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Q & A

Chamber judgment in the case of *Ireland v. the United Kingdom* (application no. 5310/71)

- **Why has this case arisen again, almost 40 years after the original judgment?**

The Government of Ireland alleged that new evidence had come to light, which if known at the time would have affected the decision in the original judgment. The Irish Government relied on material which had been classified at the time of the original proceedings and had been released into the United Kingdom's public archives 30 years later. The Irish Government state that they learned about the relevant new facts from a television programme broadcast in Ireland in June 2014 and had subsequently obtained documents. It therefore made a request to revise the original judgment under Rule 80 of the Rules of Court.

- **Why is a revision significant?**

Chamber judgments are final unless referred to the Grand Chamber, whose judgments are always final. On the grounds of legal certainty, a revision request is therefore an exceptional procedure. Such requests are subjected to strict scrutiny.

- **Wasn't there an earlier finding in Strasbourg that the men in the case had been tortured, which the British Government did not dispute? Why were there then proceedings before the Court itself?**

An initial report was issued by the European Commission of Human Rights in 1976. The Commission was a body which dealt with cases before they went to the Court. It issued reports, establishing the facts and expressing opinions, and could refer cases to the Court. In the present case, the Government of Ireland asked for a referral to the Court itself for a ruling. The Court came to a different conclusion than the Commission on the question of torture, finding that there had been inhuman and degrading treatment rather than torture. The Commission no longer exists as it was merged into the Court to become a single body after 1998 reforms which were designed to speed up the adjudication of cases and improve access to the Court.

- **Is this the Court's final word in the case of *Ireland v. the United Kingdom*?**

As this is a Chamber judgment, it is in principle possible for either side to ask for it to be referred to the Grand Chamber (composed of 17 judges instead of seven in the Chamber). It would be for a panel of the Grand Chamber to decide on such a request.

- **The original judgment found that there had been a violation of Article 3 because of inhuman or degrading treatment, but not torture. What is torture in the eyes of the Court?**

The Court has laid down principles in its case-law on Article 3 on what constitutes torture.

It has found in general that it appeared to have been the intention of the European Convention on Human Rights to attach a special stigma to “torture” and to distinguish between it and “inhuman or degrading treatment”. “Torture” is understood to mean “deliberate inhuman treatment causing very serious and cruel suffering”.

The Court has also spoken of a “purposive element” in torture, as recognised in the United Nations Convention against Torture, which in Article 1 defines torture in terms of the intentional infliction of severe pain or suffering with the aim, *inter alia*, of obtaining information, inflicting punishment or intimidating.

The Court has made various findings of torture: in *Aksoy v. Turkey* (1996), the Court’s first judicial determination that an individual had been tortured, the applicant was suspended naked by his arms after they had been tied together behind his back, while in the *El-Masri v. “the Former Yugoslav republic of Macedonia”* of 2012 the applicant was forcibly undressed, hooded and given a suppository against his will.

Torture was also found in *Shishkin v. Russia* (and *Korobov v. Ukraine* (both 2011) after the applicants were severely beaten while in police custody.

In the judgment in *Aydin v. Turkey*, delivered in 1997, a woman who was raped by the police while in custody was also found to have been tortured.

In the 1999 case of *Selmouni v. France*, where there was also a finding of torture, the Court also stated that as the Convention was a living instrument, treatment which had in the past been considered as “inhuman and degrading treatment” as opposed to “torture” could be classified differently in future. It noted that an “increasingly high standard” in the area of the protection of human rights inevitably required “greater firmness in assessing breaches of the fundamental values of democratic societies”.