

**QUES TIONNAIRE RELATED TO**

**THE RIGHT OF ANYONE DEPRIVED OF HIS OR HER LIBERTY BY ARRES T OR DETENTION TO BRING PROCEEDINGS BEFORE COURT, IN ORDER THAT THE COURT MAY DECIDE WITHOUT DELAY ON THE LAWFULNES S OF HIS OR HER DETENTION AND**

**ORDER HIS OR HER RELEAS E IF THE DETENTION IS NOT LAWFUL**

1)

1. If your State *is* a party to the International Covenant on Civil and Political Rights, how is Artic le 9 (4) of the Covenant incorporated into your domestic legislation? Please provide reference to the specific provisions, including their wording and date of adoption

The Human Rights Act, act of 22 May 1999 No. 30, section 2 reads as follows:

“The following conventions shall have the force of Norwegian law insofar as they are binding for Norway:

(…)

3. The International Covenant of 16 December 1966 on Civil and Political Rights, together with the following protocols:

a) Optional Protocol of 16 December 1966,

b) Second Optional Protocol of 15 December 1989 on the abolition of the death penalty.

Not only does the ICCPR have the force of Norwegian law, as section 3 states that “[t]he provisions of the conventions and protocols mentioned in section 2 shall take precedence over any other legislative provisions that conflict with them”.

Thus, Article 9 (4) is directly incorporated into Norwegian law, and shall prevail over conflicting provisions in other Norwegian statutes.

1. Does this mechanism apply to all forms of deprivation of liberty, such as administrative detention, including detention for security reasons, involuntary hospitalisation, immigration detention, or any other reason?

**Yes**

*If yes*, please provide the list of the forms of detention to which the mechanism is applicable.

As the ICCPR Art 9 (4) is directly incorporated into Norwegian law, the rights and mechanisms that follows from Art 9 (4), have force as Norwegian law. Thus, the mechanism applies to all forms of deprivation of liberty.

1. Is the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court available for individuals subjected to preventive detention measures?

**Yes**

1. Does this mechanism provide for any particular remedies? In particular, does the mechanism provide for release and compensation for unlawful detention?

**Yes**

*If yes*, please state and explain the relevant remedies.

According to The Criminal Procedure Act 22 May 1981 No. 25 section 444 a person charged is entitled to compensation by the State for any financial loss that the prosecution caused him in so far as he has been arrested or detained in custody contrary to Article 5 of The European Convention on Human Rights or Article 9 of the UN International Covenant on Civil and Political Rights. Section 445 states that even if the conditions for compensation prescribed in section 444 are not fulfilled, the person charged shall, if it appears to be reasonable, be awarded compensation for financial loss resulting from special or disproportionate damage that the prosecution has caused him.

Compensation awarded pursuant to sections 444 and 445 may be reduced or cease to be payable due to conditions on the charged persons side.

Finally, section 447 states that a “person charged is entitled to redress at rates prescribed by the King for any humiliation or other injury of a non-pecuniary nature resulting from an arrest or remand in custody if he is acquitted or the prosecution against him is discontinued”.

In addition to the above mentioned provisions, ICCPR Article 9 (5) has force as Norwegian law, providing anyone who has been victim of unlawful arrest or detention an enforceable right to compensation.

1. Are there persons other than the detainee who can initiate the procedure on behalf of the detainee under your country’s domestic law?

**Yes**

*If yes*, please state who?

As an example can be mentioned preventive detention. In the case of preventive detention, a release on probation can be initiated by the convicted person or the prison and probation service, according to the The General Civil Penal Code, act of 22 May 1902 No. 10, section 39 f.

1. What are the forma l requirements and procedures for a detainee to invoke the right to bring proceedings before court, in order that the court may decide without delay on the lawfulness of the detention? Please cite relevant domestic legislation.

Under The Criminal Procedure Act, the detainee does not have to do any actions to invoke this right. According to section 183, the prosecution authority, if it wishes to detain an arrested person, must, as soon as possible and not later than on the third day following the arrest, bring the arrested person before the court with an application that he be remanded in custody. The court decides whether the arrested person shall be remanded in custody.

According to section 185, the person in custody has the right to a new proceeding before the court every fourth week.

According to The Criminal Procedure Act section 187 a, “[a] person who is remanded in custody shall be released as soon as the court or the prosecuting authority finds that the grounds for the remand in custody no longer apply, or when the time-limit for the custody has expired”.

1. Does the legislation provide for a time limit for submitting such a pplication to the court? If so, please indicate what is the maximum time in the number of:

☐Days (How many?)

☐Months (How many?)

☐Years (How many?)

No, there is no time limit.

1. Are there any major decisions of your country’s Constitutional or Supreme Courts concerning the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court?

Not recently. In 1990 a case from Norway went all the way to The European Court of Human Rights. In Eriksen v. Norway, Series A no. 181-A, The European Court of Human Rights concluded that there had been a violation of the right.