

## **Submission to the Commission of Investigation into the Death of Gary Douch**

The Council of the ACJRD believe there are a number of issues under the terms of reference of this Inquiry which they would like to address. Thank you for giving the organisation the opportunity to present their opinion.

This submission deals with the issues involved in the death of Gary Douch under the following headings;

- The Induction Process for Prisoners
- Cell Placement
- Health
- Justice and Human Rights

### **The Induction Process**

It is the opinion of the ACJRD that there should, and must, be a broader induction process for offenders entering prison, particularly young prisoners and those who are incarcerated for the first time. ACJRD feel that such an induction should provide;

- A clear overview of prison services and facilities
- Information for all prisoners on their rights and responsibilities
- Advice on how to obtain help and assistance both within the prison and externally.

Crucially, there must be a full assessment of the prisoner's needs and risks, considering:

- a) the frequency and seriousness of offending,
- b) their behaviour prior to entry into prison,
- c) personal issues,
- d) health problems (including mental health).

### **Cell Placement**

Under the European Convention of Human Rights (ECHR) which Ireland ratified through the Human Rights Act 2003, there is a wealth of precedent which guides international best practice in the area of appropriate cell placement.

The European Court of Human Rights has made a number of judgments on the preferred cell size in which prisoner's are housed.<sup>1</sup> The European Committee for Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) found, in their 2007 report<sup>2</sup> that a number of Irish prisons, including Mountjoy, were functioning above their operational capacity. Given the dilapidated conditions of Mountjoy Prison this is not acceptable. The ACJRD feel that these conditions may have contributed to the incident in question and that temporary measures be put in

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<sup>1</sup> Mayzit v Russia

<sup>2</sup> CPT/Inf (2007) 40

place to remedy this state of affairs. The Irish Government's response is on the CPT website<sup>3</sup>. We acknowledge the Thornton Hall project and welcome the plans for single cell housing of prisoners. Indeed, conditions within a prison can be found to breach Article 3 of the ECHR.<sup>4</sup>

Segregation of particular prisoners is also important particularly with regard to young people. This issue was highlighted by the CPT in the report of their last visit to Ireland.<sup>5</sup> They state that although structures are being put in place to move 16 and 17 year old males away from St Patrick's Institute, in the meantime 'appropriate measures be taken to ensure adequate separation between children and young adults.'<sup>6</sup> While the incident being investigated here occurred in Mountjoy Prison the issue of segregation is still relevant. ACJRD believe that separation should occur based on remand or committal status, age group, gang affiliation (where appropriate) and seriousness of offending.

## Health

The main concern of the ACJRD under this heading and in terms of the Gary Douch Inquiry is mental health.

The right to health is provided for under Article 12 of the UN Convention on Economic, Social and Cultural Rights. It specifically refers to 'the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.'<sup>7</sup> While the ECHR does not refer to such a right, the European Social Charter does. However, the European Court of Human Rights has upheld a right to health in a number of cases.<sup>7</sup>

A number of recent reports have found that mental illness amongst prisoners in Ireland is significantly higher than amongst the general public.<sup>8</sup> This is a very worrying statistic. It emphasises the need for mental health evaluations for each prisoner. ACJRD submit that assessments must be carried out for the safety of all within our prison system, and that the necessary resources be put in place to facilitate a policy change in the management of such prisoners.

Of particular interest to the ACJRD is the study carried out by Hayes and O'Reilly (2007)<sup>9</sup> on mental health and juvenile delinquency through University College Dublin. This report supports many of the findings of the ACJRD Children Court study also published in 2007<sup>10</sup>. The report looked at mental health in young adolescent males within three categories: i) young offenders (30 males residing in juvenile detention facilities); ii) mental health group (20 young boys involved with psychiatric

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<sup>3</sup> For documents referenced CPT/Info(2007)41 dated 10 October 2007

<sup>4</sup> Human Rights issues dealt with later in the submission.

<sup>5</sup> Ibid

<sup>6</sup> Ibid at 18

<sup>7</sup> Keenan v UK (2001); Price v UK (2001)

<sup>8</sup> C O'Brien "Mentally Ill End Up in Jail due to Glaring Gaps" in Irish Times 6<sup>th</sup> December 2005. See also Hayes, J and O'Reilly, G (2007) Emotional Intelligence Mental Health and Juvenile Delinquency. Juvenile Mental Health Matters, Cork

<sup>9</sup> Ibid

<sup>10</sup> ACJRD Carroll, J, Meehan, E & McPhillips, S (2007) The Children Court: A National Study

services of Health Service Executive- South); and iii) the control group (consisting of 30 regular teenage boys with neither a history of offending or mental health). Hayes and O'Reilly found that the level of mental health problems within the group of young offenders interviewed was actually higher than the comparative mental health group studied. This highlights the serious mental health issues afflicting young people in detention in Ireland which are going undetected and undiagnosed, often for long periods of time. Again ACJRD reiterate the need for individual assessments at the earliest possible opportunity and sufficient funding for such an endeavour.

## Justice and Human Rights

Article 3 of the ECHR provides that “no one shall be subject to torture or to inhuman or degrading treatment or punishment.” The Court has interpreted this proviso broadly. In *Keenan v UK (2001)*<sup>11</sup> the European Court of Human Rights held that Article 3 imposes upon member States a “duty to protect” the well-being of people in detention. This includes protection of their physical integrity.<sup>12</sup>

The CPT which ‘examine the treatment of persons deprived of their liberty with a view to strengthening if necessary, the protection of such persons’ have found that the conditions in which a prisoner is placed can amount to inhuman or degrading treatment. In their last report the CPT recommended that the authorities ‘invest the necessary resources in the existing prison estate to ensure that all prisoners are kept in appropriate conditions in detention.’<sup>13</sup> ACJRD echo this recommendation.

ACJRD feel that interagency co-operation and information sharing are vitally important justice issues and that the Commission should focus on the existence or otherwise of these issues in the instant case. Greater communication between the various criminal justice agencies can only improve the situation and ensure that everyone is informed of relevant issues where necessary. This is particularly important in the cases of young prisoners.

ACJRD value the opportunity to make a submission to the Commission of Investigation into the Death of Gary Douch. We hope that the issues raised here are considered. We note the introduction of Prison Rules 2007 as a positive development and look forward to further reforms.

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<sup>11</sup> *Keenan v UK (2001)*

<sup>12</sup> *Hurtado v Switzerland (1994)*

<sup>13</sup> *CPT/Inf (2007)* at pg 19