

# THE HAUNTING OF THE “HOODED MEN”

CAROLINE MURPHY\*

---

## Introduction

*“Time does not heal all wounds if justice is not done.”*

A first-year law student would simply not get away with it. There was no precedent, little authority, and no reasoning. The seminal decision in the first inter-state case taken before the European Court of Human Rights, *Ireland v United Kingdom*,<sup>1</sup> has long since been a source of contention. The underlying rationale for distinguishing torture from inhuman and degrading treatment is afforded minimal exploration in the judgement. In fact this rationale or, more fittingly, lack thereof, occupies just a single sentence. Yet, it is under the auspices of this lone sentence that nations time and again justified their deplorable conduct over the past four and a half decades. The case of the “Hooded Men” has not receded into the realms of history, but instead has set a binding and troubling precedent. Its authority has been reached for in the sanctioning of some of the most horrendous methods of interrogation, providing a perfect tutorial for the damned.

Firstly, this TCLR blog post will explore the factual background of this landmark legal battle and the controversial ruling of the judiciary. It will then exemplify the recurring utilisation of this judgement by the governments of multiple nations, exposing the far-reaching consequences of this historic resolution. Furthermore, this post will examine the “Hooded Men’s” lengthy journey to renewed prominence in both the public and legal spheres. Lastly, it will consider the likelihood of the European Court’s invocation of its power of revision, as the tale of the “Hooded Men” is revisited, over forty years later.

## I. Who are the “Hooded Men”?

---

\* Junior Freshman LLB Candidate, Trinity College Dublin. The author would like to thank the Senior Editorial Board. Above all, the author is immensely grateful to Brónach Rafferty for her guidance and enthusiasm throughout the drafting process.

<sup>1</sup> Case 5310/71 *Ireland v United Kingdom* [1978] ECHR 1.

*“These barracks are the anterooms of death...”*<sup>2</sup>

During the darkest days of “The Troubles”, internment without trial was commonplace. Over 1,000 people, deemed to pose a threat to the unionist state, were imprisoned in a prison camp in Long Kesh. However, in the spring of 1971, a building was erected on the British army site at the old Second World War airfield at Ballykelly, County Derry. This building proved to be a purpose built torture centre. Fourteen IRA suspects were detained in this secret compound; Jim Auld, Pat Shivers, Joe Clarke, Michael Donnelly, Kevin Hannaway, Paddy Joe McLean, Francis McGuigan, Patrick McNally, Sean McKenna, Gerry McKerr, Michael Montgomery, Davy Rodgers, Liam Shannon and Brian Turley. These men claim they were subjected to five interrogation techniques, namely; wall standing in stress positions for hours, hooding, sleep deprivation, exposure to incessant static noise and deprivation of food and water. The men were also hooded and thrown from helicopters which they were told were hundreds of feet in the air, but were in fact near ground level. Moreover, death threats were a daily occurrence. The fourteen men’s collective suffering and its enduring scars, bestowed upon them the title of the “Hooded Men”.

Described as a “sophisticated method to break or even eliminate the will”,<sup>3</sup> the European Commission deemed the use of the five techniques to amount to torture, a violation of Article 3<sup>4</sup> of the European Convention on Human Rights. However, in 1978 this decision was appealed to the European Court of Human Rights. The Court held that the combination of the ‘five techniques’ utilised systematically did constitute inhuman and degrading treatment, but they did not encapsulate suffering of the requisite intensity and malice to justify a finding of torture.<sup>5</sup> Thus, the bar for torture was set unbelievably high. In light of the horrific statements of the hooded men recounted to the court, one cannot help but wonder how vile and inhumane our conduct may be, before the necessary requirements for torture

---

<sup>2</sup> Eoin McNamee, *Writing Rights: Not in History. Not in Another Country* <<http://www.irishtimes.com/culture/books/writing-rights-not-in-history-not-in-another-country-by-eoin-mcnamee-1.2460434>> (visited April 6 2016).

<sup>3</sup> Philip Leach, *Ireland v UK: Revisiting the Treatment of the “Hooded Men”* <http://www.jurist.org/forum/2014/12/philip-leach-hooded-men.php> (visited April 6 2016).

<sup>4</sup> Article 5 European Convention on Human Rights.

<sup>5</sup> Case 5310/71 *Ireland v United Kingdom* [1978] ECHR 1, at 167-168.

are met? This unsettling question continues to play on the minds of government officials across the globe to this day.

## II. The Legacy of the “Hooded Men”

*“If Britain taught the world anything, it taught it how to torture.”*<sup>6</sup>

The case of the “Hooded Men” delivered a lesson on torture on an international stage. Human rights history speaks of the use of the controversial decision in *Ireland v United Kingdom*, as a watertight legal defence for horrific atrocities. In September 2003, Baha Mousa, an Iraqi man, died in British army custody in Iraq. The extensive inquiry into his death divulged the utilisation of torture techniques reminiscent of those employed during the hooded men’s internment. Baha Mousa’s post-mortem revealed evidence of ninety- three injuries. However, the techniques of hooding, fear, starvation and stress positions were hugely attributable to his death and unsettlingly familiar if the accounts of the ‘Hooded Men’ are recalled. Mousa was a young father employed as a hotel receptionist who was wrongfully believed to be a terrorist involved in the murder of four members of the United Kingdom Defence Forces. Although several British soldiers were tried for this heinous crime, there was a distinct lack of conclusive evidence as a result of “... a more or less obvious closing of ranks.”<sup>7</sup> Corporal Donald Payne was the only soldier found liable, after pleading guilty to the charge of inhumane treatment of prisoners. This guilty plea was unavoidable after damning video evidence was shown documenting Payne’s abuse of the Iraqi man. Payne was sentenced to a pitifully short term of imprisonment despite being the first member of the British Armed Forces to be convicted for war crimes under provisions of the International Criminal Court Act 2001<sup>8</sup>.

Payne’s recorded conduct strikes a note of discord. The gratuitous violence revealed in this footage is not simply a piece of inculpatory

---

<sup>6</sup> Lara Whyte, “Britain Taught the World How to Torture”: Northern Ireland’s Hooded Men Take New Evidence Back to Court <<https://news.vice.com/article/britain-taught-the-world-how-to-torture-northern-irelands-hooded-men-take-new-evidence-back-to-court>> (visited 6 April 2016).

<sup>7</sup>United Kingdom Court Martial acquittals: many questions remain unanswered and further action required to ensure justice <<https://www.amnesty.ie/our-work/united-kingdom-court-martial-acquittals-many-questions-remain-unanswered-and-further-action>> (visited 6 April 2016).

<sup>8</sup> International Criminal Court Act, 2001.

evidence. Instead, the scenes that unfolded in these recordings speak of something far more sinister than the behaviour of a single soldier gone rogue. Blame for the deaths and grievous injuries of Baha Mousa and many others do not rest solely with the ‘few bad apples’ of the military.<sup>9</sup> The interrogation procedures exercised by Corporal Payne were expressly prohibited from use by British military personnel by Prime Minister Ted Heath in 1972.<sup>10</sup> These methods of sensory deprivation, stress positions, beatings and the withholding of food and drink were banned in the aftermath of the use of these techniques on the “Hooded Men” during their internment.

During the court martial, Payne chillingly admitted that he “enjoyed” hearing the sounds of the Iraqi captives cries of pain during their mistreatment, describing the noise as “the choir.”<sup>11</sup> Unquestionably, this is an expression of a systematic regime whereby the attainment of terrorist information comes at the high cost of human sufferance. Despite this, the term “torture” did not manage to permeate through the unyielding boundaries of the court’s dictionary. Payne’s regiment were cleared of an “entrenched culture of violence.” Yet, the author of this post would argue that the European Court of Human Right’s decision in the case of the “Hooded Men” unwittingly warranted the entrenchment of a cleverly veiled torture culture in countless states.

Stress, duress and the pursuit of confessions. They call it the American Nightmare. Torture is illegal in the United States and thus is punishable before the law. However, this strict legal stance grows weak and ambiguous when faced with the prosecution of US perpetrated abuse that occurs on foreign soil. Nine days following the 9/11 attacks, “... awakened by danger and called to defend freedom,”<sup>12</sup> US President George W. Bush declared a “War on Terror.” As Bush’s orchestrated war unfolded it became apparent that the price to be paid for the defeat of terror was the gross violation of human rights, namely through the use of torture.

Established a year after the September terrorist attacks, the Guantánamo Bay detention camp proved to be setting for much of this torturous interrogation. Detainees of the camp were composed of suspected terrorists and Muslim militants who had been captured by US Forces in territories including Iraq and Afghanistan. From the outset, the Bush

---

<sup>9</sup> Caroline Hawley, *Baha Mousa Inquiry Reveals Uncomfortable Truths* <<http://www.bbc.com/news/uk-14790271>> (visited 6 April 2016).

<sup>10</sup> *Case 5310/71 Ireland v United Kingdom* [1978] ECHR 1, at 101 and 135.

<sup>11</sup> <http://www.theguardian.com/uk/2006/sep/21/iraq.military> visited 6 April 2016).

<sup>12</sup> <http://georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010920-8.html> (visited 6 April 2016).

administration appeared to anticipate the system's propensity to resort to torture techniques when seeking information on terrorist activity.<sup>13</sup> This is supported by the administration's careful selection of a site for the prison; outside US territory, rendering the captives unprotected by US laws. Crucially, US officials were adamant that the Geneva Conventions<sup>14</sup> concerning the treatment of prisoners of war were inapplicable in this zone. However, the existence of this legal loophole was quickly refuted by the US Supreme Court in *Hamdan v Rumsfeld*<sup>15</sup>. The Court ruled that Bush administration's military commissions had indeed violated the detainee's right to the minimal protections enumerated under Common Article 3 of the Geneva Conventions. Chastised, the United States restored the legality of the military commissions through the Military Commissions Act 2006.

Unfortunately, this expression of atonement proved only to be fleeting.

Controversy and allegations have been rife worldwide since the instalment of the camp. International human rights and humanitarian organisations have repeatedly condemned the despicable happenings inside the gates of Guantánamo Bay. The 2005 Amnesty International Report contended that the detention centre was the "Gulag of our times."<sup>16</sup> Following the discovery of the commonality of torture inside America's most infamous prison, the United Nations submitted an urgent, yet ultimately futile bid, to Bush's administration to shutter the camp. President Barrack Obama is currently implementing a plan for the complete closure of the prison. At this moment, ninety three prisoners are detained in Guantánamo Bay; its lowest ever captive population. Every year of the detention camp's acrimonious fourteen year existence, represents one of the fourteen "Hooded Men." A disparate European Court ruling back in 1978 could have dramatically altered the treatment of countless prisoners who spent years festering within the confines of a detention centre reviled by so many.

---

<sup>13</sup> General information on Guantánamo Bay may be accessed here: Jeannette L Nolan, Guantánamo Bay Detention Camp <<http://www.britannica.com/topic/Guantanamo-Bay-detention-camp>> (visited 6 April 2016)

<sup>14</sup> Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949 <<https://www.icrc.org/applic/ihl/ihl.nsf/7c4d08d9b287a42141256739003e636b/6fef854a3517b75ac125641e004a9e68>> (visited 6 April 2016).

<sup>15</sup> *Hamdan v Rumsfeld* 548 U.S 557 (2006).

<sup>16</sup> <http://www.theguardian.com/world/2005/may/26/usa.guantanamo> visited 6 April 2016).

From the start, directors of the “War on Terror” were “...assured of the rightness”<sup>17</sup> of their actions. This righteousness never truly wavered, even when cracks began to form in their carefully constructed cause. This was evident in the leniency shown to Chief Warrant Officer Lewis E. Welshofer Jr., a soldier in the US army convicted of negligent homicide and dereliction from duty following the death of the Iraqi prisoner of war, Major General Abed Hamed Mowhoush, resulting from the utilisation of unspeakable torture techniques. Major Mowhoush was considered to be a prized intelligence prospect, having previously been the commander of Air Defences under the notorious Saddam Hussein in western Iraq. Furthermore, the US military authorities believed he was the leader and the financier of the insurgency in western Iraq, responsible for the provision of housing and food for fighters arriving from Syria.<sup>18</sup>

The punishment faced by a serviceman found guilty of negligent homicide and dereliction from duty are a maximum three year prison sentence and dismissal from the military. Yet adopting an unmistakable permissive stance that would, as aforementioned, be echoed in Britain, the court martial ordered Welshofer to pay a small fine and sentenced him to two months of restriction to his barracks, his church and his home. Globally decried, this essentially non-existent punishment was a stunning reprieve for Chief Warrant Officer Lewis E. Welshofer Jr. An individual, whose abominable and tortuous actions led to the death of a fifty-seven year old father, was sent to simply pray away this troublesome blunder, allowing the American Nightmare to continue. Thus, the US officials’ dream of emerging victorious from the “War on Terror” continued unperturbed.

### **III. The Truth Uncovered**

---

<sup>17</sup> Address to a Joint Session of Congress and the American People: <<http://georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010920-8.html>> (visited 6 April 2016).

<sup>18</sup> Eric Schmitt, Army Interrogator Is Convicted of Negligent Homicide <[http://www.nytimes.com/2006/01/23/politics/23general.html?pagewanted=print&\\_r=0](http://www.nytimes.com/2006/01/23/politics/23general.html?pagewanted=print&_r=0)> (visited 6 April 2016).

*'This could grow into something awkward if pursued.'*<sup>19</sup>

The fourteen 'Hooded Men' have been seeking justice for the past four decades, but it took the broadcast of the RTÉ documentary "Torture Files,"<sup>20</sup> to accelerate their case towards a rehearing on the international stage. This piece of investigative journalism exposed newly- discovered archive documents from the public records office located in London. The discovery was made by the Pat Finucane Centre.<sup>21</sup> Spurred on by this pertinent evidence alongside widespread public attention, the Minister for Foreign Affairs and Trade, Charlie Flanagan TD, endorsed the growing call for an application for the revision of the judgement in *Ireland v United Kingdom*; "On the basis of the new material uncovered, it will be contended that the ill treatment suffered by the Hooded Men should be recognised as torture."<sup>22</sup>

The documentary revealed that the United Kingdom deliberately failed to disclose pertinent evidence to the European Court of Human Rights in what ultimately transpired to be a successful bid to absolve them from the stigmatised finding of torture. The programme utilised British State papers which exposed that the interrogation methods endured by the 'Hooded Men' had been approved far up the chain of command. In addition, incriminating medical reports which describe the condition of the fourteen detainees in the aftermath of their release were not made known to the Court.

#### **IV. The Chance of Change**

*"I think they are waiting for us to die and our case to die."*<sup>23</sup>

These words were spoken by Francis McGuigan, a surviving member of the fourteen "Hooded Men" earlier this month. Although ominous, these words encapsulate the often silent and always relentless struggle of the "Hooded

---

<sup>19</sup> Susan McKay, The Torture Centre: Northern Ireland's "Hooded Men" <<http://www.irishtimes.com/news/crime-and-law/the-torture-centre-northern-ireland-s-hooded-men-1.2296152>> (visited 6 April 2016).

<sup>20</sup> RTÉ Investigations Unit: The Torture Files <<http://www.rte.ie/news/player/prime-time-web/2014/0604/>> (visited 6 April 2016).

<sup>21</sup> See: <<http://www.patfinucanecentre.org/>> (visited 6 April 2016).

<sup>22</sup> Statement by Minister Flanagan on the Hooded Men Case <https://www.dfa.ie/news-and-media/press-releases/press-release-archive/2014/december/hooded-men-case-northern-ireland/> (visited 6 April 2016).

<sup>23</sup> British Authorities Accused of Stalling Over Hooded Men Inquiry <http://www.irishtimes.com/news/crime-and-law/british-authorities-accused-of-stalling-over-hooded-men-inquiry-1.2487087> (visited 6 April 2016).

Men” to have their case reheard before the European Court of Human Rights. This wait is set to continue as an extensive trawl for documents relevant to the men’s legal challenge continues. Speaking outside the High Court in Belfast, victims of this shameful atrocity contended that the ongoing delay for requisite materials is a deplorable stalling tactic by British authorities to impede the progression of their case. The Belfast High Court adjourned their legal action until April of this year.

Nine of the ten members of the “Hooded Men”, who survived alongside family members of four who have since died, are represented by an unparalleled legal team. This legal party boasts both eminent Silk Ben Emmerson QC, and the renowned barrister and human rights activist Amal Clooney. Yet, in spite of the “Hooded Men’s” legal team’s combined force of advocacy skills, this hugely anticipated international legal clash will not be easily won. The attainment of justice has faced obstacles from the outset, the difficulty of the case even from a political standpoint is acknowledged by Executive Director of Amnesty International Colm O’ Gorman; “We recognise the diplomatic challenges in Ireland’s seeking to have this case reopened.”<sup>24</sup>

Promisingly, recent judicial decisions across the globe have displayed an undeniable shift towards the likelihood of a finding of torture when the case of *Ireland v United Kingdom* is eventually readdressed. This is exemplified in a body of recent cases which illustrate the recognition of the enjoyment of a generally higher standard of human rights today. The case of *Selmouni v France*<sup>25</sup> proposes that the restrictive boundary, separating the classification of “torture” from that of “inhuman and degrading treatment”, be broken down. The originally undisclosed medical reports describing the condition of the “Hooded Men” following their internment and the enduring emotional and physical scars of their ordeal may prove to be an invaluable instrument in the quest to secure a reversal of the 1978 judgement. This view was expressed in *Egmez v Cyprus*.<sup>26</sup> The Secret Rendition Cases<sup>27</sup> also propose that the examination of the long term mental and emotional consequences of prolonged human imposed suffering, is a

---

<sup>24</sup> Amnesty Calls on Irish Government to Reopen “Hooded Men” Case <http://www.bbc.com/news/uk-northern-ireland-30177715> (visited 6 April 2016).

<sup>25</sup> Case 25803/94 *Selmouni v France* [1999] ECHR 66.

<sup>26</sup> Case 30873/96 *Egmez v Cyprus* [2002] 34 ECHR 29.

<sup>27</sup> The Secret Rendition Cases include: Case 39630/09 *El-Masri v The Former Yugoslav Republic of Macedonia* [2012] ECHR GC; Case 28761/11 *Al Nashiri v Poland* [2012] ECHR 2028; Case 44883/09 *Nasr and Ghali v Italy* [2016] ECHR 210.

relevant factor when determining if the necessary threshold for a classification of “torture” has been met.

## Conclusion

*“Man’s inhumanity to man  
Makes countless thousands mourn!”<sup>28</sup>*

To conclude, the decision reached by the European Court of Human Rights in *Ireland v United Kingdom* has proven to be a haunting presence over the last four and a half decades. The authority of this 1978 judgement has underscored the warranting and concealment of counts of some of the most heinous interrogative methods and mistreatment the global populace has witnessed in recent times. The ‘Hooded Men’ have time and again shielded international government officials and military authorities from the disappointing voices of their own moral conscious’s. Instead echoes of the Court’s resolution have proven to be the navigator on their road to hell. Fourteen ‘Hooded Men’ were subjected to deplorable mistreatment during their internment in Northern Ireland; however the worldwide victims of the European Court of Human Right’s decision could never be enumerated.

The “Hooded Men” and their families have, for almost half of a century, yearned for the invocation of the European Court’s power of revision. A reversal of the Court resolution would eradicate this controversial benchmark by which countries such as Britain and the United States measure their enhanced interrogation programmes. Possibility that the “five techniques” employed by the British military during the interrogation of the “Hooded Men”, could attain the legal classification of “torture”, has been the sustaining force driving their cause forwards towards justice. Developments in 2016 will undoubtedly prove to be instrumental in the writing of the final chapter of the tale of the “Hooded Men.”

---

<sup>28</sup> Excerpt from “Man Was Made to Mourn: A Dirge.” Available at: <http://www.robertburns.org/works/55.shtml> (visited 6 April 2016).