

# NATIONAL ARCHIVES

## IRELAND



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THE EUROPEAN COURT OF HUMAN RIGHTS  
DELIVERS JUDGMENT IN THE CASE OF IRELAND v. THE UNITED KINGDOM

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The following information is communicated by the Registrar of the European Court of Human Rights:

By judgment delivered at Strasbourg on 18 January 1978 in the case brought by Ireland against the United Kingdom the Court held that, in respect of two of the several allegations made, Article 3 of the European Convention on Human Rights had been violated: there had occurred, as regards certain persons held in custody in Northern Ireland in 1971, a practice of inhuman treatment and, as regards other such persons, a practice of inhuman and degrading treatment.

On the other hand, the Court found that various further allegations of breaches of the Convention were not established. It held, in particular, that it was not established that derogations from Article 5 entailed by the application of certain special legislation exceeded the extent strictly required by the exigencies of the situation (Article 15) or that there had been discrimination contrary to Articles 14 and 5 taken together.

The judgment was read out at a public hearing by Mr. G. Balladore Pallieri, President of the Court.

I. BACKGROUND TO THE CASE BEFORE THE COURT

A. Principal facts

Faced with the continuing emergency situation, the Northern Ireland Government brought into operation on 9 August 1971 various special powers involving the arrest, detention and/or internment without trial of large numbers of persons. These powers continued to be used after the introduction of direct rule on 30 March 1972 when the functions of the Northern Ireland Government and Parliament were transferred to United Kingdom authorities. The main target of the special powers was stated to be the Irish Republican Army. After 5 February 1973 the powers were also utilised against persons suspected of involvement in Loyalist terrorism.

The legislation granting the special powers evolved during the course of the present case and the extent to which recourse was had to them varied from time to time. Individuals were subjected to one or more of the powers which, basically, took the form of (a) an initial arrest for interrogation; (b) prolonged detention for further investigation; and (c) preventive detention for a period unlimited in law. The ordinary criminal law remained in force and in use concurrently with the special powers.

B. Proceedings before the Commission

In December 1971, the Government of Ireland lodged an application with the European Commission of Human Rights alleging that the United Kingdom had contravened, in relation to Northern Ireland, certain Articles of the European Convention on Human Rights, notably Articles 1, 3, 5, 6, 14 and 15 (\*). The essence of these allegations was that many persons held under the special powers had been subjected to ill-treatment and that the powers themselves were not in conformity with the Convention and had been used with discrimination on the grounds of political opinion.

II. SUMMARY OF THE JUDGMENT (\*\*)

A. Allegations of ill-treatment (Article 3 of the Convention)

1. In its report of 25 January 1976, the Commission had expressed the opinion that, inter alia:

- (a) the combined use in 1971 of the "five techniques" as an aid to the interrogation of fourteen persons amounted to a practice of inhuman treatment and torture in breach of Article 3;
- (b) ten other persons had suffered inhuman treatment contrary to Article 3 and there had been in 1971 at Palace Barracks, near Belfast, a practice in connection with interrogation which was inhuman treatment in breach of that Article.

Before the Court, the United Kingdom Government did not contest the Commission's opinion on these two points and also gave an unqualified undertaking that the "five techniques" would not in any circumstances be reintroduced as an aid to interrogation. Moreover, they argued that no purpose would be served by the Court's ruling on these points in view of the above undertaking and of various other measures adopted by the United Kingdom.

The Court took formal note of that undertaking; however, it held unanimously that, although certain violations of Article 3 were not contested, a ruling should nevertheless be given thereon.

[Paragraphs 152-155 of the judgment and item 1 of the operative provisions]

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(\*) The text of these Articles appears in communiqué C (77) 16.

(\*\*) This summary, prepared by the Registry, does not in any way bind the Court.

(a) In August and October 1971, a total of fourteen persons detained at an unidentified centre or centres were submitted to a form of "interrogation in depth". This involved the combined application of five techniques which consisted basically of hooding the detainees, subjecting them to a continuous loud and hissing noise, depriving them of sleep, subjecting them to a reduced diet and making them stand for periods of some hours against a wall in a painful posture. Detailed evidence regarding two such persons revealed that the techniques were applied to them, with intermittent periods of respite of undetermined length, during four or possibly five days. Further particulars concerning the techniques and their use appear in paragraphs 96 and 104 of the judgment.

The Court noted that the techniques (i) were applied in combination, with premeditation and for hours at a stretch, caused, if not actual bodily injury, at least intense physical and mental suffering and led to acute psychiatric disturbances during interrogation; and (ii) were such as to arouse in their victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance. The Court held:

- (i) by sixteen votes to one, that recourse to the five techniques amounted to a practice of inhuman and degrading treatment;
- (ii) by thirteen votes to four, that the use of the techniques did not constitute a practice of torture since they did not occasion suffering of the particular intensity and cruelty implied by the word torture.

[Paragraphs 162-168 of the judgment and items 3 and 4 of the operative provisions]

(b) As to Palace Barracks, the Court considered that the evidence before it disclosed that, in the autumn of 1971, quite a large number of persons held in custody at those Barracks had been subjected by members of the Royal Ulster Constabulary to violence (for example kicking and beating) which led to intense suffering and to physical injury that on occasion was substantial.

The Court held:

- (i) unanimously, that there had existed at Palace Barracks in the autumn of 1971 a practice of inhuman treatment;
- (ii) by fourteen votes to three, that the said practice was not one of torture since the severity of the suffering capable of being caused by the acts complained of did not attain the particular level inherent in the notion of torture;
- (iii) unanimously, that it was not established that the practice continued beyond the autumn of 1971.

[Paragraphs 173-177 of the judgment and items 6, 7 and 8 of the operative provisions]

2. The Court described the treatment of detainees at Ballykinler military camp in August 1971, which included the compulsory performance of painful exercises, as a discreditable and reprehensible practice; however, it held, by fifteen votes to two, that this practice did not infringe Article 3.

The Court considered that the information before it suggested that there must have been individual cases of violation of Article 3 in various other places in Northern Ireland. It concluded, however, by fifteen votes to two, that no practice in breach of Article 3 was established as regards such places.

[Paragraphs 178-185 of the judgment and item 9 of the operative provisions]

3. The Court held unanimously that it could not direct, as the Irish Government had requested, the United Kingdom to institute criminal or disciplinary proceedings against those who had committed, condoned or tolerated the breaches of Article 3 found by the Court.

[Paragraphs 186-187 of the judgment and item 10 of the operative provisions]

B. Extrajudicial deprivation of liberty (Articles 5 and 15 of the Convention)

The Court first agreed with the Commission's conclusion, which was not contested by the British Government, that, as exercised, the special powers of arrest, detention and/or internment did not comply with Article 5 on a number of points.

The Court then examined the question of Article 15, under which a State may, in time of war or other public emergency threatening the life of the nation, derogate from certain of its obligations under the Convention to the extent strictly required by the exigencies of the situation. It was not disputed, and the Court confirmed, that there was such an emergency in Northern Ireland during the period under consideration.

However, the Irish Government alleged that the derogations from Article 5 exceeded the "extent strictly required". After taking into account the "margin of appreciation" left to States by Article 15, the Court, by sixteen votes to one, held that this allegation was not established.

[Paragraphs 188-224 of the judgment and items 11 and 13 of the operative provisions]

C. Discrimination (Article 14 of the Convention)

The Irish Government claimed that a policy or practice of discrimination on the grounds of political opinion was disclosed by the fact that the special powers were used exclusively against suspected IRA terrorists before February 1973 and continued to be used against them thereafter to a far greater extent than against supposed Loyalist terrorists.

The Court noted that, before 30 March 1972, the vast majority of terrorist acts were the work of the IRA which, with its far more structured organisation, constituted a far more serious menace than Loyalist terrorists. It was also, as a general rule, easier to institute criminal proceedings against Loyalist terrorists than against their Republican counterparts and the former were frequently brought before the courts.

After March 1972, there was a spectacular increase in the activities of Loyalist terrorists. However, the Court considered it unrealistic to carve into clear-cut phases a constantly evolving situation and could understand the authorities' hesitating about the course to take, feeling their way and needing a certain time to try to adapt themselves to the successive demands of the crisis. The Court accordingly stated that it could not affirm that the use before February 1973 of the special powers against the IRA alone amounted to discrimination within the meaning of the Convention: the aim pursued until that date - the elimination of the most formidable organisation first of all - could be regarded as legitimate and the means employed did not appear disproportionate.

The Court noted, amongst other things, that, after February 1973, extrajudicial deprivation of liberty was used to combat terrorism as such and no longer just a given organisation. The measures were not applied against Loyalist terrorists to anything like the same extent as against the IRA, but the latter were still committing the majority of the acts of terrorism. Bearing in mind the full range of the measures used against the two categories of terrorists, the Court found that the initial difference of treatment did not continue after February 1973.

Accordingly, the Court held, by fifteen votes to two, that no discrimination contrary to Articles 14 and 5 taken together was established.

[Paragraphs 225-232 of the judgment and item 15 of the operative provisions]

D. Fair trial and duty to secure human rights (Articles 6 and 1, respectively, of the Convention)

Reference should be made to paragraphs 233-243 of the judgment and to items 16 and 17 of the operative provisions for the Court's conclusions on the claims made in connection with these Articles.

E. Just satisfaction (Article 50 of the Convention)

The Court held unanimously that it was not necessary to apply Article 50 in the present case.

It should be noted, in this connection, that the Agent of the Irish Government had indicated that his Government, "while not wishing to interfere with the de bene esse jurisdiction of the Court, have not as an object the obtaining of compensation for any individual person and do not invite the Court to afford just satisfaction under Article 50, of the nature of monetary compensation, to any individual victim of a breach of the Convention."

[Paragraphs 244-246 of the judgment and item 18 of the operative provisions]