INTERROGATION PROCEDURES

Lord GARDINER'S Report

In November 1971, the Government of the United Kingdom appointed a Committee of three Privy Counsellors to consider 'whether, and if so in what respects, the procedures currently authorised for the interrogation of persons suspected of terrorism and for their custody while subject to interrogation require amendment '.

The Committee was established owing to public concern about the interrogation procedures which, as the Compton Report (Cmnd. 4823) had disclosed, had been in use for ' interrogation in depth ' at an interrogation centre in Northern Ireland.

The conclusions of the Compton Committee, as later summarised by Lord Gardiner, were that the procedures consisted of:

(a) Keeping the detainees' heads covered by a black hood except when being interrogated or in a room by themselves.

(b) Submitting the detainees to continuous and monotonous noise of a volume calculated to isolate them from communication.

(c) Depriving the detainees of sleep during the early days of the operation.

(d) Depriving the detainees of food and water other than one round of bread and one pint of water at six-hourly intervals.

(e) Making the detainees stand against a wall in a required posture (facing wall, legs apart, with hands raised up against wall) except for periodical lowering of the arms to restore circulation; detainees attempting to rest or sleep by propping their heads against the wall were prevented from doing so and, if a detainee collapsed on the floor, he was picked up by the armpits and placed against the wall to resume the required posture.

These procedures had been taught for some time by the British army for use in emergency conditions in colonial-type situations, and members of the Royal Ulster Constabulary had been trained in their use at the British army Intelligence Centre.

The report of the Committee of Privy Counsellors was published in March, 1972 (Cmnd. 4901). A majority report, approving the use of these procedures subject to certain safeguards, was submitted by Lord Parker and Mr. John Boyd Carpenter, M P. A minority report rejecting the procedures was submitted by Lord Gardiner.

Somewhat unusually, the recommendations in Lord Gardiner's minority report were accepted by the British Government in preference to those of the majority. In view of the widespread use in other countries of interrogation methods at least as objectionable as those which had been evolved by the British army, it may be of interest to lawyers in other parts of the world to know in more detail the conclusions reached by Lord Gardiner and the arguments upon which they were based.

After summarising the procedures in the words quoted above, Lord Gardiner posed three questions. Were the procedures ' authorised '? What were their effects? Do they in the light of their effects require amendment and, if so, in what respects?

He first considered whether these procedures were authorised in domestic law:

> " By our own domestic law the powers of police and prison officers are well known. Where a man is in lawful custody it is lawful to do anything which is reasonably necessary to keep him in custody but it does not further or otherwise make lawful an assault. Forcibly to hood a man's head and keep him hooded against his will and handcuff him if he tries to remove it, as in one of the cases in question, is an assault and both a tort and a crime. So is wall-standing of the kind referred to. Deprivation of diet is also illegal unless duly awarded as a punishment under prison rules. So is enforced deprivation of sleep. "

He found that in Northern Ireland the powers of the police and prison officers were substantially the same as in English law, that the procedures were and are illegal, and that no Army directive and no Minister could lawfully authorise the use of these procedures unless Parliament alters the law.

It had been argued before the Committee that the procedures used also involved infringement of Article 5 of the Universal Declaration of Human Rights, Articles 7 and 10 of the International Covenant on Civil and Political Rights, Article 3 of each of the four Geneva Conventions of 1949, and Article 3 of the European Convention on Human Rights. Lord Gardiner found it unnecessary to express any opinion on these submissions as the procedures were illegal under domestic law and as the matter was *sub judice* before the European Commission on Human Rights.

As to the effects of these procedures, the Committee had received medical evidence of the possible physical and mental effects upon persons subjected to them. On the other hand, it had been submitted that the procedures were necessary for the purpose of saving lives in face of the campaign of terror conducted by the Irish Republican Army. In the opinion of the British army and of the interrogators, the considerable quantity of intelligence information obtained by these methods would not have been obtained, or not so quickly, by other means. However, these procedures had not been adopted in

war-time interrogation centres where much vital information was obtained from prisoners and suspects.

Lord Gardiner's conclusions on this point were as follows:

> " If . . . the view is taken that the use of the procedures may initially have saved lives, this has to be balanced against the fact that in a guerilla-type situation the position of the forces of law and order depends very much on how far they have the sympathy of the local population against the guerillas. If the sympathy of a large part of the population is lost, the difficulties of the forces of law and order are increased. How far the loss of that sympathy since 9th August is due to internment or to the procedures or how far in the end they may have saved lives or cost lives, seems to me impossible to determine. '

On the question whether the procedures required amendment, Lord Gardiner said that as they had been shown to be illegal, ' the real question . . . is whether we should recommend that Parliament should enact legislation making lawful in emergency conditions the ill-treatment by the police, for the purpose of obtaining information, of suspects who are believed to have such information and, if so, providing for what degree of ill-treatment and subject to what limitations and safeguards. '

He continued:

'I am not in favour of making such a recommendation for each of the following five reasons:

(1) I do not believe that, whether in peace time for the purpose of obtaining information relating to men like the Richardson gang or the Kray gang, or in emergency terrorist conditions, or even in war against a ruthless enemy, such procedures are morally justifiable against those suspected of having information of importance to the police or army, even in the light of any marginal advantages which may thereby be obtained.

(2) If it is to be made legal to employ methods not now legal against a man whom the police believe to have, but who may not have, information which the police desire to obtain, I, like many of our witnesses, have searched for, but been unable to find, either in logic or in morals, any limit to the degree of ill-treatment to be legalised. The only logical limit to the degree of ill-treatment to be legalised would appear to be whatever degree of ill-treatment proves to be necessary to get the information out of him, which would include, if necessary, extreme torture. I cannot think that Parliament should, or would, so legislate.

(3) Our witnesses have felt great difficulty in even suggesting any fixed limits for noise threshold or any time limits for noise, wall-standing, hooding, or deprivation of diet or sleep.

All our medical witnesses agreed that the variations in what people can stand in relation to both physical exhaustion and mental disorientation are very great and believe that to fix any such limits is quite impracticable. We asked one group of medical specialists we saw to reconsider this and they subsequently wrote to us.

" Since providing evidence to your Committee we have given much thought to the question of whether it might be possible to specify reasonably precise limits for interrogators and those having charge of internees. The aim of such limits would be to define the extent of any ' ill-treatment ' of suspects so that one could ensure with a high degree of probability that no lasting damage was done to the people concerned.

After a further review of the available literature, we have reluctantly come to the conclusion that no such limits can safely be specified. Any procedures such as those described in the Compton Report designed to impair cerebral functions so that freedom of choice disappears is likely to be damaging to the mental health of the man. The effectiveness of the procedures in impairing willpower and the danger of mental damage are likely to go hand in hand in hand so that no safe threshold can be set. "

(4) It appears to me that the recommendations made by my colleagues in the concluding part of their Report necessarily envisage one of two courses.

One is that Parliament should enact legislation enabling a Minister, in a time of civil emergency but not, as I understand it, in time of war, to fix the limits of permissible degrees of ill-treatment to be employed when interrogating suspects and that such limits should then be kept secret.

I should respectfully object to this, first, because the Minister would have just as much difficulty as Parliament would have in fixing the limits of ill-treatment and, secondly, because I view with abhorrence any proposal that a Minister should in effect be empowered to make secret laws: it would mean that United Kingdom citizens would have no right to know what the law was about police powers of interrogation.

The other course is that a Minister should fix such secret limits without the authority of Parliament, that is to say illegally, and then, if found out, ask Parliament for an Act of Indemnity.

I should respectfully object even more to this because it would in my view be a flagrant breach of the whole basis of the Rule of Law and of the principles of democratic government.

(5) Lastly, I do not think that any decision ought to be arrived at without considering the effect on the reputation of our own country.

For many years men and women and a number of international organisations have been engaged in trying patiently to raise international moral standards, particularly in the field of Human Rights. The results are to be found in the Universal Declaration of Human Rights, the four Geneva Conventions, which 129 countries have signed and ratified, the International Covenant on Civil and Political Rights and The European Convention on Human Rights, whose provisions are referred to in paragraph 11 above. And this is not all. The World Conference on Religion and Peace, representative of all the world's religions, held in October 1970 declared:

' The torture and ill-treatment of prisoners which is carried out with the authority of some Governments constitute not only a crime against humanity, but also a crime against the moral law '

while the subsequent Consultation of all the Christian Churches declared:

' There is today a growing concern at the frequency with which some authorities resort to the torture or inhuman treatment of political opponents or prisoners held by them . . . There exist at the present time, in certain regions of the world, regimes using systematic methods of torture carried out in the most refined way. Torture itself becomes contagious . . . . The expediency of the moment should never silence the voice of the Church Authorities when condemnation of inhuman treatment is called for. '

There have been, and no doubt will continue to be, some countries which act in this way whatever Convention they have signed and ratified. We have not in general been one of these. If, by a new Act of Parliament, we now depart from world standards which we have helped to create, I believe that we should both gravely damage our own reputation and deal a severe blow to the whole world movement to improve Human Rights.

Conclusion

I cannot conclude this report without mentioning two points:

(1) An eminent legal witness has strongly represented to us that as Article 144 of the Fourth Geneva Convention provides that

' The High Contracting Parties undertake, in time of peace as in time of war to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to the entire population '

and as the other three Geneva Conventions contain somewhat similar Articles, and as we do not appear to be complying with these provisions, some step should now be taken to incorporate such instructions in military training.

As we have been told by those responsible that the army never considered whether the procedures were legal or illegal, and as some colour is lent to this perhaps surprising assertion by the fact that the only law mentioned in the Directive was the wrong Geneva Convention, it may be that some consideration should now be given to this point.

(2) Finally, in fairness to the Government of Northern Ireland and the Royal Ulster Constabulary, I must say that, according to the evidence before us, although the Minister of Home Affairs, Northern Ireland, purposed to approve the procedures, he had no idea that they were illegal; and it was, I think, not unnatural that the Royal

> Ulster Constabulary should assume that the army had satisfied themselves that the procedures which they were training the police to employ were legal.

The blame for this sorry story, if blame there be, must lie with those who, many years ago, decided that in emergency conditions in Colonial-type situations we should abandon our legal, well-tried and highly successful wartime interrogation methods and replace them by procedures which were secret, illegal, not morally justifiable and alien to the traditions of what I believe still to be the greatest democracy in the world. '