



CPT/Inf (2005) 10

**Report to the Government of the United Kingdom
on the visit to the United Kingdom
carried out by the European Committee
for the Prevention of Torture and Inhuman
or Degrading Treatment or Punishment (CPT)**

from 14 to 19 March 2004

The United Kingdom Government has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2005) 11.

Strasbourg, 9 June 2005

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Copy of the letter transmitting the CPT's report

Strasbourg, 23 July 2004

Dear Mr Kissane,

In pursuance of Article 10, paragraph 1, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I enclose herewith the report to the Government of the United Kingdom drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visit to the United Kingdom from 14 to 19 March 2004. The report was adopted by the CPT at its 54th meeting, held from 28 June to 2 July 2004.

The recommendations, comments and requests for information made by the CPT are set out in the Appendix to this report. The CPT requests the authorities of the United Kingdom to provide within **three months** a response containing an account of action taken by them to implement the Committee's recommendations and setting out their reactions and replies to its comments and requests for information. It would also be most helpful if the United Kingdom authorities could provide a copy of the response in a computer readable form.

I am at your entire disposal if you have any questions concerning either the CPT's report or the future procedure.

Yours sincerely,

Silvia CASALE
President of the European Committee for
the Prevention of Torture and Inhuman
or Degrading Treatment or Punishment

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I. INTRODUCTION

A. Dates of the visit and composition of the delegation

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "the Convention"), a delegation of the CPT carried out a visit to the United Kingdom from 14 to 19 March 2004. The visit was one which appeared to the Committee "to be required in the circumstances" (cf. Article 7, paragraph 1, of the Convention).

2. The visit was carried out by the following members of the CPT:

- Mario FELICE (Head of the delegation)
- Pétur HAUSSON.

They were supported by Geneviève MAYER, Deputy Executive Secretary of the CPT and assisted by:

- Per BORGÅ, Psychiatrist, Head of Section, Karolinska Institutet Danderyd Hospital, Sweden (expert)
- Mohammad ASSI (interpreter)
- Aziz TAALAB (interpreter).

B. Context of the visit

3. The visit focused on the treatment of persons certified by the United Kingdom's Secretary of State for Home Affairs (Home Secretary) as suspected international terrorists and detained pursuant to the Anti-Terrorism, Crime and Security Act 2001 (hereafter the "ATCSA"). The aim was to assess developments that have occurred in the treatment of this category of persons since the CPT's visit in February 2002¹. The CPT's delegation paid particular attention to the impact of the conditions of detention on the mental and physical well-being of these detainees.

4. The background to and legal basis for this form of administrative detention, ordered by decision of the Home Secretary, were described in paragraphs 3 and 4 of the report on the CPT's 2002 visit.

¹ See CPT/Inf (2003) 18.

According to information supplied to the delegation by the authorities, in March 2004, there were fourteen persons certified as suspected international terrorists and deprived of their liberty in the United Kingdom. Twelve of them were being detained exclusively under Part 4 of the ATCSA², of whom half since December 2001. The CPT's delegation interviewed, in private, all of these twelve persons and examined their conditions of detention in Belmarsh and Woodhill prisons and Broadmoor Special Hospital.

C. Cooperation received and consultations undertaken during the visit

5. The CPT's delegation enjoyed excellent cooperation at all levels. It had rapid access to the detention facilities it wished to visit, the persons it wished to interview and the information it required to carry out its task.

6. The delegation met Phil WHEATLEY, Director General of the Prison Service, and other members of the Prison Service. The meeting was also attended by representatives of the Home Office, the Foreign and Commonwealth Office and the Department of Health (including the North London Health Authority), and John KISSANE, of the Department for Constitutional Affairs, who assisted the delegation as liaison officer. The CPT wishes to highlight the assistance provided by Mr Kissane both during and after the visit.

The delegation also met a solicitor acting for several persons detained under the ATCSA, mental health professionals having assessed several of these persons, and representatives of the NGOs Amnesty International and Liberty.

D. Immediate observation pursuant to Article 8, paragraph 5, of the Convention in relation to three persons detained under the Anti-terrorism, Crime and Security Act 2001

7. At the meeting with the authorities which took place at the end of the visit, the CPT's delegation made an immediate observation, pursuant to Article 8, paragraph 5, of the Convention, concerning three persons detained under the ATCSA.

The first person, who had been transferred from Belmarsh Prison to Broadmoor Special Hospital, was suffering from a most severe post-traumatic stress disorder, a condition which requires a safe and calm environment as a basis for treatment. In Broadmoor, this person has endured frequent episodes of verbal abuse by members of staff (a fact acknowledged by other staff members) as well as assaults from other patients. The delegation itself witnessed such an unprovoked attack, which might have led to injury had its members not been able to intervene. His mental state also appeared to have deteriorated seriously, risking permanent damage. The delegation stressed that it was clinically inappropriate to place this person in an establishment that was mainly tasked with the care of dangerous and violent patients. It asked for him to be transferred as a matter of urgency to a different type of treatment facility.

² See Section 23 of the Act. Two certified persons were detained on other grounds; one was serving a term of imprisonment and the other was detained on remand.

The second person ("G"), imprisoned in Belmarsh Prison, suffered from major physical disabilities. Moreover, the depression provoked by his detention had led to significant weight loss and a further loss of function, which necessitated the use of a wheelchair or crutches. The delegation stressed that if this person remained in these conditions in Belmarsh, which did not offer the appropriate treatment facilities, his state of health was likely to deteriorate further. It asked for immediate steps to be taken to ensure that he received the care and treatment warranted by his condition³.

The third person ("P"), who was also imprisoned in Belmarsh, suffered from a disability (amputation of both forearms) that prevented him from urinating or defecating unaided. However, he did not always receive the necessary assistance. Moreover, his mental state had deteriorated seriously as a result of his detention, leading to both severe depression and post-traumatic stress disorder. The delegation asked for urgent consideration to be given to his transfer to an establishment with proper facilities to deal with his physical disability and to treat his mental disorder, in a humane environment. It also stressed that psychiatric treatment for this detainee – which must not be delayed any longer – was both an acute, life-saving measure and an essential prerequisite for any rehabilitative effort.

The delegation asked the authorities to report, within two months, on measures taken in the light of its immediate observation. By letter of 11 June 2004, the United Kingdom authorities responded to the immediate observation made by the delegation. This response will be assessed later in this report.

³ "G" was released on bail on 22 April 2004.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Ill-treatment

8. Certain detained persons whom the delegation met and who had been deprived of their liberty after the February 2002⁴ visit alleged that, at the time of the arrest, they were handcuffed too tightly, causing them pain. Moreover, one person detained in 2003 said that he had been struck by the police when being arrested. He has apparently lodged a complaint about the treatment he received.

9. In Woodhill Prison, the detained persons interviewed by the delegation were unanimous in acknowledging the staff's positive attitude towards them. The delegation also took note of the relaxed atmosphere in House Unit 1A, where persons detained under the ATCSA were being held.

However, in the health-care centre in Belmarsh Prison, one person detained under the ATCSA claimed that staff members had placed him in isolation because he was praying loudly, and had left him there for a night wearing no clothing and with the ventilation system switched on. In their response dated 11 June 2004, the authorities confirmed that this person had been placed in the intensive-care "suite" for a very short period for his "safety", without, however, specifying the practical conditions. **The CPT would like to obtain clarification of this point, in particular with regard to whether it is possible for patients to be left in this room without clothing.**

The delegation also heard allegations that centre staff members threatened patients with placement in the intensive-care "suite" if they did not behave correctly. The CPT takes note of the response of the authorities on this point, which emphasises the strict policy and monitoring surrounding the use of this room. However, the delegation observed for itself in situ that certain staff members used abusive and aggressive language towards patients or laughed with derision while watching a patient in the room through a camera; this demonstrated that the risk of the situation getting out of hand is far from theoretical. **The CPT recommends that staff at Belmarsh Prison be reminded that ill-treatment of any form, including threats, abusive or aggressive language and mockery, will not be tolerated and will be the subject of severe sanctions.**

10. Persons detained under the ATCSA in Belmarsh Prison also claimed that they were sometimes victims of racist behaviour by other prisoners, with staff failing to intervene. In this regard, **the CPT trusts that as part of the anti-bullying strategy⁵ developed by the Prison Service over several years, the United Kingdom authorities will take the necessary steps to ensure that Belmarsh Prison staff are alert to the risk of such conduct towards these persons and intervene appropriately whenever necessary.**

⁴ Most of those concerned had initially been detained under the Terrorism Act 2000. After the police dropped charges, they were subsequently detained under the ATCSA.

⁵ See document CPT/Inf (2001) 7, paragraph 48.

B. Response to the immediate observation pursuant to Article 8, paragraph 5, of the Convention in relation to three persons detained under the Anti-Terrorism, Crime and Security Act 2001

11. In the case of the patient placed in Broadmoor Special Hospital, the authorities state in their response that the Home Office considers that, in view of his clinical needs and also the risks he presents to the public, this is the most appropriate setting for him. The Committee is not convinced by this reply. It conflicts with the conclusions of a number of medical experts, including those – and this is acknowledged by the authorities – of the Broadmoor Special Hospital medical team. Moreover, the medical doctor responsible for this patient has requested authority to transfer him to local psychiatric services, but has apparently never received a reply.

Even if, following the CPT's visit, the patient was transferred to another hospital ward offering a "more stable" environment⁶ and steps were taken to deal with his psychological needs, the wisdom of keeping him in a setting intended for the care and treatment of violent and dangerous patients with a quite different clinical profile is highly debatable. Such a decision, which appears to give little weight to therapeutic considerations – and thus to the patients' well-being – is not, in the opinion of the Committee, acceptable.

In the light of the delegation's request and of the conclusions and proposals of the Broadmoor Special Hospital medical team and other expert reports, **the CPT recommends that the United Kingdom authorities take the necessary steps to ensure that this patient, whose mental health has deteriorated seriously whilst in detention, benefits without further delay from the whole range of treatment required by his condition in care facilities that correspond to his clinical profile.**

The CPT would also like to receive precise information on the individualised treatment plan for this patient drawn up since the delegation's visit.

12. The CPT notes in connection with the allegations of verbal abuse by staff that disciplinary proceedings have been launched against one staff member while in two other cases the allegations were found after investigation to be unsubstantiated. **It would like to receive in due course the results of the disciplinary proceedings in the first mentioned case, as well as further details concerning the grounds for the conclusions reached in the two other cases. It would also like to be informed of the response of the National Health Service to the other complaints submitted by the patient.**

13. Finally, for so long as this patient is held in Broadmoor, **the CPT trusts that all possible steps will be taken to ensure that he can practise his religion and receives food which is in keeping with his dietary habits.**

⁶ It should be noted that since his arrival in Broadmoor, the patient had already been accommodated in several different wards, including the one to which he was transferred after the visit, without any lasting improvement to his condition.

14. In the case of detainee "G", the Special Immigration Appeals Commission (SIAC) ruled on 20 January 2004 that he should be given bail because of the effects of his detention on his mental health. The SIAC considered that "detention [had] created a mental illness" and that "the open-ended nature of the detention was such as to ensure that the condition did not improve". The release on bail, on very strict terms, took place in April 2004. The Committee welcomes this decision.

15. In the case of detainee "P", the authorities state that the mental health team at Belmarsh do not agree with the delegation's request that he should be transferred, without further delay, to a suitable facility for physical rehabilitation and for treatment of his mental disorder. In their opinion, if "P" were prepared to accept the treatments and assistance currently being offered to him they would be sufficient to ameliorate any deterioration in his physical and mental states. They add that Belmarsh Prison is able to provide the support required for both physical rehabilitation and the treatment of his mental disorder, under the conditions of security required by his detention. Should the mental health team consider at any time that he required in-patient treatment for his mental disorder, the team would take the necessary steps under the provisions of the Mental Health Act 1983.

In the CPT's opinion, this approach indicates a profound lack of awareness of the state of this person, who suffers from severe depression and post-traumatic stress disorder, bordering on psychosis. Efforts to help him accept his new prostheses were inevitably doomed to failure because of the recurrent symptoms of extreme traumatising (consequences of the torture inflicted in his country of origin, the explosion that cost him both forearms and damaged his lower legs, his current conditions of detention and the experience of police confiscation and non-restitution of his prosthesis), which were not adequately identified or taken into account, and because of the anti-therapeutic and punitive methods used in Belmarsh Prison to force him to use the prostheses, including threats and the temporary withdrawal of nursing assistance necessary for him to perform his everyday functions. It is therefore unreasonable to expect such a person to exhibit the confidence in and cooperation with the current prison environment necessary for treatment⁷. It is widely recognised that severe depressive symptoms can prevent full cooperation with assistance offered.

The CPT considers that maintaining this person in his current conditions of detention while waiting for him to accept the treatment offered by the Belmarsh Prison health facility creates an imminent risk of a serious deterioration in his mental and physical condition. For so long as this person is deprived of his liberty, **the CPT calls on the United Kingdom authorities to take the necessary steps, without delay, to address the risk of permanent damage, in accordance with the request made by its delegation at the end of the visit.**

⁷ All these issues are dealt with at length in several psychiatric reports produced between September 2003 and February 2004, as part of proceedings initiated by the patient and of which the CPT has copies. In particular, it is clearly stated that "P" was not receiving proper care in the prison for his special needs arising out of his being an amputee, and that "the prison regime was simply too inflexible and the attitudes in the Category A section too harsh and unreasonable to allow him even to have the benefit of the care which they [the prison] had now agreed to pay for ...". It is also stated that the detainee "had been subject to the most superficial assessment of his mental state often by relatively junior or inexperienced staff ...", and that "the prison has made no effort to attempt to tackle the problem of's alleged unco-operativeness or to understand it...". The report dated February 2004 recommends that if the detainee is to remain detained, he should be transferred to an environment where he can be cared for 24 hours a day by a fully trained multi-disciplinary team, who are experienced in dealing with people with depression and trying to engage them in appropriate treatment.

C. The mental and physical well-being of other persons detained under the Anti-Terrorism, Crime and Security Act 2001

1. Situation observed in the prisons visited

16. Since the ATCSA came into force, the prison authorities have tried, as far as possible, to cope with this category of persons deprived of their liberty, who have not been accused or convicted of any offences. Compared with the situation observed in 2002, their conditions of detention have been relaxed in some respects.

In Belmarsh Prison, the detained persons were no longer placed in the high security unit⁸, but in an ordinary detention unit (House Block IV) for Category A prisoners⁹.

The situation had also improved in terms of available activities and out-of-cell time, which was more generous than in the past¹⁰. Persons detained under the ATCSA now have access to educational activities (daily in Woodhill and three times a week in Belmarsh) and to regular sporting activities. However, the delegation did ask the authorities in Belmarsh to review the rule restricting the number of Category A detained persons who could take part in educational activities to a maximum of three at a time. In their letter of 11 June 2004, the authorities rejected this request on security grounds. They stated, moreover, that this restriction applied to all Category A inmates and that waiving it for one individual or group of individuals would only disadvantage the other inmates. The CPT does not share this view, which fails to take account of the specific status of persons detained under the ATCSA. Moreover, it represents a much more rigid attitude than that adopted in Woodhill Prison.

In addition, there were repeated complaints at Belmarsh that association periods were sometimes curtailed and that outdoor exercise was not available every day.

17. Turning to contacts with the outside world, visits now took place in open conditions, in a pleasant environment. Detained persons could also make telephone calls without restriction (to a limited range of numbers) during association periods. Nevertheless, certain practical difficulties remained to which solutions are required. The length of visits was apparently often reduced by the time it took to complete the visitor verification procedure. Moreover, access to the telephone was difficult in practice because of the limited number of telephones available in the units compared with the total number of prisoners.

⁸ In Woodhill, they were placed in an ordinary detention unit from the outset. This prison was visited by the CPT in 2001 (see CPT/Inf (2002) 6, paragraphs 53 and 54).

⁹ The persons detained under the ATCSA are treated as "Category A" remand prisoners and are held with Category A prisoners. Category A is the highest security risk classification, reserved for prisoners whose escape it is considered would be highly dangerous to the public or the police or to the security of the State (see paragraph 9 of CPT/Inf (2003)18).

¹⁰ Nearly five hours out-of-cell time (in addition to outdoor exercise) in Belmarsh per day, three to four times per week, compared with two hours in 2002, and about ten hours per day in Woodhill, five days a week. At weekends, only outdoor exercise was available.

18. Finally, the appointment of full-time imams in the two establishments was intended to enable these detained persons to practice their religion and reassure them that the food they were served was compatible with their dietary practices (of which they were far from convinced at the time of the visit, often preferring not to eat it and to purchase supplies in the prison shop).

19. The above assessment shows that the developments recorded were above all the result of local initiatives, which varied in scope according to the prison concerned and the flexibility of the approach adopted by management and staff. While acknowledging the value of such improvements, the CPT must stress that they are far from sufficient when viewed against the scale of the problem.

In fact, the information gathered during the 2004 visit reveals that the authorities are at a loss at how to manage this type of detained person, imprisoned with no real prospect of release and without the necessary support to counter the damaging effects of this unique form of detention. They also highlight the limited capacity of the prison system to respond to a task that is difficult to reconcile with its normal responsibilities. The stated objective, in the response to the CPT's report on the February 2002 visit, of formulating a strategy to enable the Prison Service to manage most appropriately the care and detention of persons held under the 2001 Act¹¹, has not been achieved.

Two years after the CPT visited these detained persons, many of them were in a poor mental state as a result of their detention, and some were also in poor physical condition. Detention had caused mental disorders in the majority of persons detained under the ATCSA and for those who had been subjected to traumatic experiences or even torture in the past, it had clearly reawakened the experience and even led to the serious recurrence of former disorders. The trauma of detention had become even more detrimental to their health since it was combined with an absence of control resulting from the indefinite character of their detention, the uphill difficulty of challenging their detention and the fact of not knowing what evidence was being used against them to certify and/or uphold their certification as persons suspected of international terrorism. For some of them, their situation at the time of the visit could be considered as amounting to inhuman and degrading treatment.

20. In addition to the remarks already made concerning the three cases which gave rise to the immediate observation, the CPT sets out below the information gathered which led it to the conclusion referred to at the end of paragraph 19.¹²

¹¹ See CPT/Inf (2003)19, point A. e).

¹² In all the cases referred to in this report, the detainees concerned were interviewed and assessed by the medical member of the CPT in the delegation and the expert, both psychiatrists.

i. At Belmarsh

A detainee, who had been imprisoned since February 2002, and had mental disorders before his detention as a result of traumatic episodes, had developed depression, accompanied by nocturnal auditory hallucinations and delusional ideas. He complained of frequent headaches, which sometimes led him to hit his head against the cupboard in his cell, and nightmares. During the interview, he exhibited serious signs of post-traumatic stress disorder and clearly posed a threat to himself. He also displayed symptoms of psychosis. Apart from an anti-depressant, he was not receiving any treatment¹³. Under the current circumstances of indefinite detention, there is a major risk of the symptoms becoming long-term, even if the detainee were to be offered appropriate treatment in prison;

Another detainee, imprisoned since April 2002, was suffering from depression¹⁴, with considerable weight loss (26% of his initial weight) and post-traumatic stress disorder with high levels of emotional numbness and growing distress, suspicion (at times bordering on paranoia), intrusive thoughts and somatic disturbances linked to a state of anxiety. The interview with this detainee showed that the sense of having no prospects for the future resulting from the indeterminate nature of his detention had been preponderant factors in the deterioration of his state of mental health. The medical care of this detainee had been minimal, being confined to the prescription of a neuroleptic and a stress-management therapy dating back to 2002. There is a clear risk of further deterioration if his detention is prolonged;

Another detainee, imprisoned since December 2001, was suffering from depression, with ideas of suicide and an extreme post-traumatic stress disorder. During the interview, he had difficulties articulating and exhibited agitation and psychomotor inhibition. During his detention, the deterioration in his condition had been virtually ignored. An assessment carried out had identified "generalised anxiety". The detainee's medical record stated that it had not been possible to carry out an appropriate clinical examination because of language barriers. The recommended examination in the presence of an interpreter had not taken place and no treatment plan had been proposed. An external psychiatric assessment carried out in November 2003 at the request of the detainee's lawyer stated that "he continues to meet the criteria for major depressive disorder... there is prominent anxiety..." and that "I would attribute more recent deterioration in his mood to his continued detention"¹⁵. An evaluation of assessments made from 2001 until the delegation saw the detainee confirms that his mental state had deteriorated steadily in detention. As things stand, this detainee is clearly at risk of suffering permanent damage.

¹³ The detainee's medical record, which was consulted in Belmarsh Prison, included a handwritten comment made in January 2004 by the psychiatrist working in the establishment, stating "I remain perplexed as to what can be done to improve his mental state".

¹⁴ This detainee had previously suffered from depression following his arrest in the United Kingdom in 1998, which had not led to subsequent prosecution and which he had found difficult to accept. Following remission of his condition, after a month spent in detention in Belmarsh he had relapsed and developed a major depression.

¹⁵ The psychiatrist who produced this report had already carried out a psychiatric assessment of the detainee in March 2001, i.e. prior to his detention.

ii. In Woodhill, two of the three ATCSA detainees displayed similar patterns of psychiatric symptoms requiring treatment, without which a major risk of permanent damage would be incurred.

The first person concerned, imprisoned since December 2001, with no previous history of psychiatric disorder, had developed depression and an anxiety disorder with panic attacks; he also displayed psychosomatic symptoms. During the interview, he complained of dizziness, difficulties in breathing, a fast heart-rate, nightmares, concentration and memory problems. He also said that he had started speaking aloud to himself and that he had lost interest in most things. The detainee's medical record was cursory. It only referred to the detainee's weight loss, and to abnormal blood tests with raised uric acid, C reactive protein and cholesterol; however, no explanations were given and, except for the prescription of an inhaler and a painkiller, no treatment was suggested. An external psychiatric assessment carried out in January 2004 at the request of the detainee's lawyer stated that he "is suffering from a depressive disorder, which has been precipitated by his detention... his mental state will not improve while there remains no end in sight to his detention."

The second person, also imprisoned since December 2001, with no previous history of psychiatric disorder, had developed depressive symptoms. He also fulfilled the criteria for post-traumatic stress disorder (symptoms of intrusion, avoidance and hyper-arousal) and displayed cognitive symptoms with impaired memory and concentration difficulties. The detainee's medical file contained an entry describing his symptoms as "various minor complaints". Moreover, it appeared from this file that the Governor of the prison had decided that his complaints were not suitable for clinical referral, which was therefore not issued, and that nursing staff had reviewed (and diagnosed as normal) pathological findings of medical doctors concerning one of his somatic problems.

Members of the mental health care team at Woodhill Prison confirmed that neither of these two detainees had ever been referred to them.

21. To summarise, the main medical findings of the delegation's psychiatrists have highlighted physical impairment related to weight loss and asthenia, and psychiatric disturbances, such as post-traumatic stress disorder, anxiety, depression and psychosis. Certain symptoms were much more severe than would be expected in other prisoners, such as, for example, remand prisoners. Some detainees also suffered from memory loss and concentration difficulties, suggestive of cognitive impairment.

2. Assessment and action proposed

22. In the report on its 2002 visit (paragraphs 25 to 27), the CPT had anticipated some of these risks and had recommended that consideration be given to the specific needs – both present and future – of this category of detainee in terms of psychological support and/or psychiatric treatment and that steps be taken to ensure that they received appropriate care in order to meet those needs. It must be said that this has not happened.

The CPT has taken note of the authorities' comments in their letter of 11 June 2004 concerning the medical services for detainees and according to which Belmarsh health-care centre is in a position to address any health needs the ATCSA detainees may have. In the light of all the information gathered by the CPT's delegation, including its talks with the Belmarsh medical team, the Committee does not share this view. These discussions demonstrated that the team was unable to cope with the care needs of ATCSA detainees. Moreover, the additional burden of responding to the numerous requests from the authorities for information about these detainees compromised the delivery of health care in the establishment, as well as the fundamental activity of screening untreated psychiatric disorders¹⁶. Staff were frustrated and on the defensive. To sum up, the doctor-patient relationship was adversely affected.

In addition, the excessively rigid and carceral approach prevailing in Belmarsh health-care centre (confirmed by the members of the health-care team, who acknowledged that it could be a difficult experience and that they tried instead to manage detainees suffering from mental disorders in the detention units), as well as the austere and extremely noisy physical environment, were also factors that made the centre a very unlikely setting to offer the level of care and special treatment necessitated by the current state of health of many of the ATCSA detainees.

At Woodhill, as highlighted in paragraph 20 above, it appeared that the detainees' health care needs were not addressed.

23. It is essential that ATCSA detainees whose state of health so requires benefit, without further delay, from treatment appropriate to their specific needs, in or with the support of appropriate care facilities capable of offering the therapeutic environment necessary for such treatment and a proper doctor-patient relationship. **The CPT calls upon the United Kingdom authorities to take the necessary steps to this effect.**

24. Apart from these steps, what other medium-term recommendations should be made to cut the Gordian knot resulting from the practical effect of the ATCSA on the treatment of persons deprived of their liberty under this legislation?

The CPT has followed with great attention the numerous debates on this issue, particularly those surrounding the renewal, on 14 March 2004, of the provisions of Part IV of the Act relating to the certification of suspected international terrorists (Section 21), deportation, removal, etc. (Section 22) and detention (Section 23)¹⁷. It has also noted with interest the reviews carried out in accordance with the legislation¹⁸, the reactions of the Home Secretary to these reviews¹⁹, the report of the House of Lords, House of Commons Joint Committee on Human Rights²⁰ and other documents that have fuelled the above-mentioned debate.

¹⁶ Which is demonstrated by the case of detainee "P", since in their response of 11 June 2004 the authorities acknowledge that the prison became aware of his mental health difficulties only in December 2003, when he brought judicial review proceedings relating to his medical treatment in prison.

¹⁷ Under Section 29 of the Act, these provisions expire at the end of the period of 15 months beginning with the day on which this Act is passed. The Secretary of State may by order repeal these sections or revive them for a period not exceeding one year. On 14 March 2004, the application of these sections was extended for a year with the approval of Parliament (Anti-Terrorism, Crime and Security Act (Continuance in force of Sections 21 to 23) Order 2004). They may be further extended until 10 November 2006, on which date they will cease to have effect.

The Committee notes that many of its concerns are reflected in the said reviews and that they all make the point that these detainees' conditions of deprivation of liberty must reflect their status as persons who are not accused or convicted of an offence. The CPT placed great emphasis on this aspect in the report on its 2002 visit.

25. In this context, the CPT noted Lord Carlile's proposals for translating this principle into reality. Its delegation therefore examined Unit 8 at Woodhill Prison, which in accordance with these proposals had been allocated to ATCSA detainees in C wing of the Closed Supervision Centre²¹.

In their response, dated 11 June 2004, the authorities state that none of the detainees have given any indication that they wish to move to the Unit and that, rather than leaving it empty, the Prison Service intends to use it for another purpose. For its part, the CPT is not surprised by the detainees' reaction. Indeed, the layout of the Unit is based on a high security concept and creates a claustrophobic and oppressive atmosphere, a state of affairs which is exacerbated by the fact that the unit would function quasi-autonomously with the detainees rarely leaving its confines.

Whatever efforts might have been made to establish an extended and varied regime of activities, this could not have offset the aforementioned negative features. Moreover, incarceration in such a unit – which is reminiscent of the Belmarsh high security unit – could only serve to reinforce the ATCSA detainees' sense of stigmatisation and isolation, and their fear of being totally abandoned. The CPT can only welcome the authorities' decision not to continue down this path.

¹⁸ Section 28 stipulates that the Secretary of State shall appoint a person to review the operation of sections 21 to 23. This task has been entrusted to Lord Carlile of Berriew Q.C., whose most recent report was published on 11 February 2004: Anti-Terrorism, Crime and Security Act Part IV Section 28 Review 2003 (February 2004) (hereafter "the Carlile Report"). Section 122 requires the Secretary of State to appoint a committee of privy counsellors to conduct a review of this Act. The committee's report was submitted to Parliament on 18 December 2003; Privy Counsellor Review Committee - Anti-Terrorism, Crime and Security Act 2001 Review: Report, HC100 (December 2003) (hereafter "Newton Committee Report").

¹⁹ Counter-Terrorism Powers: Reconciling Security and Liberty in an Open Society: A Discussion Paper; document presented to Parliament by the Secretary of State for the Home Department in February 2004.

²⁰ House of Lords, House of Commons Joint Committee on Human Rights - Anti-Terrorism, Crime and Security Act 2001: Statutory Review and Continuance of Part 4; Sixth Report of Session 2003-04.

²¹ This Centre was visited by the CPT in 2001; see paragraphs 59 to 63 of CPT/Inf (2002) 6.

26. Nevertheless, while Part IV of the ATCSA remains in force, a fundamental review of the treatment of persons who are or might be deprived of their liberty under its provisions is essential. Such detainees must benefit from a specific and clearly defined status that takes full account of the fact that they are subject to immigration and not criminal legislation²². This status must also be reflected in practice in the material conditions of detention and the regime, which must prevent or actively counter the damaging effects of this unique form of detention on the detainees' personalities. As well as avoiding as far as possible any impression of a carceral environment in the detention facilities, all possible steps must be taken to satisfy the reasonable needs of detainees. This means that detainees should be able to engage in educational and intellectual activities, training, work (of a more varied nature than simply cleaning and distributing meals) and sport; they must also be able to practice their religion and observe their dietary customs with confidence. The longer the period of detention, the more varied the activities must be. Moreover, detainees must be able to exercise a reasonable degree of choice about how they manage their daily lives.

During their period in custody, detainees must also be given an individualised support plan, including psychological and social support, to help them as far as possible to cope with their detention and continue to look to the future. Particular attention must be given to maintaining contacts with families and/or friends.

As regards staff assigned to the supervision of detainees, the CPT makes reference to the remarks and the recommendation made in paragraph 28 of the report on its 2002 visit.

Finally, as emphasised in the report on the 2002 visit, if security measures are deemed to be necessary, they must be based on an individualised assessment of the risks and needs, and not on a classification generally imposed by the central prison service. In practical terms, this requires that the authorities establish for each individual ATCSA detainee whether the imposition or continuation of Category A status is justified, and if the associated high security constraints are also justified²³.

The CPT recommends that the United Kingdom authorities review their approach to managing persons deprived of their liberty under the Anti-Terrorism, Crime and Security Act 2001, having due regard to the guidelines set out above. Should the prison system be unable to meet these needs, alternative approaches must be found.

It also recommends that the shortcomings identified in paragraphs 16 and 17 above be remedied.

²² This would avoid erroneous entries such as were observed in detainees' personal files, their security information sheets presenting ATCSA detainees as accused or convicted of terrorist-type offences.

²³ For example, ATCSA detainees were regularly required to change cells, which prevented any sense of stability. Further, they had to undergo searches after visits, including the requirement to undress; the detainees felt this as deeply degrading, as it contravened their religious and cultural precepts.

D. Safeguards for persons detained under the Anti-Terrorism, Crime and Security Act 2001

27. The ATCSA makes no reference to the three fundamental safeguards that the CPT deems essential for all detained persons as from the very outset of their deprivation of liberty, namely the right to notification of custody, the right of access to a lawyer and the right of access to a doctor. These rights derive from the application of other texts relating to immigration and of the prison rules²⁴.

The CPT recommends that it be expressly provided that persons certified under the ATCSA enjoy these three rights as from the very outset of their deprivation of liberty, whatever their place of custody. It should also be expressly provided that, where necessary, the assistance of a qualified interpreter must be organised to enable those concerned to benefit fully from the exercise of those rights.

28. In practice, access to a lawyer on arrival in prison has not caused problems for ATCSA detainees following the 2002 visit. Arrangements have been made in both the prisons visited by the delegation to ensure that the detainees concerned have rapid access to their lawyers. However, it appeared that at Belmarsh, visits from lawyers were not always subsequently possible during detention, because of either a lack of staff or a shortage of space²⁵. Such a situation is unacceptable **and the United Kingdom authorities must ensure that it does not happen again.**

29. Information for detainees about their rights clearly remains a problem. Despite the authorities' statement, in response to the Committee's recommendation in paragraph 30 of the 2002 visit report, that the Prisoners' Information Book is available in various languages, complaints were received from detainees about the lack of information on their rights. **The CPT recommends that steps be taken to ensure that ATCSA detainees are informed in writing of all their rights in a language they understand.**

30. In its report on the 2002 visit, the CPT considered other important procedural safeguards. In their response to the report, the authorities expressed surprise about the Committee's concern that the SIAC could consider evidence against a person without disclosing it and could exclude the interested party and his/her lawyer from hearings.

The Committee's concerns have since been echoed by authoritative voices in the United Kingdom (see, for example, paragraph 187 of the Newton Committee Report). **The CPT would like to know whether the United Kingdom authorities intend to take measures to remedy the current procedural disadvantage that the Secretary of State's power to object to the disclosure of evidence creates for ATCSA detainees and to improve their possibilities to challenge the certification on which their detention is based.**

²⁴ See paragraph 13 of the CPT's report on its 2002 visit and the response of the United Kingdom Government (CPT/Inf (2003)19, paragraphs 10 and 11).

²⁵ Such a difficulty of access to a detainee was raised by a lawyer at a hearing of the SIAC on 20 January 2004. In this respect, the President of the Commission stated that "we shall be incandescent with rage if we discover that .. hasn't been able to get access to.."

The CPT has noted the existence of the special advocate²⁶, who is appointed to represent the interests of ATCSA detainees when the Secretary of State objects to the disclosure of evidence and the detainees and their lawyers are excluded from hearings in closed session. However, it appears that the rules restrict special advocates' contacts with detainees and their lawyers, and that in practice such contacts have been very limited (a point made by the Carlile Report), or even, according to ATCSA detainees and one of their lawyers whom the delegation met, almost non-existent. **The CPT would like to be informed of the steps taken to improve the possibilities of contacts between the special advocate and the detainees and/or their own lawyers. It would also like to receive precise information on the other measures taken in response to the Carlile Report's proposals (paragraphs 72 to 76) to improve the quality and functioning of the institution of the special advocate.**

31. During the 2004 visit, several persons whom the delegation met were very concerned that the SIAC could apparently take into consideration evidence that might have been obtained elsewhere by coercion, or even by torture²⁷. Such an approach would contravene universal principles governing the protection of human rights and the prohibition of torture and other forms of ill-treatment, to which the United Kingdom has adhered²⁸.

The CPT would like to receive the United Kingdom authorities' comments on this matter.

32. Finally, the Newton Committee Report (paragraph 200) stated that the authorities appeared to have given no thought to what change in circumstances might lead them to consider that an individual detained under the ATCSA should be released or dealt with differently; it argued that there had not been a sufficiently proactive, focussed, case management approach to this problem. In its response to this report²⁹, the Government emphasised that individual cases were kept actively under review. **The CPT would like to receive information regarding the manner in which this review is carried out in practice. It would also like to receive detailed information on the number and dates of certification reviews undertaken by the SIAC, and the outcome of these reviews.**

²⁶ Rule 34 et seq. of the Special Immigration Appeals Commission (Procedure) Rules 2003.

²⁷ In its decision of 29 October 2003, which is referred to as the generic judgment, the SIAC states that "We cannot be required to exclude from our consideration material which [the Secretary of State] can properly take into account, but we can, if satisfied that the information was obtained by means of torture, give it no or reduced weight". See also Baroness Scotland of Asthal's reply to Lord Judd's parliamentary question of 26 April 2004 on the admissibility and reliability of evidence obtained through torture.

²⁸ See in particular Article 15 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which states: "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made."

²⁹ Paragraph 53 "Counter-Terrorism Powers: Reconciling Security and Liberty in an Open Society".

33. In recent months, voices have been raised in the United Kingdom calling for Part IV of the Anti-Terrorism, Crime and Security Act 2001 to be replaced by legislation fully in line with the country's international human rights commitments. Proposals for alternatives to detention have also been made. However, the Government believes that the powers granted to it under the ATCSA continue to be necessary to address the threat of international terrorism.

It is not for the CPT to enter into a discussion on this policy issue. However, for so long as the extraordinary powers conferred on the United Kingdom authorities by the Act exist, **the Committee calls upon those authorities, to make proactive and constant efforts to guarantee to persons detained under the Act humane and decent treatment preserving their physical and psychological integrity.**

APPENDIX

List of the CPT's recommendations, comments and requests for information

Recommendations

- staff at Belmarsh Prison to be reminded that ill-treatment of any form, including threats, abusive or aggressive language and mockery, will not be tolerated and will be the subject of severe sanctions (paragraph 9);
- the necessary steps to be taken to ensure that the patient referred to in paragraph 11 benefits, without further delay, from the whole range of treatment required by his condition in care facilities that correspond to his clinical profile (paragraph 11);
- the necessary steps to be taken, without delay, to address the risk of permanent damage to "P" 's state of health, in accordance with the request made by the CPT's delegation at the end of the visit (paragraph 15);
- the necessary steps to be taken to ensure that ATCSA detainees whose state of health so requires benefit, without further delay, from treatment appropriate to their specific needs, in or with the support of appropriate care facilities capable of offering the therapeutic environment necessary for such treatment and a proper doctor-patient relationship (paragraph 23);
- the approach to managing persons deprived of their liberty under the Anti-Terrorism, Crime and Security Act 2001 to be reviewed, having due regard to the guidelines set out in paragraph 26. Should the prison system be unable to meet these needs, alternative approaches must be found (paragraph 26);
- the shortcomings identified in paragraphs 16 and 17 to be remedied (paragraph 26);
- it should be expressly provided that persons certified under the ATCSA enjoy the right of access to notification of custody, the right of access to a lawyer and the right of access to a doctor as from the very outset of their deprivation of liberty, whatever their place of custody (paragraph 27);
- it should be expressly provided that, where necessary, the assistance of a qualified interpreter must be organised to enable ATCSA detainees to benefit fully from the exercise of the three rights referred to in paragraph 27 (paragraph 27);
- steps to be taken to ensure that ATCSA detainees are informed in writing of all their rights in a language they understand (paragraph 29);
- proactive and constant efforts to be made to guarantee to persons detained under the Anti-Terrorism, Crime and Security Act 2001 humane and decent treatment preserving their physical and psychological integrity (paragraph 33).

Comments

- the CPT trusts that as part of the anti-bullying strategy developed by the Prison Service over several years, the United Kingdom authorities will take the necessary steps to ensure that Belmarsh Prison staff are alert to the risk of racist conduct by other prisoners towards ATCSA detainees and intervene appropriately whenever necessary (paragraph 10);
- the CPT trusts that all possible steps will be taken to ensure that the patient placed in Broadmoor Special Hospital can practise his religion and receives food which is in keeping with his dietary habits (paragraph 13);
- the United Kingdom authorities must ensure that there are no more instances of ATCSA detainees not being able to have access to their lawyers (paragraph 28).

Requests for information

- clarification concerning the practical conditions of placement in the intensive-care "suite" of Belmarsh Prison health-care centre and, in particular, whether patients can be left in this room without clothing (paragraph 9);
- precise information on the individualised treatment plan drawn up for the patient placed in Broadmoor Special Hospital (paragraph 11);
- the results of the disciplinary proceedings launched against one staff member of Broadmoor Special Hospital, and further details concerning the grounds for the conclusions reached in the two other cases referred to in paragraph 12 (paragraph 12);
- the response of the National Health Service to the other complaints submitted by the patient held at Broadmoor (paragraph 12);
- whether the United Kingdom authorities intend to take measures to remedy the current procedural disadvantage for ATCSA detainees referred to in paragraph 30 and to improve the possibilities for such persons to challenge the certification on which their detention is based (paragraph 30);
- the steps taken to improve the possibilities of contacts between the special advocate and ATCSA detainees and/or their own lawyers (paragraph 30);
- precise information on the other measures taken in response to the Carlile Report's proposals to improve the quality and functioning of the institution of the special advocate (paragraph 30);
- the United Kingdom authorities' comments on the matter raised in paragraph 31 (paragraph 31);

- information regarding the manner in which the review of individual cases is carried out in practice (paragraph 32);
- detailed information on the number and dates of certification reviews undertaken by the SIAC, and the outcome of these reviews (paragraph 32).