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STRASBOURG CASE

1. The report of the European Commission of Human Rights on the case taken by Ireland against Britain in December 1971 was made available to the Irish and British Governments and to the other member States of the Council of Europe on 9 February 1976.

2. The main conclusions of the report are as follows:

- 2.1. Articles 5 (personal liberty) and 6 (fair trial) of the Convention taken in conjunction with Article 15 (derogation in emergency) re internment - no violation of the Convention by the British Government as the measures, although contrary to Article 5, were permissible under Article 15 (unanimous decision).
- 2.2. Article 14 (discrimination on political grounds *inter alia*) re implementation of internment - no violation (unanimous decision).
- 2.3. Article 1 (obligation to secure the rights embodied in the Convention) - no violation as this Article does not impose a separate obligation from the rights Articles and cannot therefore be separately breached (12 votes against 1).
- 2.4. Article 3 (torture or inhuman or degrading treatment or punishment)
 - (i) Cases involving the five techniques - violation of the Convention by a practice of inhuman treatment and torture in breach of Article 3 (unanimous decision);
 - (ii) Other cases
 - A. - violation of the Convention in most of the 16 cases in which oral evidence was heard by inhuman treatment of the persons concerned at the hands of the security forces in breach of Article 3 (unanimous decision);
 - B. - violation of the Convention by a practice of inhuman treatment in breach of Article 3 by members of the RUC in connection with interrogation of prisoners at Palace Barracks in Autumn of 1971 (unanimous decision);
 - C. - no practice in breach of the Article was found arising out of other individual cases of treatment in breach, or the conditions in Girdwood Park in August 1971 (unanimous decision);
 - D. - no violation of the Article by the conditions at Ballykinlar in August 1971 (unanimous decision).

(Where a practice in breach of the Article is found the violation is that much more serious, the gravity depending on the level at which tolerance is found. Authorisation of the five techniques by the British Government was found to have been admitted and the Commission also found that the practice in Palace Barracks was tolerated at a high level.)

3. The report was placed on the Agenda of the Committee of Ministers of the Council of Europe on 9 February 1976. On 10 March 1976, the Government exercised its option of referring the case to the European Court of Human Rights under Article 48 of the Convention. The Government's reasons for taking this action are outlined in the attached instructions which were sent to the Ambassador, London, on 10 March 1976.

4. A meeting took place in Strasbourg on 18 May 1976 between the representatives of the Irish and British Governments, the European Commission and the President of the European Court. The meeting was requested by the European Court to discuss procedural issues and the question of publication of the Commission's report. The following decisions were taken at that meeting:

- (a) the Commission's report is to be made public as soon as the report has been reprinted to take into account the amendments proposed by both Governments to ensure the continued secrecy of their witnesses' names. The Court expects the report to be ready for publication towards the end of June 1976. Arrangements are being made to have adequate supplies of the report made available to both parties before the date of publication;
- (b) in relation to future procedure in the case it has been agreed that the Irish Government will submit a written memorial before 2 August 1976 and the United Kingdom Government will reply by 30 October 1976. The Commission will then have one month to present its observations if it so desires.

The President of the Court expressed the hope that oral submissions might be heard in the second half of January 1977 and in general displayed an anxiety to complete the case as soon as possible. The Court does not, at this stage, propose to hear any new evidence.

Instructions given to Ambassador, London
on 10 March 1976

1. The Government has given careful consideration to the points raised by the Prime Minister in his discussions with the Taoiseach on 5th March. Taking account of these points and also having regard to a development which it has learned of since the 5th March discussions, the Government has decided for the reasons which follow, that it is in our mutual interest to refer the case to the Court under Article 48 of the Convention.
2. Under the Convention, the Court is the proper forum to adjudicate on the matter. The Court is a judicial body and the assessment of evidence and the application of the Convention to the evidence are functions which the Court is particularly qualified to perform than is the Committee of Ministers.
3. It is recognised, regretfully, that the proceedings have put a certain strain on Anglo-Irish relations. If the matter is left with the Committee of Ministers it would be inevitable that both parties would, quite properly, seek to influence the Committee's decision by urging its point of view with the governments of Member States. A further and much greater strain on Anglo-Irish relations would inevitably result. Before the Court the matter would largely be in the hands of the parties' Legal Advisers and our European partners would not be involved in any way.
4. Early publication of the report is possible under the rules of Court (by virtue of a recent amendment to rule 29). Both parties have expressed a willingness to have the report published as soon as possible. Publication by the Committee of Ministers could be long delayed.
5. A decision to refer to the Court was taken this week on legal advice. The Department learned on 5th March and the Government was informed at its meeting on 9th March that the Commission has announced its intention to consider at its sittings this week whether it should exercise its power to refer the case to the Court. The Government was advised that Court procedures would be more expeditious and effective if the Government rather than the Commission was the

moving party. Furthermore, the fact that the Government (rather than the Commission) was the moving party would facilitate rather than hinder the settlement of the case before the Court. For these reasons it was considered advisable to obtain the status of applicant by forwarding its application immediately and prior to any possible decision by the Commission to do so.

6. The question of publication of the Commission's report is a matter for the Court. It has power to publish it after the Chamber is constituted. The Government has noted the British Government's view of publication and is itself of the view that early publication is desirable. Publication will dispel speculation and should go a long way to satisfying public attitudes about the case and to help create a climate of opinion which might make a settlement possible. After publication the Government would give careful consideration to any suggestions which the United Kingdom Government might make as to actions which it could take to enable the matter to be satisfactorily concluded before the Court without the necessity of a long drawn out hearing which, it agreed, would not be helpful.
