STUDY GUIDE

EUROPEAN COURT OF HUMAN RIGHTS

PART I: EUROPEAN COURT OF HUMAN RIGHTS

PART II. CASE OF IRELAND V UNITED KINGDOM

LETTER from SECRETARY GENERAL

Distinguished participants,

It is a privilege for me, as the Secretary General of the conference, to introduce you to Themis Court Simulations 2023.

This year, once again we are hosting a leading moot court conference in Turkey, which have academic saturation in addition to organizational excellence. Themis Court Simulations has always advanced itself each passing year in this regard, once again, our goal is to keep this tradition going and host you a unique and exciting experience.

This year, we are continuing a tradition with additions. Our perspective is to have courts in the most exciting, competitive, and instructive areas of law, and in this scope, our conference will contain six court simulations. In the European Court of Human Rights, participants will debate on one of the most contraversial topic in human rights law; torture. On behalf of the academic team, who prepared this exciting court, I would like to welcome you all to Themis Court Simulation. Likewise, our organization team will welcome you with their kind hospitality to make your experience as convenient as possible.

Moreover, I would like to thank in advance all of my academic team. I can see that I have an opportunity to work with an amazing group of people, therefore I'm glad to have a team like this. With their potential, it's clear that this journey will be incredibly joyful. Moreover, I would like to thank my friends, Director General Mr. Yiğit Hazar Eren and Deputy Director General Mr. Can Deryahan, and their tireless organization team. They are the people who are making this conference possible with their endless efforts.

Concluding my letter, on behalf of the Themis Court Simulations, I, once again, would like to welcome you all to this year's edition. Looking forward to meeting you soon, let's define justice together!

Best Regards,

Arda Özkan

Secretary-General of Themis Court Simulations 2023

LETTER from UNDER SECRETARY GENERAL

Esteemed participants,

It is an honor to serve you as Under Secretary General of the European Court of Human Rights at Themis Court Simulations, 2023. My name is Asil Boran Eri, senior law student at Istanbul University.

European Court of Human Rights has an important responsibility on its shoulders since its decisions are leading the international human rights law and how we all understand and interpret the meaning of human rights and their importance in our everyday lives. The Court is a living instrument for protection of human rights.

The most contraversial topics in human rights law is the cases where the court is trying to find a balance between rights of individuals and public policies, we wanted to create this case for this balance to be discussed. Ireland v. UK revolves around the issue of applicable standard for protection of human rights in times of public emergency. The case is inspired from a real case but alterations and additions have been made. Thus, all participants must only refer to and analyze the case according to the merits of the case.

It is your duty to find and decide this balance in accordance with the European Convention on Human Rights and render a decision for protecting human rights. In this scope, this document has been provided by the TCS Secretariat to give background and general knowledge about our case, European Court of Human Rights. Please be reminded that participants are expected to read and understand this guide to the fullest extent.

During the entire process, I had oppourtunity to work with an incredible group of people. Firstly, I would like to thank to my Academic Assistants, Meral Yıldırım & İlkim Şanel for making this process fruitful and joyful with their efforts and for being the greatest academic assistants in the universe. Once again, my sincere gratitude for your contributions. Secondly I would like to thank our friends, Secretary General Mr. Arda Özkan and Director General Mr. Yiğit Hazar Eren for giving us the oppourtunity and making this court simulation possible.

To conclude, I would like to welcome you all to Themis Court Simulations 2023. Looking forward to meeting you soon.

Best regards,

Asil Boran Eri

LIST OF ABBREVIATIONS

CoE	Council of Europe
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
IRA	Irish Republican Army
JSIW	Joint Services Interrogation Wing
RIC	Royal Irish Constabulary
RUC	Royal Ulster Constabulary
UVF	Ulster Volunteer Force
UK	United Kingdom

I. Introduction to The European Court of Human Rights

The European Court of Human Rights, also referred to as 'the Court' or 'ECtHR' in further, was established initially in 1959, based in Strasbourg - France, is one of the most fundamental bodies of international human rights in existence. The Court is the only judicial institution of the Council of Europe which implements the European Convention on Human Rights.[1] There stands 46 judges in total for each member state of the Council, and the decisions of the Court are, *erga omnes*, potentially binding upon the member states of the Council of Europe. [2]

The jurisdiction of the court may be separated in three main parts: Inter-State applications, applications by individuals, and advisory opinions. Most of the applications, which have been brought before the ECtHR are Individual applications, where a private person has a concern over their human rights. Even though it is extremely rare in practice, it is still possible for a contracting state to the European Convention of Human Rights to sue another one for alleged violations of the Convention. Furthermore, the highest courts and tribunals of a State Party may request the Court to give an advisory opinion in relevance with the rights defined in the Convention or the protocols, under the Protocol No. 16. [3]

A. History of ECtHR

After two catastrophic World Wars and the start of the Cold War, Europe needed to form a council to put an end to the bloodshed that had resulted in thousands of deaths. Belgium, France, Luxembourg, the Netherlands, the United Kingdom, Ireland, Italy, Denmark, Norway, and Sweden formed the Council of Europe in order to meet this need.

The Council of Europe drew up the legal text of the European Convention on Human Rights in 1950 and created the institutions responsible for monitoring human rights in Europe. The Convention serves as the legal backing for European human rights protection. States promise to act in accordance with human rights and freedoms by signing and ratifying the Convention for the Protection of Human Rights and Fundamental Freedoms, European Convention on Human Rights.[4]

On January 21, 1959, the European Court of Human Rights (ECtHR) was established as one of three mechanisms designed to ensure that states that signed up to the European Convention on Human Rights uphold their assumed obligations as a result

[1] William Schabas, The European Convention on Human Rights: A Commentary (Oxford University Press, 2015) 1.

[2] "The Russian Federation is excluded from the Council of Europe" (Press release). Strasbourg: Council of Europe. 16 March 2022.

[3] Rhona K. M. Smith, Christian van den Anker, The Essentials of Human Rights (Hodder Arnold, 2005) 115.

[4] Andreas Føllesdal, Birgit Peters, Geir Ulfstein, Constituting Europe: The European Court of Human Rights in a National, European and Global Context (Cambridge University Press, 2013) 1.

of articles between 19 and 51 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

The convention has been revised several times over the years as a result of experiences and shifting perspectives on human rights. These revisions are known as additional protocols, and the convention currently has 13 additional protocols.[5]

B. Sources of ECtHR

1. The European Convention on Human Rights

The European Convention on Human Rights (ECHR) is an international human rights treaty signed by the 46 member states of the Council of Europe (CoE).
Governments that have signed up to the ECHR have made a legal commitment to uphold certain standards of behaviour and to protect people's basic rights and freedoms. It is a treaty designed to protect the rule of law and promote democracy in European countries, but the convention has since spread throughout the world. It represents the minimum human rights standards to which the European States could agree to more than 50 years ago and is primarily concerned with the protection of civil and political rights, rather than economic, social, or cultural rights.

The Convention secures:

- the right to life (Article 2)
- freedom from torture (Article 3)
- freedom from slavery (Article 4)
- the right to liberty (Article 5)
- the right to a fair trial (Article 6)
- the right not to be punished for something that wasn't against the law at the time (Article 7)
- the right to respect for family and private life (Article 8)
- freedom of thought, conscience and religion (Article 9)
- freedom of expression (Article 10)
- freedom of assembly (Article 11)
- the right to marry and start a family (Article 12)
- the right not to be discriminated against in respect of these rights (Article 14)
- the right to protection of property (Protocol 1, Article 1)
- the right to education (Protocol 1, Article 2)

[5] Weller, K., Wagner, A., Hacker, R., Harvey, P., & McCormick, P. , A Brief History Of The European Court Of Human Rights (2018, May 09).

- the right to participate in free elections (Protocol 1, Article 3)
- the abolition of the death penalty (Protocol 13)

2. The Protocols

Following the entry into force of the European Convention on Human Rights in 1953, some Council of Europe member states signed and ratified protocols in which they sought to protect a number of rights and freedoms, making them legally binding for themselves.

Protocol Nos. 2, 3, 5, 8, 9, 10, 11, and 14 are Protocols that amended Convention proceedings and did not include any additional rights or freedoms. These Protocols have been signed by all Contracting Parties. The remaining Protocols, and the rights and freedoms they guarantee, are as follows:

• Protocol No. 1, which entered into force on 18 May 1954: protection of property, the right to education, and the right to free elections.

•Protocol No. 4, which entered into force on 2 May 1968: prohibition of imprisonment for debt, freedom of movement, the prohibition of the expulsion of nationals, and the prohibition of collective expulsion of aliens.

• Protocol No. 6, which entered into force on 1 March 1985, provides for the abolition of the death penalty but includes a provision to allow the Contracting Parties to prescribe the death penalty in their legislation in a time of war or of imminent threat of war.

• Protocol No. 7, which entered into force on 1 November 1988: procedural safeguards relating to expulsion of aliens, the right of appeal in criminal matters, the right to compensation for wrongful conviction, the right not to be tried or punished twice for the same offence, and equality between spouses.

• Protocol No. 12, which entered into force on 1 April 2005: created a free-standing prohibition of discrimination. Unlike Article 14 of the Convention, which prohibits discrimination in the enjoyment of "the rights and freedoms outlined in the Convention", Protocol No. 12 prohibits discrimination in the enjoyment of "any right set forth by law" and not just those rights guaranteed under the Convention.

• Protocol No. 13, which entered into force on 1 July 2003: abolished the death penalty in all circumstances. Applicants should note that the Protocols mentioned above have not been ratified by all the Contracting Parties. It follows that a complaint made under an Article of one of the Protocols against a State that has not ratified that Protocol will

be declared inadmissible. The table of Dates of Entry into Force of the Convention and its Protocols reproduced in "Textbox i" above should be consulted.[6]

C. Structure

The structure of the Court is mentioned between Article 19 and 51 of the European Convention on Human Rights. According to Article 20 [7] and Article 21 [8], one judge is elected from each High Contracting Party, resulting in a total of 46 judges. The judges are selected among those who are of high moral character, less than 65 years old, and are qualified to take part in a high judicial office. Their duty ends either when they serve one term for nine years or when they reach seventy years old. The totality of the members form the Plenary Court which mostly has administrative missions and authority.

According to Article 26 of the Convention[9], there are mainly four different formations which a case may go through once it is brought before the Court:

1. Single Judge Formation
2. Committees
3. Chambers
4. The Grand Chamber

1. Single Judge Formation

A single judge has the authority to strike an application out or declare it inadmissible when there is no further examination needed. If the single judge does not declare it inadmissible or strike it out, the application gets forwarded to a Committee or to a Chamber for further examination. Decisions of a single judge are final.

2. Committees

A committee consists of three judges and has the authority to unanimously declare an application inadmissible or strike it out of the Court's list of cases, or declare it admissible and if the subject of the case is thorough and well- submitted, reach a conclusion on the merits of the case.

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6 Pieter van Dijk, Godefridus J. H. Hoof, G. J. H. Van Hoof , Theory and Practise of the European Convention on Human Rights (Martinus Nijhoff Publishers, 1998) 4-5

7 European Convention on Human Rights, Article 20 *'The Court shall consist of a number of judges equal to that of the High Contracting Parties.'*

8 European Convention on Human Rights, Article 21 *'1. The judges shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence. 2. Candidates shall be less than 65 years of age at the date by which the list of three candidates has been requested by the Parliamentary Assembly, further to Article 22. 3. The judges shall sit on the Court in their individual capacity. 4. During their term of office the judges shall not engage in any activity which is incompatible with their independence, impartiality or with the demands of a full-time office; all questions arising from the application of this paragraph shall be decided by the Court.'*

9 European Convention on Human Rights, Article 26 *'Single-judge formation, Committees, Chambers and Grand Chamber'*

3. Chambers

A chamber is conducted by seven judges. If no conclusion has been reached by a single judge or a committee, upon the admissibility of the application, there are two possibilities depending on the type of application.

In the case of an individual application, the Chamber decides on admissibility and the merits of the application. For Inter-State applications, the Chamber decides separately unless another decision has been made by the Court, on the admissibility and merits of the application.

4. The Grand Chamber

a. General

The structure of the Grand Chamber is explained in Article 26 of the Convention. Herein states that the Grand Chamber is formed by the President of the Court, the Vice-Presidents, the Presidents of the Chambers and Elected Judges and National Judges which are selected under the rules of the Court, making it host a total number of seventeen judges. Among them, National Judges shall sit in cases concerning their country in the Grand Chamber as *ex officio* members. In addition, the Grand Chamber has at least three substitute judges.

The Grand Chamber never accepts direct applications, therefore hears only a small number of cases. These cases include the ones which are referred to it by a Chamber under Article 43 [10], abandoned by a Chamber when the matter involves a significant or unusual issue which must be examined further by the Grand Chamber under Article 30 [11], or referred to it by the Committee of Ministers under Article 46 [12].

Sections: Sections are administrative units appointed for three years which are aimed to mirror various legal systems and geographical backgrounds, as well as gender balance, and are established via a proposal of the President, by the plenary Court. This procedure substantiates under the Rules of Court. Presidents of the Sections shall be elected by the plenary court in accordance with Rule 8 [13]. Rule 25 requires the creation of at least four sections, and Rule 25.5 allows the plenary Court to add a new section,

[10] European Convention on Human Rights, Article 43 *'Referral to the Grand Chamber'*

[11] European Convention on Human Rights, Article 30 *'Relinquishment of jurisdiction to the Grand Chamber'*

[12] European Convention on Human Rights, Article 46 *'Binding force and execution of judgements'*

[13] Rules of Court, Rule 8 *'Election of the President and Vice-Presidents of the Court and the Presidents and Vice-Presidents of the Sections'*

which it has been added[14]. As a result, the first four sections each have nine judges, while the fifth has eleven.

b. Submitting an Inter-State Application to the Court

According to **Rule 46** contracting parties or parties intending to bring an Inter-State case in front of the Court shall file an application to the Court's registry. The application is required to include

"(a) the name of the Contracting Party against which the application is made;
(b) a statement of the facts;
(c) a statement of the alleged violation(s) of the Convention and the relevant arguments;
(d) a statement on compliance with the admissibility criteria (exhaustion of domestic remedies and the four-month rule) laid down in Article 35 § 1 of the Convention;
(e) the object of the application and a general indication of any claims for just satisfaction made under Article 41 of the Convention on behalf of the alleged injured party or parties;
(f) the name and address of the person or persons appointed as Agent; and accompanied by
(g) copies of any relevant documents and in particular the decisions, whether judicial or not, relating to the object of the application."

b.1. General Principles

- Rule 34.1 declares English and French as the official languages of the Court and decisions of the Court are published in English and French[15].
- Parties may be represented by a lawyer if they want. While lawyers are not required to file a complaint, they must represent the applicant at any hearing before the Court once the application is found to be admissible.
- Typically, transactions are conducted through written proceedings; public hearings are rare.
- There is no fee for submitting an application. Furthermore, the applicant may request legal aid for expenses that must be met in the following stages.
- In any stage of the procedure, the Court may strike an application out of the list if it is believed that the applicant does not hold the intention to pursue his claims, if the issue has been already solved, or if it is unjustified to further examine the application.

There are two basic steps in analysing cases submitted to the court. The first of these stages is admissibility, which determines whether the matter can be heard in court. The second stage is the major step in which the concerns are examined. The nature of the case will determine the speed and duration of the proceedings.

[14] Rules of Court, Rule 25 'Setting-up of Sections'
[15] Rules of Court, Rule 34 *'Use of languages'*

b.2. Proceedings on Admissibility

Following the filing of an application to the Court under Rule 46, the President of the Court assigns one of its Sections and notifies the respondent state. This is the main difference between an Inter-State and an individual application. In terms of Inter-State applications, the application is directly reviewed by a Chamber while an individual application is initially reviewed by a single judge.

The President of the assigned Section shall set up a Chamber pursuant to Rule 26 where national judges of both of the applicant and respondent party shall sit as ex officio members of the Chamber.

The contracting party will be asked to submit written observations on the issue of admissibility of the application. The information will also be communicated to the applicant state, who alo may respond with a written observation. Before the decision on the admissibility of the application, the Chamber or the President of the Section may request parties to submit further written observations. If the respondent state has claims indicating inadmissibility of the application, they must include that claim in their written or oral observations.

The decision of the Chamber on the admissibility of the case shall be communicated by the Registrar to the applicant, concerned Contracting Parties, or Council of Europe Commissioner for Human Rights.[16]

b.3 Proceedings After the Admission of an Application

Once an application made under Article 33 of the Convention is deemed admissible by the Chamber, the time limits for the preparation and filing of written observations on the merits and for presenting further evidences are set by the President of the Chamber although this procedure may be dispensed with a joined decision of both sides, and the decision of the President.

b.4 Hearings

Hearings are organised by the President of the Chamber and are typically held in public, unless there is a situation where the public order, national security, democracy of the society, interests of juveniles and morals or privacy is being threatened.

[16] Practical Guide on Admissibility Criteria - Council of Europe/European Court of Human Rights, 2022

b.5 Grand Chamber Procedure

Any rule of procedure before the Chamber also applies to proceedings before the Grand Chamber. Regardless of the type of application, the Grand Chamber has appellate jurisdiction on the applications according to Article 31 of the Convention[17].

There are two types for the jurisdiction of the Grand Chamber, first one is the "Chamber relinquishing its power in favour of the Grand Chamber" regulated under Rule 72[18]. This rule indicates that a Chamber might relinquish its power if there is an important question in the interpretation of the Convention or the protocols or if the outcome of the case is likely to be against established precedent.

The second type of jurisdiction of the Grand Chamber is called "referral". Article 43 ensures any party to be able to request the referral of the case to the Grand Chamber if there are exceptional circumstances present within a period of three months from the judgement date. A Panel of five judges examines the request and accepts it if there is an issue regarding the interpretation or application of the Convention or the Protocols or a serious issue of general importance. After the acceptance from the panel, the Grand Chamber works on a judgement regarding the referral.

5. Inter-State Applications

Individuals, groups of people, companies, or non-governmental organisations form the majority of applications made to the European Court of Human Rights. Inter-State applications, on the other hand, are much scarce due to their nature.

This possibility is set out under Article 33[19] of the European Convention on Human Rights, which states that *'any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the Protocols thereto by another High Contracting Party'*.[20]

There have been twenty one inter-State cases since the European Convention entered into force in 1953. In comparison with the number of Individual applications, the twenty one Inter-State applications in more than 60 years seem negligible. However, some of the Inter-State cases have affected and continue to affect a large number of individual cases for they overlap with Inter-State applications. Ireland v UK, being among one of

[17] European Convention on Human Rights, Article 31 *'Powers of the Grand Chamber - The Grand Chamber shall (a) determine applications submitted either under Article 33 or Article 34 when a Chamber has relinquished jurisdiction under Article 30 or when the case has been referred to it under Article 43; (b) decide on issues referred to the Court by the Committee of Ministers in accordance with Article 46, paragraph 4; and (c) consider requests for advisory opinions submitted under Article 47.'*

[18] Rules of Court, Rule 72 *'Relinquishment of jurisdiction in favour of the Grand Chamber'*

[19] European Convention on Human Rights, Article 33 *'Inter-State cases'*

[20] European Convention on Human Rights, Article 33 *'Inter-State cases'*

the most influential Inter-State cases that has been brought before the Court, also had features overlapping with Individual applications.[21]

II. Case of Ireland v United Kingdom

A. Introduction To The Case

The Ireland v UK case is a significant and longstanding legal dispute between the Republic of Ireland and the United Kingdom. The case centers on allegations of human rights violations during the Troubles in Northern Ireland, especially the use of torture and mistreatment by the UK security forces. The timeline of events leading up to this case began in the late 1960s and continued until 1990s, which the Troubles take place. The conflict was primarily between two main groups:

- Irish nationalists consisting of mostly Catholics, who sought a united and independent Ireland,
- The Unionists consisting of mostly Protestants, who wished Northern Ireland to remain a part of the United Kingdom.[22]

The case dealt with the issue of the treatment of prisoners in the United Kingdom, particularly in relation to the use of solitary confinement in the Maze Prison in Northern Ireland. The case was brought by the Irish government, which claimed that UK had violated the European Convention on Human Rights by subjecting prisoners in the Maze to inhumane and degrading treatment.

The case was highly controversial and attracted significant media attention. For some people, this case was a solid explanation wether UK is committed to uphold human rights and the rule of law. Ruling of this case was seen as a landmark ruling in the history, now it is in the hands of judges and advocates to pave the way for justice.

B. Historical And Political Background

1. Events Leading Up To "The Troubles"

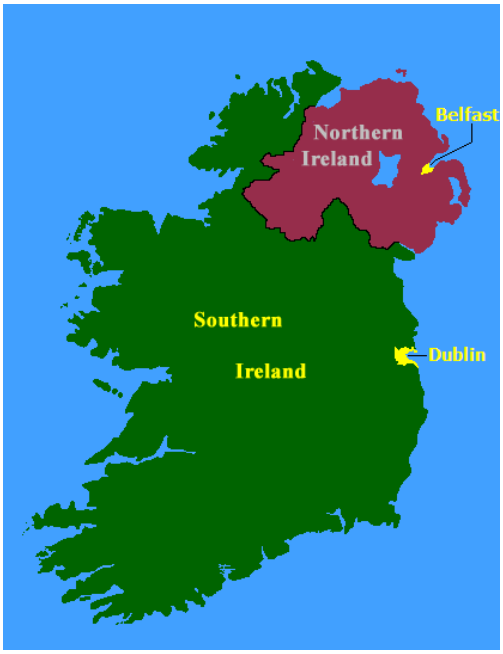
The roots of the conflict can be traced back to the partition of Ireland in 1920 with The Government of Ireland Act, when the island was divided into two separate entities: the Irish Free State and the Northern Ireland.[23] The latter was predominantly Protestant and

[21] İsabelle Risini, The Inter-State Application under the European Convention on Human Rights (2018) 1-12.

[22] Thomas E. Webb, Republic of Ireland v United Kingdom (1979-80) 2 EHHR 25, September 2020

[23] Lawrence J. McCaffrey, *The Irish Question: 1800-1922* (1968)

unionist, while the former was predominantly Catholic and nationalist. This arrangement was the product of complex negotiations between the UK government, Irish nationalists, and unionist leaders in Northern Ireland.



Northern and Southern Ireland after the Government Act of Ireland (1920)

Back in 1919, the Irish Republican Army ('the IRA') was formed to fight for Irish Independence from the UK.[24] The IRA launched a violent campaign against British forces in Ireland, leading to the establishment of the Irish Free State in 1922.

In the 1920s and 1930s, tensions between the Catholic nationalist community in Northern Ireland and the Protestant unionist community continued to grow. There were violent clashes between the two groups, and the IRA continued to launch attacks against British forces in the region.

In the beginning of 1960s, the first moves towards a campaign for "civil rights" began to emerge in Northern Ireland, calling for equal treatment and opportunities for the Catholic minority.[25] This was met with resistance from the Protestant-dominated government and paramilitary groups, such as the Ulster Volunteer Force (UVF), which were established to protect Protestant interests, declaring war on the IRA and warning of its intention to execute all IRA men. The UVF was declared illegal in June 1966 and seemed to have remained inactive until 1969.

After being silent since 1920s, in the early 1970s, the Irish Republican Army (IRA) and the Ulster Volunteer Force (UVF) began campaigns of violence and terrorism against each other and the British government. The situation in Northern Ireland eventually reached a boiling point, it escalated into a full-blown conflict, with both IRA and UVF committing numerous acts of violence. The IRA targeted British soldiers and civilians, while the UVF targeted Catholic civilians and IRA members. The IRA later launched a new campaign of violence, known as the "Troubles", in an effort to force the British government to withdraw from Northern Ireland. The British government responded by deploying military forces to Northern Ireland to try to restore the order, but the situations only worsened. [26]

[24] Taylor, Peter (1998). *Provos The IRA & Sinn Féin*. Bloomsbury Publishing.
[25] Ranelagh, John (1994). *A Short History of Ireland* (2, illustrated, revised ed.). Cambridge University Press.
[26] Dingley, James (2008). *Combating Terrorism in Northern Ireland*. Routledge.

2. Operation Demetrius

In 1971, Operation Demetrius, a military operation carried out by the UK government in Northern Ireland was introduced. The aim of designing such a plan was to counter the growing threat of violence and terrorism from the IRA. The British forces carried out mass arrests of suspected IRA members and supporters under this operation. However with inadequate or inaccurate information, it is accepted that some people would have been wrongfully detained. The suspects were interned without trial under the Terrorists Order introduced in August 1971, several months before the Operation, and held in detention camps being subjected to harsh interrogation techniques.[27]

One of the harshest interrogation techniques used was called "The Five Techniques". These techniques consisted of wall-standing, hooding, subjection to noise, deprivation of sleep, and deprivation of food and drink.

Internment,1971

The detainees were held in cold cells while being handcuffed and hooded, subjected to loud noises even when they were not being interrogated. There were specifically fourteen men who were the only detainees being victims of five techniques alltogether, they later became widely-known as "the Hooded Men".

3. The Parker Report (2 March 1972)

As the internment process was critisized by both the Nationalist community and civil rights activists for violating civil liberties and human rights, the British government commissioned the Parker Report (officially known as the Report of the Committee on Internment), led by Lord Parker of Waddington. [28]

The main objective of the Parker Report was to review the policy of internment, its effects and its consequences. It had come to a conclusion that there was a lack of evidence to support the continued use of internment, and did not find the internment

[27] Internment – Summary of Main Events. Conflict Archive on the Internet (CAIN)

[28] *Report of the committee of Privy Counsellors appointed to consider authorised procedures for the interrogation of persons suspected of terrorism.* ("CAIN: HMSO: The Parker Report, March 1972")

measures to be illegal but made suggestions to evolve the current system. In this scope, there were two reports submitted: the majority report of the Chairman (Lord Parker) and Mr. Boyd-Carpenter, and the minority report of Lord Gardiner.

The majority report suggested the following:

- Abolition of the policy of internment without trial, which would be replaced by a system of detention based on evidence and the rule of law. The report proposed that detention should be based on evidence rather than suspicion, and that individuals should be given the right to a fair trial.
- Establishment of an independent tribunal to review the cases of those detained under the internment policy.
- Creation of a new system of bail, which would allow for the release of those who were not considered to be a threat to security.
- Establishment of a new system of appeals, which would allow for the review of detention orders.
- Improvement of the conditions of detention, and for the provision of legal representation for the detainees.

On the other hand, the minority report which was written by Lord Gardiner, disagreed with the majority report saying that the evidence provided by the security forces was enough to justify the internment of individuals who were suspected of being involved in terrorist activities and suggested to continue internment without trial as a measure to maintain public safety.[29] In the minority report, Lord Gardiner issued those who are responsible for this situation as:

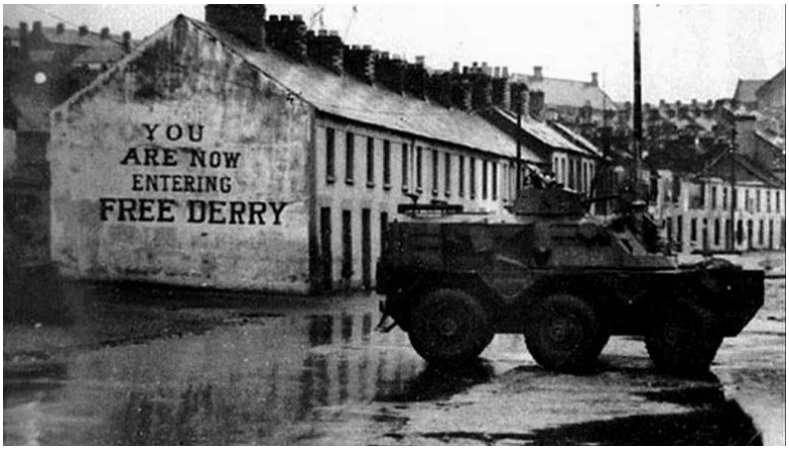
"*The blame for this sorry story, if blame there be, must lie with those who, many years ago, decided that in emergency conditions in Colonial-type situations we should abandon our legal, well-tried and highly successful wartime interrogation methods and replace them by procedures which were secret, illegal, not morally justifiable and alien to the traditions of what I believe still to be the greatest democracy in the world."*[30]

4. Introduction Of The Direct Rule And Operation Motorman

On 28 March, 1972 the Direct Rule was introduced in Northern Ireland. The British government believed that direct rule was necessary in order to restore stability and order in the region, and to address the issues of violence and secterianism that had plagued Northern Ireland for decades. The Direct Rule made it possible for the government to directly control and administer the six counties of Northern Ireland, rather than allowing the Northern Ireland government to have autonomy.

[29] Greer & White. *Abolishing The Diplock Courts* p.91: Report of a Committee to consider, in the context of civil liberties and human rights, measures to deal with terrorism in Northern Ireland, Lord Gardener.
[30] Ibid. para. 21

There were areas in which the British government and security forces were effectively unable to maintain control, due to presence of heavily armed and organized militant groups. These groups including the loyalist paramilitary organizations and the IRA, set up barricades and checkpoints, and enforced their own rules in these areas. These areas were called "no-go areas". They were often characterized by poverty, crime and lawlessness, and were seen as a symbol of the ongoing conflict and instability in the region.



Operation Motorman, 1972

The IRA had attempts such as high-profile bombing attacks to disrupt the efforts of British government to maintain control in the region. These attacks often resulted in thousands of civilian casualties.

On July 31, 1972, Operation Motorman was carried out in order to reoccupy the "no-go" areas. Eventhough Derry and Belfast was cleared out as a result of the Operation, police were still not able to penetrate and function properly in Catholic areas.[31] As a result of the Operation, even if it was still high, the level of violence caused by the Catholic/Nationalist group, including the IRA immediately fell. However, there was substantial evidence that several homes and neighbourhoods were destroyed, leaving the habitants with no place to live.

During the Direct Rule period, the internments were made through the use of Special Powers Act, which granted the UK to arrest and detain any individual suspected of being involved with paramilitary organizations, hence leaving no possible way to differentiate between actual terrorists and those who are innocent. This internment policy was primarily used against members of the IRA.

Under the light of the events explained above, it is clear that the introduction of Direct Rule had a number of effects on the political and social landscape of Northern Ireland. The most immediate and obvious effect of direct rule was the loss of autonomy for the Northern Ireland government. Decisions about the region were made by the British government, rather than by elected officials from Northern Ireland. This caused

[31] Beaves, Harry (2018). *Down Among the Weeds*. Troubador Publishing Ltd. p. 73

frustration and resentment among many, who felt that they had lost control over their own affairs. Many nationalist and republican groups opposed direct rule and saw it as a form of colonial control, while unionist and loyalist groups supported it as a way to maintain the status quo and protect their interests. Business and industries also suffered due to the ongoing violence and instability, and many people left the region in search of safer and more stable environments. These impacts were felt for many years after the introduction of the direct rule.

5. The Diplock Commission

The UK Government was expecting a positive response from the IRA when the internments made under the Direct Rule were eventually phased out. However, they saw it as an opportunity to renew their efforts and increase their attacks. This was a clear indication for the UK Government that it was highly necessary to find a way to distinguish known terrorists from the rest.

On 21 September 1972, a Commission under the leadership of Lord Diplock was established in order to examine the use of internment without trial in the region, and make reccomendations to deal with the situation better.[32] The Diplock Commission report was presented on December 1972, stating inter alia: *"The fear of intimidation is widespread and well-founded. Until it can be removed and the personal safety of witnesses and their families guaranteed, the use by the Executive of some extrajudicial process for the detention of terrorists cannot be dispensed with."* [33]therefore supporting the United Kingdom in its policies with the use of extrajudicial practises was temporarily necessary for the safety and well-being of the population. The Commission also noted in its report that after the introduction of Direct Rule, the extrajudicial powers were exercised on a relatively selective basis while acknowledging the danger of Protestant violence on a large scale, in conformity with the criteria stated below:

- Extrajudicial orders were served only issued against people accused of being involved in severe and organized terrorism,
- They were used only as a "last resort", if there were no sufficient evidence to justify prosecution before ordinary courts.

Recommendations of the Commission included the use of "exclusion orders, control orders, curfew orders, forfeiture orders" which would allow the authorities to generally control the activities of individuals and to exclude certain individuals from certain areas, "proscription orders" which would allow the authorities to prohibit certain organizations that were found to be involved in terrorist activities, "stop and search" powers which would allow the authorities to search individuals and their vehicles

[32] *Report of the Commission to Consider Legal Procedures to deal with Terrorist Activities in Northern Ireland*
[33] Ibid.

without the need for a warrant, "closed material procedures" which would allow the authorities to present evidence in court without disclosing it to the defendant party. The Diplock Commission's main recommendation was the use of special courts composed of single judges, and non-jury Diplock Courts.

Non-jury Diplock Courts were established as a recommendation of the Diplock Commission report. These courts were specifically designed to try cases that are related to terrorism, as the idea behind was to address the perceived bias of juries in Northern Ireland and the difficulty in obtaining convictions in certain cases. The difference between non-jury Diplock Courts and traditional courts was that they were composed of a single judge rather than a jury therefore it was thought that it could provide more efficient means of dealing with the high volume of terrorism-related cases that were being brought before the courts in Northern Ireland.

6. The Emergency Provisions Act 1973

After the release of the Diplock Commission, the British government immediately took action and implemented the recommendations, the use of non-jury Diplock Courts was their priority.

The level of violence in Northern Ireland was somewhat lower than in 1972 however it was still high considering the events. The IRA, UVF and other paramilitary groups were actively engaged in volence, targeting both military members and civilians with including but not limited to frequent bombings, shooting, asassinations, street riots and other acts of violences. It was registered by the police forces that 116 deaths were considered to be the responsibility of Loyalists, among the total number of 403 deaths.[34]

On 8 August 1973, the Emergency Provisions Act 1973 came into force by going through the standard legislative process before the parliament. The act gave the authoutities the power to impose curfew and exclusion orders, which restricted the movement of individuals, and to seize the property of those who were suspected of involvement in terrorist activities, and allowed the use of the Diplock Courts just as it was recommended in the Diplock Commission report.

There were several extrajudicial powers introduced and remained in force for a year unless renewed under this Act such as: arrest and detention for 72 hours, interim custody for 28 days, and detention.[35]

The orders of interim custody were served on 99 Protestants and 626 Catholics between February and October of 1974. By the Christmas of 1973, 65 detainees including 63 Catholics, were released. During the same period, 1042 Protestants, 1420 Catholics and

[34] *Ireland v. UK* App no 5310/71 (ECtHR, 18 January 1978) p. 22

[35] Ibid. p. 22

16 soldiers were charged with "terrorist-type offences" including 60 Protestants and 66 Catholics which were also charged with murder. [36] Although the political progress between 1973 and 1974 was erratic, the level of violence seemed to have dropped than prior.

In March 1973, the White Paper, officially titled as "The Future of Northern Ireland", was published by the UK Government, setting out proposals for the constitutional future of the six counties in Northern Ireland.[37] The White Paper was a significant policy statement that proposed a political solution to the conflict, rather than a military one, showing that there was a shift in the Government's policy towards Northern Ireland. The proposals in the White Paper were to create a power-sharing executive which would involve representatives from both the Catholic and Protestant communities in Northern Ireland, as well as the establishment of a bill of rights to guarantee the civil liberties and human rights of all individuals in Northern Ireland, creation of a new police force which would represent the whole community and accountable to the power-sharing executive, also proposing the abolishment of the Special Powers Act.

Other than the White Paper, there was also the Sunningdale Agreement in 1973, which was between the British and Irish governments, that would realize what the White Paper had envisioned. The Northern Ireland Executive, a power-sharing government for the first time in its history, came into office on 1 January 1974, collapsed in May 1974 because of a general strike organized by Loyalists, resulting in a very short-lived organism. [38]

Eventhough the White Paper and the Sunningdale Agreement was both an important effort to address the issues in Northern Ireland with a political approach, they both faced immense opposition from Unionists and Loyalists who saw it as a threat to their position, therefore it was not successful in bringing peace to the region.

As a response to the ongoing situation, the British parliament passed the Northern Ireland Act 1974 on 17 July 1974, aiming to restore stability and security in Northern Ireland, and to provide a framework for the future government of Northern Ireland. This Act envisaged the establishment of a new Northern Ireland Assembly and a new Executive responsible for the administration of the fovernment, and the establishment of the Diplock Courts, in an effort to make the prior progress official as the Act became a law by passing the parliament.

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[36] Ibid. p. 23

[37] *The Sunningdale Agreement* ("CAIN: Events: Sunningdale Agreement, December 1973")

[38] Holohan, Francis T. (2009). *Politics and Society in Northern Ireland, 1949-1993*. Folens Publishers, Hibernian Industrial Estate, Greenhills Road, Tallaght, Dublin 24: Folens. p. 37

7. Gardiner Committee Report

The United Kingdom Government appointed the Gardiner Committee, to be led by Lord Gardiner, in 1974, to examine the Emergency Provisions Act 1973, make recommendations, and determine what laws and authorities would be necessary to comba terrorism and subversion in Northern Ireland while also protecting civil liberties and human rights to the greatest extent possible under the circumstances.

The Gardiner Committee report was presented to the United Kingdom Parliament in January 1975, and critically examined the trial procedures of the ordinary courts, existing and proposed terrorism-related offences, the powers of the security forces, prison conditions, special category prisoners, and detention. The Gardiner Committee, addressed the question of detention in the report as:

"... We have detailed evidence of 482 cases of intimidation of witnesses between 1st January 1972 and 31st August 1974: and there must be many more. Civilian witnesses to murder and other terrorist offences are either too afraid to make any statement at all, or, having made a statement identifying the criminal, refuse in any circumstances to give evidence in court. The prevalence of murder and knee-capping make this only too easy to understand." [39]

Also made recommendations about detention and current detention procedures as:

"After long and anxious consideration, we are of the opinion that detention cannot remain as a long-term policy. In the short term, it may be an effective means of containing violence, but the prolonged effects of the use of detention are ultimately inimical to community life, fan a widespread sense of grievance and injustice, and obstruct those elements in Northern Ireland society which could lead to reconciliation. Detention can only be tolerated in a democratic society in the most extreme circumstances; it must be used with the utmost restraint and retained only as long as it is strictly necessary. We would like to be able to recommend that the time has come to abolish detention; but the present level of violence, the risks of increased violence, and the difficulty of predicting events even a few months ahead make it impossible for us to put forward a precise recommendation on the timing. We think that this grave decision can only be made by the Government…"[40]

With the Orders of 17 July 1974, 17 December 1974, and 27 June 1975, the Emergency Provisions Act 1973 which was the main subject of the analysis made by the Gardiner Committee, was extended. Later on 7 August 1975, as an extension of the previous one,

[39] *Report of a Committee to consider, in the context of civil liberties and human rights, measures to deal with terrorism in Northern Ireland* ("CAIN:The Gardiner Committee Report, January 1975")

[40] Ibid. para.148,149

Emergency Provisions Act 1975 was passed by the British government, acting on the recommendations of the Gardiner Report.

The Emergency Provisions Act 1975, also known as The Emergency Provisions Amendment Act, amended the law relating to detention without trial and established new provisions pertaining to criminal proceedings, maintaining order, and detecting crime in Northern Ireland. Therefore, since December 1975, no one had been detained in Nothern Ireland under extrajudicial measures, eventhough the continual of terrorism and violence until 1978, the case being brought before the European Court of Human Rights.

The Irish Government brought the situation of "Hooded Men," who were arrested and detained by the British Government in 1971 as a part of its policy of internment in Northern Ireland, and alleged that the United Kingdom had violated the European Convention on Human Rights. On the other hand, United Kingdom, the Responded Government, have argued that the techniques used against the "Hooded Men," did not amount to torture or inhumane or degrading treatment, and detention of them were necessary to maintain public safety. United Kingdom also drew attention to its continued efforts to minimizing the discrimination and to provide protection for human rights since 1969.

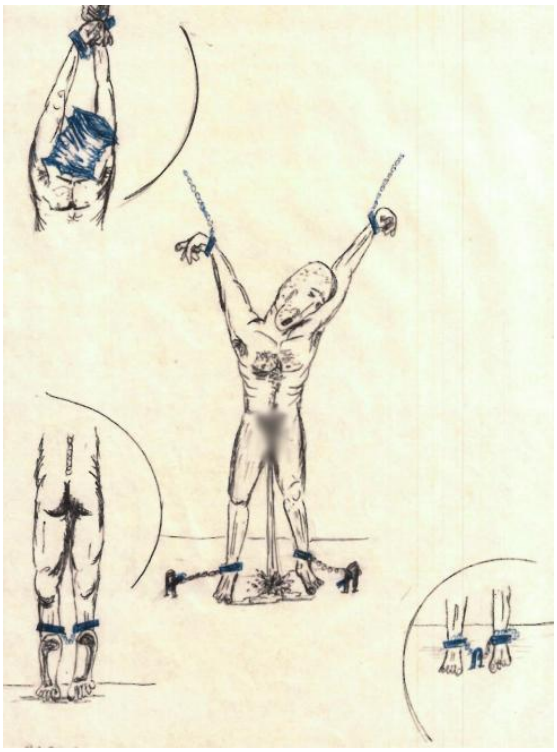
Hooded men: Michael Donnelly, Patrick McNally, Brian Turley, Gerry McKerr, Francie McGuigan, Joe Clarke, Jim Auld, Kevin Hannaway and Liam Shannon with Colm O'Gorman of Amnesty International Ireland, which has acted on their behalf.

C. Keypoints Of The Case

1. Extrajudicial Deprivation of Liberty

During the period; in addition to the ordinary criminal law which remained in force and in use, the authorities had various special powers to combat terrorism in Northern Ireland. These were all discretionary and underwent modification from time to time.

a. Five Techniques:



In the 1970s, after the announcement of Operation Demetrius UK security forces used a series of controversial interrogation techniques in response to the Troubles in Northern Ireland. The UK admitted it had used the 'five techniques' ,which is also known as deep interrogation, in Northern Ireland.[41] Likewise the five techniques were part of United Kingdom's policy and the Joint Services Interrogation Wing (JSIW), Britain's "only official school for interrogation training," taught five techniques to the Royal Ulster Constabulary (RUC) in the Spring of 1971. [42]

The Royal Ulster Constabulary (RUC) was Northern Ireland's police force. Following the partition of Ireland, it was established on 1 June 1922 as a successor to the Royal Irish Constabulary (RIC).

The RUC was overwhelmingly Protestant, prompting accusations of one-sided policing and sectarianism from the Catholic and Irish nationalist minorities. Officers have also been accused of police brutality and of working with loyalist paramilitaries. British security forces, on the other hand, praised it as one of the most professional police forces in the world.

These methods, sometimes termed "disorientation" or "sensory deprivation" techniques. The techniques consisted of:

[41] Newbery, SL.Intelligence and controversial British interrogation techniques : the Northern Ireland case, 1971–2. Royal Irish Academy:2009.pp.103-119. http://dx.doi.org/10.3318/ISIA.2009.20.103

[42] The National Archives, Ministry of Defence (hereafter cited as TNA DEFE), 23/108, 'Northern Ireland—Interrogation in depth', unsigned and undated, covering letter by Sir Arthur Hockaday, Assistant under-secretary (General staff) (AUS(GS)), 13 October 1971.

(a) wall-standing: forcing the detainees to remain for periods of some hours in a "stress position", described by those who underwent it as being "spread eagled against the wall, with their fingers put high above the head against the wall, the legs spread apart and the feet back, causing them to stand on their toes with the weight of the body mainly on the fingers";

(b) hooding: putting a black or navy coloured bag over the detainees' heads and, at least initially, keeping it there all the time except during interrogation;

(c) subjection to noise: pending their interrogations, holding the detainees in a room where there was a continuous loud and hissing noise;

(d) *deprivation of sleep:* pending their interrogations, depriving the detainees of sleep;

(e) *deprivation of food and drink:* subjecting the detainees to a reduced diet during their stay at the centre and pending interrogations.

2. Allegations Of Ill Treatment

a. Introduction

On political grounds, several allegations of ill treatment and degrading behavior have been made, indicating that UK security and military forces violated human rights during detainee interrogation processes. And the alleged places of ill treatment were interrogation centres and spontaneous locations.

b. The Unidentified Interrogation Centre Or Centres

It was claimed that there were some secret or special detainee interrogation centres which are not known as formal and never existed in documents. Those are all mentioned below:

i. Palace Barracks: Palace Barracks, a military camp in Holywood,County Down, on the outskirts of Belfast, was used as a holding centre for some days in August 1971 and then from September 1971 until June 1972. During this period, when it was the main interrogation centre in Northern Ireland, some 2,000 persons from all over the province passed through Palace Barracks. The centre was operated jointly by the army and the RUC. The interrogations - records of which were kept for filing – were conducted solely by police.

ii. Girdwood Park Regional Holding Centre: This army camp on the outskirts of Belfast, adjacent to Crumlin Road Prison, was used as a regional centre for holding and interrogating suspects, 186 of whom passed through it in August 1971. It was temporarily closed in that month and re-opened in October 1971 as a police holding centre. The arrangements at Girdwood for receiving, detaining, interrogating and releasing suspects were essentially the same as at Palace Barracks.

iii. Ballykinler Regional Holding Centre: Ballykinler was an army camp in County Down used in August 1971 for holding and interrogating some of those arrested during Operation Demetrius. It was under the overall authority of the RUC, the army being responsible for security and the Special Branch conducting the interrogations

iv. Miscellaneous Places: 121 cases involving allegations of ill-treatment at miscellaneous places were referred to the Commission by the applicant Government. The allegations included beating and assaults by the army or the police at army posts, police stations, a prison, in the street, at home or during transport at dates falling between August 1971 and 1974. 65 of these cases were in connection with interrogation.

c. Medical and Other Records

The arrested person and the arresting soldier were to be photographed together beginning in May 1970. The British Human Rights Committee noted that during Operation Demetrius, each person admitted to a regional holding center was photographed, and that upon entry to Ballykinler and Magilligan, but not Girdwood Park, a medical examination was performed and the results were recorded.

Beginning on November 15, 1971, every individual brought to a holding center was medically examined upon arrival and departure. Medical personnel were instructed to file reports whenever there was evidence of ill-treatment. Furthermore, after a certain

period of time, records were kept of the prisoner's condition as he progressed through interrogation.

The majority of those medical records were not available during the hearings. However, according to Committee members, the departure records showed that the prisoners were not tortured. Records on the progress of interrogations mostly demonstrate UK police forces acting in accordance with the rules and acts.

d. Provisions designed to prevent ill-treatment

It appears that at the start of the internment operation, reliance was simply placed on the standard regulations requiring humane treatment and prohibiting the use of violence.

Parker report had been adopted on January 31, 1972, to discuss the legitimacy of using five techniques. The report covered both a majority and a minority perspective. The majority report concluded that, subject to recommended safeguards against excessive use, the techniques should not be prohibited on moral grounds. However, Lord Gardiner's minority report disagreed that such interrogation procedures, even in emergency terrorist situations, were morally justifiable.

The majority and minority both did believe the methods were illegal under domestic law, though the majority's view was limited to English law and "some, if not all of the techniques''. Following the release of the Parker report, the Prime Minister clarified Parliament and stated that the techniques would not be used in future interrogations.

Furthermore, it mandated medical examinations, the keeping of detailed records, and the immediate reporting of any complaints of ill-treatment. In April 1972, army instructions and RUC Force Order 64/72, which addressed arrests under the Special Powers Regulations and the treatment of prisoners, respectively, stated that excessive force should never be used.

Shortly after the implementation of direct rule, the Attorney-General of the United Kingdom issued a ministerial directive on the proper treatment of people in custody, making it clear that if any form of illtreatment was reported, the Director of Public Prosecutions would prosecute.

Further army and RUC arrest and interrogation instructions issued in August 1972 enjoined the proper and humane treatment of prisoners; they strictly prohibited the use of violence, the five techniques, threats, or insults, and concluded with a prohibition similar to Article 3 (art. 3) of the Convention. In August 1973, new army arrest instructions emphasized the importance of proper behavior.

e. Complaints Procedures and Criminal Prosecutions

(a) The police

Under the Police Act (Northern Ireland) 1970, an investigation department within the RUC had been set up to report to the Chief Constable on all complaints against the police whatever their source. An official committee of five members of the Police Authority of Northern Ireland, including two Catholics and two Protestants, examined each month the records of complaints kept by the Chief Constable.

Where a serious criminal offence was disclosed, reports were submitted to the Attorney-General for Northern Ireland or, after the introduction of direct rule, to the Director of Public Prosecutions in Northern Ireland, a newly-created office, for decision whether to prosecute. On 15 June 1972, the United Kingdom Attorney-General instructed the Director of Public Prosecutions to direct the RUC to investigate and report on any circumstances which might involve the commission of a criminal offence by a member of the security forces. From November 1972 onwards, all completed investigations of both police officers and army personnel had to be sent to the Director of Public Prosecutions.

In September 1973, new disciplinary regulations brought the arrangements for the investigation of complaints against the RUC into line with the arrangements existing elsewhere in the United Kingdom. In 1975, a fresh unit was established within the RUC under the direct control of the Deputy Chief Constable to be responsible for the investigation of complaints.

The Gardiner Committee in its report of January 1975, while expressing itself satisfied that full investigations were made, nevertheless found a widespread belief in Northern Ireland that complaints against members of the security forces were not taken seriously

It therefore recommended the setting up of an independent means of investigating complaints. The Police (Northern Ireland) Order 1977 established a completely independent Police Complaints Board for Northern Ireland with supervisory functions in the matter.

(b) The army

The policy of the General Officer Commanding, as stated in the evidence before the Commission, was that every complaint should be investigated. An investigator was automatically appointed as soon as an incident was reported, even before a formal complaint had been made. As with the RUC, notice was also taken of allegations in the press or from third parties.

It would seem that in the early stages of the emergency complaints against soldiers were handled by the army authorities themselves; later on, two RUC officers were appointed to oversee army enquiries and subsequent investigations were actually carried out by the RUC, at least where there appeared to be a serious criminal offence.

In addition, complainants were encouraged to channel their complaints through the police. On 20 January 1972 a joint army/RUC investigation team was created. Complaints against the army were referred to an outside authority - the Director of Public Prosecutions as from April 1972 – for directions on whether to prosecute.

D. As To The Law

1. Relevant Domestic Law

a. The Special Powers Act And Regulations There Under: In 1922, the Northern Ireland government enacted the Civil Authorities (Special Powers) Act. Although the government intended for it to be used to restore order in the province, the statute was still used even after levels of political violence had decreased. The legislation and regulations enacted under the auspices of the Special Powers Act became a major source of controversy in the civil rights movement of the late 1960s. Many regulations and amendments were made under this act to promote peace and put an end to political groups' attacks against each other. During the late 1970s troubles, the justification for the measures was changed to an emergency law as critical to the stability of Northern Ireland's political structure.[43]

- **Arrest Under Regulation 10**

- Any individual could be arrested without warrant and detained for the purpose of interrogation;
- the arrest could be authorised by any officer of the RUC;
- the officer had to be of the opinion that the arrest should be realised "for the preservation of the peace and maintenance of order";
- the detention could not exceed forty-eight hours.

- **Arrest Under Regulation 11 (1)**

- Any individual could be arrested without warrant;
- the arrest could be affected by any police constable, member of the forces or person authorised by the "Civil Authority" (i.e. the Minister of Home Affairs or his delegates);

[43] The Historical Journal,Donohue,Laura K.Regulating Northern Ireland: The Special Powers Acts, 1922-1972.Cambridge University Press/ Vol. 41. No. 4 (Dec., 1998): pp. 1089-1120.

- the person making the arrest had to suspect the individual of acting, having acted or being about to act in a manner prejudicial to the preservation of the peace or maintenance of order or of having committed an offence against the Regulations;
- the duration of the arrest was unlimited in law but limited in practice to seventy-two hours.

- **Detention Under Regulation 11 (2)**

- Any individual arrested under Regulation 11 (1) could be detained in prison or elsewhere on the conditions directed by the Civil Authority;
- the power to make detention orders was vested in the Civil Authority and the initiative for them came from the police. The respondent Government said that they were always made on the personal decision, before direct rule, of the Prime Minister of Northern Ireland or, thereafter, of the Secretary of State for Northern Ireland or two other Ministers;
- detention continued until the individual was discharged by the Attorney-General or brought before a court. Its duration was unlimited in law but limited in practice, generally, to twenty-eight days

- **Internment Under Regulation 12 (1)**

- Any individual could by order be subjected to restrictions on movement or interned;
- The power to make such orders was vested before direct rule in the Minister of Home Affairs for Northern Ireland on the recommendation of a senior police officer or of an advisory committee. The respondent Government said that they were always made on the personal decision of the Prime Minister of Northern Ireland;
- the Minister had to be satisfied that for securing the preservation of the peace and the maintenance of order it was expedient that a person suspected of acting, having acted or being about to act in a manner prejudicial te peace and order be subjected to such restrictions or interned;
- the duration of internment was unlimited. In many cases, after prolongation under later legislation, it lasted for some years.

b. The Terrorists Order: A temporary measure made under the Temporary Provisions Act. The Order defined "terrorism" as "the use of violence for political ends [including] any use of violence for the purpose of putting the public or any section of the public in fear".

c. The Emergency Provisions Act: The Emergency Provisions Act, came into force on 8 August 1973 . This Act, which was based mainly on the recommendations of the Diplock Commission repealed the 1922 Special Powers Act, Regulations 10 and 11 (1) and the Terrorists Order but maintained in effect - under its own provisions - the existing interim custody and detention orders. The emergency powers contained in the new Act were to remain in force for one year unless renewed for a period not exceeding one year by an Order of the Secretary of State approved by both United Kingdom Houses of Parliament.

d. The Emergency Provisions Amendment Act: With effect from 21 August 1975, the Emergency Provisions Amendment Act, based on the recommendations of the *Gardiner Committee,* made, inter alia, new provisions for the detention of terrorists which have not been the subject of the present case. The Act reverted to the principle of detention by order of the Secretary of State, rather than of a commissioner, such order to be preceded by a report from a legally qualified Adviser.

2. Applicable Law

- **Article 3 of European Convention on Human Rights: Prohibition of torture:**

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

- **Article 5 of European Convention on Human Rights: Right to liberty and security:**

  "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

  (a) the lawful detention of a person after conviction by a competent court;

  (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

  (c) *the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; ..."*

- **Article 15 of European Convention on Human Rights: Derogation in time of emergency:**

  "1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligation under international law.

  2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or form Articles 3, 4 (paragraphs 1) and 7 shall be made under this provision…"

- **Article 33 of European Convention on Human Rights: Inter-State cases:**

  "Any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the Protocols thereto by another High Contracting Party."

- **United Nations (1975) Declaration on the protection of all persons from being subjected to torture and other cruel, inhuman or degrading treatment or punishment**

- **International Covenant on Civil and Political Rights (1966)**

E. Claims of Parties

Republic of Ireland as Applicant Party:

- The Irish Government made various allegations of violations by the United Kingdom of Articles 1, 2, 3, 5, 6 and 14 of the Convention.
- The treatment of persons in custody, in particular the methods of interrogation of such persons, constituted an administrative practice in breach of Article 3 (art. 3)
- The United Kingdom kept detainees in disgraceful living and health conditions.
- Internment without trial and detention under the Special Powers Act and the Special Powers Regulations constituted an administrative practice in breach of Articles 5 and 6 in connection with Article 15.

United Kingdom as Respondent Party:

- Conflict between Loyalists and Nationalists was an existential threat to the United Kingdom.
- The United Kingdom provided good living and health conditions for detainees and even conducted regular health checks on them.
- During the interrogation, the United Kingdom used no harsh interrogation techniques.
- The United Kingdom attempted to strike a balance between the two sides of the conflict.
- The United Kingdom did not violate the European Convention On Human Rights.

F. Merits of The Case

→ What is Torture?
→ What is intolerable for one person?
→ How to measure the physical and mental toll?
→ Is there a universal standard for the measurement of human pain on the subject, without regard to the intent of the security professional conducting the interrogation?
→ Is there a standard that respects the humanity of the detainee?
→ How should be the standards of interrogation in times of war or other public emergency?
→ What is acceptable practice during conducting counterterrorism operations by security forces?
→ What are the boundaries of usage of special measures to combat terrorism?
→ Can the acts of United Kingdom during the conflict be counted as torture, ill-treatment or both?

Further Readings

- https://www.google.com/url?q=https://www.lawteacher.net/cases/ireland-v-uk.php&sa=D&source=docs&ust=1670850736659780&usg=AOvVaw2o6vzU7i4O33r-5M4df0sd
- Definition of Torture ın International Law https://biblioteca.corteidh.or.cr/tablas/32054.pdf
- What Practices Constitute Torture?: US and UN Standards

- https://heinonline.org/HOL/LandingPage?handle=hein.journals/waslee67&div=6&id=&page=
- Human Torture: Description and Sequelae of 104 Cases - PMC
- A Narrative Checklist Comparing Legal Definitions in a Torture Treatment Clinichttps
- Summary of the Gardiner Committee Report: https://cain.ulster.ac.uk/hmso/parker.htm

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