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Hidden files on policing could change the definition of torture

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Royal Ulster Constabulary members parade in Belfast, 1970. PA

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On December 2, the Irish government **announced** that it will ask the European Court of Human Rights (ECHR) to reconsider its 1978 judgement on the UK's treatment of internees in Northern Ireland.

This action has the potential to affect how torture is defined in law. If the definition is changed, any treatment of prisoners that is not now classed as torture may soon meet the definition.

Ireland's move follows the discovery of British government records from the 1970s which were withheld from Ireland and from the ECHR at the time of the original case – and whose content threatens to force the Court to revise its judgement.

Over the line

In 1971, Ireland began a legal action against the UK claiming its actions in Northern Ireland had breached a number of the obligations imposed upon it by the European Convention on Human Rights. The British government, of course, was not pleased. It objected in particular to the allegation that five interrogation techniques used against 14 internees in the autumn of 1971 constituted a breach of Article 3, which prohibits torture and “inhuman or degrading treatment or punishment”.

The five techniques concerned were covering the internee's face and head with a hood, exposing them to white noise, forcing them to maintain a stress position, allowing only limited sleep and providing limited food and water.

To the British government's relief, the Court concluded that the intensity and cruelty of these interrogation techniques did not meet the definition of torture. The techniques were instead found to be in breach of Article 3's prohibition of inhuman and degrading treatment.

Research undertaken by RTÉ's Investigation Unit in the National Archives in London has identified evidence that may force the Court to revise its judgement and describe the techniques as torture. The evidence that has been uncovered suggests that during the Court's original investigations, the UK withheld information that showed the effects of the techniques were more severe than the Court was led to believe.

While Ireland's decision to ask the Court to revisit its judgement has attracted some media coverage on both sides of the Irish Sea, its potential significance has largely been overlooked. And make no mistake: deeming these interrogation methods to be torture could have a major impact.

Cruel and inhumane

Ireland v United Kingdom has been used by various countries wanting to protect themselves from allegations of torture – and no less a power than the United States has found it very useful for that purpose.

Soon after the 9/11 terrorist attacks, a lawyer working for the Bush administration used the Court's 1978 judgement, among other cases, to support the US argument that similar interrogation techniques did not meet the definition of torture and could therefore be used in Guantánamo Bay.

Should Ireland's application be successful, the threshold at which controversial interrogation techniques can be classified as torture will be lowered. This will be unwelcome news for countries now using these kinds of techniques – though it will obviously be welcomed by many past, present and future detainees.

Can of worms

But the consequences for the UK in particular could be weighty. Since the European Convention on Human Rights applies to British forces who arrested and detained civilians in Iraq after the 2003 invasion, revising the definition of torture may pave the way for new legal actions associated with that conflict.

The UK has already admitted that its treatment of ten Iraqi civilians detained in Basra in September 2003 was in breach of Article 3 and has issued compensation to these men and their families. One of the soldiers involved in this episode admitted inhuman treatment of the detainees – a court martial subsequently found him guilty of the charge and he became the UK's first convicted war criminal.

Meanwhile, Ireland's impending application to the ECHR is not the only legal action to result from recent discoveries in archival records. In 2013, the British government agreed to pay compensation to thousands of Kenyans tortured during the fight for independence from Britain, known as the **Kenyan Emergency**. Compensation was awarded only after the revelation of evidence contained in written records which the government was forced to release into the National Archives.

As masses of records from other former colonies continue to be made available to the public, similar successful claims may well be made – and success for this one would undoubtedly spur them on.

What remains to be seen is how the action may affect Anglo-Irish relations. The British government may not take kindly to a neighbouring state's allegations that not only did it use interrogation methods amounting to torture, but that it did so within the UK.

Of course, the two states are now on better terms than ever, and their relationship is unlikely to be fundamentally altered – though what effect the European Court of Human Rights' decisions may have on stability in Northern Ireland is difficult to predict.

But what the case proves once and for all is that Britain is not safe from reprisals for episodes it might prefer to forget.

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