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Human Rights Case at Strasbourg

Ireland v United Kingdom

1. During August 1971, the Northern Ireland Government decided, after consultation with the United Kingdom Government, to intern a large number of people under Regulations made under the Special Powers Act 1922. The arrests were made on 9 August.

2. Of those arrested, 12 men were taken to an unknown centre where, it was later admitted, they were subjected to a combination of five interrogation techniques - namely, hooding, wall-standing, subjection to noise, deprivation of food and water and deprivation of sleep. It subsequently emerged that in October 1971 two further persons were subjected to these same techniques.

3. Apart from allegations relating to the use of these five techniques, there were a large number of allegations from all over Northern Ireland of ill-treatment by the security forces of persons detained on or subsequent to 9 August 1971. These complaints were of such a serious nature that the Government decided to submit, on 16 December 1971, a series of complaints against the British Government to the European Commission of Human Rights in Strasbourg alleging breaches of the European Convention on Human Rights. Documentary evidence relating to 228 individual cases of alleged ill-treatment in breach of

Article 3 of the Convention ("No one shall be subjected to torture or to inhuman or degrading treatment or punishment") was lodged with the Commission in support of the Government's submission of breach of the Convention. Submissions of breach of the Convention by the British Government were also made in respect of:

Article 1 - general implementation of the Convention

Article 2 - right to life

Article 5 - right to liberty) to decide that internment
) without trial and detentio

Article 6 - right to a fair trial) were in breach of the
) Convention.

Article 14 - discrimination : to decide that internment and detention were applied to minority community in a discriminatory manner.

4. The Commission adopted its report on 25 January 1976 and transmitted it to both Governments. It found that there had been breaches of Article 3 of the Convention in the following instances:

(i) Cases involving the five techniques

(ii) Other Cases

A. In the majority of the 16 illustrative cases examined in depth by the Commission;

B. In Palace Barracks in Autumn 1971 there was a general administrative practice which was in breach of Article 3.

5. In a general observation the Commission held the United Kingdom Government responsible for these breaches. No breaches of the other Articles of the Convention referred to in the Irish submission were found. The Government decided on 10 March 1976 to refer the case to the European Court of Human Rights for final adjudication. The case which was the first inter-State case to the Court, was considered at hearings in Strasbourg in February and April 1977.

6. The Irish Government in its written and oral submissions, asked the Court both to endorse the Commission's findings of breach of the Article 3 of the Convention by the British Government, and, further, to find (i) that the practices complained of at Palace Barracks constituted torture and not merely inhuman treatment as found by the Commission, and (ii) that these practices were not confined to Autumn 1971, but continued until the closing down of the interrogation centre at Palace Barracks in June 1972. The Court was also asked to find that there occurred at different places in Northern Ireland between 1971 and 1974 a substantial number of other acts in breach of Article 3 in addition to those specific cases of breach found by the Commission. The then Attorney General asked the Court to make the following consequential orders:-

- (a) prohibiting the reintroduction of the "five techniques", and
- (b) requiring the U.K. to institute criminal or disciplinary proceedings against those involved in the commission of wrongful acts in breach of Article 3.

The Court was also asked to bring in findings of breach of the other Articles of the Convention which had been brought to the attention of the Commission (except for Article 2 which the Commission had declared inadmissible).

7. The British Government indicated in its submissions to the Court that it did not contest the Commission's findings of breach and went on to suggest that it was unnecessary for the Court to concern itself further with this part of the case. We strongly opposed this view on the grounds that it was important for the defence of human rights both in Northern Ireland and elsewhere to secure from the Court a condemnation of the practices complained of that would be binding in international law. As regards those parts of the case in respect of which the Commission had made no findings of breach, the Court was asked by the British Government to uphold the Commission's findings.

8. At the first hearing before the Court in February the British Attorney General referred to the order which the Irish Government had requested be made by the Court prohibiting the further use of the "five techniques" and gave the following undertaking

"The Government of the United Kingdom have considered the question of the use of the 'five techniques' with very great care and with particular regard to Article 3 of the Convention. They now give their unqualified undertaking that the 'five techniques' will not in any circumstances be re-introduced as an aid to interrogation."

The Irish Attorney-General indicated at the April hearing that in the light of this undertaking he would not now request the Court to make the consequential order previously sought.

9. The Embassy in London reported in March of this year on two separate conversations with officials of the Foreign and Commonwealth Office in which it was stated that the British Government was insistent that allegations against members of the security forces could only be dealt with through the normal legal processes. The position was simply, it was said, that with the lapse of time there was not sufficient evidence to bring specific charges against any individuals. One official was reported as saying that the investigating officers had in fact met with a wall of silence. The point was also made that, if prosecuted, those concerned could claim that they were operating within "general guidelines" and that surely we did not expect the British Government to bring members of the then Government before the courts. In his submission to the Court in April the U.K. Attorney General similarly averred that his Government would only be prepared to move against individuals accused of ill-treatment on the basis of evidence likely to stand up in Court.

10. The latest indication from the Court Secretariat is that the judgement in the case will not be given until January 1978. The Convention on Human Rights provides that "the judgement of the Court shall be final" (Article 52) and that the parties to a case "undertake to abide by the decision of the Court" (Article 53). Under the terms of Article 54 the judgement of the Court is transmitted to the Committee of Ministers "which shall supervise its execution". While the Committee of

Ministers has a reasonably well defined corpus of precedents and procedures for dealing with inter-State cases referred to it under Article 32 (i.e. cases which have not been heard by the Court) this is not the position in respect of inter-State cases on which the Court has delivered judgement; the present case being of course the first such case.

11. While it is obviously important in the CSCE context to expose the hypocrisy of any attempt by the Soviet Union or its allies to make propoganda out of the Strasbourg case, it is also important that the serious nature of the issues now being considered by the Court should not be in any way minimized or deprecated. The then Attorney General in the course of his concluding remarks (relevant extract appended) to the Court at the April hearing made it clear that we believed, and continue to believe, that serious breaches of the Convention did take place. Our action in taking this case to Strasbourg was, *he said*, motivated not, as has been alleged, by malice or any spirit of vindictiveness, but, rather, by the hope that the outcome of these proceedings would help ensure that for the future "human rights for the people of Northern Ireland would be more adequately secured", a factor which, he pointed out, would in itself help defeat the men of violence. It is also anticipated that the Court, by its judgement, would be "setting standards for the protection of human rights which will be of relevance to all the people of Europe". It should also be born in mind that throughout the case the Government was prepared to use the good offices of the Commission to effect a friendly settlement. However, the absence of appropriate proposals from the British Government on which to base such a settlement made impossible a resolution of the case along these lines.

12. While the main burden of replying to Soviet allegations of double-standards etc. should be with the British delegation it is understandable that, in the event of the Soviets using the case as a bat with which to berate the West, other Western countries would expect us to intervene. In that event it can be pointed out that we are well aware that violations of human rights occur in the West as well as in the East; in Western Europe, however, there exists an international body with binding supra-national powers to which alleged violations by a member State of the human rights of its citizens can be referred either by the individuals concerned or by another member State. No such extra-territorial protection is available to citizens of the Soviet Union or other Eastern European countries. The Irish Government recognises that the action it took at the European Commission and Court would not have been possible but for the fact that the British Government, like the Irish Government, accepts the supra-national jurisdiction of the Council of Europe human rights institutions.

13. If the question of continuing violations of the Convention by the British authorities in Northern Ireland is raised it would be appropriate to refer to the "unqualified undertaking" given to the Court by the British Attorney General in April in respect of the 'five techniques' and to state that we have no reason to believe that this undertaking is not being honoured. The Soviet delegation may also refer to the continuing flow of allegations of ill-treatment of persons in custody by the RUC and

also, perhaps, to complaints of harassment by units of the British Army of the civilian population, particularly in parts of Belfast. It is understood that a number of Soviet officials/journalists visited Northern Ireland earlier this year to collect information on some of these allegations. While Belgrade is not the most suitable forum in which to air our concern about certain of these allegations it would be necessary, if pressed, to acknowledge that we are aware of these allegations and that we will continue to monitor events in Northern Ireland to ensure that the rights guaranteed in the Convention are respected.

14. While comment on cases before the Court of Human Rights is not subject to the same sub-judice rules which apply in the domestic jurisdiction, the fact that the Court is still deliberating on the case should be borne in mind. A reference to our wish not to prejudice in any way the Court's deliberation could appropriately be included in any public comments on the case.

Appendix
Const. H.R.
22 April 1977

"Mr. President, may I conclude - and as this is the last time on which the applicant Government will have an opportunity to address the Court - I would like to conclude with some very brief observations of a general character.

The Court has rightly been concerned with legal arguments, legal submissions and the analysis of hundreds of pages of documentary material, but I know that all the Members of the Court are keenly aware, just as we, the advocates who are appearing before you, are aware, of the grim reality of the violence and human suffering which the written documents record. Part of that grim reality is the IRA. The IRA, Mr. President, is a body of ruthless men whose evil conduct besmirches the honourable traditions of the Irish nationalism, who comprise but a tiny minority of the Irish people they claim to represent and whose actions have been repudiated time and time again by the electorate in both parts of Ireland.

Another part of that reality is represented by the Loyalist extremists whose actions defile the high principles of the religious tradition they pretend to uphold and whose deeds are an affront to all right-thinking people of the political tradition they claim to defend.

My Government and the respondent Government have been cooperating in many ways and on many levels for the purpose of extirpating the evil of terrorism from our midst, but there is, Mr. President, no inconsistency between this common concern of our two Governments who are here represented and the institution and maintenance of these proceedings before the supervisory organs of the Convention of which both our Governments are signatories.

It was believed and is believed that serious breaches of human rights had occurred in Northern Ireland; that practices had occurred which it was proper to bring to the notice of this tribunal and of the Commission so that they could be condemned. To fail to institute and maintain these proceedings because of the need to take common action against terrorist organisations would have been both illogical and a breach of our responsibilities as signatories of the Convention.

The belief that serious breaches of the Convention occurred has been justified by the Commission's opinion. By asking the Court to confirm that opinion and to make further findings of breach, the applicant Government are not motivated by any malice or any spirit of vindictiveness. The Irish Government believe that the European Convention of Human Rights, and the judicial machinery for the protection of human rights which is established, constitute one of the most significant developments in the history of postwar Europe. Through these present proceedings, they believe that human rights for the people of Northern Ireland will be strengthened and more adequately secured, a factor which in itself will help to defeat the men of violence. But this case we know will have a wider significance. This Court, by its decisions, will be setting standards for the protection of human rights which will be of relevance for all the people of Europe and, indeed, for a wider community outside the European continent. As a result of the evils of these past seven years in Northern Ireland some lasting good can come, and it is in this hope, Mr. President and Members of the Court, that the many and complex issues are brought before this Court for its consideration and adjudication."