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CPT/Inf (2008) 27

Report to the United Kingdom Government 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 2 to 6 December 2007

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 (2008) 28.

Strasbourg, 1 October 2008

Copy of the letter transmitting the CPT's report

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Strasbourg, 14 March 2008

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 a 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 2 to 6 December 2007*. The report was adopted by the CPT at its 65th meeting, held from 3 to 7 March 2008.

The recommendations and comments made by the CPT are set out in bold type in paragraphs 7, 10, 12 and 13 of the report. The CPT requests the United Kingdom authorities 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 to its comments.

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

Yours sincerely,

Mauro Palma
President of the European Committee for the
prevention of torture and inhuman
or degrading treatment or punishment

cc. Ms Eleanor FULLER, Ambassador Extraordinary and Plenipotentiary,
Permanent Representative of the United Kingdom to the Council of Europe

* A second report concerns the visit, from 2 to 4 December 2007, to persons convicted by the International Tribunal for the former Yugoslavia and serving their sentences in the United Kingdom.

I. INTRODUCTION

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 2 to 6 December 2007. 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 main objective of the visit was to examine, in pursuance of the Agreement between the United Nations and the United Kingdom Government on the Enforcement of Sentences of the International Criminal Tribunal for the former Yugoslavia (ICTY), the treatment of two persons convicted by the ICTY and serving their sentences in the United Kingdom. The facts found during this specific CPT monitoring activity are set out in a separate visit report.

3. Further, in the course of a return visit to Paddington Green High Security Police Station in London and during discussions with the United Kingdom authorities, the CPT's delegation re-examined the safeguards afforded to persons detained by the police under the Terrorism Act 2000 as well as the conditions of detention of such persons. The findings during this part of the visit are set out in the present report.

In preparation of the periodic visit to the United Kingdom to be carried out by the CPT later in 2008, the Committee's delegation also held discussions with the State Minister of Justice and senior officials on other matters falling within the scope of the CPT's mandate, notably the practice of diplomatic assurances and related Memoranda of Understanding in the context of deportation procedures, the use of force and means of restraint during deportation procedures, the use of means of restraint on children in detention, and overcrowding in prisons in England and Wales.

This part of the visit was carried out by Mr Mario FELICE (Head of Delegation) and Veronica PIMENOFF, members of the CPT, and by Mr Trevor STEVENS (Executive Secretary) and Mr Hugh CHETWYND (Head of Division), of the CPT's Secretariat.

4. The CPT's delegation enjoyed very good cooperation at all levels.

In the course of the visit, the delegation met State Minister of Justice David HANSON, Interim Chair of the Youth Justice Board Graham ROBB and senior officials from the Foreign and Commonwealth Office, the Home Office and the Ministry of Justice. The CPT would like to thank John KISSANE and his team from the Ministry of Justice for their assistance in facilitating the visit.

The delegation also met representatives from the Children's Rights Alliance for England, Liberty and the National Society for the Prevention of Cruelty to Children.

II. PERSONS DETAINED BY THE POLICE PURSUANT TO THE TERRORISM ACT 2000

1. Safeguards against ill-treatment

5. The Terrorism Act 2000 permits the police, on their own authority, to detain persons arrested under Article 41 of the Act for a maximum period of 48 hours. Thereafter, a warrant for further detention of such a person prior to his being charged may be obtained from a judicial authority. At present, pre-charge detention of a terrorist suspect may be extended initially up to 7 days, and then by successive periods of 7 days up to a maximum of 28 days. However, a Counter-Terrorism Bill introduced into Parliament on 24 January 2008 makes provision for the current maximum limit of pre-charge detention to be extended to 42 days in specified circumstances.

6. The existing - and a fortiori possible new - provisions regarding the permissible length of pre-charge detention in cases falling under the terrorism legislation are a matter of considerable concern to the CPT. The Committee has no intention of entering into the current debate on the arguments for and against the length of pre-charge detention of terrorist suspects in the United Kingdom. However, as the CPT has emphasised in the past, in the interests of the prevention of ill-treatment, the sooner a criminal suspect passes into the hands of a custodial authority which is functionally and institutionally separate from the police, the better. Consequently, the Committee must insist that neither the existing nor any new provisions in this area should result in criminal suspects spending a prolonged period of time in police custody.

In fact, the Code of Practice on the detention of persons under the Terrorism Act 2000 (Code H) does expressly provide that where a warrant is issued which authorises detention beyond 14 days, "the detainee must be transferred from detention in a police station to detention in a designated prison as soon as is practicable". However, there are exceptions to the obligation to transfer to a prison (if the detainee specifically requests to remain in detention in a police station; if transfer to prison would prevent the investigation from being conducted diligently and expeditiously), and the information gathered at Paddington Green High Security Police Station indicates that the exceptions have become very much the rule.

7. Allowing criminal suspects to "request" to remain in police custody is a fundamentally-flawed approach from the standpoint of the prevention of ill-treatment. Further, the CPT doubts whether there will ever be "reasonable grounds" to believe that transfer to a prison of a person who has already spent 14 days in police custody will jeopardize an ongoing investigation; it should be emphasised in this connection that transfer to a prison does not preclude further questioning of the person concerned by the police.

Transfer to a prison should in all cases be obligatory if detention of a terrorist suspect beyond 14 days is authorised (and, preferably, such a transfer should occur at a much earlier stage). Of course, transfer to a prison should not prejudice the exercise by the person concerned of his rights, and in particular the right of access to a lawyer; potential difficulties in this regard have apparently motivated many of the requests to date by terrorist suspects to remain detained in a police station.

The CPT recommends that the necessary steps be taken to ensure that :

- **all persons suspected of offences under the terrorism legislation in respect of whom detention beyond 14 days is authorised are transferred forthwith to a prison;**

- **appropriate arrangements are in place enabling terrorist suspects transferred to prison whilst still in pre-charge detention to make effective use of their rights, including that of access to a lawyer.**

As regards further questioning of the detainee by the police after his transfer to prison, the general rule should be that such questioning is to be carried out at the prison, not on police premises.

8. For as long as a criminal suspect does remain in the custody of a law enforcement agency, stringent safeguards must be in place. One crucial requirement is that the detained person be physically brought before a judicial authority at regular intervals.

The delegation which carried out the December 2007 visit observed that persons detained under the terrorism legislation are still not physically brought before the judge responsible for deciding either the question of the possible extension of pre-charge detention beyond 48 hours or that of further extensions. Instead, the hearings are held via a video conferencing link, set up in the lobby of the secure custody suite of Paddington Green High Security Police Station. In addition to the detained person, officers of the Anti-Terrorist Branch of the Metropolitan Police, representatives of the Crown Prosecution Service and, in principle, the detainees' lawyer, are present in the makeshift hearing area.

Such an arrangement is simply not adequate from the standpoint of the prevention of ill-treatment[1].

9. As the Committee has emphasised on previous occasions, one of the purposes of the judicial hearing should be to monitor the manner in which the detained person is being treated. From the point of view of making an accurate assessment of the physical and psychological state of a detainee, nothing can replace bringing the person concerned into the direct physical presence of the judge. Further, it will be more difficult to conduct a hearing in such a way that a person who may have been the victim of ill-treatment feels free to disclose this fact if the contact between the judge and the detained person is via a video conferencing link.

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[1] A view recently shared by the United Kingdom Parliament's Joint Committee on Human Rights (JCHR) in their Report on Counter–Terrorism Policy and Human Rights: 28 days, intercept and post–charge questioning, paragraphs 77 to 79 (published 30 July 2007).

10. In their response to the report on the CPT's November 2005 visit, the United Kingdom authorities stated inter alia that the judicial authority concerned "has ultimate responsibility for deciding whether the physical presence of a detainee at a hearing is necessary". The CPT cannot agree with such an approach; the physical presence of the detainee should be seen as an obligation, not as an option open to the judicial authority[2]. As regards more particularly the first possible extension of detention beyond 48 hours, the physical presence of the detained person at the judicial hearing would also appear to be a requirement by virtue of Article 5, paragraph 3, of the European Convention of Human Rights. In the Grand Chamber judgment of 12 May 2005 in the case of Öcalan against Turkey, the Court stated that the purpose of Article 5(3) is to ensure that "arrested persons are physically brought before a judicial authority promptly". The Court went on to comment that "Such automatic expedited judicial scrutiny provides an important measure of protection against arbitrary behaviour, incommunicado detention and ill-treatment".

The CPT calls upon the United Kingdom authorities to ensure that persons detained under terrorism legislation who have not yet been transferred to prison are always brought into the direct physical presence of the judge responsible for deciding the question of the possible extension of their detention.

Further, the CPT considers that for so long as a detained person remains in the custody of the police, the interval between his appearances before a judicial authority should preferably not exceed four days.

The CPT would add that once a detained person has been placed in the custody of the prison service, judicial hearings via a video conferencing link might be envisaged.

11. The information gathered during the December 2007 visit suggests that, as regards persons detained on suspicion of an offence under the Terrorism Act 2000, two other basic safeguards against ill-treatment advocated by the CPT (the rights of notification of custody and of access to a lawyer)[3] operate, on the whole, in a satisfactory manner. In particular, the persons met by the delegation who had been held under terrorism legislation indicated that they were offered the possibility of access to a lawyer and to notify a third party of the fact of their detention as from the outset of their deprivation of liberty.

Further, the CPT's delegation was satisfied that in those exceptional cases when access to a specific lawyer was denied to a detained person on the authority of a police superintendent for a period up to 48 hours, access to another lawyer was offered[4].

12. However, it would appear that the presence of a lawyer is not guaranteed during "public safety interviews"; this lacuna should be filled. T**he CPT recommends that the necessary steps be taken to guarantee the right of access to a lawyer during such interviews.**

Of course, given the urgency of the matters dealt with at public safety interviews, the police should not be prevented from beginning to question a detained person who exercises his right of access to a lawyer, pending the arrival of the lawyer.

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2 Nor as a right that a detained person might choose to waive.

3 See *inter alia*, Schedule 8, paragraphs 6 and 7, of the Terrorism Act 2000.

4 See Annex B (A3) of the Code of Practice H: detention, treatment and questioning by police officers of persons under section 41 of, and Schedule 8 to, the Terrorism Act 2000.

2. Conditions of detention

13. The CPT made clear in its July and November 2005 visit reports[5] that the conditions of detention at Paddington Green Police Station, whilst adequate for custody periods of a few days, were not suitable for prolonged periods of detention. Regrettably, the CPT's delegation noted in the course of the December 2007 visit that no improvements have been made to the conditions of detention in this police station. It is high time that this problem was resolved

The cells in the secure custody suite were of a reasonable size (approximately 8.5m), had adequate artificial lighting and ventilation, and were equipped with a call system, a means of rest (raised platform) and a toilet. Detained persons were offered a mattress and blankets, and the cells were clean. Arrangements for the provision of food were also satisfactory and the necessary measures were taken to observe the religious rites of the detainees.

However, the cells provided a very austere environment and there was minimal access to natural light. Further, outside exercise was still not systematically offered every day and, when it did take place, it was limited to under 20 minutes and took place under unsatisfactory conditions (a cordoned off section of the vehicle park). The norm should be that all persons held in detention for more than 24 hours are offered the opportunity to take outdoor exercise every day.

The CPT considers that such conditions are not acceptable for persons held for periods of up to 14 days (let alone 28 or 42), and other bodies have supported this view[6]. **The CPT calls upon the United Kingdom authorities to take the necessary measures to improve the conditions of detention at Paddington Green High Security Police Station for persons held under the Terrorism Act 2000 for longer than a few days[7].**

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5 See CPT/Inf (2006) 26, paragraphs 20 to 24 and CPT/Inf (2006) 28, paragraph 39.

6 See JCHR, opcit., paragraphs 67 to 70, and Independent Police Complaints Commission (IPCC) Report into the Forest Gate counter-terrorism operation, 2 June 2006, published Feb 07, Recommendation 4.

7 Without prejudice to the remarks and recommendations made in paragraph 7 of the report.