

## Torture: source sheet

See Lord Hope 'Torture' The University of Essex/Clifford Chance Lecture 2004

### Definition

See Ireland v UK [1978] ECHR 1. Torture is 'deliberate inhuman treatment causing very serious and cruel suffering'.

96. Twelve persons arrested on 9 August 1971 and two persons arrested in October 1971 were singled out and taken to one or more unidentified centres. There, between 11 to 17 August and 11 to 18 October respectively, they were submitted to a form of "interrogation in depth" which involved the combined application of five particular techniques. These methods, sometimes termed "disorientation" or "sensory deprivation" techniques, were not used in any cases other than the fourteen so indicated above. It emerges from the Commission's establishment of the facts that the techniques consisted of: (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 "spreadeagled 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.

102. At the hearing before the Court on 8 February 1977, the United Kingdom Attorney-General made the following declaration: "The Government of the United Kingdom have considered the question of the use of the 'five techniques' with very great care and with particular regard to Article 3 of the Convention. They now give this unqualified undertaking, that the 'five techniques' will not in any circumstances be reintroduced as an aid to interrogation."

165. The facts concerning the five techniques are summarised ... above. In the Commission's estimation, those facts constituted a practice not only of inhuman and degrading treatment but also of torture.

'Although the five techniques, as applied in combination, undoubtedly amounted to inhuman and degrading treatment, although their object was the extraction of confessions, the naming of others and/or information and although they were used systematically, they did not occasion suffering of the particular intensity and cruelty implied by the word torture as so understood.

168. The Court concludes that recourse to the five techniques amounted to a practice of inhuman and degrading treatment, which practice was in breach of Article 3

Threat of torture provided 'sufficiently real and imminent' can be in breach of Article 3 (Campbell and Cosans v UK (1982) 4 EHRR 293)

Slapping, kicking or punching suspect in custody is breach of Article 3 (Tomasi v France (1933) 15 EHRR 1.

In respect of a person deprived of his liberty, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is, in principle, an infringement of the right set forth in Article 3. (Ribitsch v Austria (1996) 21 EHRR 573)

## **Admissibility**

A and others v the Secretary of State for the Home Department [2005] UKHL 71

Related to SIAC proceedings. Rule 44(3) of Appeals Commission (Procedure) Rules 2003. SIAC 'may receive evidence that would not be admissible in a court of law'.

This rule is incompatible with the fundamental nature of the objection to the admission of statements obtained by the use of torture, wherever it is administered ... Nothing short of an express provision will do, to which Parliament has unequivocally committed itself. Lord Hoffman para 114 in A.

Exclusionary rule applies only to information obtained by torture not 'fruit of the poisoned tree' Lord Hope 120. The test is not whether there is a risk of the use of torture but, by majority: 'Is it established by means of such diligent inquiries into the sources that it is practicable to carry out and on a balance of probabilities that the information relied upon ... was obtained under torture'.

Detainee can raise the issue that information may have come as a result of torture, SIAC then bound to investigate and take a view.

## **Deportation**

Chahal v UK (1997 23 EHRR 413) – no removal where 'real risk' of breach of Article 3 even if danger to national security

DD and AS v Secretary of State (SIAC April 2007) – diplomatic assurances not enough in relation to Libya but see Othman v Secretary of State (SIAC February 2007) OK for Jordan. U and BB v Secretary of State, court of appeal requires reconsideration (July 2007).

## **Deprivation of resources**

Treatment is inhuman or degrading if, to a seriously detrimental extent, it denies the most basic needs of any human being. As in all article 3 cases, the treatment, to be proscribed, must achieve a minimum standard of severity, and I would accept that in a context such as this, not involving the deliberate infliction of pain or suffering, the threshold is a high one. A general public duty to house the homeless or provide for the destitute cannot be spelled out of article 3. But I have no doubt that the threshold may be crossed if a late applicant with no means and no alternative sources of support, unable to support himself, is, by the deliberate action of the state, denied shelter, food or the most basic necessities of life. It is not necessary that treatment, to engage article 3, should merit the description used, in an immigration context, by Shakespeare and others in *Sir Thomas More* when they referred to "your mountainish inhumanity".

Lord Bingham para 7, Limbuela v Secretary of State [2005] UKHL 66

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