nationals were detained in Norway in 2002. 176 were detained pursuant to section 41 (pending deportation), 39 pursuant to section 37 (identification) and 20 pursuant to both provisions. (The total number of rejections/deportations from

Norway was 8065 in 2002.) In 2003 a total of 232 foreign nationals were detained. 161 were detained pursuant to section 41, 58 pursuant to section 37, and 13 pursuant to both provisions.

107. According to section 37 of the Immigration Act, a foreign national has a duty to co-operate in clarifying his or her identity. If the foreign national refuses to state his or her identity, or there are reasonable grounds for suspicion that the foreign national has given a false identity, the foreign national may be required to report to a particular authority or to stay in a particular place. If such obligation is not complied with or is deemed to be clearly insufficient, the foreign national may be arrested and remanded in custody pursuant to the provisions of section 37c, third paragraph.

108. Section 41 states that a foreign national who fails to comply with a decision that means that he/she must leave Norway may be escorted out of the country by the police. To ensure the implementation of such a decision, the foreign national may be ordered to report, to surrender his or her passport or any other identity document or to stay at a particular place of residence. Such orders may only be made where there is particular reason to fear that the foreign national will evade implementation. In cases where it is necessary in order to ensure implementation, the foreign national may be arrested and remanded in custody (pursuant to the provisions of section 37c, third paragraph). The same applies in cases where the foreign national does not do what is necessary to fulfil the duty to possess or obtain a valid travel document.

109. This means that arrest and custody should not be resorted to if, given the nature of the case and the general circumstances, this would be an unreasonable interference, or the court finds that it may instead impose an obligation to report, seizure of passport or a particular place of residence.

110. Section 37 d of the Immigration Act contains a provision on detention centres. There is a small detention centre at Gardermoen Airport, Oslo, for the purpose of detaining persons being deported. Ordinary prisons are used when the duration of the detention exceeds one night. It should be noted however that detention pursuant to sections 37 and 41 of the Immigration Act is not criminal detention.

111. Pursuant to the provisions of section 37 c, third paragraph, the prosecuting authority orders the arrest. In cases where the prosecuting authority wishes to detain the person arrested, it must as soon as possible and as far as possible at the latest the day after the arrest, bring the person arrested before a court of law with a petition for remand in custody. The decision is automatically reviewed every two weeks.

### **Detention of persons who use intoxicating substances**

112. Reference is made to paragraphs 98-100 of Norway's fourth report. The total number of decisions on compulsory placement of drug and alcohol abusers in 2001 to 2003 is as follows:

|   | 2001 | 2002 | 2003 |
|---|------|------|------|
| Decisions by the County Board                                       | 44   | 36   | 39   |
| Decisions by social services, temporary decisions, urgent decisions | 31   | 35   | 30   |

The number of decisions on compulsory placement of pregnant drug and alcohol abusers in 2001 to 2003 was as follows:

|   | 2001 | 2002 | 2003 |
|---|------|------|------|
| Decisions by the County Board                                       | 13   | 27   | 14   |
| Decisions by social services, temporary decisions, urgent decisions | 11   | 34   | 24   |

Temporary decisions made by the social services are short-term, and subject to temporary confirmation by the chair of the County Board as soon as possible and if possible within 48 hours. A proposal for a final decision shall be submitted to the County Board, a committee of experts and laypersons led by a chairman with legal training, within two weeks. If the proposal is not submitted to the County Board within this deadline, the decision will be annulled. It must be underlined that the condition for an immediate or urgent decision with regard to pregnant women is that there is a qualified or paramount danger of a harmful effect on the child if the decision is not immediately made and carried out.

113. Three Norwegian treatment programmes reviewed the practical and clinical results of compulsory treatment of substance abusers before the end of the 1990s. One is a specialised treatment unit for pregnant drug abusers (*Borgestadklinikken*). The main finding was that the main effect of a three-month period of compulsory treatment was an increase in motivation for continued treatment on a voluntary basis. Another study documents the same results of a treatment programme for younger drug abusers and for adult abusers referred from prisons (*Tyrili Foundation*). A third study from an emergency unit at Oslo University Hospital (*Ullevål*) concludes that the results are meagre.

#### **Duration of pre-trial detention**

114. In its concluding observation of 1 November 1999, the Committee noted with concern that pre-trial detention in some cases is used for excessive periods of time. Measures to speed up the investigation and adjudication of cases are described under Article 14. As to the facts, statistics show that the average duration of pre-trial detention is two months (1998-2001). There are however differences. For prisoners over 30 years of age, the average is 75 days. Foreign nationals charged with drug-related offences are on average detained pending trial for 137 days. One reason may be the increased risk that they will flee the country if released.

#### **Compensation for detention**

115. The provisions of Chapter 31 of the Criminal Procedure Act concerning compensation in connection with a prosecution were amended by Act of 10 January 2003 No 3. The Act entered into force on 1 January 2004. The main improvement, from a human rights point of view, is that the person seeking compensation no longer has to establish the probability that he or she did not commit the act that was the basis of the charge.

116. In accordance with section 444 (as amended), a person charged is entitled to compensation from the State for any *financial loss* that the prosecution has caused him or her if the person is acquitted, if the prosecution is discontinued, or in so far as the person has been

arrested or detained in custody contrary to Article 5 of the European Convention on Human Rights or Article 9 of the Covenant. A convicted person is also entitled to compensation for financial loss due to execution of a sentence that exceeds the sentence imposed after a case has been reopened. If the conditions set out in section 444 are not fulfilled, the person charged may still, if it is deemed reasonable, be awarded compensation for financial loss resulting from special or disproportionate damage that the prosecution has caused (section 445). The compensation mentioned in sections 444 and 445 may however be reduced or not awarded if the person, without reasonable cause, has chosen to exercise his or her right not to give testimony or has counteracted the illumination of the case, has induced the prosecution or the conviction or has not to the best of his or her ability reduced the loss or damage caused by the prosecution or conviction (section 446).

117. Furthermore, a person charged is entitled to redress at rates prescribed by the King for any indignity or other damage of a *non-pecuniary nature* resulting from an arrest or remand in custody if he or she is acquitted or the prosecution is discontinued.

### Article 10

118. Some information relevant to Article 10 may be found under Articles 7 and 17.

### Prisons

119. The Government submitted a white paper on the Prison and Probation Service to the Storting on 23 April 1998 (Report No 27 (1997-98) to the Storting). The white paper contained a thorough review of existing penal sanctions and the care and confinement of criminals, and was the basis for the new Act of 18 May 2001 No 21 relating to the Execution of Sentences, etc., which replaced the 1958 Prison Act. The Execution of Sentences Act and appurtenant regulations and comprehensive guidelines entered into force on 1 March 2002. (An English translation of the Act and the regulations is enclosed at Appendix 8.)

120. The Execution of Sentences Act deals with the execution of prison sentences, preventive detention, remand in custody and community sentences. The UN Standard Minimum Rules for the Treatment of Prisoners and the Council of Europe's European Prison Rules have been normative for the Act.

121. The Act explicitly states that a sentence shall be executed in a manner that takes account of the purpose of the sentence, that serves to prevent the commission of new criminal acts, that safeguards the interests of the community, and that within this framework ensures satisfactory conditions for the prisoner. The convicted person shall be given the opportunity to make an individual effort to avoid committing new criminal acts (section 2).

122. The new provisions focus particularly on individually adjusted execution of sentences in a manner that satisfies the need for security. Sentences of imprisonment may be executed in prisons with a high security level, prisons with a lower security level, prison/halfway houses, outside prison subject to special conditions or on probation subject to conditions.

123. Prisoners are entitled to complain to the Prison Governor, with the right to appeal to the regional level of the Norwegian Correctional Services. Prisoners may also complain to the Parliamentary Ombudsman for the Public Administration. Moreover, in connection with each region there is a supervisory council that exercises supervision over the prisons and the offices of the Probation and Aftercare Service and the treatment of the prisoners, while also ensuring that the treatment of prisoners is in accordance with the Act, the regulations and other provisions. This allows prisoners to talk with and complain to persons other than the prison and probation officers. Prisoners are given information regarding these rights. Moreover, the guidelines issued under the Execution of Sentences Act state that the Act, regulations and guidelines shall be available in prisons and probation offices, and that other relevant provisions shall be given to the prisoners on request. The Execution of Sentences Act and regulations are available in English. Interpreters are frequently used.

124. Pursuant to section 3 of the Execution of Sentences Act, the substance of the execution shall be based on the measures available for assisting a convicted person to adjust to society, and the Correctional Services shall make suitable arrangements for enabling a convicted person through efforts of his or her own to avoid committing new criminal acts. The regulations state that suitable arrangements shall be made for enabling the convicted person to amend his or her way of life and to prevent recidivism. Furthermore, the Act states that there shall, as far as possible, be a gradual transition from imprisonment to complete freedom, and opportunities to participate in leisure activities shall also be provided. Thus, the rehabilitation aspect is now enacted, and provided for in the guidelines.

125. Prisoners are provided with a personal contact officer who assists him or her. They are also provided with a “plan for the future”, which is a written and agreed plan for the prisoner’s imprisonment. The plan shall be solution-oriented, and open for questions regarding work and education for the duration of the sentence, participation in programmes, leisure-time activities, etc.

126. A comprehensive menu of programmes is now available. These programmes set out structured plans directed at sentenced and remanded persons, and are usually in the form of education, skills training and/or structured conversations. Reference is made to Norway’s fourth periodic report of 1997, paragraphs 112 to 116. In addition to those mentioned there, the following new programmes are offered:

- Offender Substance Abuse Programme, with follow-up programme for the Probation Service;
- Stop Crime – a programme directed at recidivists;
- Win – a programme for women;
- One to One – a cognitive programme used both in prisons and in the Probation Service;
- ATV – discussion groups for violence/sexual offenders;

- Anger Management Programme;
- Sexual Offenders Programme.

127. If special security reasons so warrant, a convicted person may be committed to a department with an especially high security level. Certain special provisions apply concerning committal to and detention in such departments due to the special need for security. At the moment, there are no prisoners in such a department in Norway.

128. Contact with the outside world is ensured through day release, mail, visits, telephone calls, leave of absence and escorted leave. Prisoners shall be located in the vicinity of their home districts when this is possible. This eases the possibility for contact with the family. Pursuant to section 3 of the Execution of Sentences Act, particular importance shall be attached to a child's right of access to his or her parents during the execution of a sentence. Representatives from various non-governmental organisations, such as the Red Cross and law student's associations, visit prisoners frequently.

129. Norway does not have separate prisons for remand prisoners. There are, however, some departments in prisons that are exclusively for remand prisoners. The guidelines issued under the Execution of Sentences Act state that special attention should be had to the suitable grouping of inmates.

130. The status of remand prisoners as persons who have not been convicted is emphasised in the provisions. The Execution of Sentences Act has a separate chapter regarding remand prisoners, which gives those inmates exclusive rights. Section 46 states that the Correctional Services may not impose other restrictions on the liberty of remand prisoners than those necessary for effecting the purpose of the imprisonment or maintaining peace, order and security in the prison, and that detrimental effects of the imprisonment shall as far as possible be prevented. Furthermore, priority shall be given to remedying the negative effects of isolation on persons remanded in custody who are subjected to restrictions pursuant to the Criminal Procedure Act.

131. Remand prisoners are entitled to participate in work, training, programmes or other measures, but they may not be ordered to take part in such activities. Remand prisoners are as a general rule entitled to make use of their own money. They may be treated by their own doctors and dentists. Remand prisoners shall be given priority as regards taking part in activities and associating with the staff in order to reduce the detrimental effects of isolation.

132. Juvenile offenders are not always separated from adults. In Norway's experience, separate prisons/departments for juvenile offenders are not necessarily successful. The main focus is therefore to ensure an appropriate grouping of the inmates, and an overall assessment is made in each case when a person is imprisoned. Security assessments, the juvenile offender's need for measures, education, training, programmes or work and his or her state of health are relevant factors. The importance of rehabilitating persons in this category of offenders is emphasised.

133. Most juvenile offenders in Norway are sentenced to alternative penalties, such as community sentences and mediation. On 12 August 2004, 11 persons under the age of 18 were imprisoned in Norway.

### **Mental hospitals**

134. The 1999 Mental Health Care Act (described under Articles 7 and 9) is based on the necessity to respect the patient and his or her human rights. According to the Act (see in particular chapter 4), the patient shall as far as possible be treated in such a way as to safeguard his or her possibility of deciding for himself or herself. Steps shall be taken to ensure that the patients are allowed to:

- Take part in shaping the day-to-day life of the institution and other matters that affect the individual patient;
- Have the opportunity to cultivate their private interests and hobbies;
- Have access to the activities offered within the limits of the house rules;
- Have the opportunity to engage in outdoor activities daily.

Consideration shall also be given to the individual's essential beliefs and cultural background (section 4-2).

### **Article 11**

135. There is nothing new to report under this article.

### **Article 12**

#### **The right to freedom of movement and to choose residence within the territory of a State**

136. According to section 7, second paragraph, of the 1988 Immigration Act, both work permits and residence permits are valid in the whole national territory. (A person who is granted asylum will also be granted a work permit or a residence permit, according to section 18 of the Act). Thus, such a permit confers the right to reside and move freely throughout the territory, unless restrictions are stipulated in accordance with rules set out in or pursuant to the Act.

137. As stated in Norway's fourth periodic report (paragraphs 121 and 122), a foreign national's freedom of movement may only be subject to legal restrictions if national security or "compelling social considerations" make this necessary (cf. section 43 of the Immigration Act). This term is given a narrow interpretation and is only invoked in exceptional circumstances.

138. Norway offers asylum seekers the opportunity to stay in an open reception centre until their applications for asylum have been dealt with. Asylum seekers who do not need an allowance from the Government may live wherever they wish within the territory. However, the majority of asylum seekers are lodged in reception centres situated throughout the country.

When an asylum seeker agrees to stay in a reception centre, he or she must reside in the municipality to which he or she has been assigned until the application for asylum has been decided. Asylum seekers may be transferred from one reception centre to another.

139. All foreign nationals with a residence permit are, with due consideration to their own wishes, assigned to specific municipalities throughout the country to avoid the concentration of large numbers of foreign nationals in some parts of the country, especially in the largest cities. The local authorities are allocated funds for the integration of the number of foreign nationals who are settled in their municipality, based on the estimated average costs for integration of that number of persons over a five-year period. This is intended to cover inter alia the costs of operating a reception centre for asylum seekers (if relevant) and funding for an introductory programme to Norwegian society. Foreign nationals from countries outside the European Economic Area (EEA) who have recently arrived in Norway and have been granted asylum or a work permit or a residence permit on the basis of an application for asylum, and their family members, have the right and obligation to participate in an educational programme as an introduction to Norwegian society, including language education. This right is dependent on continued residence in the municipality in which the foreign national was first settled, since it is this municipality that is allocated the funds necessary for financing the introductory programme offered to that foreign national. This means that foreign nationals who decide to move from the municipality in which they were first settled no longer have the right to participate in the introductory programme. This cannot, however, be regarded as a legal restriction on the right to free movement within Norwegian territory.

140. A foreign national's right to social services according to the Social Services Act is suspended if the he or she is offered free residence at a reception centre for asylum seekers, provided that the reception centre can satisfy the basic needs of the person in question. This cannot be regarded as a legal restriction on foreign nationals' right to move freely and choose their residence within Norwegian territory.

### **Freedom to leave the country**

141. The Passport Act was adopted on 19 June 1997. (An English translation of the Act is enclosed at Appendix 9.) Passports are issued to all applicants who have Norwegian nationality, subject to payment of a fee, at present approximately EUR 116. Pursuant to section 5, first paragraph, of the Act, passports are not to be issued:

- If the applicant is wanted by the police or remanded in custody under suspicion of a criminal offence;
- If the applicant has debts and is prohibited from leaving the country pursuant to the Enforcement of Civil Claims Act sections 14-17 or the Debt Negotiations and Bankruptcy Act section 102 (see the fourth periodic report paragraphs 123-130); or
- When a decision has been made by a public authority pursuant to statute which prohibits the applicant from leaving the country, for instance pursuant to the Debt Negotiations and Bankruptcy Act section 105 or the General Conscription Act section 39.

142. Pursuant to section 5, second and third paragraphs, of the Passport Act, the competent authority may also refuse to issue a passport if the applicant has been sentenced to detention in a criminal case or in other instances where this is prescribed by law; where the applicant is subject to other restrictions pursuant to certain provisions of the Penal Code, the Criminal Procedure Act or the Execution of Sentences Act; if the applicant has previously abused his passport or has forged or used a false passport; there is reason to suspect that the purpose of the applicant's departure is unlawful activity; the applicant has been granted a loan secured against his passport by a Norwegian foreign service mission and the loan has not been repaid; the applicant is seriously mentally ill or mentally disabled and will not be capable of looking after himself; or the applicant does not keep his previous passport in a satisfactory manner or the passport is in the possession of an unauthorised person.

143. In these cases, the competent authority may only refuse to issue a passport if this is justified by weighty considerations, with due regard to the importance of having a passport for the applicant in question.

144. Pursuant to section 7 of the Passport Act, a passport may be withdrawn on the same conditions as mentioned in section 5. A passport may also be withdrawn if it has been altered or if it no longer corresponds to the appearance of its holder. There are no regulations besides the Passport Act authorising confiscation of passports. The provisions of the Criminal Procedure Act mentioned in Norway's third report (sections 123-124) have been repealed. According to section 12 of the Immigration Act, refugees staying lawfully within the territory have the right to be issued a travel document authorising departure from and re-entry into the country. The same applies to other foreign nationals who have applied for asylum and have been granted a work or residence permit. The competent authority may refuse to issue such a travel document in the same circumstances as mentioned in section 5 of the Passport Act. In addition, a foreign national may be refused a travel document pursuant to section 65, subsection 2 of the regulations to the Immigration Act if the person concerned has been convicted of a very serious criminal offence and poses a threat to society, there are doubts concerning the refugee's identity, or national security or weighty considerations of foreign policy so require.

### **The right to enter one's own country**

145. Apart from those instances covered by Article 13 of the Covenant, there are no restrictions on the right of Norwegian citizens or foreign nationals with a residence permit to enter Norwegian territory. However, if a foreign national has had permanent residence outside the country for two years or more, a residence or settlement permit may be withdrawn. Norway may in such cases no longer be regarded as the foreign national's "own country" within the meaning of Article 12, paragraph 4, of the Covenant.

### **Article 13**

146. A foreign national may only be expelled from Norwegian territory in pursuance of a decision made in accordance with the 1988 Immigration Act.

147. According to section 27 of the Act, a newly arrived foreign national may be rejected with immediate effect (“bortvist”) on or within seven days of arrival, subject to certain specific conditions. A foreign national that is rejected pursuant to section 27 of the Act will not have been “lawfully in the territory” within the meaning of Article 13 of the Covenant. However, if the foreign national claims to be a refugee in accordance with Article 1 A of the Refugee Convention, he or she has the right, according to section 40 of the Act, to remain in the country until the case has been finally decided. This does not apply when it is obvious from the circumstances that the foreigner cannot be regarded as a refugee within the meaning of the Refugee Convention.

148. According to section 29, first paragraph, of the Immigration Act, a foreign national may be expelled (“utvist”), if he or she has repeatedly violated one or more of the provisions of the Immigration Act or has evaded the execution of any decision made pursuant to the Act. Furthermore, a foreign national may be expelled if he or she less than five years previously was sentenced or imprisoned for a criminal offence that according to Norwegian law is punishable by imprisonment for more than three months; if the foreign national has been found guilty of a criminal offence that is punishable by imprisonment for more than three months; when expulsion is considered necessary out of consideration for national security; or if the foreign national has committed an act of terrorism, or has tried to protect someone who the foreign national knew had committed such an act.

149. According to section 29, second paragraph, a foreign national may not be expelled if this would be a “disproportionately severe measure” with regard to the foreign national him/herself or his/her family, having regard for their connection to the country on the one hand and the gravity of the criminal offence on the other.

150. A decision to reject a foreign national is, with one exception, made by the police in the first instance (cf. section 31, first paragraph), and the Directorate of Immigration handles administrative complaints. Administrative proceedings regarding expulsion are prepared by the police (cf. section 31, second paragraph), but the Directorate of Immigration makes the decision in the first instance. The Immigration Appeals Board (“Utlendingsnemnda” - established in 2001), which is independent from ministerial direction in individual cases, deals with administrative complaints against decisions made by the Directorate.

151. In cases of expulsion, the foreign national has the right to be represented by a lawyer or another person of his or her choice. The foreign national may lodge an administrative complaint, submit a complaint to the Parliamentary Ombudsman or bring the case before the courts. In cases of expulsion of a foreign national with a work, residence or settlement permit, these measures will all have a postponing effect, which means that the foreign national has the right to remain in the country until the case is finally decided. In cases of expulsion on grounds of refusal of an initial application for a work or residence permit, the decision cannot be implemented until the foreign national has had an opportunity to lodge an administrative complaint, at the earliest 48 hours after the person concerned received notice of the refusal (section 39 of the Immigration Act).

152. There has not been any significant development in the case law regarding expulsion of foreign nationals during the period covered by the present report, but a few decisions that confirm the case law described in the previous report can be mentioned. In a judgement published in Norwegian Supreme Court Reports 1998, p. 1795 et seq., the Supreme Court held that not only can it try whether the Ministry has kept within the limits laid down by the relevant statutory provision and whether it has based its decision on the relevant facts (cf. the decision published in Norwegian Supreme Court Reports 1995 p. 72 et seq., as described in the fourth periodic report, paragraphs 134-136). The Court held that it can also try the Ministry's decision as to whether expulsion pursuant to the Immigration Act, sections 29 and 30, would be a disproportionately severe reaction against the foreign national or his family, in consideration of the seriousness of the offence leading to the expulsion and the foreign national's connection to the country. In this case, the foreign national in question had been found guilty of several serious criminal offences, including possession and sale of narcotics. He had a wife and family in Pakistan. The fact that he had had permanent residence in Norway for 22 years, since the age of 12, was not found to entail that expulsion amounted to a "disproportionately severe reaction" within the meaning of the Immigration Act section 29, second paragraph.

#### **Article 14**

153. In general, it should be noted that the guarantees covered by Article 14 and the corresponding articles of the European Convention on Human Rights now play a significant role in court proceedings. In particular, a number of Supreme Court cases address the right to examine witnesses, (cf. Article 14, paragraph 3 (e)) in relation to the reading out of statements made to the police, and questions relating to the right not to be punished twice for the same offence (cf. Article 14, paragraph 7). Regarding the latter, the Supreme Court has held that some administrative sanctions (e.g. increased punitive tax) cannot be followed by convictions for the same offence, and vice versa.

#### **The right to be tried without undue delay**

154. The amendments to the Criminal Procedure Act by Act of 28 June 2002 No 55 also included measures designed to reduce the overall time spent on the investigation and adjudication of criminal cases. These include the establishment of time limits for when the hearing shall take place in cases in which special diligence is required, i.e. in cases in which the person charged was under 18 years of age when the crime was committed, or is remanded in custody. In these cases the hearing shall, if there are no particular obstacles, be held within six weeks of the date on which the trial court received the case. As for the hearing in the Court of Appeal, it must take place within eight weeks (section 275).

#### **The right to a hearing by an independent tribunal**

155. The National Court Administration was established by Act of 15 July 2001 No 62, amending the 1915 Act relating to the Courts of Justice. It is now the National Court Administration that carries out the administration of the courts of law, not the Ministry of Justice. The reform is in conformity with the proposal by the majority of the Court Commission in the official Norwegian report NOU 1999:19 (cf. paragraph 149 of Norway's fourth report),

and the purpose is mainly to make the separation between the courts and the executive branch more distinct. The Storting lays down guidelines for the administration and activities of the National Court Administration through its annual budgetary process. The King in Council (i.e. the Government, but not the Ministry alone) may make decisions on the National Court Administration's work and administration of the Courts.

156. The procedure for appointing judges was amended by the same Act (sections 55a to 55c of the Act relating to the Courts of Justice). While appointments are still made by the King (i.e. the Government), this is done on the basis of a nomination made by the Nominating Council. The Nominating Council consists of seven members of whom three are judges, one is a practising lawyer, one is a publicly employed lawyer and two are non-lawyers. The members are appointed for a period of four years, and may be reappointed once. If the King (i.e. the Government) considers appointing a candidate who has not been nominated, the Nominating Council shall be asked to state its opinion on that candidate.

### **Reopening of cases**

157. By Act of 15 June 2001 No 63 amending both the Criminal Procedure and the Civil Procedure Acts, the provisions regarding the reopening of cases as a result of a decision by an international body were strengthened. The reopening of a case may be requested not only when an international court, but also when the Human Rights Committee in a case against Norway, has held:

- That the decision violates a provision of international law binding upon Norway, and new consideration of the case must be expected to lead to another decision; or
- That the court proceedings in the case violate a provision of international law binding upon Norway, if there is reason to believe that the procedural error has influenced the decision and reopening of the case is necessary to remedy the harm resulting from the procedural error.

158. The Norwegian Criminal Cases Review Commission was established by the same Act. The Commission consists of five permanent members. The chairman of the Commission is appointed by the King in Council for a period of five years and is not eligible for reappointment. The other members of the Commission and the deputy members are appointed by the King in Council for a period of three years and are eligible for reappointment. The Commission is obliged to provide guidance to any person who petitions for the reopening of a case so that he or she can safeguard his or her interests as fully as possible. The Commission shall of its own accord consider whether a person charged needs guidance. Five of its members, of whom three shall have a law degree, decide whether the petition shall be granted. If the Commission decides that a case shall be reopened, the case shall be referred for a full retrial by a court of equal jurisdiction to the court that has pronounced the judgement challenged. The provisions regarding the Commission entered into force on 1 January 2004.

159. A person may apply for the Commission to review his or her case, but the Commission also has the power to make moves to reopen cases on its own initiative. The most common causes for such reviews are new evidence or circumstances that may lead to acquittal, or that the previous verdict is seen to contradict human rights. In the legislative amendment process, the Ministry of Justice and the police estimated that the Commission would receive around 100 applications the first year from people who wanted their cases to be reviewed. The number of applicants will probably exceed this during the first year.

160. The revision of sections 444 through 449 of the Criminal Procedure Act should also be seen in relation to the establishment of the Norwegian Criminal Cases Review Commission (see under Article 9 above). Previously, the courts handled cases regarding financial compensation in connection with a prosecution. These cases are now decided by a secretariat under the authority of the Ministry of Justice and the Police. Decisions of this secretariat may be reviewed by a court. The total amount of compensation awarded is expected to increase as a result of this.

### **Juvenile offenders**

161. Act of 21 March 2003 No 18 amending both the General Civil Penal Code and the Criminal Procedure Act contained a number of legislative amendments on the treatment of juvenile offenders. Their background and expected effect is described in the bill put before the Storting, Proposition No 106 (2001-2002) to the Odelsting. The reform includes inter alia the following:

- The police are obliged to investigate a case if the offender is more than 12 years of age (the age of criminal responsibility is still 15 years). When the investigation is terminated, the police may transfer the case to the child welfare service;
- The police may instruct a child suspected of having committed an otherwise criminal act and his or her parents to meet at the police headquarter for a talk in order to reduce the risk of further criminal acts. In this way, the child is made aware of the seriousness of what has happened, and his or her parents will be involved. The child and the parents shall be informed that they are not obliged to give an explanation, cf. the right not to incriminate oneself;
- If the suspect is under 18, the decision on indictment shall be made within six weeks from the time the person was considered a suspect;
- The prosecuting authority may prohibit a child under 15 from staying at a certain place if there is reason to believe that this would increase the risk of him/her committing an otherwise criminal offence;
- Taking part in mediation is made a possible condition for a suspended sentence. (Approximately 6500 cases are referred to the mediation services each year. Most of the offenders are boys aged 15-17, followed by boys aged 12-14. The most common offences are vandalism (18 per cent), violence (16 per cent), shoplifting (16 per cent) and harassment/threats (11 per cent).

**Withdrawal of reservations**

162. There have been no legislative amendments that make it possible for Norway to withdraw its reservations to Article 14, paragraphs 5 and 7. Reform of the Court of Impeachment is being considered (a proposal for amendment of the Constitution has been put forward by leading parliamentarians from various parties, see Proposition No 12: 1 (2003-2004) to the Storting, cf. Proposition No 19 (2003-2004) to the Storting), but this is unlikely to affect the principle that the judgements of the Court of Impeachment are final and cannot be reviewed. As regards conviction by the Supreme Court of a person who has been acquitted by a lower court, it should be noted that this happens rarely. The Supreme Court has stated that if, in exceptional cases, the question should arise of pronouncing a new judgement in stead of quashing an existing judgement, the appeal procedure must be prepared with a view to giving the person charged the possibility to be present during the Supreme Court's hearing of the case, and to express his or her opinion (Norwegian Supreme Court Reports 1999 page 71 et seq.).

**Article 15**

163. In Proposition No 90 (2003-2004) to the Odelsting, the Government put forward a bill containing the general provisions of a new Civil Penal Code. Article 15 of the Covenant is discussed in the explanatory comments on the bill and, in particular, the right to benefit from a provision enacted after the commission of the offence that imposes a less severe penalty. It is stated that this provision of the Covenant is wide, and that it can hardly be construed literally. Less severe penalties or the abolition of penal provisions due to a change of the circumstances the provisions relate to should not necessarily be given effect for offences committed before that change. The wording of the proposed section 3, first paragraph, of the new Civil Penal Code is thus:

“The legislation in force at the time of the commission of the offence shall apply. However, the legislation in force at the time of the decision shall apply when this leads to a decision that is more favourable to the person charged and the legislative amendment is caused by a revised opinion on what acts should be punished or on the use of criminal sanctions.”

**Article 16**

164. There is nothing new to report under this Article.

**Article 17**

165. Interference with privacy, family affairs, the home or correspondence is not allowed unless so provided by law, and such interference is generally penalised. The following update may be given:

**The Personal Data Act**

166. The Personal Data Act of 14 April 2000 No 31 entered into force on 1 January 2001, replacing the 1978 Act relating to Personal Data Filing Systems. The Act implemented

Directive 95/46/EC of the European Parliament and of the Council. The Norwegian legislation is thus harmonised with common European rules in this area, and the new Act establishes a greater degree of protection of the privacy and integrity of individuals than the previous one.

167. Section 1 states the purpose of the Act, and reads as follows:

“The purpose of this Act is to protect natural persons from violation of their right to privacy through the processing of personal data.

“The Act shall help to ensure that personal data are processed in accordance with fundamental respect for the right to privacy, including the need to protect personal integrity and private life and ensure that personal data are of adequate quality.”

168. To achieve this purpose, the Act provides detailed rules governing the processing of personal data. An English translation of the Act is attached at Appendix 11.

### **The right to privacy and correspondence in prisons**

169. Prisoners may as a general rule send and receive mail, receive visits and use the telephone (see sections 30, 31 and 32 of the Execution of Sentences Act). However, control shall be carried out in blocks and prisons with an especially high security level. In prisons with a lower level of security or in halfway houses, control shall only be carried out if it is deemed necessary for security reasons.

170. The use of cellular phones is prohibited in Norwegian prisons, except in halfway houses. Prisoners may use computer equipment for work, instruction or other measures on certain conditions. In prisons with a high security level the use of a private computer may only be permitted in special training situations where an extraordinary need for such use is documented.

171. Pursuant to section 29 of the Execution of Sentences Act, inspections may be carried out in order to expose the use of intoxicants, etc. Section 29 reads:

“The Correctional Services may order convicted persons who are serving sentences pursuant to section 10 first paragraph items a, b, c and d, to provide urine samples, and breath or blood specimens, or to co-operate in other forms of inspection which may be carried out without risk or particular discomfort, in order to expose the use of intoxicants, anaesthetics, hormone preparations or other chemical substances that are not lawfully prescribed. Blood specimens may only be taken by health-service personnel.

“If it is probable that a convicted person is concealing in his or her body intoxicants, anaesthetics, hormone preparations or other chemical substances that are not lawfully prescribed, the Correctional Services may decide that the convicted person shall be placed in a secluded room equipped with a special lavatory. A medical opinion shall be obtained and taken into account in considering whether this measure shall be implemented. While so placed the convicted person shall be subject to constant supervision by health-service personnel.

“If it is highly probable that a prisoner is concealing in his or her body intoxicants, anaesthetics, hormone preparations or other chemical substances that are not lawfully prescribed, the Correctional Services may decide that a bodily search or other measure may be carried out in order to bring the substance to light. A medical opinion shall be obtained and taken into account in considering whether this measure shall be implemented. Only health-service personnel may carry out the intervention. Consent shall be obtained from the regional level beforehand if this is practically possible.”

172. The guidelines state that prison officers who are involved in the inspection should be of same sex as the prisoner.

### **Access to the files and registers of the Police Security Services**

173. One result of the findings of the Lund Commission regarding unlawful use of telephone monitoring and other surveillance (see paragraphs 187 to 198 of Norway’s fourth report) was the adoption of the Temporary Act of 17 September 1999 No 73 regarding Limited Access to the Files and Registers of the Police Security Services. The Act establishes a person’s right, with some exceptions, to access to information about him/herself contained in the files of the police security service from 8 May 1945 to 8 May 1996. Access to information obtained after 25 November 1977 may only be granted if the information was collected or used without sufficient legal authorisation. A person who has been given access to his or her file is entitled to compensation limited upwards to NOK 100,000 if the person has suffered serious harm caused by the unauthorised collection or use of information.

174. By 22 September 2004, 12,791 applications for access to files had been made. 5,496 of these had been dealt with, and access had been given in 1 988 cases. In 2 874 of the cases, there was no file. There had been 501 applications for compensation. Of these, 377 had been dealt with, and 189 applicants had been given compensation.

## **Article 18**

### **The relationship between the State and the church**

175. In January 2003 the Government appointed a committee to review the relationship between the State and the church, and to make recommendations as to whether the Church of Norway should continue in its present form, be reformed or be organised as a separate entity independent from the State. The committee is to submit its recommendation within 2005. Article 2, second paragraph, of the Constitution, which defines the relationship between the State and the church in Norway, will be considered in connection with the implementation of the Committee’s recommendation. There has been no proposal to repeal only the second sentence of the second paragraph of Article 2, which the Committee finds is incompatible with the Covenant (see paragraph 13 of the Concluding Observations of 1 November 1999), but this provision will be affected by a possible future reform. As to the (lack of) legal significance of the provision, reference is made to Norway’s fourth report, paragraphs 212 to 213.

### **Teaching of religion and moral education**

176. On 3 November 2004, the Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the Covenant, adopted the view that the present framework of the subject entitled “Christian Knowledge and Religious and Ethical Education”, including the current regime of exemptions, as it had been implemented in respect of the authors of communication 1155/2003, constitutes a violation of article 18, paragraph 4 in their respect. At the time of submission of this report, the Norwegian Government has just received these views. They will now be studied closely, and their implications be decided upon.

### **Conscientious objectors**

177. Act of 19 March 1965 No 3 relating to exemption from military service was amended by Act of 18 February 1999 No 7. The requirement that all applicants had to be questioned by the police in order to determine whether their pacifist convictions were sincere was abolished. The applicant now only needs to submit a formal statement expressing that his religious beliefs or his conscience prevents him from performing ordinary military service in order to be granted exemption. The competent authority can, however, request additional information and require the applicant to meet in person for an oral examination.

## **Article 19**

### **Amendment of the constitutional provision relating to freedom of expression**

178. The most significant development regarding freedom of expression in the period covered by the current report is the adoption on 30 September 2004 of a new Article 100 of the Norwegian Constitution. The new provision is a complete and thorough revision of the previous Article 100 regarding freedom of expression, which had not been altered since its adoption in 1814. The revision is a result of the work of the Commission on Freedom of Expression, as mentioned in the fourth periodic report (paragraphs 225-227). On the basis of the Commission’s report (Official Norwegian Report, NOU 1999: 27), the Government submitted a white paper (Report No 26 (2003-2004) to the Storting) recommending that Article 100 should be amended. The wording recommended in the white paper was altered somewhat as a result of the ensuing parliamentary debate, but the legal substance of the provision that was finally adopted was in most respects in line with the Government’s recommendation. Thus, the preparatory work laid down by the Commission on Freedom of Expression and by the Government will still, together with the Standing Committee’s report and plenary discussions in the Storting, guide the interpretation of the constitutional provision.

179. Article 100 of the Constitution reads (in English translation) reads as follows:

“There shall be freedom of expression.

No one may be held liable at law, except on the basis of contract or other private legal basis, for having conveyed or received information, ideas or messages unless such liability can be justified in consideration of the reasons for the right to freedom of expression namely the search for truth, democracy and the individual’s free formation of opinions. Such legal responsibility must be clearly prescribed by law.

Everyone shall be free to speak his mind frankly on the administration of the State and on any other subject whatsoever. Only clearly defined limitations to this right may be set, when justified by particularly weighty considerations that outbalance the reasons for the right to freedom of expression.

Prior censorship and other preventive measures may not be used unless it is necessary to protect children and young people from harmful influence of moving pictures. Censorship of letters may only be implemented in institutions.

Everyone has a right of access to the documents of the State and of the municipal administration and a right to be present at sittings of the courts and elected assemblies. The law may prescribe limitations to this right in regard of the right to privacy or other weighty considerations.

It is a duty of the State authorities to facilitate an open and enlightened public dialogue.”

180. One of the most important aspects of the new Article 100 is that it secures the constitutional protection of freedom of expression regardless of the media the expression is channelled through. Strictly speaking, the previous Article 100 mainly concerned the printed media, in that it stipulated that “There shall be liberty of the *Press*”, and that “No person may be punished for any *writing* ...”. In contrast, the new Article 100, second paragraph, states in general terms that “There shall be freedom of *expression*.”

181. The new Article 100 is also a significantly more complete provision in the sense that it covers all the basic aspects of the right to freedom of expression. The previous provision did not cover inter alia the right to demonstrate or protest, the right to receive information or the right to access to information held by public authorities. These aspects are important parts of the new Article 100, and will be examined in the following.

182. According to the second paragraph of the new Article 100, no person may be held liable for having “conveyed or received information, ideas or messages”. Thus, the protection includes both the right to *impart* and to *receive* information and ideas. The right *not* to express oneself, the “right to silence”, is also protected under the second paragraph, even though this is not explicitly expressed in the provision. The provision only provides protection from liability imposed by public authorities, not from civil liability imposed on the basis of a contract, e.g. an employment contract. “Political” speech, which is specifically regulated in the third paragraph, is however also protected against interference from private persons or entities, e.g. private employers. Thus, the new constitutional provision protects the freedom of expression of employees much better than the previous one.

183. The protection provided in the second paragraph of Article 100 is not limitless. The provision states that no person may be held liable for expressions conveyed or received, *unless* such liability can be justified in consideration of the reasons for the right to freedom of expression, namely the “search for truth, democracy and the individual formation of opinions”. In this way, Article 100 reflects a *utilitarian* approach to the freedom of expression, as opposed

to a view on freedom of expression as an inherent, inviolable right conferred on all human beings. If a certain limitation on the right to freedom of expression can be justified in consideration of the reasons for or ultimate objectives of this right, and there are also sufficiently weighty reasons to limit such freedom of expression, the limitation is legitimate. If for instance it can be held that certain commercial, violent or pornographic expressions do not contribute to the “search for truth, democracy and the individual formation of opinions”, it may be justified to hold the conveyor of such expressions liable for their content.

184. In the above-mentioned white paper (Report No 26 (2003-2004) to the Storting), the general principles of the second paragraph are elaborated in more detail in relation to certain categories of expressions and in connection with certain conflicting interests. This is intended to guide future interpretation of the constitutional provision, and therefore has a certain legal relevance. Some of the more important aspects of the white paper will therefore be examined in the following.

185. According to section 142 of the Penal Code, any person who “by word or deed publicly insults or in an offensive or injurious manner shows contempt for any creed” is liable to a penalty. Blasphemous expressions may have a wider political application, for example if they are directed at a religious institution, and in such cases the third paragraph of Article 100 of the Constitution will apply. Other blasphemous expressions may be perceived as attacks on an individual’s personal beliefs and integrity and thus undermine the processes that the right to freedom of expression is meant to promote. The Government therefore concludes in the white paper that it should still be possible to prosecute an individual for the most detrimental blasphemous expressions, even though the last prosecution on grounds of blasphemy took place in 1933.

186. According to section 135 a of the Penal Code, any person who “by any utterance or other communication, including expression by symbols, made publicly or otherwise disseminated among the public threatens, insults, or subjects to hatred, persecution or contempt any person or group of persons because of their creed, race, colour or national or ethnic origin” is liable to a penalty. This provision has generally been considered to be consistent with international human rights obligations in that it lies within the “margin of appreciation” granted to national authorities in their determination of the level of protection of the right to freedom of expression, which may be in conflict with the need to protect persons from verbal racism or other hate speech. However, it has been claimed that section 135 a does not provide sufficient protection for minorities against racial abuse. In its third report on Norway, published in June 2003, the European Commission against Racism and Intolerance (ECRI) held that “the Norwegian legislation [...] does not provide individuals with adequate protection against racist expression.”

187. This conclusion was reached partly on the basis of a Norwegian Supreme Court judgement of 17 December 2002, published in Norwegian Supreme Court Reports 2002 p. 1618 (“Sjøliesaken”), which overturned a Court of Appeal decision to convict the defendant for breach of section 135 a. In the context of a demonstration held in memory of Rudolf Hess, the defendant used strongly anti-immigrant and anti-Semitic speech, including

the following: “[E]very day our people and country are robbed and destroyed by Jews who take the wealth and replace it with immorality and anti-Norwegian thoughts.” After the speech, the defendant requested one minute’s silence in memory of Rudolf Hess and then shouted “*sieg heil*”. A majority of the Supreme Court judges held that both the anti-immigrant and the anti-Semitic statements were protected by the right to freedom of speech pursuant to Article 100 of the Constitution, and the defendant was therefore acquitted. The majority of the judges held that the right to freedom of expression implies that a person should not be penalised for an opinion that is not explicitly expressed but only inferred by others from his statements.

188. The judgement caused a lot of debate in the Norwegian media as to whether such statements deserved to be protected by the right to freedom of expression pursuant to Article 100. In the white paper the Government expressed the opinion that the new Article 100 should provide greater scope for making such blatantly racist statements punishable. This also seems to be the outcome of the adoption of Article 100, even though it is not in every detail clear how the provision must be interpreted. The Government is now preparing a bill to amend section 135a of the Penal Code in order to adjust the scope of the provision.

189. Section 204 of the Penal Code makes it a punishable offence to publish, sell or in any other manner distribute pornography, which is defined as sexual depictions that are offensive or are likely to have a humanly degrading or corrupting effect. Sexual depictions that have an artistic, scientific or informative purpose do not fall within the scope of this provision. Only sexual depictions that are purely commercial or for entertainment, and can be deemed to be offensive to public morals are considered to be “pornography” according to section 204. Such depictions cannot be said to contribute in any significant manner to the aforementioned processes that the right to freedom of expression is meant to promote. The freedom to convey such expressions can therefore, according to the white paper, be limited to a certain extent. In the Government’s opinion, the existing section 204 of the Penal Code does not have to be amended or limited as a result of the new Article 100 of the Constitution. When it comes to child pornography, not only distribution, but also possession and reception are punishable according to section 204. The freedom of expression when it comes to this kind of pornography is close to non-existent. On this particular point, the need to suppress an industry that violates the most basic rights of children must have priority over the freedom of every individual to convey and receive such expressions.

190. The third paragraph of the new constitutional provision specifically relates to expressions of a “political” nature, i.e. expressions concerning the administration of the State or other important public matters, defined widely. In the white paper, “political expressions” are described as “all subjects of public interest, [...] of a political, social, moral and cultural nature.” Political speech is essential to the processes that the freedom of expression is meant to contribute to, and is therefore given an especially strong protection. However, not even the freedom to convey “political” expressions is limitless. Paragraph three states that limitations to this right have to be “clearly defined”, and must be “justified by particularly weighty considerations” that outbalance the reasons for the freedom of expression. For example, although some racist expressions may be considered to be of a “political” nature, they may be curtailed and possibly even prosecuted under section 135 a of the Penal Code.

191. The fourth paragraph of Article 100 is also of central importance. It specifically prohibits censorship and other forms of prior restraint on all types of expressions. This is to signal that this type of limitation on the right to freedom of expression is considered to be particularly damaging to the ultimate objectives of freedom of expression. The only form of censorship that is expressly permitted is certain prior restraints for the protection of children from the detrimental influence of “moving pictures”, e.g. television, films and videos. A system of setting age limits for films and video that are violent, pornographic or otherwise unsuitable for children can thus be retained. Advance approval or other forms of prior restraint on films and videos for adults are abolished following the adoption of the new Article 100 of the Constitution. The second clause of the fourth paragraph expressly states that censorship of letters and other private correspondence may only be implemented in institutions, i.e. prisons and mental institutions.

192. The fifth paragraph concerns the right to access to information held by public authorities, which is regarded as an important aspect of the freedom of expression, more precisely the right to access to available information. The provision reads: “Everyone has the right to access to State and municipal documents and to be present at sittings of courts and elected assemblies.” This right may be limited, but only “in regard of the right to privacy or other weighty considerations”. The Government is currently considering a draft of a new Freedom of Information Act, set forth in a report issued on 3 December 2003 (Official Norwegian Report, NOU 2003: 30 New Freedom of Information Act).

193. Finally, the sixth paragraph imposes a duty on the public authorities to “facilitate an open and enlightened public dialogue”. The paragraph focuses on positive obligations on the part of the State. This can, however, only to a limited degree be seen as a legal duty. The provision rather imposes a political duty on the governing authorities to ensure that the freedom of expression is effective in the sense that the public are given a real opportunity to express themselves freely through a variety of media. Legal duties and corresponding rights for the individual must primarily be established through ordinary legislation.

### **Penal sanctions against defamation**

194. In its concluding observations on Norway’s fourth periodic report, the Committee recommended early action to review and reform laws relating to criminal defamation. The Penal Code has not been amended on this particular point in the period covered by the current report, largely because the Government was awaiting the outcome and follow up of the work done by the Commission on Freedom of Expression. However, there has been significant development in the case law regarding defamation, to a large extent as a result of developments in the case law of the European Court of Human Rights. In 1999 and 2000 the Court ruled against Norway in three cases where the applicants had been subjected to sanctions because of certain defamatory statements. The Norwegian Supreme Court has subsequently complied with this case law. In a judgement published in *Norwegian Supreme Court Reports 2003 p. 928*, the Supreme Court stated: “[I]t is the Convention and the European Court of Human Rights’ practice that is currently the primary source of law when Norwegian courts are to identify those defamatory statements that may result in penal sanctions or mortification.”

195. In general, defamatory statements are more and more seldom met with penal sanctions. In the period from 1 January 1999 to 1 October 2004, the Supreme Court handed down ten judgements concerning the lawfulness of defamatory statements. None of these cases have concerned criminal defamation, but rather various forms of civil liability or injunctions.

196. In the white paper concerning the new constitutional provision on freedom of expression (Report No 26 (2003-2004) to the Storting), the Government states that the adjustment of Norwegian case law towards the practice of the European Court of Human Rights ought to be reflected in the relevant provisions of the Penal Code. In addition, it is generally noted in the white paper that criminal sanctions should be given a less prominent role in the law of defamation. The Government will thus, in the ongoing work on preparing a new Penal Code, ensure that the provisions concerning penal sanctions on defamatory statements are revised to this effect.

### **Political advertising in broadcasting**

197. In 1995 the Parliamentary Ombudsman for Public Administration raised objections to the prohibition of religious and political advertising in broadcasting, among other things as regards its legal basis in the legislation relating to broadcasting and the Marketing Act (see paragraph 232 of Norway's fourth report). However, a Proposition to the Storting (Proposition No. 8: 61 (1995-96) to the Storting) to the effect that the said prohibition should be abolished was rejected by the Storting. The majority instead explicitly expressed the opinion that the prohibition should be maintained, but it also requested a review of its compatibility with the protection of freedom of expression (cf. Recommendation No 217 (1995-96)). The Government subsequently proposed including a provision in Act of 4 December 1992 No 127 relating to broadcasting (enclosed as Appendix 13) prohibiting religious and political advertising in *television* broadcasts (cf. Proposition No 58 (1998-99) to the Odelsting). Such a provision was incorporated into section 3-1, third paragraph, of the Broadcasting Act by Act of 25 June 1999 No. 51.

198. However, from the parliamentary debate on the new Article 100 of the Constitution, it was clear that the majority of the Storting was in favour of abolishing the prohibition on political advertising in section 3-1 of the Broadcasting Act. The Government will therefore consider a proposal to amend the Broadcasting Act to this effect.

### **Other matters relating to public broadcasting**

199. In 2003 Act of 4 December 1992 No 127 was amended, revoking the general licence requirement for broadcasting networks. The licence requirement for terrestrial wireless transmission networks that are primarily utilised for broadcasting purposes was retained, however, because of the current scarcity of frequency resources.

200. In 1998 the Broadcasting Complaints Commission was abolished. The Commission, established by Act of 4 December 1992 No 127 relating to broadcasting, investigated complaints pertaining to the right of reply, improper conduct and invasion of privacy by Norwegian broadcasters. Such complaints have since been referred to the media's own self-regulatory body.

201. Act of 13 June 1997 No 53 relating to the supervision of the acquisition of newspaper and broadcasting enterprises (the Media Ownership Act, enclosed as Appendix 14) entered into force on 1 January 1999. The purpose of the Act is to promote freedom of expression, genuine opportunities to express one's opinions and a comprehensive range of media. The concern was that a strong concentration of media ownership could lead to the standardisation of information to the public, and make it more difficult for citizens to express ideas and views that are not in the interests of the media owners.

202. The Norwegian Media Ownership Authority was established on 1 January 1999. Pursuant to the Act and subject to certain conditions, the Authority has discretionary powers to impose conditions on acquisitions of ownership interests in newspaper or broadcasting enterprises, or to stop them. The sector-specific limits set out in the broadcasting regulations relating to ownership of broadcasting companies were abolished as a consequence of the introduction of the Media Ownership Act.

203. Following the parliamentary debate on the media white paper (Report No 57 (2000-2001) to the Storting) in 2002, the Government put forward a bill in June 2004 proposing to raise the ownership threshold at the national level, abolish ownership restrictions at the local level, and extend the scope of the Act to cover electronic media.

#### **Article 20**

204. See under Articles 19 and 26 regarding legislation on racial and religious hatred.

#### **Article 21**

205. There is nothing new to report under this article.

#### **Article 22**

### **Freedom of association**

206. Since Norway's fourth periodic report there have been two Supreme Court rulings that relate to freedom of association, the first one involving questions concerning the "positive" aspect of the right to organise, the second one relating to the "negative" aspect of the right to organise.

207. In a Supreme Court judgement of 16 February 2001 (Norwegian Supreme Court Reports 2001 p. 248) the Court stated that an employer is not at liberty to offer jobs on the condition that the applicant does not join a trade union.

208. In a judgement of 9 November 2001 (Norwegian Supreme Court Reports 2001 p. 1413) in a case between Norwegian People's Aid and a former mine clearance worker, the negative aspect of the right to organise was one of the issues. Norwegian People's Aid is a humanitarian organisation under the Norwegian Confederation of Trade Unions (LO), and according to the standard employment contract of Norwegian People's Aid, an employee had to be a member of a union affiliated with the Norwegian Confederation of Trade Unions (LO) in order to be

employed by the organisation. The Supreme Court held that the right to organise has been recognised as a fundamental principle of Norwegian labour law, and that even though the principle of freedom to organise is not statutory, section 55A of the Working Environment Act is based on this principle. The Supreme Court concluded that Norwegian People's Aid's closed shop clause was unlawful.

209. It may be added that as a result of this Supreme Court judgement there are almost no closed shop clauses in collective agreements in Norway today. Such clauses used to be rather common in enterprises affiliated with the Norwegian Confederation of Trade Unions and the co-operative movement, but most of them were abolished after the Confederation made a review of the question in 1999. After the Supreme Court judgement, the Confederation carried out a new review, which resulted in a unanimous decision in the organisation to abolish closed shop clauses in all agreements. The Confederation itself and the member unions may, however, still require affiliation with a Confederation union for particular positions under certain conditions, i.e. when trade union policy and trade union affiliation are considered to be important for the promotion of the goals of the organisation.

### **Industrial disputes legislation**

210. Norway's fourth periodic report refers to an Official Norwegian Report, NOU 1996: 14, that puts forward certain principles for a new Act relating to industrial disputes. The proposal met with considerable opposition in the public consultation round and was therefore set aside. A new committee appointed in 1999 with broad representation from the social partners undertook an analysis of the current bargaining system and framework for collective wage negotiations and industrial disputes. In its report, Official Norwegian Report, NOU 2001:14, the committee concluded that the present system was by and large satisfactory, but proposed some amendments to the legislation concerning mediation in connection with the revision of wage agreements.

211. Official Norwegian Report, NOU 2001:14 was circulated for comment to a broad range of institutions. Some of the proposals met with considerable opposition and were not followed up, as the Government considered it essential that amendments to the legislation concerning bargaining arrangements should have broad support from the social partners. Thus, only minor technical amendments were made in the Labour Disputes Act. The new amendments entered into force on 1 January 2003.

## **Article 23**

### **Measures against forced marriages**

212. In 1998 the Ministry of Children and Family Affairs developed an Action Plan to Combat Forced Marriages (1998-2001) aimed at preventing forced marriages and assisting young people who are under threat of or subjected to such marriages. Information material was distributed targeting young people, parents and the authorities. The intention was to promote communication and mediation between children and parents, provide assistance in the form of emergency housing in particularly acute situations, and foster dialogue and co-operation with various ethnic groups.

213. In 2002, the plan was updated to include 30 new measures. The principal measures consist of assistance to young people in crisis, legislative amendments to prevent forced marriages and marriage agreements involving children, and training of welfare service personnel in their work against forced marriages.

214. As a result of the Action Plan several legislative amendments have been passed:

- In July 2003 the Penal Code was amended to include a provision on forced marriage. The penalty for causing a forced marriage is imprisonment for a term not exceeding six years (section 222);
- In December 2003 the Children Act was amended to “underscore that parents or others are not permitted to enter into binding marriage agreements on behalf of their children”;
- In line with amendments made in 2003 to the Marriage Act of 4 July 1991 No 47, county governors have been empowered (as of March 2004) to instigate legal proceedings to determine whether or not a marriage is valid, so as to be able to react with legal means in possible cases of forced marriage. Furthermore, the National Population Register will (as from autumn 2004) undertake a review of the criteria for a valid marriage. The aim of a compulsory public review of marriage criteria is to gain better control and achieve a more uniform processing of such cases. In consequence, weddings performed in Norway without prior review by the National Population Register will be invalid.

#### **Article 24**

215. The Convention on the Rights of the Child and its two protocols were incorporated into Norwegian law in 2003 by an amendment of the Human Rights Act (see under Article 2 above).

216. All children in Norway who have a special need for assistance and measures have the same right to assistance from the child welfare services regardless of whether or not they have a lawful residence permit.

217. The action plans against violence in close relationships, trafficking in women and children, racism, forced marriages and genital mutilation mentioned under other articles all include measures designed to protect children.

#### **Article 25**

##### **Elections**

218. A new Act relating to Election to the Storting, County Councils and Municipal Councils (the Election Act) was adopted on 28 June 2002, with detailed provisions regarding the right to vote, eligibility, the duty to accept election, registration of political parties, the distribution of mandates according to the number of votes received by each party and the practical execution of

elections. The new Act does not entail any significant changes regarding central democratic rights such as the right to vote or the right to be elected to office. The accounts given in the previous reports still give an adequate overview of the law relating to these matters. Nevertheless, some central provisions of the new Act regarding the right to vote are outlined in the following.

219. Section 1-1 of the Election Act reads:

“The purpose of this Act is to establish such conditions that citizens shall be able to elect their representatives to the Storting, county councils and municipal councils by means of a secret ballot in free and direct elections.”

220. Any Norwegian national who has attained the age of 18 by the end of the year in which the election is held, has not been disenfranchised pursuant to Article 53 of the Constitution, and has at some time been registered in the Population Register as being resident in Norway, is entitled to vote in parliamentary elections (cf. section 2-1 of the Act).

221. Any person who is entitled to vote in parliamentary elections is also entitled to vote in local government elections. Furthermore, persons who are not Norwegian nationals, but otherwise satisfy the conditions mentioned in the previous paragraph, are entitled to vote in local government elections if they were been registered in the Population Register as being resident in Norway for the last three years prior to Election Day, or are nationals of another Nordic country and were registered in the Population Register no later than 31 May of the year of the election.

## Article 26

### **Ethnic discrimination**

222. The Government's policy on ethnic discrimination is based on the principle that Norway is a multicultural society, and that cultural plurality enriches our lives and benefits society as a whole. Everyone living in Norway, regardless of their background, shall have genuinely equal opportunities, equal rights and equal obligations to participate in society and make use of their resources. The fight against racism and discrimination requires a persistent, focused and long-term effort.

223. The Centre for Combating Ethnic Discrimination (SMED) was established on 11 September 1998 and officially opened in February 1999. The Centre is an independent State agency that provides legal assistance to individuals who are victims of discrimination on grounds of religion, belief, race, colour, or national or ethnic origin. It also monitors the types and extent of racial discrimination in Norway. The Centre publishes reports regarding the nature and extent of ethnic discrimination in Norway.

224. As regards the incidence of racial discrimination in Norway, no lawsuits have been brought claiming that an administrative decision is invalid on grounds of racial discrimination. However, the Centre for Combating Ethnic Discrimination has received several complaints from immigrants (particularly from Africa, Asia and Latin America) on public services, especially the

police, the immigration authorities and health and social services, see chapter 2 (pages 14-25) of the report “Moving towards a better protection 2002”, which is enclosed at Appendix 16. The Norwegian Directorate of Immigration and the Antiracist Centre (an NGO that receives public funding) also monitor discrimination and write periodic reports about the types and extent of racism and discrimination in Norway. All three reports conclude that there is a high level of awareness among central and local authorities of the existence of racism and discrimination in Norway, and of the need to address these issues.

225. Racial discrimination and harassment by private parties occur in Norway, mostly directed against immigrants from developing countries, see chapter 2 of the report “Moving towards a better protection 2002”. The report, along with other studies, shows that the problem is not primarily racist groups spreading terror in the streets, but more subtle forms of everyday discrimination, especially in the labour and housing markets.

226. In August 1999 the Supreme Court ruled on a case regarding section 349a of the Civil Penal Code (published in Norwegian Supreme Court Reports 1999, p. 1192). Section 349a states that any person who in an occupational or similar activity refuses any person goods or services on the same conditions as apply to others because of his religion, race, skin colour or national or ethnic origin shall be liable to fines or imprisonment. The owner of a housing agency was charged with discriminating against customers. The housing agency kept files of flats to let with some entries stating that only Norwegians with a steady income would be considered. The Supreme Court acquitted the owner of the agency, stating that the agency was simply presenting offers of a discriminatory nature for which the owners of the flats were responsible. According to the Supreme Court, the penal provision in question did not apply to private individuals. Thus, the provision was not applicable in the present case.

227. After this, the legal protection against discrimination in the housing market was strengthened in Norwegian law. Amendments to the housing acts (Acts No 1 and 2 of 4 February 1960 relating to housing co-operatives, Act of 26 March 1999 No 17 relating to tenancy agreements and Act of 23 May 1997 No 31 relating to owner-occupied units), enacted by the Storting in May 2003, include prohibition against discrimination on grounds of faith, colour, language skills, national or ethnic origin, sexual orientation, or lifestyle.

228. Two cases regarding racist motivated crimes have received considerable public attention and prompted much public debate: The so-called Sogndal case and the Holmlia case. The Sogndal case regards the death of 17-year-old Arve Beheim Karlsen. Beheim Karlsen, was an Indian-born boy adopted by Norwegian parents when he was a baby, was subject to long-term racist harassment and violence. He lived in the small town of Sogndal in the western part of Norway, and was found dead in Sogndal River in April 1999. On the night of his death, he had been chased through the streets of Sogndal, close to the river, by two teenagers. Witnesses claim that the two teenagers were yelling “kill him, kill him” along with racial slurs as they chased him. The circumstances around Beheim Karlsen’s death are not clear. On 11 June 2001, two 19-year-old men were sentenced to one and three years’ imprisonment for racist harassment and violence. The court stated that it had no grounds for concluding that there was a direct connection between the death of Beheim Karlsen and the racist threats he was subjected to.

Even though the court concluded that the harassment, violence and threats against Beheim Karlsen were racist, the defendants were not found guilty of violating section 135 a of the Penal Code Section, which prohibits public dissemination of racist speech. According to the court, it was never proved that the racist speech was disseminated *publicly*. Therefore, section 135 a was not violated.

229. The Holmlia case regards the death of Benjamin Hermansen and is the first clear case of homicide on purely racist grounds in Norway. On 26 January 2001 Benjamin Hermansen, a 15-year-old Norwegian boy whose father was of African origin and mother of Norwegian origin, was stabbed to death in a parking lot near Holmlia centre in Oslo. Although he was known in the local community as an active spokesperson against racism, there is no indication that he was killed because of his anti-racist activity. In December 2002, two members of a neo-Nazi group were sentenced to 17 and 18 years for the crime.

230. In response to Benjamin Hermansen's death, there was a broad based mobilisation by civic organisations. Demonstrations and appeals by anti-racist organisations made the headlines of the national media in the days following the murder. The Norwegian authorities, led by the Prime Minister, took an active part in the mobilisation, and launched new measures to combat racism.

231. In this context, reference should also be made to the case on section 135 a of the Penal Code that is described above under Article 19 ("Sjøliesaken"). The case illustrates that law enforcement authorities do not take allegations of racial discrimination lightly (cf. the Committee's concluding observations of 1 November 1999 paragraph 15). Further measures to ensure that law enforcement authorities take cases of racial discrimination seriously are described below in the context of the plan of action to combat racism.

232. In the summer of 2002, the Norwegian Government presented a new plan of action to combat racism and discrimination for the period 2002-2006 (a copy is enclosed at Appendix 17). This action plan is a part of a long-term effort, and is based on the Government's previous plan of action against racism and discrimination (1998-2001). It is also part of the Norwegian Government's follow up of the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in South Africa in September 2001. The plan of action applies to indigenous peoples, national minorities and the immigrant population in Norway. The measures set out in the plan are mainly focused on eight target areas: working life, public services, schools/education, the judicial system, documentation/monitoring, the Internet, the local community, and the strengthening of legal protection against ethnic discrimination and racist harassment. The following is a brief description of some of the measures set out in the plan, many of which have already been implemented:

- All central government agencies shall be required to encourage persons with an immigrant background to apply when they advertise job vacancies. Agencies are also required, for the duration of a two-year pilot project, to call in at least one applicant with an immigrant background for a job interview, provided the applicant is qualified for the position in question;

- Improvements shall be made to the accreditation system for learning and skills acquired other than through formal education, in order to make it easier for immigrants to obtain accreditation for qualifications acquired in their home country;
- The Government shall encourage more educational institutions to focus on multicultural understanding;
- Measures shall be implemented to increase the recruitment of people with immigrant background to secondary and higher education, such as improving skills among teachers and advisers and providing financial support to universities and colleges that have given special emphasis to measures for people with an immigrant background;
- New teaching aids shall be prepared for use in schools as part of their general effort to raise awareness, with a special focus on racism and discrimination;
- The police shall increase their awareness and knowledge of minorities. A central forum for dialogue shall be established, consisting of representatives of the Directorate of the Police and representatives of relevant non-governmental organisations. Local forums for dialogue shall also be established in each police district. In addition, training in this field shall be provided for all police employees. Recruitment and career development in the police force and the prison service for people with immigrant background is also one of the aims;
- The Government shall establish special units under the public prosecuting authority that will provide specialist expertise in this field. A person shall be appointed at each public prosecutor's office to be responsible for co-ordination between the police and the public prosecuting authority in cases involving ethnic discrimination and racially motivated harassment or violence;
- The Government will consider establishing a system of registration in connection with police checks so that people can document how frequently they are checked;
- Efforts to combat racism on the Internet will be intensified, including greater involvement by the police;
- The Government will put forward a legislative proposal to the effect that discrimination in nightclubs, restaurants, etc., may result in withdrawal of licences to serve alcohol.

233. A follow-up mechanism for the plan of action has been established consisting of representatives from the relevant ministries, the Directorate of Immigration, the Centre for Combating Ethnic Discrimination, the Contact Committee for Immigrants and Authorities and NGOs working in the field of racism and discrimination.

234. A white paper on immigration and multicultural Norway was submitted to the Storting in October 2004 (Report No 49 (2003-2004) to the Storting: Pluralism through Inclusion and Participation). The white paper focuses on how we should relate to people being different, in

light of the fact that the Norwegian population is composed of people with various backgrounds, ethnicities, religions, cultures, languages and ways of life. A multicultural society must balance both the development of a sense of fellowship and peaceful coexistence, and the acknowledgement that people are different and have the right their own way of life.

235. In March 2004, chapter 10 of Act of 4 February 1977 No 4 relating to Worker Protection and the Working Environment, etc., was amended with the aim to establish equal opportunities in working life. Direct or indirect discrimination on grounds of gender, religion, philosophy of life, colour, national or ethnic origin, political view, membership of a labour organisation, sexual orientation, disability or age is prohibited. The prohibition applies to all aspects of employment, including advancement and pay. For instance, working conditions must be modified to accommodate disabled employees. Both public and private employers must comply with these provisions.

236. In December 2004, the Government will put forward a bill on the prohibition of ethnic discrimination in all areas of society. The bill will be based on the report submitted in 2002 by a committee appointed by the Government for this purpose in March 2000, Official Norwegian Report, NOU 2002:12, and will comply with the requirements of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

### **People with disabilities**

237. In December 2002, the Norwegian Government appointed a committee to draft legislation to protect people with disabilities against discrimination, either by proposing a new Act or amendments to existing legislation. The object is to promote equality and full participation in society. The committee will complete its work by April 2005.

## **Article 27**

### **Indigenous peoples**

238. The Sami people are defined as an indigenous people according to ILO Convention No. 169 concerning Indigenous and Tribal Peoples. The basis of the Government's policies towards the Sami people is that the Norwegian State was originally established on the territory of two peoples: the Norwegians and the Sami. They both have the same right to maintain and develop their language and their culture. The aim of the Government's policies is thus not to give the Sami a special position, but to reverse the negative effects of the previous policy of Norwegianising Sami culture.

239. The decision-making competence of the Sami Parliament has steadily increased in fields such as education, kindergartens, language and culture. In 2004 approximately NOK 542 million of the government budget was allocated for special measures and programmes for the Sami people in Norway. The Sami Parliament administers NOK 227 million of this, while the rest of the allocation includes economic support to the reindeer herding Samis and

special measures established for Sami educational purposes, health care programmes and a legal aid office. These funds are administered by the respective ministries in charge of the various sectors.

240. Chapter 6 of the 1998 Education Act (Appendix 12) gives all Sami pupils in Norway and all pupils in Sami districts at the primary and lower secondary level the right to receive tuition both in and through the medium of the Sami language. Outside Sami districts, if at least 10 pupils in a municipality wish to receive tuition in and through the medium of the Sami language, they have the right to such tuition as long as there are at least six pupils in the group.

241. In order to ensure that the Sami people themselves can decide how their culture is to be transmitted, the Education Act empowers the Sami Parliament to determine the Sami content of national curricula and to establish syllabuses in Sami language subjects, and in specific Sami subjects (duodji, i.e. handicrafts, and reindeer husbandry) within a time frame and resource framework set by the ministry. As from January 2000, the Sami Parliament is responsible for developing specific Sami teaching aids and materials.

242. A Resource Centre for the Rights of Indigenous Peoples has been established in Kautokeino in Finnmark, the northernmost county of Norway. The purpose of the Centre is to increase knowledge about the human rights of indigenous peoples. One of the Centre's main tasks will be to provide information to schools and other institutions and organisations that need information about indigenous peoples.

243. The Sami flag has according to provisional regulations been flown at official events at the Sami Parliament and along with the Norwegian flag in celebration of the Sami People's Day, 6 February. A resolution adopted on 5 December 2003 introduced the Sami People's Day as an official flag day in Norway, with the possibility of using the Sami flag together with the Norwegian flag. By an Act adopted on 11 April 2003, the Act 29 June 1933 relating to the use of flags on public buildings was amended to allow the Sami flag to be used along with the Norwegian flag on all public buildings in Norway. The use of the Sami flag on public buildings should help promote the recognition of the Sami people as the indigenous people of Norway and the Sami culture, language, institutions and way of life.

244. The Government has allocated NOK 6 million for the development of a Sami proof-reading programme for electronic word processing. This type of technology, in this case a grammar and spell check, word division programme and thesaurus, is very important for the preservation and development of the Sami language.

245. In May 2004, the Government launched its Sami language website. In addition to providing the Sami-language population with the choice of receiving information in Sami or Norwegian, it is important for the Government that the Sami language is made visible in a public context.

246. The Ministry of Local Government and Regional Development has established a competence base and a dedicated website for the Sami language and IT. Public agencies can use the website for assistance in using the Sami language.

247. In January 2004, a new district court was established in Tana, in inner Finnmark, where a majority of the population are Sami-speaking or bilingual. The Inner Finnmark District Court is staffed with a judge and officers who are fluent in the Sami language, and is the first and only bilingual court in Norway. The Ministry of Justice and the municipality of Tana have also established a project for developing Sami legal terminology.

248. Since 2002, Finnmark County has had an official bilingual Norwegian-Sami name, Finnmark-Finnmarkku, which must be used in all official contexts. Since 2004, the municipality of Porsanger has an official multilingual name in Norwegian, Sami and Kven/Finnish: Porsanger, Porsánŋgu, Porsangin. The Act of 19 July 2002 relating to Personal Names entitles everyone to take back their great-great-grandparents' family name. This will make it easier for the Sami people, the Kven and other national minorities to use their former family names.

249. In 2003, the Norwegian Broadcasting Corporation (*NRK Sami Radio*) broadcast 1,727 hours of radio programmes in Sami, 100 of which were reruns. In addition NRK Sami Radio broadcast on the DAB network a total of 4 855 hours including reruns. In the same period NRK Sami Radio broadcast 65 hours of television programmes in Sami. NRK Sami Radio also contributed a total of 175 items to national and regional broadcasts, an increase of 137 on the previous year.

250. As regards the problem described in paragraph 16 of the concluding observations on Norway's fourth periodic report, reference is made to the Supreme Court's judgement in the "Selbu" case (a plenary judgement by the Supreme Court published in Norwegian Supreme Court Reports 2001 p. 769). In this case the Supreme Court stated that when considering whether the conditions for establishing a right to reindeer herding in a particular area based on immemorial usage are met, one has to take into consideration the special conditions for Sami reindeer herding, including the nomadic lifestyle and the lack of visible signs of activity due to their traditional way of life. Prior to this judgement it had been difficult for people engaged in reindeer herding to obtain rights in cases where there was competing use of the land in question. The "Selbu" case is considered to be a milestone and will be an important source of law in similar cases.

251. On 4 April 2003, the Government put forward a bill relating to legal relations and management of land and natural resources in the county of Finnmark (Proposition No. 53 (2002-2003) to the Storting). The proposed Finnmark Act is based on the report from the Committee on Sami Legal Matters (Official Norwegian Report, NOU 1997:4), submitted in 1997, and extensive comments on this submitted by the Sami Parliament, Finnmark County and several other public bodies and non-governmental organisations.

252. The bill proposes the establishment of a new, independent body to which shall be transferred the right of ownership of the land that currently lies under the State (i.e. Statskog SF). This constitutes about 95 per cent of the land in Finnmark county. The new body will be called "Finnmark Estate" (*Finnmarkseiendommen*, in Sami *Finnmárkkkuopmodat*). It is to have a board with an equal number of members elected by the Sami Parliament and by Finnmark County Council, three members elected by each body. The six board members shall reside in Finnmark. In addition, the King (i.e. the Government) shall appoint a board member without the right to

vote who will be responsible for ensuring a continuous dialogue between Finnmark Estate and the central authorities. In the event of a tied vote, the government-appointed member may have the matter in question referred to the Ministry for a decision if the operation of Finnmark Estate depends on a decision being taken.

253. Finnmark Estate will be a legal entity independent of the central government, which will have no authority to instruct or control its activities. Finnmark Estate's legal status will be the same as that of other landowners with the following exceptions: National parks may be established on the land without compensation to Finnmark Estate. Finnmark Estate may not claim compensation in the case of expropriation of land for public purposes for the benefit of the county or municipalities in the county. Finnmark Estate is entitled to compensation when land is expropriated by the State with the exception of expropriation for hospitals, churches and cultural and educational purposes. The Storting may change the legal status of Finnmark Estate by law.

254. Section 5 of the proposed Act clears up a possible concern that State ownership may have precluded the acquisition of independent rights on a law of property basis. The provision states that established rights shall be respected and that the Act does not interfere with such rights.

255. The proposed Act provides for joint management without making distinctions on the basis of ethnicity and with equal representation of indigenous peoples and the remainder of the population. The proposed Act, however, also establishes other instruments to ensure the practical and genuine influence of indigenous peoples on land management. Both the Norwegian Constitution and international law commit the Norwegian Government to creating favourable conditions for the preservation of the Sami people and further development of its culture.

256. In addition to its influence on the composition of the board, the Sami Parliament is empowered to issue guidelines for considering the effect on Sami culture, reindeer husbandry, commercial activity and social life of changes in the use of uncultivated land. The guidelines will enter into force when the Ministry has approved them. The guidelines are to be used by Finnmark Estate when considering matters concerning changes in the use of uncultivated land. Should two members of the board hold that a decision is incompatible with the guidelines, they may request to have the matter submitted directly to the Sami Parliament, even if a majority of the board votes in favour of the decision. If the Sami Parliament supports the minority, the majority may bring the matter before the King for a final decision. Public authorities shall also use the guidelines when considering matters concerning changes in the use of uncultivated land.

257. The reindeer herding Sami population has been secured representation on the board of Finnmark Estate, and the independent statutory basis of reindeer husbandry is laid down in the Act. The Sami Parliament's guidelines and the rules of procedure for the board will also help to ensure that the interests of reindeer husbandry will be safeguarded in connection with the future management of uncultivated land.

258. The relationship to the provisions of international law concerning indigenous peoples and minorities is regulated in section 3. The provision stipulates that the Act shall be applied in accordance with the provisions of international law concerning indigenous peoples and minorities. The provision has been included as a natural consequence of the central role of international law in the area to be regulated by the Act.

259. For a more detailed description of the proposed Finnmark Act, reference is made to the enclosed translation of the text of the proposed Act and of Chapters 1 and 7 of Proposition No. 53 (2002-2003) to the Storting (enclosed at Appendix 18).

260. The Sami Parliament discussed the proposed Finnmark Act at its plenary meeting in May 2003. The Sami Parliament required several changes to the proposed Act, but did not reject the bill. (The views of the Sami Parliament are available in English on the Sami Parliament's website: [www.samediggi.no](http://www.samediggi.no).)

261. The Storting is currently considering the bill. In June 2003 the Storting's Standing Committee on Justice arranged oral hearings where the Sami Parliament, Finnmark County Council, municipalities and various organisations presented their views on the proposition. As part of the preparation, the Committee has also travelled to Finnmark and to Canada. Both the Sami Parliament and Finnmark County Council were represented on the trip to Canada.

262. In June 2003, the Standing Committee on Justice asked the Government for additional information and proposals on several points. The Government was also asked to provide an "independent legal opinion" on the proposition, based on international law. The Ministry of Justice gave this task to two law professors at the University of Oslo, Professor Hans Petter Graver and Professor Geir Ulfstein. The professors' report was submitted to the Storting on 3 November 2003.

263. The main emphasis of the report is on the relationship between the proposed Finnmark Act and Norway's obligations under ILO Convention No 169 concerning Indigenous and Tribal Peoples in Independent Countries. However, the relationship between the bill and Articles 1 and 27 of the Covenant is also studied, and the professors conclude:

"Individuals and groups of individuals whose interests are affected must [...] have rights as a party to cases where Finnmark Estate makes decisions on the management and utilisation of the Estate's land. This follows from the International Covenant on Civil and Political Rights, Article 27.

"Apart from the requirement as to rights as a party, we have no significant objections to the law proposal with a basis in the International Covenant on Civil and Political Rights Article 1 or 27 [...]."

264. The Government does not concur with the study's conclusions as regards Article 27 of the Covenant. In a letter to the Standing Committee on Justice from the Minister of Justice, the following is stated in this regard:

"It is not possible to see that Article 27 of the International Covenant on Civil and Political Rights provides further guidance on how the protection of land rights should be implemented. If the provision requires effective protection of individual rights necessary for maintenance of specific ways of life and the economic base, it is not possible to deduce specific requirements regarding the models to be selected for resolving issues concerning land rights. "

265. In October 2003 the Standing Committee on Justice decided to have consultations with the Sami Parliament and Finnmark County Council as part of the preparations for the Finnmark Act. The Committee based this decision on Article 6 of ILO Convention No 169. During the first session of the parliament in 2004, the Committee organised two rounds of consultations. The parties to the consultations are currently discussing possible amendments and additions to the proposed Act.

266. When it comes to Sami areas south of Finnmark, the Committee on Sami Legal Matters continues its work and is expected to submit a report within three to four years.

### **Recent immigrant groups**

267. Some of the information provided under Article 26 is also relevant here as well.

268. Recent immigrant groups run a great variety of voluntary organisations. These are mainly local organisations, although regional and national ones exist. Immigrant organisations, including religious communities, receive a substantial part of their funding from various government sources. Eight of the national organisations received government funding in 2004.

269. The Government allocates funds for the special educational needs of linguistic minorities, including recent immigrant groups. A substantial proportion of these funds is used for mother tongue teaching, mainly in the primary and lower secondary school.

270. Since September 1997, the Norwegian Broadcasting Corporation has broadcast a multicultural television series called "Migrapolis". This weekly programme is shown in prime time on NRK1, as well as on the second NRK channel, NRK 2, and averages 310,000 viewers a week. "Migrapolis" is produced by a multiethnic staff in the Oslo regional office of the Broadcasting Corporation.

### **National minorities**

271. In 1999 Norway ratified the Council of Europe Framework Convention for the Protection of National Minorities. The groups of persons considered to be national minorities in Norway are Jews, Kven (people of Finnish descent living in northern Norway), Roma/Gypsies, the Romani people/Travellers and Skogfinn (people of Finnish descent living in southern Norway). The Sami people in Norway are also a national minority in terms of international law. However, the Sami Parliament has declared that it does not consider the Framework Convention to be applicable to the Sami people, since as an indigenous people the Sami have legal and political rights that extend beyond those covered by the provisions of the convention.

272. In December 2000, the Government presented a white paper on national minorities in Norway to the Storting (Report No 15 (2000-2001) to the Storting). Among other things, it contains a review and evaluation of Norway's international obligations in this field, and examines the principles and legal foundation on which policy is based. The white paper discusses ways of ensuring equal conditions for participation in society and the preservation of language, culture and cultural identity, and describes the Government's plans for further work in this field.

273. The Ministry of Local Government and Regional development administers financial support to minority non-governmental organisations and support for projects relevant to national minorities. In 2004 this amounted to NOK 2.9 million.

274. The presence of the Kven is the result of immigration from Finland and northern Sweden from the 16th century to the first half of the 19th century. The Kven/Finnish language is used in Troms and Finnmark, the two northernmost counties of Norway. Estimates of the number of speakers of Kven/Finnish vary from 2 000 to 8 000, depending on the criteria and methods used. There is a growing interest in learning Finnish in the area with a Kven population. The Ministry of Education provides special funds enabling local municipalities in these two counties to teach Finnish as a second language to primary and lower secondary pupils of Finnish or Kven descent. The Government is considering whether oral Kven should be considered a separate language or a Finnish dialect. The Kven organisation Norske Kveners Forbund receives financial support from the Government. A newsletter financed by the Government is published with articles written in Norwegian, Finnish and Kven. The Kvæntun Centre in Porsanger is a centre for the Kven language and culture, and receives government funding. The Government has signalled its intention to support the expansion of the premises of the Kvæntun Centre. Nordreisa municipality also has plans to establish a Kven cultural centre for the documentation and presentation of Kven culture and traditions, particularly in Troms County.

275. The Norwegian Broadcasting Corporation has weekly broadcasts for the Kven minority. The programmes, which are in Finnish, are produced by NRK Troms and are broadcast in Troms, Finnmark and parts of Nordland every Wednesday.

276. The Roma people (Gypsies) largely live in the Oslo area and travel during the summer. All the special measures were phased out in the beginning of the 1990s, partly because they were expensive and partly because they did not seem to be successful.

277. The Romani people (Travellers) have been part of the Norwegian population for centuries. For a long time the Romani people were regarded by the majority population and by society at large as a group with a different, aberrant way of life, and as representatives of an alien culture. Official policy long consisted of heavy-handed attempts to bring the group under control by criminalising their itinerant lifestyle and subjecting members of the group to criminal prosecution. One of the methods used was sterilisation, and children were taken away from their families and relatives and grew up with no knowledge of their own background. Families were sent to Svanviken Labour Colony in an attempt to induce the group to settle down. On the whole, the policy pursued in respect of the Romani people, particularly in the 1900s, has been one of active assimilation. The policy has actively contributed towards undermining the traditional way of life and culture that were characteristic of the ethnic group, with the result that even today many people are reluctant to pursue their way of life and culture openly. In February 1998, the Government officially apologised for the abuses committed by the Norwegian authorities against the Romani people through the years. The cultural history of the Romani people has long been ignored by the majority culture. The construction of a permanent centre for documentation and presentation of Traveller culture at the Glomdal Museum in Elverum is thus an important measure. Organisations representing the Travellers receive financial support from the Government.

278. The Jews in Norway represent an ethnic as well as a religious minority. There is no particular policy regarding the Jews except for the general public grants to religious congregations and a particular State grant for a Jewish home for old people in the Jewish community.

279. The Skogfinn community in southeast Norway is a result of extensive emigration from southeast Finland northwards and westwards from the 16<sup>th</sup> century onwards. Like the Kven, the Skogfinn were subjected to a stringent policy of Norwegianisation. By the mid-1900 the use of the Finnish language had practically fallen into disuse in this community.

**Apologies, funds, compensation, etc.**

280. In March 1999 the Storting decided on a historical and moral settlement for the treatment in Norway of the economic liquidation of the Jewish minority during World War II. This took the form of collective and individual financial settlements. The collective compensation amounted to NOK 250 million. Of this, NOK 150 million was granted to the Jewish minority to secure the culture and future of the Jewish community in Norway. This settlement was more than a purely financial settlement based on assets confiscated from Jews during the war. The sum was paid to Jewish communities in Norway, which will decide how the funds are to be used. As part of the collective settlement, NOK 40 million was allocated for the establishment of a centre for studies of the Holocaust and religious minorities in Norway. The purpose of such a centre is to build up expertise in Norway on the Holocaust in general and on the Norwegian chapter of Holocaust history in particular, as well as to lay the foundation for broad knowledge of the history, beliefs, traditions, culture and status of religious minorities in Norwegian society. A standard amount of NOK 200 000 has been granted to each person who was born before the end of 1942 and who suffered under anti-Jewish measures in Norway.

281. In a white paper submitted to the Storting in December 2000 (Report No 15 (2000-2001) to the Storting), the Government strongly condemned the abuses committed against the Romani people. Moreover, the Government expressed regret for the Norwegianisation policy to which all the national minorities and the Sami people have been subjected, and apologised on behalf of the State for the way in which the minorities have been treated.

282. In 2000, the Storting established a fund for the Sami people, with a capital of NOK 75 million. The Sami Parliament will administer the profits of the fund. The fund has been established in order to compensate for some of the negative effects of previous assimilation policies, which have weakened the position of the Sami language and culture. The purpose of the fund is to improve the situation of the Sami people by enhancing their opportunities to practise their own language and culture, which will help to preserve and develop the Sami language and culture. The intention is not to give individual compensation to people who have suffered from the assimilation policy. The profits of the fund will be allocated to projects that are not financed by existing public budgets and are in accordance with the Sami Parliament's priorities. The establishment of the fund signifies an assurance on the part of the Norwegian Government that the policy of assimilation towards the Sami people will not be continued or reintroduced.

283. In the summer 2004, the Norwegian authorities established a NOK 75 million fund as collective reparations for injustices done to the Romani people. The returns of the fund will be used for initiatives and activities to promote the preservation and development of the Romani people culture, language and history, and will cover the costs of a secretariat and a counselling service.

284. In a white paper submitted to the Storting in July 2004 (Report No 44 (2003-2004) to the Storting), the Government proposed simplified requirements of proof for the awarding of damages through the Storting's ex-gratia payment scheme in cases concerning damages for injustice done to the Romani people by the authorities, and in cases concerning Sami people and Kven people who have lost their schooling and been victims of the Norwegianisation process. The Government has proposed that the current starting point regarding injustices of the past, i.e. that they be judged on the basis of prevailing norms at the time of the injustice, should not be absolute.

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