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Some Considerations on the question of referring allegations of ill-treatment at Castlereagh to the Commission of Human Rights in Strasbourg in the light of the Bennett Report and the findings in the Ireland v United Kingdom case.

1. It has been suggested in varicus quarters that the practices complained of at Castlereagh RUC Interrogation Centre and which form the background to the Bennett Report should be raised by the Government with the organs of the European Convention on Human Rights (ECHR) on the basis that they amount to a breach of undertakings given by the British Government to the Court of Human Rights. The wording of that undertaking was as follows:

> "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 this unqualified undertaking, that the 'five techniques' will not in any circumstances be reintroduced as an aid to interrogation."

2. It should be noted that the undertaking refers only, and is so understood in both the findings of the Commission and the judgement of the Court, to the use of these techniques in the very specific form in which they were used on 14 individuals in August and October 1971 for the purpose of inducing a state of sensory deprivation. The Commission and Court of course also found that there existed at Palace Barracks in Autumn 1971 in the course of interrogation carried out by members of the RUC a practice of inhuman treatment in breach of the Convention involving beatings and other forms of assault. The Court failed to find, as requested by the Irish Government, that these breaches continued after Autumn 1971 or that breaches occurred in this period at other interrogation centres in Northern Ireland.

3. In regard to current allegations there is no generally recognised procedure under the Convention for the further consideration of matters previously dealt with by the Court except insofar as Rules 53 and 54 of the Court's Rules of Procedure provide for consideration of requests for interpretation or revision of a judgement. The application of both Rules is limited and strictly defined and would not appear to be relevant in the present

* "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

instance. Neither is there any accepted mechanism for the supervision of Court judgements. Insofar as the Convention does refer to supervision it entrusts the function to the Committee of Ministers (of the Council of Europe)in the following terms (Art. 54):

> "The judgement of the Court shall be transmitted to the Committee of Ministers which shall supervise its execution".

The well-established practice of the Committee in this respect is to treat its functions in this area as a once-off exercise leading to agreement on a formal statement in which the Committee takes note of the various measures proposed by the defendant Government and declares its functions to be discharged. This it has already done in the inter-State case.

4. The weight of case precedent (Cyprus cases) would appear to indicate that allegations of renewed breaches must be submitted to the Commission as a new and separate application which will be considered for acceptance by the Commission by reference to its standard criteria. It will be recalled that in the inter-State case a period of over 4 years elapsed before the Commission released its report; a further period in excess of two years was to elapse before the judgement of the Court was available.

5. The Convention provides at Article 26:

> "The Commission may only deal with [complaints] after all domestic remedies have been exhausted, according to the generally recognized rules of international law, and within a period of six months from the date on which the final decision was taken".

Commission case-law provides however that in considering the admissibility of complaints the domestic remedies rule may be set aside if the practices complained of constituted an "administrative practice" i.e. if it can be shown that they were carried out with some degree of complicity on the part of the State or its officials. The Commission report in the inter-State case considered this aspect in some detail and a copy of the relevant extract is attached.

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6. The findings of the Bennett Committee are not, of course, conclusive one way or the other on the question of whether events at Castlereagh over the past 2/3 years constituted an administrative practice and, in the last analysis, this could only be decided by the Commission. It is relevant to point out however that the Bennett Committee draws attention to the numerous measures which the RUC authorities have taken to improve supervision during interrogation (para. 210) and that the general tone of the Committee's report is to emphasise that the RUC are moving in the right direction in this regard albeit at too slow a pace.

7. Whatever about the possibilities for successful litigation at the admissibility stage the situation in regard to establishing at the substantive merits stage that the matters complained of constituted a breach of the Convention would appear, from what we know of the standards of proof insisted upon by the Commission in the inter-State and other cases, to be very difficult. Despite the submission of a brief which included documentary evidence relating to 228 individual cases and a considerable body of supporting evidence for the existence of a regime of officially sanctioned or tolerated brutality by the British Army and the RUC, the Commission, and subsequently the Court, limited itself on this occasion to narrow findings of breach at one centre (Palace Barracks) in Autumn 1971.

8. The following extract from the Court's judgement (para. 179-181) which deals with allegations of ill-treatment at Ballykinler indicates clearly that acceptance by the Court that gross wrongdoing has taken place is insufficient to establish breach:

(a) Ballykinler

179. The Court first examined the situation at the Ballykinler military camp. For this purpose, it did not have to investigate separately the individual contested case of T3 on which the Irish Government are no longer seeking a specific finding (see paragraph 158 above).

180. The RUC, with the assistance of the army, used Ballykinler as a holding and interrogation centre for a few days early in August 1971. Some dozens of people arrested in the course of Operation Demetrius were held there in extreme discomfort and were made to perform irksome and painful exercises; eleven of those persons subsequently received compensation (see paragraphs 123-126 above).

There was thus a practice rather than isolated incidents. The Court found confirmation of this in the judgment of 18 February 1972 in the Moore case.

181. The Court has to determine whether this practice violated Artic Clearly, it would not be possible to speak of torture or inhuman treatment, but the question does arise whether there was not degrading treatment. Th Armagh County Court granted Mr. Moore £300 by way of damages, the maximum amount it had jurisdiction to award. This fact shows that the matters of which Mr. Moore complained were, if nothing else, contrary to the domestic law then in force in the United Kingdom. Furthermore, the way in which prisoners at Ballykinler were treated was characterised in the judgment of 18 February 1972 as not only illegal but also harsh. However, the judgme does not describe the treatment in detail; it concentrates mainly on reci the evidence tendered by the witnesses and indicates that the judge reject that given on behalf of the defence. The Compton Committee for its part considered that, although the exercises which detainees had been made to d involved some degree of compulsion and must have caused hardship, they wer the result of lack of judgment rather than an intention to hurt or degrade.

To sum up, the RUC and the army followed at Ballykinler a pract which was discreditable and reprehensible but the Court does not consider they infringed Article 3.

9. In any disputation before the Commission the British Government would no doubt advert, as the Court did in the inter-State case, to the numerous measures which have been taken by the British authorities over the past few years both to make it more difficult for members of the security forces to engage in ill-treatment and to facilitate consideration of complaints

> "Indeed the preventive measures taken by the United Kingdom (see paragraphs 133-136 above) at first sight render hardly plausible, especially as regards the period after the introduction of direct rule (30 March 1972), if not the suggestion of individual violation of Article 3 - on which the Court does not have to give a specific ruling - at least the suggestion of the continuation or commencement of a practice or practices in breach of that Article" (Court - para. 184)

10. In the period since these matters were argued before the Cour the recurring allegations at Castlereagh have been examined by a delegation from Amnesty International who were given a measure of official co-operation in the carrying out of their investigation. Their report led to the decision to establish the Bennett Committe whose report has been accepted by the British Government and whose major recommendations are, it is said, in the course of being implemented. While it would presumably be not impossible for the

State's legal advisers to devise a contrary case, in support of which certain statements from the Bennett report could be adduced, it is difficult to believe in the face of our previous experience before the Commission that such arguments would prevail. There must even be a risk that they would be summarily and embarrassingly rejected. Such an outcome would undoubtedly weaken our position in seeking to influence any British government on matters pertaining to the protection of human rights in Northern Ireland. Of course should the State decline to institute proceedings the option of application to the Commission by individual complainants, which is accepted by the British Government, remains open and can, in accordance with what is in fact the more normal practice of the Commission, be fully pursued without any requirement for the involvement in the application of another Government.

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