

Torture

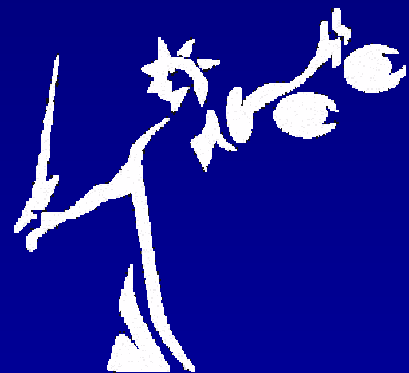
JUSTICE Student Human
Rights Network conference
8 March 2008

Roger Smith
Director
JUSTICE, UK



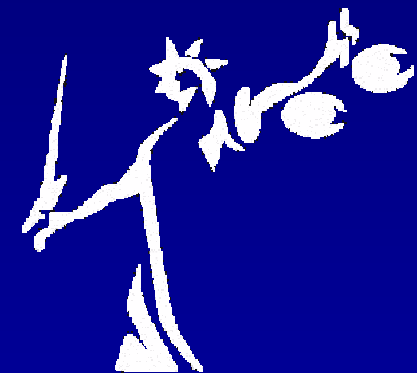
Article 3 ECHR

No one shall be subject to torture or to inhuman or degrading treatment



UN Convention against Torture (1985)

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person ... by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity [except] pain or suffering arising only from, inherent in or incidental to lawful sanctions



Torture: a relevant issue US

Donald Rumsfeld was asked to approve the following techniques in Iraq (*CNN 22 June 2004*).

- Use of scenario to convince the detainee that death or severe pain could be imminent for him or his family.
- Exposure to cold weather or water.
- Use of a wet towel or dripping water to induce a perception of suffocating.
- And mild non-injurious physical contact such as grabbing someone's arm, poking them in the chest or light shoving.

Which did he, and would you, approve?



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Torture: Cheney-style

What interrogation technique did Vice President Cheney call so obviously merited as to be a ‘no-brainer’?

‘You can have a fairly robust interrogation program without torture and we need to be able to do that.’

26 October 2006



Torture: a relevant issue UK

Lt Col Mercer had seen 40 hooded prisoners kneeling in the hot sun with their hands cuffed behind their backs ... he considered what he saw illegal and told his superiors. He got an email ... saying the Human Rights Act did not apply in Iraq

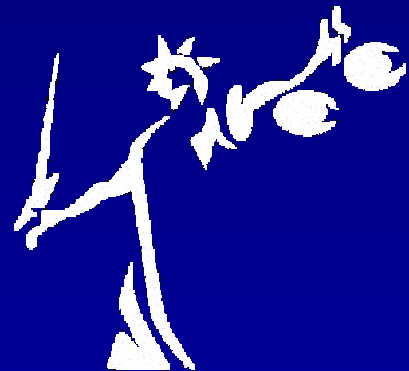
Independent 1 July 2007

Was this torture or ill-treatment?

Did the HRA apply in Iraq?

Al-Skeini v Sec of State [2007] UKHL 27

Roger Smith, JUSTICE

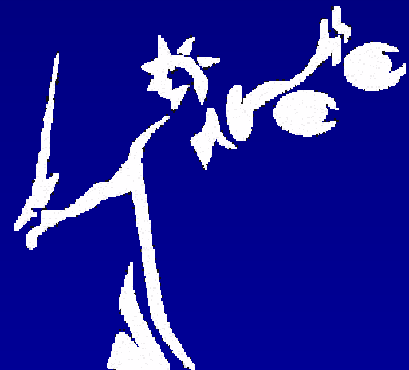


Torture: Northern Ireland

- wall-standing
- hooding
- noise
- deprivation of sleep
- deprivation of food and drink

Would these amount to torture or ill-treatment?

Would it matter which?



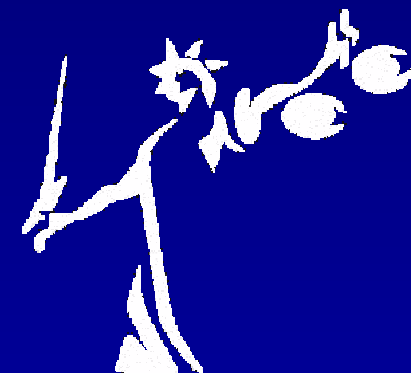
Torture: ECtHR cases

Ireland v UK [1978] ECHR 1

Campbell and another v UK (1982) EHRR 293 (threat)

Tomasi v France (1993) 15 EHRR 1 (slapping)

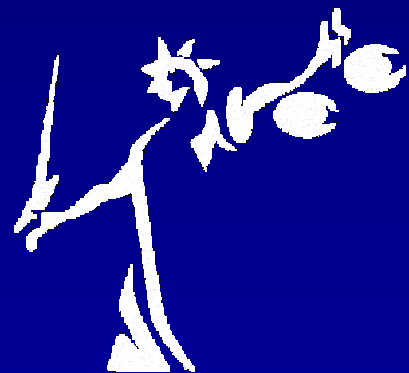
Ribitsch v Austria (1996) 21 EHRR 573 (physical force in principle)



Threshold

Can article 3 be extended to give a right to housing or income?

Limbuella v Secretary of State [2005] UKHL 66



Admissability

- Is a tribunal dealing with national security issues able to take into account evidence which might be submitted by eg the US from detainees in Guantanamo Bay?
- Would it make any difference if there was a specific statutory instrument that allowed the tribunal to ‘receive evidence that would not be admissable in a court of law’

A and others v Sec or State [2005] UKHL 71

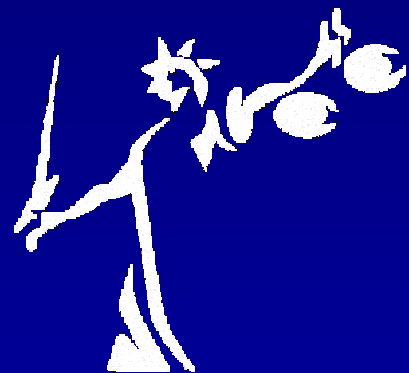


Deportation

Can you deport someone who is found guilty of an offence in the UK or who is deemed a threat to national security to the country of which they are national?

What about if the person argues that there is a real risk that they will be tortured?

Chahal v UK (1997) 23 EHRR 413



Deportation with assurances

DD and AS v Sec or State (SIAC April 2007)

Libya (no)

Othman v Secretary of State (SIAC, Feb 2007)

Jordan (yes)

*U and others v Secretary of State 2007 EWCA
808 (Algeria – reconsider)*



DWA – seeking to change Chahal

Saadi v Italy

UK Third Party Intervenor

Tunisia – appn no 37201/06 decision 28/02/07
(no).



The bitter legacy of extraordinary rendition

We do not condone torture. I have never ordered torture. I will never order torture. The values of this country are such that torture is not a part of our soul and our being.

President Bush 22/6/2004

"The enemy we fight has no respect for human life or human rights. They don't deserve our sympathy," he said. "But this isn't about who they are. This is about who we are. These are the values that distinguish us from our enemies."

Senator John McCain

October 7th 2005

