



Secretariat of the Committee on the Prevention of Torture
Council of Europe
F-67075 Strasbourg Cedex
France

22nd March 2012

Dear Sir,

Re: Marion Price

The PFC is a non-party political, anti-sectarian human rights group advocating a non-violent resolution of the conflict on the island of Ireland. We believe that all participants to the conflict have violated human rights. The PFC asserts that the failure by the State to uphold Article 7 of the Universal Declaration of Human Rights, "all are equal before the law and are entitled without any discrimination to equal protection of the law", is the single most important explanation for the initiation and perpetuation of violent conflict. It is therefore implicit to conflict resolution that Article 7 be implemented in full. The PFC campaigns towards that goal.

The PFC has serious concerns about the continuing detention of Marion Price/McGlinchey. There has been much attention paid to the manner of her detention and to the fact that until February 2012 she was held in the all male Maghaberry prison. PFC is concerned that the move to Hydebank Wood Women's Prison, does not address the issues around her detention and that there are ongoing concerns about the conditions of her detention and compliance with Human Rights standards. However, it is not only the manner of her detention causing concern, but it's lawfulness.



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Issues about the legality of detention

The centre is concerned that Marion Price/McGlinchey's detention is a form of administrative internment. We are concerned that in her particular circumstances the checks and balances which should ensure her detention is compliant with domestic and international law cannot and do not do so as the very basis of her continuing detention is a flawed presumption which does not have an evidential base.

Ms. Price was returned to prison in May 2011 after appearing at a dissident republican rally in Derry.

In court in Derry two days after her detention, despite strenuous prosecution objections, she was granted bail, then immediately rearrested under an order signed by the Secretary of State the previous evening.

This in itself raises a concern for the respect for the role of the judiciary and its independence.

It suggests that the Secretary of State may have determined that if the judge decided that the stringent conditions for bail were met, that Ms. Price/McGlinchey was to be detained anyway.

Jelena Pejic in 2005 in the International Review of the Red Cross states

"Internment or administrative detention is defined as the deprivation of liberty of a person that has been initiated/ordered by the executive branch — not the judiciary — without criminal charges being brought against the internee/administrative detainee¹.

Internment is an exceptional measure of control that may be ordered for security reasons in armed conflict, or for the purpose of protecting State security or public order in non-conflict situations provided the requisite criteria have been met.²"

Section 9(2) of the Life Sentences (Northern Ireland) Order 2001 states that the Secretary of State may revoke a licence "where it appears to him that it is expedient in the public interest to recall that person".

There is dispute over the legality of this authority, however. Kevin R Winters & Co. Solicitors, representing Price/McGlinchey, claims that she was not even subject to a licence when taken into custody in May 2011 – having been pardoned in 1980 by a Royal Prerogative of Mercy – and so is unlawfully detained at present. It appears that there is no copy of this pardon in existence, as it is claimed that the only copy was destroyed in 2010 by the UK Government.

The basis of her detention was and continues to be this order revoking her life licence. PFC understands that the Parole Commissioners assumed jurisdiction despite the doubt about the legality of this licence revocation.

¹ 1 See Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, ICRC/Martinus Nijhof Publishers, Geneva, 1987, "Commentary on Protocol I relative to international armed conflicts", Art. 75 (3), para. 3063.

² The relevant criteria are laid down in Article 4 of the International Covenant on Civil and Political Rights (ICCPR).

The Parole Commissioners, superseded the Life Sentence Review Commissioners for Northern Ireland (LSRC) in 2008. The work of the Parole Commissioners for Northern Ireland is governed by two 'Orders' and one set of 'Rules' - The Criminal Justice (Northern Ireland) Order 2008, the Life Sentence (Northern Ireland) Order 2001 and the Parole Commissioners Rules (Northern Ireland) 2009.

The superseded LSRC formed an independent body of Commissioners appointed by the Secretary of State under the provisions of the Life Sentences (Northern Ireland) Order 2001 and were first constituted in September 2002. Their work has its origins in the Criminal Justice Review which recommended that an independent body of judicial character be set up to assess the suitability for release of life sentence prisoners.

Their remit is to decide:

- (1) whether it is safe to release on licence persons sentenced to indeterminate custodial sentences after the period of their court imposed imprisonment has expired, once released whether they should be recalled and after recall whether they should again be released on licence;
- (2) whether persons sentenced to extended custodial sentences should be released on licence once they have served half of the custodial part of their sentence, whether once released such persons should be recalled and, if recalled, whether they should again be released; and
- (3) whether persons given other fixed term sentences and released on licence should be recalled to prison

The Commissioners are part-time judicial office holders appointed by the Secretary of State and although they claim to be working independently of Government, the previous Commissioner raised concerns about their independence in the Annual General Report of 2010/2011.

The PFC is also concerned that their remit does not extend to carrying out investigations and that therefore, in these circumstances, they do not have sufficient powers to satisfy the requisite procedural checks and balances necessary to prevent arbitrary detention.

Among the relevant norms of international human rights law, the Universal Declaration of Human Rights, Article 9 of which stipulates: "No one shall be subjected to arbitrary arrest, detention or exile." The corresponding provision in the International Covenant on Civil and Political Rights (ICCPR) is Article 9, paragraph 1, which stipulates: "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."

The above international norms reflect a universal consensus that an individual cannot be deprived of liberty except pursuant to specific legislative authority and with respect for procedural safeguards. In the regional systems of human rights protection, Article 5, paragraph 1, of the European Convention on Human Rights and Fundamental Freedoms (ECHR) stipulates: "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law..." Article 5, paragraph 4, stipulates: "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

Pursuant to Article 15, the European Convention is subject to derogation. In the context of the “war on terror” the United Kingdom has derogated from Article 5 of the ECHR, as it did with regard to Article 9 of the ICCPR. The effect of the House of Lords ruling of 16 December 2004 in the Belmarsh prison case is, however, that this derogation was deemed invalid and it was withdrawn in 2005.

The above international norms reflect a universal consensus that an individual cannot be deprived of liberty except pursuant to specific legislative authority and with respect for procedural safeguards.

The PFC is concerned that these standards have not been met. The reality is that, although the Parole Commissioners should vigorously test the legality of detentions arising from a licence revocation and ensure release if the detention is not properly proscribed by law that, in this case, they appear to have accepted jurisdiction without conducting any rigorous investigation into the existence of a licence and without establishing the facts underpinning her prior release.

We are not aware, and neither was Ms. Price when the PFC caseworker, Maggie O'Connor visited her on the 13th March 2012, that any investigation has been conducted into the absence of any information about the contents of the Royal Prerogative of Mercy applicable to Ms. Price/McGlinchey. Ms. Price advises that her then solicitor, who is now deceased, held the pardon in his hand and said “you can put it all behind you now and get on with your life” and that she understood it applied to all charges, both the life sentence and the determinate sentence. (These sentences arose from her involvement in planting four car bombs in London in 1973. She was released in 1980 following health problems which were attributable to force feeding)

We are concerned that the unavailability of the evidence that the Royal Prerogative could provide coupled with the Secretary of State's reliance on circumstantial evidence to infer that Ms. Price/McGlinchey is still subject to licence does not meet the standards for lawful detention.

As Amnesty International point out

“Detention is seen as ‘arbitrary’ when there is no legal basis for detention or there are grave violations of the right to a fair trial.

Detention and imprisonment which is lawful under national standards may be considered arbitrary under international standards.”

Conditions of detention

Marian Price was moved out of the high security Maghaberry prison in February 2012. The prison service said the decision to move her was taken on clinical advice from healthcare staff at the South Eastern Trust.

The Prison Service said that since being returned to prison nine months ago the prison service and the Trust have, on a number of occasions, discussed and reviewed her needs while in custody.

The women's wing at Maghaberry was closed in 2004 with all female inmates being transferred to Hydebank.

The European Court of Human Rights has, since the turn of the century produced judgements in which it has found that conditions of detention can violate Article 3 of

the ECHR. While we do not intend to review their findings in this submission we are concerned that Ms. Price/McGlincey's detention may breach Article 3³.

Hydebank Wood was opened as a category C Young Offenders Centre in 1979 and comprises five self-contained units (Ash, Beech, Cedar, Elm and Willow), each of which can accommodate approximately 60 young people in single cell accommodation. As well as housing young adults between the ages of 18 and 21, Hydebank Wood YOC holds male juveniles aged under 18 years in separate accommodation in Willow House.

In June 2004, women prisoners previously held at the Mourne Unit, Maghaberry Prison were transferred to Ash House (which was designated as a prison for women prisoners) and the centre was designated as Hydebank Wood Young Offenders Centre and prison.

At present, women prisoners are accommodated in Ash House at Hydebank Wood.

According to the Department of Justice "This was originally a house of the male Young Offenders Centre and, while there are discrete self-contained accommodation units for the young offenders and the women, there are considerable shared services and facilities".⁴

The Criminal Justice Inspectorate for Northern Ireland (CJNI) reported a number of findings relevant to our concerns about the conditions of Marion Price/McGlinchey's detention.

In a follow up report on Ash House in March 2011 laid before Parliament in October 2011, the CJNI reported that

- Women were constrained both by the restrictions arising from a shared site with young men and by the inappropriate implementation of security measures relating to the male side, which were not sufficiently intelligence-led.
- Too many male staff.
- The general environment was good though women's access to the site was still too restricted.
- The Ash House building was far from ideal for a women's prison – ***it was particularly claustrophobic for life-sentenced and long-term prisoners.***
- ***Health services had not improved sufficiently, despite transfer of responsibility to the South Eastern Health and Social Care Trust.***
- ***Health services were under-resourced, poorly managed and there was sometimes unsatisfactory attention to the needs of patients***
- ***Women had too little exercise***
- ***There was no coherent learning and skills strategy that differentiated between the needs of the various groups held on the Hydebank Wood (HBW) site***
- Only 27% of previous education recommendations had been implemented in comparison to over 50% of all other recommendations.
- ***There was insufficient work to keep prisoners occupied.*** [They] suggest it is [now] necessary to establish effective collaborative partnerships with

³ Article 3 European Convention on Human Rights – Prohibition of torture "No one shall be subjected to torture or to inhuman or degrading treatment or punishment"

⁴ Women's offending behaviour in Northern Ireland: a strategy to manage women offenders and those vulnerable to offending behaviour 2010-2013 DOJNI October 2010

external education and training providers – such as further education and/or work-based learning suppliers – as a matter of urgency.^{5 6}

The CJNI point out that although they recognise that Ash House is now an improving establishment, that

“However, the progress that could be achieved within the confines of an establishment catering for young adults and children, as well as women, was significantly limited.”

The Committee on the Prevention of Torture, in its 10th General Report states “in all Council of Europe member States, women inmates represent a comparatively small minority of persons deprived of their liberty. This can render it very costly for States to make separate provision for women in custody, with the result that they are often held at a small number of locations (on occasion, far from their homes and those of any dependent children), in premises which were originally designed for (and may be shared by) male detainees. In these circumstances, particular care is required to ensure that women deprived of their liberty are held in a safe and decent custodial environment”.

Marion Price/McGlinchey advised that when she was first transferred from Maghaberry that the conditions she was transferred to could certainly not be said to be such and that there are still serious problems with the conditions of her detention.

She advises that the cell to which she was transferred was filthy, there was blue mould on the walls and that for the first number of weeks there were workmen making adaptations to the cell and area surrounding it. Further, as the cell was designed for observation of those vulnerable to self harm there was a camera in the cell. This has now, on her request been addressed and blanked out and she is not subject to continuing invasion of her privacy.

However, other issues indicate that the regime in Hydebank is not an improvement on the conditions in Maghaberry.

This is not what one would expect for a move arising from concerns about the prisoner’s health.

There are ongoing issues which include the following:

- There is a loudspeaker Tannoy immediately outside her cell and this is constantly sending loud general messages for the staff and to the detainees in the Young Offenders centre, which adds to her stress.
- In Maghaberry she had access to an adjacent yard for exercise at all times when she was unlocked. While she was held there she advises that her cell was opened at 8.30a.m. and closed at 7p.m, whereas in the Health Centre at the Hydebank site where she is presently housed, she is unlocked for a much shorter time.
- In Maghaberry she therefore had unlimited access to a better exercise regime. In Hydebank, however she not only has to be walked through the areas where there are young males to get access to a small garden, but, she states, this area does not allow for proper exercise as it is too small.

⁵ Report on an unannounced short follow-up inspection of 21 - 25 March 2011 Report on an unannounced short follow-up inspection of Hydebank Wood Women’s Prison by the Chief Inspector of Criminal Justice in Northern Ireland, Her Majesty’s Chief Inspector of Prisons and the Regulation and Quality Improvement Authority, 21 - 25 March 2011 - October 2011.

⁶ Emphasis added

- Because of the design of the windows she does not have any view of the outside or have access to fresh air.
- The Health Centre where Marion is housed is also the facility where young males come for drug replacement treatment, and although she has not been directly harassed, she is exposed to their distress and to fighting which is a further cause of stress.
- The situation is exacerbated by the lack of a positive regime and purposeful activity. She wants access to education on an equal footing with the access that males in the separated regime have.
- There is apparently no space in the women's prison to create a separated area on a par with that which has been created in the male prison.

The present circumstances are a cause for serious concern, especially given Ms. Price/McGlinchey's vulnerability and concerns about her health. The Minister for Justice does have a power under Article 7 of the Life Sentences (NI) Order 2001 (as amended) to order the release of Ms. Price/McGlinchey on compassionate grounds and we, and others, have asked him to exercise this discretion in all the circumstances.

In summary the PFC is concerned that both the legality of Ms. Price/McGlinchey's detention and the conditions under which she is held breach domestic and international human rights norms.

Further given her vulnerability and concerns about her health, and in light of the domestic courts decision to grant bail in connection with the charges against her, we believe that there are humanitarian considerations supporting her immediate release.

Yours sincerely,

Maggie O'Connor
Caseworker

c.c The Minister for Justice for Northern Ireland
The Minister for Foreign Affairs Dublin
The Prisons Ombudsman
The Red Cross
The Regulation and Quality Improvement Authority
The Secretary of State for Northern Ireland
The Secretariat of the Committee on the Prevention of Torture
The Special Rapporteur on Torture