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IHF FOCUS: Domestic human rights safeguards; freedom of expression; detainees' rights; racial discrimination; protection of asylum seekers and immigrants; rights of the handicapped and mentally disabled.

In 1998, the Norwegian government presented for the first time an annual report on its human rights activities both at home and abroad. In December 1999, the government presented a new Plan of Action on Human Rights that included over 300 measures to improve human rights protection in Norway and internationally. The plan was presented as a follow-up to an appeal made at the 1993 UN World Conference on Human Rights to national governments to launch human rights action plans.

Measures to strengthen human rights protection in Norway in 1999 included the incorporation of international human rights conventions into Norwegian law; a revision of the law on, and practice of, pre-trial detention; and the strengthening of the legal protection of persons in psychiatric institutions (e.g., clarifying the rules regarding the use of coercion and force, and improving the legal protection of psychiatric patients). Further, according to the government plan of action, the government intended to continue with reforms to make the asylum policy more flexible; implement more conventions in Norwegian law; propose a new law against ethnic discrimination; establish a national institution on human rights; and give more resources to human rights training and education. The establishment of a center to deal with indigenous peoples' rights was also planned.

Domestic Human Rights Safeguards

On 21 May, the parliament adopted a new human rights law which incorporated the

International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the European Convention of Human Rights (ECHR) into Norwegian law. Commentators deemed this to be a major breakthrough in the strengthening of international human rights law in Norway. However, the law has been criticized for not including other important international conventions such as the 1989 UN Convention on the Rights of the Child and the 1981 UN Convention on the Elimination of All Forms of Discrimination Against Women.

According to the December 1999 Plan of Action on Human Rights, the government will propose to implement both conventions in Norwegian law, as well as the 1965 UN Convention for the Elimination of All Forms of Racial Discrimination, and the 1984 UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The method of implementation, however, is to be decided at a later stage.

Norway has a dualistic legal system, meaning that international conventions to which Norway is a party do not automatically become part of national legislation.

According to the Norwegian Helsinki Committee, the government should have taken a position which favored incorporation as the means of implementation. All of the above-mentioned conventions should be incorporated into Norwegian law so as to ensure that all the provisions become part of Norwegian legislation. The proposal also failed to include the 1951 UN Convention Relating to the Status of Refugees.

Freedom of Expression

In order to clarify the balance between freedom of expression and other basic

¹ Based on the *Annual Report 1999 of the Norwegian Helsinki Committee*.

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rights or freedoms guaranteed under Norwegian law and practice, the Norwegian government established a special committee on freedom of expression, which was to conclude its work in the fall of 1999. One of the issues to be addressed by the committee was the balance between freedom of speech and Norway's legal obligations to fight racism. Another important issue was the clarification of the restrictions placed on Norwegian media in publishing defamatory statements.

■ In a judgment by the European Court of Human Rights in the case of *Bladet Tromsø and Stensaas v. Norway*, the court concluded that there had been a violation of article 10 of the ECHR. The newspaper *Bladet Tromsø*, of which Stensaas was the editor, had published articles by an official seal-hunting inspector, Mr. Lindberg, who criticized some Norwegian seal hunters for inadequate practices. The articles claimed that the seals had been skinned alive and that the hunters had assaulted and threatened the seal-hunting inspector. A district court ruled that such statements were null and void, and considered that the newspaper had acted negligently. The court ordered the newspaper and the editor to pay NOK 10,000 and NOK 1000 respectively (approximately U.S.\$ 1,300 and 130, respectively) to each of the 17 plaintiffs, and to cover their legal costs. The Supreme Court refused leave of appeal. The European Court of Human Rights stated in its judgment that the reasons relied on by the respondent state were not sufficient to show that the interference complained of was "necessary in a democratic society." There was no reasonable relationship of proportionality between the restrictions placed on the applicants' right to freedom of expression and the legitimate aim of protecting the seal hunters' "reputation or rights." Accordingly, the court held that there had been a violation of article 10 of the ECHR.

Detainees' Rights

In a July 1997 report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Norway was criticized for using police cells for remand purposes. The committee also focused its attention on the problems related to the isolation of remand prisoners who were subject to a ban on, or screening of, letters and visitors.

The UN Committee for the Prevention of Torture (CAT) stated in its report of May 1998 that it was concerned about the institution of solitary confinement, particularly as a preventive measure during pre-trial detention. The committee said that "except in exceptional circumstances, inter alia, when the safety of persons or property is involved, the Committee recommends that the use of solitary confinement should be abolished, particularly during pre-trial detention, or at least that it should be strictly and specifically regulated by law and that judicial supervision should be strengthened."

In 1998, the Ministry of Justice created guidelines that limit detention in a police cell to no more than five days. Recently, the Ministry of Justice stated that all remand prisoners should be transferred to an ordinary prison within 24 hours following a court order to be remanded in custody.

In a recent statement, the minister of justice acknowledged that the long periods of remand custody were a problem, and said that several initiatives had been taken by the ministry in order to resolve the issue.

The aforementioned Plan of Action on Human Rights also addressed problems related to solitary confinement and long periods of pre-trial detention. According to the plan, the government would, among other things, implement measures to make police investigations more efficient, with a view to shortening the period of pre-trial

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detention (100 persons were kept in pre-trial detention for over one year in 1999), and ensure that solitary confinement was not used as a means of obtaining confessions from inmates.

Racial Discrimination

According to several research reports, immigrants and refugees living in Norway were subjected to discrimination in different spheres of society; for example, the labor and housing markets.

In summer 1998, the government presented a comprehensive plan of action to combat racism and discrimination from 1998-2001. In September 1998, a Center for the Prevention of Ethnic Discrimination was established. The task of the center was to help monitor developments in the nature and extent of discrimination, and provide legal aid to persons who were exposed to discrimination on grounds of religion, race, skin-color or national or ethnic origin. The plan of action also included a wide range of other measures to strengthen the campaign against discrimination in the police force, the judiciary, employment, housing, education, etc.

Several critics have pointed out that although the present government began a serious campaign against discrimination and racism, very few immigrants were actually employed in the public sector. According to critics, Norwegian authorities' policy in accepting foreign educational degrees was too strict and created problems for foreigners in the labor market.

■ In the election campaign for the 13 September 1999 municipal and provincial elections, the second largest party (the Progress Party) made use of strong anti-immigration and anti-refugee rhetoric to gain support. Two of its parliamentarians touring Norway claimed that "Norway was in the process of being destroyed by immigrants and refugees" who were responsible

for the overwhelming majority of criminal acts.

In the new Plan of Action on Human Rights, the government indicated that it would propose a new law on ethnic discrimination in order to strengthen the legal protection of ethnic minorities.

Protection of Refugees and Immigrants

Refugee Policy

In 1998, the government introduced several changes in the Norwegian refugee policy that were met with positive reactions from human rights organizations. One such change was the decision that not only persons persecuted for their political views and activities could be granted asylum. Persons persecuted because of their religion, ethnic origin, social group or gender can now also be granted political asylum in Norway. Moreover, refugee status is no longer limited to persons who were persecuted by the state; it has now been extended to cover persons "other than the authorities of their home country."

On 15 January 1999, the Norwegian government issued new guidelines for the implementation of the 1998 changes in asylum policy. The guidelines provided for more flexible practice in the implementation of the requirement of proof (that the risk of persecution in his/her country of origin was "probable"), and the rule of the first country of asylum.

Although human rights activists generally regarded the changes as improvements, several other problems remained. For example, the current policy did not protect the right to seek asylum in all cases. The introduction of visa requirements for entering Norway made it virtually impossible at times for asylum seekers to submit their application. In addition, the treatment of child refugees (who constitute nearly 30

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percent of all asylum seekers in Norway) has been criticized for not taking into account the fact that children have basic rights irrespective of their parents' situation (article 22 of the UN Convention on the Rights of the Child).

The slow processing of asylum applications also triggered criticism. Several asylum seekers had to wait longer than 15 months, the maximum period set by the Immigrant Directorate for processing an asylum claim. In 1999, sixty-one persons had been kept in centers for asylum seekers for over three years. According to the authorities, these persons were mostly unwilling to co-operate in terms of giving information etc. Consequently, according to the authorities, they should not benefit from their obstruction of the processing of their cases, and should not be granted asylum automatically, as some human rights organizations proposed.

Immigration Act

On 4 March, the parliament adopted substantial amendments to the immigration act. Human rights organizations have heavily criticized the changes, which they claim weaken the legal protection of foreigners in Norway.

The new law gives the police the right to search a person, and his/her home or belongings if they have reason to doubt the identity of the foreigner. This provision conflicts with both article 102 of the Norwegian constitution, which forbids house searches except in criminal cases, and article 8 (right to privacy) of the ECHR.

According to the new provisions, foreigners could be expelled from Norway immediately. The old law had granted a 48-hour period to file a complaint on the expulsion decision. The police were also given the right to imprison persons who had been ordered to leave Norway if they had reason to doubt whether the persons would

follow the order. A decision to imprison someone can be based solely on a negative experience with persons of the same nationality. This provision clearly discriminates against certain groups, since the imprisonment was not based on an evaluation of each individual case.

These and other problems with Norwegian immigration and refugee legislation and practice have led to proposals to establish a national commission to scrutinize both the application of the immigration act and the ways in which different categories of asylum seekers are treated.

Rights of the Mentally Disabled and Mentally Ill

Mentally Disabled

On 1 January, a new law on the use of coercion and force in the treatment of mentally handicapped persons came into effect. The original proposal for the new legislation was criticized by several human rights organizations for its non-compliance with international human rights standards. As a result, the adoption of the new legislation was postponed until the proposal was amended.

However, the amended version of the law also met with criticism that focused mainly on two issues. First, the law legitimized forced behavioral therapy (so-called negative reinforcement) despite the fact that many experts in the field have warned against the therapy. Further, other European countries have tended to abolish it because it is inhuman and heavy-handed.

Secondly, the law permitted the use of involuntary treatment in private homes. In addition, the mechanisms of controlling abuse were deemed too weak. The chief administrative officer of a province (*fylke*) had the double responsibility of both permitting the use of force, and controlling any abuse. The Norwegian Helsinki Com-

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mittee stated that charging one governmental office with both tasks contradicted the principle of the separation of powers.

The Mentally-Ill

According to a 1998 research report by the Norwegian Institute of Hospital Research (NIS), more than 45 percent of hospitalizations in psychiatric institutions in Norway were involuntary. Between 1994 and 1997, the number of persons subjected to involuntary treatment increased by 28 percent.

The report criticized the inadequate legal protection of patients in psychiatric hospitals. It referred to statistics showing that complaints against involuntary hospitalization or coercive treatment (mechanical coercion, medication or physical isolation) were only approved in 14 percent of all cases. The report concluded that the control mechanisms related to abuse were insufficient.

The number of involuntary hospitalizations in psychiatric hospitals in Norway was extremely high compared with other European states. This may stem from the limited resources for mentally-ill persons in the health care system, cultural factors, and legal provisions allowing the hospitalization of persons who did not constitute an imminent threat to themselves or others. According to the so-called "treatment criterion" in Norwegian legislation, forced admission was justified if the prospect of healing, or improving, a person's mental condition may otherwise be forfeited. This was in contradiction with international standards, which restricted compulsory admission to cases characterized by a "serious danger to the patient or to other persons" or where "the absence of placement could lead to a deterioration or prevent the patient from receiving appropriate treatment."

The frequent use of coercive treatment, the reliance on chemical drugs, mechanical means of coercion, and isolation were also

criticized. There have even been reports of mentally-ill persons being kept in prisons because the health care system lacked resources. One such case was reported to the CPT in early 1999.

In 1998, the Norwegian parliament adopted a comprehensive plan to improve the mental health care system, which included extra funding for the mental health care system in the amount of approximately U.S.\$ 3 billion over eight years. The main foci of the plan were the increased capacity in polyclinics, the establishment of more special housing units for mentally ill persons, and the development of more support at the local level. There would be no substantive increase in resources for psychiatric hospitals.

Following considerable debate and criticism – both from psychiatrists and human rights experts – a new law regulating the coercive treatment and compulsory admission of mentally ill persons was adopted by the Norwegian parliament 31 May. It is expected to come into force in 2001. The new law would permit the use of coercive treatment outside hospitals. In contradiction with Council of Europe recommendations, it did not require that "in the event of compulsory admission, the decision regarding placement in a psychiatric institution must be taken by a judge..." The law has also been criticized for weakening legal protection, and limiting the rights of patients to receive visitors, and send and receive mail.

There is no consensus among experts on the future effects of the new law in terms of the number of compulsory admissions and coercive treatment. According to the Norwegian Helsinki Committee, from a human rights point of view, the most problematic point of the law was that it did not provide for sufficient safeguards against abusive practices and left too much to the discretion of the professional psychiatrists. ■■■