

COUR EUROPÉENNE
DES
DROITS DE L'HOMME

CONSEIL DE L'EUROPE
STRASBOURG

JS/ab

*Miss Lydon
re cc. Mr D. Quigley, M.C.O.
Ms S Danton*

26/10/77

EUROPEAN COURT
OF
HUMAN RIGHTS

COUNCIL OF EUROPE
STRASBOURG

26 April 1977

Recd 9/11/77

Case of Ireland v. the United Kingdom

no. 3275

Sir,

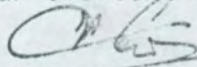
I write for the purposes of record to acknowledge receipt:

- (a) on 18 April, of your letter of 14 April which you had previously transmitted to me in the form of a telex;
- (b) on 19 April, of your Government's written observations on Article 1 of the Convention which have been entered on the Court's register under no. 3261;
- (c) on 20 April, of documents Cour/Misc (77) 20 and 21 on which have been marked the corrections to Mr. Costello's address to the Court on 19 April and which have been entered on the Court's register under no. 3271.

On 21 April I handed to you copies of the respondent Government's written observations on Article 1 and no doubt you will let me know in due course if you require further copies. I shall also let you have as soon as possible the English version of the observations of the Commission's delegates on this Article, the original French of this having already been handed to you on 22 April.

I am,

Your obedient Servant,


Marc-André Eissen
Registrar

F.M. Hayes, Esq.,
Agent of the Government of Ireland
Department of Foreign Affairs,
80, St. Stephen's Green,
IRL - DUBLIN 2

Strasbourg, 26 April 1977

Case of Ireland v/ the United Kingdom

N° 3263

Sir,

I have the honour to send you herewith the provisional shorthand note of the hearings of 22 April 1977 (Cour/Misc (77) 26) in the above case.

For the establishment of the final note, I should be very grateful if you would inform me, within two weeks' time, of any corrections you might wish to make to the text of your addressees to the Court.

The present communication is made in application of Rule 45 § 2 of the Rules of Court.

I am, Sir,

Your obedient Servant,

Marc-André Eissen
Registrar

Mr. Declan COSTELLO, S.C.
Attorney-General
c/o Mr. Hayes
Agent of the Government of Ireland
80, St. Stephen's Green
DUBLIN 2

cc: Mr. Hayes

Note prepared in Information Section
for visit of Governor Carey.

Not issued

The case which Ireland has brought against the United Kingdom before the European Commission and Court of Human Rights

1. The European Convention on Human Rights was drawn up by the members of the Council of Europe. It rendered legally binding in the participating states (the "High Contracting Parties") many of the human rights principles proclaimed by the United Nations. Among these provisions, those relevant to the present case were:-

Article 1. That participating states will secure to everyone within their jurisdiction the rights and freedoms defined in Section 1 (Articles 2 to 18) of the Convention.

Article 2. That no-one shall be deprived of his life intentionally (except in the execution of a sentence of a court on conviction of a crime for which the death penalty is provided by law).

Article 3. That no-one shall be subject to torture or to inhuman or degrading treatment or punishment.

Article 5. That everyone has the right to liberty and security of person and that a person lawfully detained or arrested shall be informed promptly of the reason for arrest and of any charges against him, shall be brought promptly before a judicial authority, and shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court.

Article 6. That in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an impartial tribunal.

Article 7. That no one shall be held guilty of a criminal offence on account of an act or omission which was not a criminal offence under the law at the time it was committed.

Article 14. That enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground.

Article 15. That in time of public emergency a participating state may take measures derogating from its obligations under the Convention to the extent strictly required by the exigencies of the situation.

Commission of Human Rights

2. Article 19 of the Convention established a Commission to ensure the observance of the engagements undertaken by participating states. The Commission has one member for each participating state, and receives complaints of alleged breaches of the Convention. Such complaints may be brought either by Governments or by individuals. The Commission first considers whether the complaints brought are admissible under the terms of the Convention. If a complaint is judged to be admissible, the Commission undertakes an examination of the petition and if necessary, an investigation. The State or States concerned by a complaint are required to furnish all necessary facilities to the Commission, and the latter is required to place itself at the disposal of the parties concerned "with a view to securing a friendly settlement of the matter". If a friendly settlement is not reached, it draws up a report on the facts of the case, and states an Opinion as to whether the facts found constitute a breach of the Convention. The Commission holds its meetings in camera.

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3. The Report and Opinion are transmitted to the Committee of Ministers of the Council of Europe. In a case involving two participating States which accept the compulsory jurisdiction of the European Court of Justice (there are 14 such states, including Ireland and the UK), one or other can bring the case to the Court of Justice within three months of the transmission of the Commission's Report to the Committee of Ministers.

The European Court of Justice

4. The Court of Justice has a member for each signatory State: for the consideration of each case it consists of a Chamber of seven judges. The Commission's report is the foundation for the proceedings of a case in the Court. These proceedings are in two parts - a written stage during which the parties and the Commission exchange submissions and rejoinders: and an oral stage, a hearing which takes place in public. If the Court finds that the party against which a case is brought has taken decisions or measures in conflict with obligations arising from the Convention, the Court shall, if necessary, afford just satisfaction to the injured party.

The Irish case

5. In August 1971 the Northern Ireland Government, after consultation with the U.K. Government, decided to intern a large number of people under Regulations made under the Special Powers Act 1922. The arrests were made on 9th August 1971. On the 16th December 1971, the Irish Government submitted a series of complaints against the British Government to the European Commission of Human Rights, alleging breaches of the European Convention on Human Rights.

6. The object of the Irish application was to ensure that the British Government would secure to everyone in Northern Ireland the rights and freedoms defined in Section I of the Convention; to bring to the attention of the Commission breaches of certain Articles of the Convention; to determine the compatibility with the Convention of certain measures and administrative practices in Northern Ireland; and to ensure the observance of the legal engagements and obligations undertaken by the British Government in the Convention.

7. The present account deals first with two Irish Government cases of which the first was held by the Commission not to be admissible and the second was struck off; and then with the other cases.

The Procedure before the Commission

8. On 16th December 1971, the Irish Government submitted its case to the Commission. Written observations on the merits of the claims were subsequently filed. After an oral hearing, the Commission's made its declaration in October 1972 on the admissibility of each of the allegations. The first oral hearing on the claims held to be admissible was held on 25 October 1973. Subsequently, the Commission heard 119 witnesses give oral evidence. Final oral submissions were made before the Commission from 14th to 20th March 1975.

9. The Commission's report was adopted on 28th January 1976. For reasons of security, the names of all witnesses were deleted from the published document.

10. On 10th March 1976, the Irish Government referred the case to the European Court of Human Rights.

Article 2

11. The original submission by the Irish Government contained allegations that the deaths of certain named persons killed by the security forces in Northern Ireland were in breach of Article 2 of the Convention. A later submission was made that further breaches of this Article arose as a result of the killings in Derry on 30th January 1972 ("Bloody Sunday"). After oral hearings, the Commission declared on 1st October 1972 that these allegations were not admissible as it had not been shown that the domestic remedies available under the law in Northern Ireland had been exhausted prior to the bringing of the claim.

Article 7

12. The Irish Government lodged a complaint claiming that the Northern Ireland Act, 1972, created criminal offences with retrospective effect, in breach of Article 7 of the Convention. Undertakings were given by the British Government, and accepted by the Irish Government, during the oral hearings to the effect that persons would not be charged under the Act in respect of an act or omission occurring before its enactment. As a result, the Commission struck this case off its list.

Article 1

13. The Irish Government submitted that a party to the Convention can be in breach of Article 1 by a failure to secure the rights and freedoms defined in Section I (Articles 2 to 18) of the Convention, independent of violations of the rights of particular individuals.

14. The Commission found this claim to be admissible. No evidence was called on this claim, the two parties making submissions consisting of legal argument. The Commission decided that as Article 1 did not grant any rights in addition to those mentioned in Section I of the Convention,

IT CAN NOT BE THE SUBJECT OF A SEPARATE COMPLAINT.

15. The Commission's Report referred to measures taken by the British Government since December 1971 and said that important measures had been taken to meet the claims of the Irish Government, though the Irish Government had not regarded them as satisfactory and no friendly settlement had been reached.

16. The Irish Government submitted its claim to the European Court of Justice and asked it to hold that breaches of Article 1 had occurred.

Article 3

17. The cases under this Article can be divided into two parts. (i) of those arrested on 9th August 1971, 12 men were taken to an unknown interrogation centre where, it was later admitted, they were subjected to a combination of five interrogation techniques. The Irish Government submitted that these techniques constituted inhuman and degrading treatment and torture within the meaning of Article 3. (ii) Treatment of prisoners under five other categories where the Irish Government submitted that breaches of Article 3 had occurred. All the cases were accepted as admissible by the Commission.

18. The Irish Government submitted written evidence in respect of 228 cases of ill-treatment. The procedure adopted by the Commission in handling these cases was to investigate 16 "illustrative" cases by means of oral evidence relating to each case. In all, 100 witnesses were heard. It also asked the British Government to submit written comments on 41 cases in which medical reports had been submitted in support of the allegations of ill-treatment.

(i) The "Five Techniques"

19. The five techniques used on 12 of those arrested on 9 August 1971 were (a) Wall Standing. The prisoners were spreadeagled against a wall, with the fingers placed high above

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the head against the wall, legs spread apart and feet back, causing them to stand on their toes with the weight of the body mainly on the fingers (b) hooding. A black or navy-coloured bag was put over the prisoners' heads. (c) Noise - pending interrogation, the prisoners were held in a room where there was a continuous loud and hissing noise. (d) Sleep. Pending interrogation, the prisoners were deprived of sleep. (e). Food and drink. The prisoners were subjected to a reduced diet during their stay at the Centre (which was from 11th to 17th August 1971) and pending interrogation.

20. The Commission examined these cases on the basis of two "illustrative cases", T.13 and T.6. A British Committee, the Compton Committee, had found that T.13 had been subjected to technique (a) - though describing it differently - for periods totalling 23 hours and T.6, 29 hours. Northern Ireland courts had awarded T.13 £15,000 damages for wrongful imprisonment and assault, and T.6 £14,000.

21. In its Opinion, the Commission concluded that the five techniques constituted a breach of Article 3 of the Convention in the form of inhuman and degrading treatment and of torture within the meaning of the Article.

22. The Irish Government has requested the Court of Human Rights to decide that the use of the five techniques constituted a practice of torture and inhuman and degrading treatment in violation of Article 3.

23. In February 1977 the British Attorney General said the British Government gave their unqualified undertaking that the 'five techniques' would not "in any circumstances be re-introduced as an ^{aid} end to interrogation".

(11) Other cases

24. Between August 1971 and November 1974 a total of 1105 complaints alleging ill-treatment or assault by the RUC (the Northern Ireland police force) were received by the

investigation department set up under the Police Act (Northern Ireland) 1970. Between 31st March 1972 and 30th November 1974, 1078 cases of assault alleged to have been committed by Army personnel were submitted to the Director of Public Prosecutions. Between 9th August 1971 and 31st January 1975, damages were paid in respect of 473 claims for false arrest, false imprisonment, and assault and battery, and at the latter date 1193 claims were outstanding. The Irish Government submitted written evidence to the Commission in respect of 228 cases of ill-treatment (including those at (1) above): in 45 of these cases compensation had been paid to the victims.

25. As mentioned above, the 'other' cases were heard by the Commission on the basis of 'illustrative' cases, and of some of the 41 cases where statements were accompanied by medical reports.

These cases related to (a) cases relating to the ^{unknown} interrogation centre. (b) cases relating to Palace Barracks, Holywood (c) cases relating to Girdwood Park Regional Holding Centre and other places (d) cases relating to Ballykinler Regional Holding Centre. In relation to all but two of the cases in (a) (b) and (c) the Commission found as to the fact that there was substance in the allegations of ill-treatment.

26. In its Opinion, the Commission found that (a) in addition to the "five techniques", the illustrative case of T.6 had received physical injuries at the hand of the security forces which amounted to inhuman treatment and a further breach of Article 3. (b) In seven of the 'illustrative' cases relating to Palace Barracks the persons concerned were subjected to assaults by members of the RUC and that this treatment was inhuman treatment within the meaning of Article 3. The Commission also found that there had been official tolerance of repetition of acts of ill-treatment, and concluded that there was a practice at Palace Barracks which was in breach of Article 3 of the Convention. (c) In relation to Girdwood Park

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and other places, the Commission found that breaches of Article 3 had been established and that in three "illustrative" cases, all three had suffered inhuman treatment and two had also suffered degrading treatment in breach of the Article. (d) The Commission found that in relation to certain exercises at Ballykindler considerable strain and hardship were caused, but that this did not amount to a breach of Article 3.

27. The Irish Government has requested the Court of Human Rights to hold that in all the 'illustrative' cases under (a) (b) (c) and (d) breaches of Article 3 occurred.

Article 5

28. The Irish Government submitted that the operation of the powers of arrest, detention and internment under the Special Powers Act (and Regulations) and the operation of the Detention of Terrorists Order 1972 and the Northern Ireland (Emergency Provisions) Act 1973 constituted a breach of the right to liberty and the guarantees contained in Article 5 of the Convention. While not contesting the fact that an emergency existed in Northern Ireland, the Irish Government claimed that the measures taken were in excess of what the situation required, and that adequate safeguards against abuse were lacking.

29. In its Opinion, the Commission concluded that some of the measures were not in conformity with Article 5, but that the measures taken were "strictly required by the exigencies of the situation" within the meaning of Article 15, and that accordingly no breach of Article 5 had been established.

30. The Irish Government has requested the Court of Human Rights to decide that the various measures in operation in Northern Ireland relating to arrest, detention and internment without trial between August 1971 and March 1975 were not in conformity with Article 5 of the Convention and were not strictly required by the exigencies of the situation and that in each of three separate phases there was a breach of Article 5.

Article 6

31. As well as claiming that the Special Powers Act and subsequent legislation were contrary to Article 5, the Irish Government claimed that it was also contrary to Article 6. The Commission, in its Opinion, stated that Article 6 did not apply to the extra-judicial procedures of arrest, detention and internment in question and that no question of breach of this Article arose.

32. The Irish Government has asked the Court of Human Rights to hold that in each of three separate phases there was a breach of Article 6 of the Convention in addition to breaches of Article 5.

Article 14

33. The Irish Government submitted that the exercise of the powers of internment and detention was carried on with discrimination on the grounds of political opinion in breach of Article 14 (taken in conjunction with Article 5). It claimed that there were two terrorist campaigns in Northern Ireland. One was aimed at overthrowing the Constitution, whilst the other was designed to intimidate the authorities in Northern Ireland and the minority community. It claimed that discrimination arose because of failure to

detain and intern members of unionist terrorist groups in the same way as members of terrorist groups from the non-unionist side were detained and interned.

34. The Commission in its Opinion concluded that even in 1971 the IRA were not the only terrorists. It found that the authorities did in fact make a distinction between 'Loyalist' extremists and 'Republican' extremists. The Commission took the view, however, that the distinction was justified and could not be attributed to a policy or practice of discrimination, and that the facts did not disclose discrimination contrary to Article 14.

35. In its submission to the European Court of Human Rights, the Irish Government has asked the Court to hold that a breach of Article 14 has in fact been established.

Case before the Court of Human Rights

36. The oral hearings of the cases took place before the Court in February and April 1977. The Findings of the Court are not expected until towards the end of 1977.

Conclusion

37. The final statement of the Irish Government to the Court in April 1977 had the following conclusion:-

"My Government and the respondent Government (the UK) have been co-operating in many ways and on many levels for the purpose of extirpating the evil of terrorism in our midst.

There is no inconsistency between this common concern of the two Governments and the institution and maintenance of these proceedings before the supervisory organs of the Convention of which both Governments are signatories. It