

HUMAN RIGHTS AND TORTURE

Research Article

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Abstract

Torture can be defined as a serious violation of physical and mental integrity of one person or individual.

The term ‘torture’ means any act by which intentionally inflicted severe pain or suffering be it physical or mental, upon a person for such purposes to take advantage of him or another person of any kind of information or confession, by punishing him for an act he or another person has committed or is suspected of having committed, or intimidating or forcing to admission of guilt, or for any kind of discrimination.

From here we can extract three essential elements which constitute torture:

- Causing pain or physical or mental suffering
- Deliberate(intentionally) infliction of pain
- The pursuit of a specific goal for example: getting information, admission of guilty.

The practice of inflating pain and torture is something dating from ancient times, and seems like nothing falls more contrary to claims for humanity and civilization. However, torture has become more prevalent in spite of, and has evolved side by side with civilization.

Cases in which practiced torture, time of which it dates, democratic values that’s violate torture and normative rules under international acts will be subject of this paper.

Key words: torture, physical and mental suffering, intimidation, admission of guilty.

Introduction

Human rights are defined as the "fundamental moral guarantee that all peoples should manifest in all countries and cultures, just because they are human beings". They are of high priority and that their conviction and respect are compulsory, inviolable and cannot be selected as desired. Human rights are usually considered as **a)** universal rights in the sense that every person has and should enjoy them without distinction, and **b)** independent in the sense that they exist equally for all and are and are available as standards of justification and criticism, regardless of whether or are not known and implemented by the legal systems of individual countries.²

The idea of Human Rights is the result of the philosophical thought of modern times, based on the philosophy of rationalism, liberalism, democracy and socialism.

The aspirations to protect the human dignity of all human beings represent the essence of the concept of human rights. This aspiration puts the human being at the center of interest.

During the twentieth century, human rights were developed as moral, political and legal formulations, and as guides for the development of a free world of fear. However, the universal human rights concept became acceptable to all human beings as a result of serious human dignity violations, and especially after the terrible Holocaust experience during the World War II, when from 48 countries was reached the agreement for the Universal Declaration of Human Rights.

Human rights violations pose a threat for human security, therefore they are used as indicators for early warning, in order to prevent conflicts. However, human rights are limited by the rights and freedoms of others, or by moral requirements, public order and the general welfare of a democratic society.

Human rights cannot be used to violate the human rights of others.³ They should not only be respected, but should be tolerated too. Therefore, even though in some special situations or extraordinary situations, there may be restrictions, all conflicts should be resolved in the spirit of respect for human rights.

²Kosta, Arqile.: Doktrina e të Drejtave të Njeriut (2007)

The right for protection from torture and any form of discrimination or non-human treatment, is part of a human rights group that cannot be restricted, prohibited, or derogated by states in all circumstances and situations, whether a state of emergency, internal political conflict or a state of war.

When it comes to torture, it automatically ASOCON us in a phenomenon of poor and non-civilizing societies. But it is surprising that the torture is practiced in 2/3 of the world countries, including industrial developed states.

However, what distinguishes the presence of torture and other forms of mistreatment from country to country is the way and rate of its application.

The worst forms of mistreatment occur in those societies and states, where human rights violations area everyday's cause.

The prohibition of torture is absolute and is emphasized in many international agreements, eg. in Article 5 of the Universal Declaration of Human Rights (UDHR); in the Article 7 of the International Covenant on Civil and Political Rights (ICCPR); where it says:

"No one shall be subjected to torture and treatments or cruel punishments, non human and humiliating"⁴

This belongs to that group of human rights which are considered inalienable and valid in all aspects and which are not allowed to be derogated by the state for any reason, whether war or state of emergency, political instability etc.

The absolute nature of the prohibition of torture is as a principle "jus conges"⁵ as the highest form of customary international law, which is mandatory for all states in all respects.

³Art. 30 of Universal Declaration of Human Rights

⁴ Art. 5 of Universal Declaration of Human Rights (UDHR)

Art.7 of International Covenant on Civil and Political Rights (ICCPR)

⁵ Jus cogens - Ligji i Forcuar, standard idetyrueshëmligjore, rregull nga e cilat Individët nuk mund të heqin dorë (e kundërta e jus dispositivum). Jus cogens janë te drejta që nuk mund të derogohen

pra, të drejta që vlejnë ndaj të gjithëve, dmth. ata vlejnë edhe në vendet që nuk janë palë në traktatin përkatës ndërkombëtar. Parimi jus cogens nuk mund të mohohen ose të revokohen me ndonjë ligj kontraktual ose me çfarëdo mjeti tjetër sundim i të drejtës ndërkombëtare.

Definition of Torture

Defining the phenomenon of torture and mistreatment in a broadly acceptable manner has been a challenge for a long time even though their punishment and detention in general have been recognized as norms of customary international law, which have been applied in all states.

Internationally accepted provisions for absolute prohibition of torture, formulated in a number of international legal texts, have not been a sufficient guarantee for the prohibition on torture. It seemed that always have existed a deflection in definition leaving space for interpretation to state authorities in order to ensure the acceptance of these international principles in principle by states.

The legal definition is included and recognized by all signatory states of the United Nations Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment- UNCAT in 1984 (which was approved on the basis of Resolution 39/46 of the General Assembly of December 10, 1984, and opened for signature, ratification and accession, and entered into force on June 26, 1987).

The definition of torture in Article 1 of the Convention (UNCAT) is defined as:

"Any act by which another person is intentionally caused by severe physical or mental pain or suffering, in order to obtain from him or any other person information or allegations to convict the offense which he or the third person has committed or suspected of having committed, or in order that person or the third person be afraid, be forced or for any other reason based on discrimination of any kind; when such pain and suffering is caused by an official person or by a third person acting under an official title".⁶

Although this definition is not comprehensive and does not elaborate in detail the different degrees of torture and mistreatment, it is important to note that this legal definition takes into account their psychological and physical dimension. This definition also excludes legal sanctions, i.e. sanctions foreseen by local legislation, which in certain cases encourage questions - if these sanctions are in full contravention of the Convention (UNCAT).

⁶ Art. 1 of United Nations Convention Against Torture (UNCAT)

For the purpose of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him, or a third person, information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in, or incidental to, lawful sanctions.

From this definition we can disclose distinctive elements of torture:

1. Intentional infliction of physical and mental pain and suffering
2. The pursuit of a specific goal for e.g. obtaining a certain information
3. These actions are performed by the state official or the third person acting in official capacity.

Intentional infliction of pain and suffering is characteristic as for the torture as well as for the humane and humiliating treatment.

In the basic legal terminology for the distinction, even though small, between torture and humiliating and cruel and humiliating treatment, is:

- a. Nature of action and its purpose
- b. The degree of severity
- c. Use of cruel methods

So, the more cruel and fierce is a deliberate action, the court will foresee as a torture case.

Torture Methods

In principle, everything from water, household elements can turn into torture instruments. However, today the tools and methods of torture have progressed, rather than stagnating, and as a result this has contributed to increasing their cruelty and inhumanity.

A number of torture methods and techniques used often do not leave visible signs in the body but still have a huge impact on the internal organs as well as on the psychological integrity of the victim.

Generally torture methods can be classified into two main groups:

1. Physical method
2. Psychic method

Physical torture causes to the victim great pains and severe suffering. In the cruelest forms it can lead to mutilations, ugliness or permanent injuries.

The most common methods of torture include: beating with sticks, metal objects, stones, cables, rods, kicking, and crashing. Other methods, many of which are used are electroshock, immersion of a victim in water, cigarette burns in different parts of the body, victim exposure at extreme low or high temperatures. There is also much so-called "falaka" or "Phalange" which means beating the victim so hard on the feet.

Psychic torture includes deprivation and exhaustion techniques such as: deprivation of food, water, sleep, hygiene equipment, deprivation of various forms of communication, isolation or inability to contact other inmates or other persons outside the prison, aggravation or threatening through the presence of other persons in torture, threats to family relatives, execution threats, or execution simulation, humiliation, continuous terrorism, etc. Sexual violence is also often used as a physical and psychological method of disabling the victims.

All the methods used are heavy blows for the dignity of human beings and a gross violation of their rights. The free world of torture means a free world from deliberate infliction of pain and suffering and the use of cruel means from one person to another.

Torture Motives

Torture motives are different, but mostly they are guided by deliberate intentions and goals. The desire to show power or simply to conceal mischief results in torture and other forms of mistreatment.

During the various epochs of history, torture has been used to take and exercise power against opponents or people who have progressive ideas and who pose a threat to certain authorities or governments. Therefore, torture is mainly used as a method of oppression and political repression, then punishment, revenge and silence of the opposition.

Although the admission of guilt, under pressure or violence is under the law or is not accepted at all as evidence, traditionally the torture has been used as a means of obtaining information and accepting guilt.

Cruel and humiliating treatment has also been used as a method for threatening, fearing, and exercising barbarism against people, and as a means of humiliating and creating people's feelings of ineffective and inferiority from their side and thus destroy their personality. All of these acts that are motivated by different goals have a long-lasting impact on the personality of the tortured people.

Victims of torture

Everyone can become a victim of torture, especially in those societies where there is no rule of law tradition or where the taken laws and commitments, or the signed and ratified international declarations, are rarely respected or implemented.

Most often mistreatment occurs in prisons, police stations, and other detention centers, but there are also rare cases where they are also conducted in private homes, specially designed for those torturing purposes, even in specialized mental health institutions for mentally ill, refugee camps etc.

In particular, pre-detainees and convicted criminals present a vulnerable group of acts of mistreatment, as they also depend on their primary needs by state authorities. These detention centers are practically closed and prisoners are outside the eyes of society, but at the same time they represent that group of people with whom society is not identified and does not feel sympathetic.

A risk of continuous trauma exists in minorities, whether ethnic, religious, social, as well as refugees and asylum seekers, as they are often subject to humiliating treatments. Older people and mentally handicapped people living in specialized institutions or hospitals as a result of insufficient resources to provide dignified living standards, health care and dignified dignity, are often forgotten and neglected and can become victims of torture and inhuman and degrading treatment. Children, women, men, young people, the elderly can become victims of torture also.

No one is untouchable by the various forms of mistreatment, not even the perpetrators themselves. Usually perpetrators are officers or military officers acting on official duty. There are numerous cases where mistreatment perpetrators act on orders and are part of specialized groups for whom torture and mistreatment are part of everyday life. The medical and insurance personnel in institutions for people with special needs may become abusive and

abusive, either as a result of their negligence or as a result of lack of proper and correct care, or as a result of lack of adequate treatment resources.

Physical improvement and rehabilitation often take many years, while the consequences cannot be fully recovered in all cases. Moreover, the consequences for permanent bodily injuries, amputations, victims of psychiatric wounds remain present throughout their lives and often prevent them from having a quiet and normal life.

Prevention of Torture

We can say that there are three main ways to effectively prevent torture:

1. Creating an effective legal framework and ensuring its implementation, as well as the application of appropriate protective measures for the prevention of torture, such as: ensuring the fundamental guarantees in prison, the right to a lawyer, a doctor, a judge etc., as well as the detention of imprisonment when there is no possibility of communication,
2. Creating control mechanisms in particular the local mechanisms for regular prisons visits, and provide the possibility for civilian organizations to monitor and to report independently,
3. Continuous training for police officers, prison guards, lawyers, judges, doctors, etc.

Everyone, through concrete actions, campaigning, lobbying for ratification of international instruments and their implementation at the local level, or writing letters and inquiries addressed to relevant institutions, may participate in torture prevention activities. All of us involved in work or volunteer in NGO, we can contribute to raising awareness and enhancing educational activities in homes, municipalities or regions. Last but not least, we can help torture victims by informing them of how their case can be addressed, and where they can defend their rights, or support them by assisted in reporting cases of terrorism and by taking legal action against the perpetrator.

As good practices of preventing torture and mistreatment, there may be:

- Building Capacity and institutions, impact on existing structures and institutions, reforming them or building new institutions with capacity to deal with issues,
- Campaigns, lobbying, raising awareness and educational activities at the local level through extensive measures and through judicial actions.

In October 2000, Amnesty International approved the 12-point Torture Prevention Program, which contains the following 12 points:

1. The official punishment of torture
2. Limitation of isolated imprisonment
3. Not to have secret arrests
4. Protection measures during interrogation and during pre-trial detention
5. Independent Investigation of Torture Reporting
6. Non-use of statements obtained through torture

7. Prohibition of torture by law
8. The legal pursuit of potential torturers
9. Training Procedures
10. Compensation and rehabilitation
11. Responsibility from the international community
12. Ratification of International Instruments⁷

Implementation and monitoring

Since 1948, have been conducted the international provisions for the prevention of torture and other forms of cruel treatment have developed and have progressively evolved, inhuman and degrading.

A large number of states have signed, ratified and incorporated these international legal commitments into their domestic legislation. Strong regional systems and national inspections have been developed for protection against torture and also were presented the visiting mechanisms.

In the international sphere, the UN Committee Against Torture and UN Special Rapporteur on torture,⁸ together with a large number of non-governmental organizations, are monitoring the implementation of local committees on the prevention of torture and other practices similar to torture. UNCAT examines the reports of the States party to the Convention that come forward in each four-year period and may conduct investigations and seek clarifications or additional information on the facts from the state reports.

Conclusion and controversy issues

After the attacks of September 11, 2001 and until today, it is noticed the opening of the old debate - If for the purpose of saving the lives of others it has been allowed to torment terrorists?!

In the United States there was conducted a debate about whether terrorism differs from other forms of crime and human rights violations, and is it necessary to introduce new standards for preventing and combating it?

Some states like Ireland, Turkey, and the United States etc. have adopted antiterrorist law, which laws have been passed through a quick approval procedure and as a result certain human rights and freedoms have been restricted.

⁷www.amnesty.org.uk

⁸Organi monitorues i OKB-së, Komiteti i OKB-së Kundër Torturës (UNCAT), u themelua në pajtim me Nenin 17 të Konventës së OKB-së Kundër Torturës,ka filluar me punë më 1 janar të vitit 1988

As a conclusion of this issue automatically emerge some logical questions:

- Does the victim have greater protection right than the perpetrators of the terrorist act or criminals?!
- Does the value of life of a perpetrator of a crime or terrorist act is the same as the value of other people's lives?!
- Is it permissible for a given the state is allowed to torture the close or wide family members of suspects or perpetrators of any crime or terrorist act? Etc.

There is no correct or incorrect answer to the solution of these complicated contradictions and moral dilemmas, but connoisseurs of international affairs, as well as international advocates constantly stand in the position that the duality of standards is unacceptable and that international legal standards cannot be applied selectively and believe this is the only way to protect the positive spirit and the functioning of international law and human security.

A new challenge for human security is the enforcement of human rights in the fight against terrorism.

No one can be put out of the law or be deprived of his inalienable right!

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