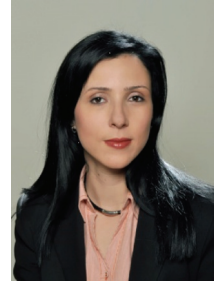




Franciska Zhitia Ymeri



Saranda Bogaj Sheremeti

TORTURE

1. NOTION OF TORTURE

Torture is an inhumane, demining and degrading act undertaken by an official person, an action done on purpose with the aim of obtaining information from that person, or various statements for actions that he has committed or is suspected of committing.

Torture as cruel treatment has its roots in early history, but which is practiced by many states even now.

In order to better understand the review of the topic which we have chosen, initially we need to understand and elaborate that which we understand to be torture.

Torture means “serious bodily harm or torment with various means, which is done to someone in order to make him speak, reveal secrets, to subjugate him, to reveal his guilt and other guilty parties, etc; beatings, starvation, water and sleep deprivation, irritation of wounds, etc.

While, according to the international law norm, the notion of torture is defined with a wider notion: “torture means any action done to another person, with the aim of causing pain or serious physical or mental suffering in order to force him or a third person to give information or statements related to an act, which he or another third party has committed or is

suspected of committing, or with the aim of frightening or compelling him or a third party, or for any other reasons based on discrimination of any type, where such pain and suffering is caused by an official person or an ex officio third person, or with his endorsement or approval. This notion does not include suffering and pain which result only from legal sanction, which are related to it or caused by them.”

Torture was used since the beginning of human society. In Europe it reached its pinnacle in the period of the inquisition. Torture was used as the main tool for terror in the Soviet Union and in other communist countries of Eastern Europe. According to the UN Convention of the 26th of June 1987, torture is defined as: 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 any other motive”

The characteristics of this criminal act are:

1. On criminal responsibility, this criminal act can be done only on purpose,
2. This criminal act can be done only by an official person and that only if the crime is committed during the exercise of his official duty.
3. In order to consider if this criminal act has been committed and the specific aim on which the official person has used forced with the aim of obtaining a declaration from the defendant.

2. REGULATION ON THE INTERNATIONAL AND NATIONAL ASPECT

Many can make the question of: What kind of relation is there between human rights and the development of a county or issues related to it? What is the role and function they play in economic, social and moral development and prosperity of the country? The best answer to this was given by

statesmen of the European State after the destructions of the Second World War. They decided to build a Europe based on wider foundations than only economic development and open markets. It was thought to be necessary to rebuild the continent on the basis of respect for special values, rights and freedoms which define the concept of a rule of law state and constitute the main pillar of democratic societies. Therefore, they decided that a society cannot be constructed without placing the individual, his respect and dignity and rights which originate from him, as the centre piece of attention.

The Council of Europe and European Convention for Human Rights resulted from this need and from these beliefs.

Together with Magna Carta and the French Declaration of Human Rights, the Bill of Rights of the United States served as a model for the Universal Declaration of Human Rights, which stipulates that: "...it is necessary that elementary human rights be protected with legal provisions of the state, so that a person is not forced to the point of rebellion against tyranny and oppression". Additionally, one of the basic principles of international law on the protection of fundamental human rights and freedoms is Article 5 of this Declaration, which states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment"; Furthermore, according to Article 7 of the International Pact on citizens and political rights, foresees the prohibition of all forms and other means of torture: "Every person has the right to his physical and mental integrity being respected and protected. No one should undergo suffering or inhuman and degrading punishment", because these forms of torture are not allowed, also with the Charter on fundamental rights of the EU (Chapter I, Articles 3 and 4), approved in Nice, on the 17.12.2000).

Additionally, according to provisions of the Convention on the protections of human rights and fundamental freedoms, Article 3 states that "No one shall be subjected to torture or to inhuman or degrading treatment or punishment" (Convention for the protection of human rights and fundamental freedoms, Rome, 04.11.1950 which entered into force on the 03.09.1953; European Convention for the prevention of Torture and of inhumane and degrading punishment and treatment, Strasbourg, 26.11.1987 which entered into force on the 1st of February 1989, paragraphs 3 and 4.

2.1 Torture according to Kosovo Criminal Code

This Code places the torture as a criminal offence among the Criminal Offences against Human Rights and Freedoms – Article 165.

According to KCC: An official person, or a person acting at the instigation of or with the consent or acquiescence of an official person who commits an act of torture, shall be punished by imprisonment of five to fifteen years.

This Code was promulgated in 2003, whereas it became effective in 2004; until this year there was a Serbian Criminal Act, which if compared to the current Kosovo Criminal Code there is a big difference especially in awarding the punishment.

Former Yugoslavia is recognized as one of the countries that has implemented the applicable laws the least, laws that were promulgated by its bodies, but also the implementation of agreements, conventions which it has signed and is state party to.

We are still suffering the consequences of that state of anarchy in Kosovo; in Kosovo's prisons, even today the rights of the prisoners are not practiced enough, whereby we often encounter different protests by prisoners.

According to the Kosovo Rehabilitation Centre for Victims of Torture, there were 500 victims of torture recorded in 2006.

3. EUROPEAN CONVENTION OF HUMAN RIGHTS

No one shall be subjected to torture, inhumane or degrading treatment or punishment.

Rights protected by Article 3 of the Convention are related directly with the personal integrity and human dignity of the individual. Thus, freedom from torture, inhuman or degrading punishment and treatment are the rights of extraordinary importance. At the same time, rules allowing to determine whether a country has violated one of these rights are to a large extent

subjective. These two elements have driven that the Commission and the Court interpret provisions from Article 3 in a strict way in majority of circumstances.

Hereby, the Court and the Commission differentiate between the three notions of Article 3 in compliance with the degree of severity of special treatment and punishment. For every notion they have determined standards of degrees of prohibited behaviour as in the following:

- Torture – inhuman treatment committed with the intent of causing severe and cruel suffering.
- Inhuman treatment or punishment - causing an intensive physical and mental suffering.
- Degrading treatment – ill-treatment striving to create among the victims a feeling of anxiety and inferiority capable of degrading and humiliating them and possibly break their physical and moral resistance.

It is worth noting in this regard that although many complaints have been made for violation of Article 3 by the individual prisoners, the Commission and the Court have rarely found violations in these matters. The Court found violations of Article 3 where individuals submitted documentation in time for the injuries they claim they had suffered while in custody by the police and where the Government offered no credible alternative explanations regarding the cause of those injuries.

The Court found a violation of Article 3 in case *Soering v. United Kingdom* (1989), in which a young German, whose extradition was requested by the U.S. for a murder which was punishable by death, whereby he would face the possibility of a long-term imprisonment in the "death row". Although it acknowledged that the death penalty was legal in the U.S., the Court stated that for it to submit the applicant to the death row phenomenon it would be in breach of the rights guaranteed by Article 3 and that the United Kingdom would be responsible for this under the Convention.

In another case the Court found a violation where the lack of financial or emotional support and low quality of health care in the country of return, were inadequate to meet the needs of an individual in the final stages of AIDS (*D versus United Kingdom* (1997)).

4. STRASBOURG COURT

No state body or institution has the right to exercise victimization, arrests, persecutions, imprisonment, torture and terror against any person seeking the exercise of his/her rights and freedoms, because these cruel inhuman and anti-human acts of the civilized world are prohibited and punishable according to the norms and rules of the international law and international applicable legal order, hereby constituting a crime, namely for criminal offences which are strictly sanctioned by the International Court of the United Nations and the European Court of Human Rights.

Establishment of the Court with a unique jurisdiction in the world proves the desire to ensure that this Convention should be more than just another statement.

Since the establishment, operation of the Council of Europe is focused in supporting greater respect for these values in the law and practice in its member states. In this context, the Court plays a crucial role for the transformation of the rights into reality for hundreds and thousands of people who have found the solution to their rights in Strasbourg, whilst its decisions have resulted in incalculable changes in the law and practice of member states to the benefit of all.

The main responsibility for implementation of the ECHR certainly rests with the national authorities. The Strasbourg Court is the last option and provides a solution to only a small number of individuals. In order for judges and prosecutors to be able to fulfil this important role, they must be trained properly. The Council of Europe welcomes the efforts of the Albanian authorities above all on the training in the School of Magistrates. The more issues are resolved in the national courts, the less people will be forced to take their applications to Strasbourg.

4.1 How to address to Strasbourg Court

If you think your grounds of appeal are related to a violation of the rights guaranteed by the Convention or by one of the Protocols, first send a letter to the secretary of the Strasbourg Court containing the information listed below. This letter must be addressed to: Le Greffier de la Cour européenne des Droits de l'Homme Conseil de l'Europe F-67075 STRASBOURG

CEDEX FRANCE. Your letter may be written in Albanian or any other foreign language and must contain: A brief summary of the reasons for your appeal, and citing of the right or the rights guaranteed by the Convention that you assess to have been violated. You will do this after you have read the European Convention of Human Rights and find the relevant Article, e.g. Prohibition of torture (Article 3), the right to a fair trial (Article 6), the prohibition of discrimination because of a national origin, religion (Article 14) etc. Appeals you have filed for example to the Court of Appeals or the High Court.

List of decisions issued for your case by a public authority, specifying for each decision: the date, its contents in the summary and the issuing body. Attach your letter to the copy of these decisions. (These documents will not be returned to you. As a result, it is in your interest to send only copies and not the originals). Appeal can be made by you personally or your authorized lawyer or any other person authorized in writing by you. Court Secretary will respond to you. You will be probably requested to provide additional documents, information or explanations regarding your appeal. They may inform you on how the Convention was interpreted in similar cases. In case when acceptance of your appeal has any obvious obstacle, you will be made aware of. If from your correspondence with the Secretary it turns out that your appeal can be registered as an application to the Strasbourg Court, and if you wish for it to be registered as such, the secretary will send you the forms used to formally submit your application. Once you have completed and addressed them to the secretary, your application will be submitted to the Court. You will be made aware of the progress of proceedings by the Secretary. This procedure, at least initially, is conducted in writing. So, you or the person authorized by you, does not have to appear at the Head Office of the Court. If possible, it is better to engage a lawyer to file your claim. Later on, during the proceedings, if necessary, you can get legal aid if you do not have the means to pay for a lawyer. But such aid cannot be granted at the time when submitting the application, but after the appeal has been accepted for a review by the Strasbourg Court.

Conclusion

So any action of torture or any other cruel, inhuman or degrading punishment or treatment, is an affront to a human dignity and should be condemned as a negation of the goals of the United Nations Charter and as

a violation of human rights and fundamental freedoms declared in the Universal Declaration of Human Rights.

Although prohibited by the international law and condemned by a number of international conventions, torture continues to be the predominant reality and quite spread these days. Torture and ill-treatment continue to be practiced in many countries, including signatories to the Convention against Torture. International pressure could force these Governments to use their authority to prevent torture, giving us a ray of hope that one day torture would be just a history.

According to the United Nations data, torture is present in many countries; despite its condemnation by the international community it is still part of the justice system. Torture is a crime and its prevention is essential and indisputable. About 50 countries, including Iran, Burma and Vietnam have not signed the UN International Convention against Torture of 1987; therefore they are being called upon to sign the Agreement and open their prisons to a check by the UN. Human rights organization Amnesty International has forewarned that there will be efforts to prevent torture in these countries.

Torture destroys men, women and children, families and communities. Torture undermines human and economic development of the society, which is one of the rights of all people.

There are disasters that cannot be prevented, such as tsunami. However, torture is a disaster caused by a man himself. You can prevent torture and heal the victims affected by it.

Literature:

- Albanian language dictionary „Rilindja“ Prishtina 1976 f.569.
- Universal Declaration of Human Rights of 1948.
- Provisional Criminal Code of Kosovo.
- Criminal Law, Special Part, Prof. Dr. Ismet Salihu.