

Judicial Communications Office

Tuesday 15 November 2011

JUDGE RULES THAT PRISON NIGHT TIME HEAD COUNT POLICY DOES NOT BREACH HUMAN RIGHTS

Summary of Judgment

Mr Justice Treacy, sitting today in the High Court, ruled that the NI Prison Service policy of carrying out routine headcounts and body checks of prisoners in their cells at HMP Magilligan during the night was not a breach of prisoners' human rights.

The NI Prison Service (NIPS) policy is that head counts are carried out a minimum of three times during the night guard period. The policy instructs officers to carry out checks quietly, using torchlight, and to use the cell light "only when it is not possible to be satisfied that all is not well in the cell". The purpose of the head count and safety check is to establish that the prisoner is present and that bodily movement can be observed. The policy was revised following recommendations of the Criminal Justice Inspectorate/HM Chief Inspector of Prisons and the Prisoner Ombudsman. NIPS also issued a policy on Suicide and Self Harm in 2011.

The judicial review was brought by Michael Irwin, a serving sentenced prisoner at HMP Magilligan. He claimed that the head counts are intrusive, the use of the observational flaps is noisy, and that prison staff switch on cell lights more frequently than the policy would suggest. Mr Irwin claimed that the checks constitute an interference with his rights under Article 8 of the European Convention on Human Rights (right to privacy), that the interference is not justified on either safety or security grounds and that it is disproportionate. He also claimed that NIPS had given no particular reason or explanation why certain prisoners in HMP Magilligan are not subject to the night checking regime.

Mr Justice Treacy referred to case law which stated that the policy of night checks was not an interference with a prisoner's Article 8 rights. He said he would however proceed on this basis that an interference had been established and would therefore concentrate on whether the policy of three head counts per night was justified by the prison authorities.

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Mr Justice Treacy said that prisoner safety and prison security is the primary responsibility of the NIPS. He said that the use of head counts was clearly within the range of reasonable alternatives open to the NIPS to achieve the legitimate aim of securing the safety and security of inmates and staff within the NIPS establishments. The judge noted that the court, therefore, has a necessarily limited role in reviewing measures which are intended to discharge this aim:

“The safety and security of a prison is a matter plainly within the expert domain of the [NIPS]. The applicant’s invitation to the Court to effectively supplant the judgment of the [NIPS] on this issue would, if accepted, represent and impermissible extension of the court’s supervisory role.”

Mr Justice Treacy concluded that the operational requirements of the prison particularly in terms of safety and security of prisoners is a matter for the prison authorities. He ruled that the head count policy and the measures put in place to implement this were not disproportionate and that any interference with Mr Irwin’s Article 8 rights was justified.

NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Court Service website (www.courtsni.gov.uk).

ENDS

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