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United Kingdom: Courts' use of evidence obtained under torture and legal possibilities for the indefinite detention of foreigners without charge or trial

Written question No 454 to the Committee of Ministers

Reply from the Committee of Ministers

adopted at the 941st meeting of the Ministers' Deputies (13 October 2005)

I. Written Question No. 454 by Mr Masson (Doc. 10284)

Mr Jean-Louis Masson wishes to draw the Committee of Ministers' attention to the serious human rights violations taking place in the United Kingdom, under the pretext of a clamp down on terrorism. Two examples illustrate these violations in a member state which, until now, has been one of the countries with the highest regard for individual freedoms.

First, the Anti Terrorism Crime and Security Act 2001 allows for the detention of foreign nationals for an indefinite period of time, simply because they are suspected of terrorist activities, without any concrete evidence in support of the charges. As stated by Liberty, a human rights association, the Government "*intends to jail people not for anything they have done, but for what the Home Secretary thinks they might have done or might do in the future*". A parliamentary committee has also acknowledged the arbitrary nature of such detention without trial for an indefinite period. In July 2002, one court described the provision as "*discriminatory and disproportionate*".

On 11 August 2004 the High Court of Appeal in London even went much further, holding that the British Home Secretary had the right to rely on evidence "*coming into his hands which has or may have been obtained through torture by agencies of other states over which he has no power of direction*". British courts therefore now believe that evidence obtained under torture is admissible so long as the torture took place in some other country. The case in question concerned ten foreign nationals who had been detained without charge or trial for an indefinite period of time, after being submitted to various forms of torture and ill-treatment at the American base in Guantanamo Bay, Cuba. The courts explicitly condoned the use of torture in American camps and accepted the confessions thus obtained, arguing that the United Kingdom had neither initiated nor was complicit in the torture. This verdict has given rise to numerous protests in the United Kingdom.

For Gareth Pierce, one of the lawyers of the ten detainees, it was a "*terrifying decision, which shows that we have completely lost our way in this country legally and morally*." Arguing that it was encouraging torture, the British branch of Amnesty International pointed out that it was "*a fundamental duty of all courts to act as a bulwark against human rights violations. The Court of Appeal has shamefully abdicated this most important duty*."

As it is the Council of Europe's role to safeguard freedoms, I wish to ask the Committee of Ministers if it intends ask the European Court of Human Rights to rule on whether the above-mentioned facts are a violation of the European Convention on Human Rights and the UN Convention on torture.

II. Reply by the Committee of Ministers

1. In response to Written Question No. 454, the Committee of Ministers first of all draws attention to the fact, as regards the judgment of the High Court of Appeal referred to, it is not for the Committee to pronounce itself given that the specific case in question is currently pending before the House of Lords.

2. The Committee recalls the absolute and non-derogable character of the prohibition of torture and inhuman or degrading treatment or punishment, as set out in Article 3 of the European Convention on Human Rights and in international human rights treaties adopted in the framework of the United Nations. It also refers to the 14th and 15th General Reports of the European Committee for the Prevention of Torture (CPT) which strongly emphasise the need to respect this prohibition also in the context of measures taken in the fight against terrorism. Furthermore, the Committee recalls that Article 15 of the United Nations Convention against Torture contains an obligation for all States Parties to ensure that "any statement made under torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made".

3. As regards the detention of foreign nationals in the United Kingdom under the Anti-terrorism, Crime and Security (ATCS) Act 2001 part 4 powers, none of whom had been detained in Guantanamo Bay, the Committee recalls that this measure has been withdrawn further to a judgment of the House of Lords in December 2004. Accordingly the United Kingdom has withdrawn its notification of derogation under the Convention in March 2005.

4. Finally, the Committee reiterates that it is fully conscious of the present challenges posed by terrorism to security in many member states and the need for effective measures to respond to them. As its Guidelines on human rights and the fight against terrorism make clear, it is both possible and necessary for such measures to respect the fundamental rights and freedoms of individuals. It is not within the competence of the Committee to refer any allegation of substantive human rights violations to the Court, since the Convention confers this right only on individuals and States Parties to the Convention.