



ECHR rejects Irish request to find torture in 1978 judgment against UK

- The European Court of Human Rights has rejected a request by Ireland to revise a 1978 judgment¹ and find that men detained by the United Kingdom during Northern Ireland's civil strife suffered torture, not just inhuman and degrading treatment.
- Ireland made the revision request in the case (application no. 5310/71) on the grounds that new evidence had emerged, which showed, in particular, that the effects of the ill-treatment had been long-term and severe.
- The Court found that the Government of Ireland had not demonstrated the existence of facts that were unknown to the Court at the time or which would have had a decisive influence on the original judgment. There was therefore no justification to revise the judgment.
- The revision request was dismissed by six votes to one by a Chamber². The judge elected in respect of Ireland issued a dissenting opinion.
- The men involved in the case were detained in 1971. They had had to spread-eagle themselves against the wall in a strained position, were hooded, deprived of food and sleep and subjected to a continuous, loud hissing noise. The methods were known as the “five techniques” in the original judgment.

Principal facts

The 1978 judgment found that the British authorities' use of the five techniques on the men, who had been detained under emergency powers, had amounted to inhuman and degrading treatment, but not torture. In contrast, the European Commission of Human Rights, a body which used to exist to take evidence, issue reports and decide whether cases could go to the Court, had classified the treatment as torture as well.

In December 2014 Ireland requested a revision of the Court's original judgment under Rule 80 of the ECHR's [Rules of Court](#). The rule states that a revision can be made if facts emerge which might have had a decisive influence on an earlier decision but were not known at the time.

The Irish Government stated that such new facts had emerged in a June 2014 Irish television documentary. The Government had subsequently obtained archive documents and submitted that a psychiatrist, Dr L., who had been heard as an expert for the United Kingdom Government in the original proceedings, had misled the Commission by saying that the effects of the ill-treatment were short-lived. In fact, he had known that the use of the five techniques had long-lasting and severe effects. The Irish Government also referred to other documents released from archives which showed that the British Government had tried to prevent the Court from accessing the full truth about the five techniques.

1. [Ireland v. the United Kingdom](#), 18 January 1978.

2. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

If the Court had been aware of such information it would have made a finding of torture as well, the Irish Government stated. The United Kingdom Government objected to the revision request. There was nothing in the material to show that Dr L.'s evidence had been misleading while knowledge of the archive documents would not have changed the judgment. Revising the judgment would also serve no useful purpose as the Court's case-law on torture had in any event evolved since 1978.

Complaints, procedure and composition of the Court

The revision request was lodged with the European Court of Human Rights on 4 December 2014.

Judgment was given by a Chamber of seven judges, composed as follows:

Helena Jäderblom (Sweden), *President*,
Branko Lubarda (Serbia),
Luis López Guerra (Spain),
Helen Keller (Switzerland),
Dmitry Dedov (Russia),
Síofra O'Leary (Ireland) and,
Lord Reed (United Kingdom), *ad hoc Judge*,

and also Stephen Phillips, *Section Registrar*.

Decision of the Court

The Court noted that the possibility to revise judgments under Rule 80 was an exceptional procedure which was based on the emergence of significant new facts which were not known at the time.

Ireland had argued two grounds for revision and supplied documents in support. It first referred to evidence that Dr L. had expressed opinions in civil compensation proceedings brought by some of the men in Northern Ireland that the interrogation methods had long-term psychiatric effects, whereas in the Strasbourg proceedings he had only referred to short-term and minor effects.

Secondly, it had submitted documents which allegedly showed the extent to which the United Kingdom had aimed at withholding information from the Court about key facts concerning the interrogation methods, including the fact that their use had been authorised at ministerial level.

However, the Court doubted whether the documents about Dr L. provided sufficient prima facie evidence of his providing misleading evidence. In particular, his findings about the long-term effects of the interrogation methods had been related to a man who had not been one of the two cases chosen from a larger group to illustrate the effects of the ill-treatment to the Commission. Other documents submitted by Ireland did not refer to Dr L.'s opinion specifically but to general medical opinion about such long-term health issues. The latter showed that at the time there was no consolidated scientific knowledge on this question.

The Court noted that the other archive documents were all internal British Government papers. Some demonstrated that the use of the interrogation methods had been authorised at ministerial level and some showed that the Government had been anxious to conclude domestic compensation settlements in order to avoid embarrassment and reputational damage. Overall, the Court found that the documents did not demonstrate facts which were unknown at the time. The Court and the Commission had both highlighted a lack of assistance from the United Kingdom, which had also conceded that authorisation for the techniques had been given "at high level".

Finally, the Court held that even if it could be shown that Dr L. had provided misleading evidence about long-term psychiatric effects on the men, it could not be said that such knowledge might have had a decisive influence leading to a finding of torture.

The original judgment had made no reference to the issue of such long-term effects and it was difficult to argue that the Court had attached particular significance to that aspect of the case. The original judgment had stated that the difference between “torture” and “inhuman and degrading” treatment depended on the intensity of suffering, which in turn depended on a number of elements. It was not clear that the one element of long-term psychiatric suffering would have swayed the Court into a finding of torture.

Separate opinion

Judge O’Leary issued a dissenting opinion. The opinion is annexed to the judgment.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.