

## PRESS RELEASE

### EUROPEAN COURT MISSES THE OPPORTUNITY TO CORRECT THE HOODED MEN RULING OF 1978

Today a chamber of the European Court of Human Rights issued its decision on Ireland's request that the Court revise one of its most controversial and damaging judgments. In that judgment, issued in 1978 in the case *Ireland v UK*, the European Court considered that the treatment of 14 men who were subject to five sensory-deprivation techniques whilst interned in Northern Ireland constituted "inhuman and degrading treatment" but not torture. These men became known as the 'Hooded Men' because one of the techniques involved the forcible use of a dark hood over the men's faces in between interrogations. The Court's 1978 judgment has given rise to serious criticism. It was inexplicable even at the time, given that it ran counter to a diametrically opposed conclusion by the Court's own fact-finding body, and --- crucially --- also ran counter to the UK's own admission in the case that the techniques used on the Hooded Men amounted to torture.

Ireland's request to revise this old judgment provided an opportunity for the European Court to correct the record. The request referred to fresh evidence discovered at the UK's National Archives that had finally been made available after 30 years. That new evidence undoubtedly supported the conclusion that the treatment of the Hooded Men constituted torture, and that those at the highest level of the UK government had authorised it. This is sufficient to allow the Court, under its rules of procedure, to revise the initial judgment. But it chose not to do so.

The Court's 1978 judgment was the first case in which the European Court defined torture, and it has been relied on by governments around the world to justify similarly brutal practices. But in the US the Obama administration reversed the position outlined in legal memos that had referred to the 1978 judgment to justify 'enhanced interrogation techniques'. And since the judgment the [House of Lords](#) of the United Kingdom and the [High Court of Belfast](#) have recognised that the five techniques, if evaluated *today* by a Court, would very likely be found to constitute torture. The European Court has itself u-turned on the case in subsequent jurisprudence, including [the \*Selmouni\* case](#) which was referred to by the majority in today's judgment.

So the question the Court was looking at today was not: do the five techniques constitute torture, as this crime is defined today? The answer to that question is clearly yes. The question was whether the new evidence disclosed facts which were unknown at the time of the original judgment and which could have had a decisive influence on it.

In order to answer this question in the negative, the Court applied a misguided reading of the original judgment and the applicable legal standard, such that “it is difficult to avoid the impression”, as the [dissenting opinion](#) points out, that the Court has “sought to shelter itself” behind the principle of legal certainty to refuse to re-open the case. By doing so, as the dissent points out, “it risked damaging the authority of [its] case-law”.

In reacting to today’s judgment, our clients, who suffered the effects of these interrogation techniques, have expressed their disappointment that the Court has not taken up this opportunity to correct this grave injustice. Indeed it is shameful that the request by the Hooded Men to intervene in the case was completely ignored by the Court in its judgment. In an era where human rights litigation is supposed to be victim-centred it is disappointing that the decision reached by the European Court is one taken without first affording the victims an opportunity to address the Court in their capacity as directly affected persons.

Commenting on today’s judgment, Mr Francis McGuigan, one of the Hooded Men, said:

*“After a long and turbulent road, we are dismayed by today’s judgment. It is now 40 years since the judgment, 15 years since the start of the Iraq war, and 3 years since we lost our fellow hooded man Gerry McKerr, it comes as a truly devastating blow. It is with regret that we learn that the Court has sought to side step this opportunity to correct the grave injustice of the Ireland v UK ruling. This has ultimately allowed for many other torture victims like us, to be the subject of these techniques under the veil of an erroneous legal finding”.*

We are also dismayed that the European Court of Human Rights has not taken up this opportunity to uphold the very principles it was designed to protect in this most crucial field of human rights protection. Our clients have instructed us to take steps to support a referral of this case to the Grand Chamber of the European Court. It is hoped that this injustice can be corrected in that forum, for the sake of the integrity of the Court and survivors of torture all over the world.

Ben Emmerson QC  
Amal Clooney  
Adam Straw  
Darragh Mackin

*Counsel/Solicitor for Francis McGuigan, Jim Auld, Patrick McNally, Liam Shannon, Kevin Hannaway, Brian Turley, Joe Clarke, Paddy Joe McClean, Brian Shivers on behalf of Pat Shivers (Deceased), Deirdre Montgomery on behalf of Michael Montgomery (Deceased), and Jim McKerr on behalf of Gerard McKerr (Deceased)*