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# TORTURE AS A CRIME DURING INTERNATIONAL ARMED CONFLICT: UKRAINIAN LEGISLATION AND INTERNATIONAL STANDARDS

# КАТУВАННЯ ЯК ЗЛОЧИН У ПЕРІОД МІЖНАРОДНОГО ЗБРОЙНОГО КОНФЛІКТУ: УКРАЇНСЬКЕ ЗАКОНОДАВСТВО ТА МІЖНАРОДНІ СТАНДАРТИ

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The article performs a comprehensive legal analysis of the prohibition of torture within the critical framework of the armed aggression of the Russian Federation against Ukraine. The study confirms that the prohibition of torture constitutes a peremptory norm of jus cogens, possessing universal force and allowing for no derogation, applying irrespective of the legal regime (peacetime, state of emergency, or armed conflict), a principle codified by the Geneva Conventions and customary International Humanitarian Law. The authors establish that there is an established practice of dual legal classification for acts of torture committed in the temporarily occupied territories. They simultaneously constitute war crimes pursuant to Article 8 of the Rome Statute (as "grave breaches" of the Geneva Conventions within the context of an International Armed Conflict) and crimes against humanity under Article 7 of the Rome Statute. This qualification is substantiated by the systematic, widespread, and politically directed nature of the documented violence. The article integrates findings from reports by the Office of the United Nations High Commissioner for Human Rights (OHCHR) (2023–2025), which identify large-scale patterns of torture against civilians and prisoners of war. This evidence is rigorously contrasted with the jurisprudence of the European Court of Human Rights (ECtHR), specifically the criteria of intensity and specific purpose defined in the cases Aksoy v. Turkey and Selmouni v. France. The existence of "torture chambers" networks and the centralized management of "filtration centers" confirm the presence of an organized policy, a key element of a crime against humanity. Furthermore, the analysis addresses problems of national implementation, particularly the wording of Article 127 of the Criminal Code of Ukraine (CCU), which fails to incorporate the international law requirement for a special subject, leading to a duplication of criminal offenses and complicating their proper legal differentiation. In conclusion, the research asserts that the totality of international legal mechanisms and the evidentiary base creates the necessary legal foundation for ensuring the individual criminal accountability of perpetrators at both international and national levels.

**Key words:** torture, jus cogens, war crime, crime against humanity, armed aggression of the Russian Federation, international criminal law.

У статті здійснюється комплексний аналіз заборони катувань у контексті збройної агресії Російської Федерації проти України. Дослідження підтверджує, що заборона катувань є імперативною нормою jus cogens, що має універсальну силу та не допускає жодних відступів від неї, і застосовується незалежно від правового режиму (мирний час, надзвичайний стан чи збройний конфлікт), що закріплено Женевськими конвенціями та звичаєвим МГП. Авторами встановлено, що існує усталена практика подвійної правової кваліфікації актів катування, вчинених на тимчасово окупованих територіях. Вони одночасно становлять воєнні злочини згідно зі ст. 8 Римського статуту (як «серйозні порушення» Женевських конвенцій у контексті міжнародного збройного конфлікту) та злочини проти людяності відповідно до ст. 7 Римського статуту. Ця кваліфікація обґрунтовується системним, широкомасштабним та політично орієнтованим характером задокументованого насильства. У статті інтегровано висновки звітів Управління Верховного комісара ООН з прав людини (2023–2025), які ідентифікують масштабні моделі тортур щодо цивільних осіб та військовополонених. Ці докази зіставляються з прецедентною практикою Європейського суду з прав людини (ЄСПЛ), зокрема з критеріями інтенсивності та спеціальної мети, визначеними у справах Aksoy v. Turkey та Selmouni v. France. Наявність мереж «катівень» та централізованого управління «фільтраційними центрами» підтверджує існування організованої політики, що є ключовою ознакою злочину проти людяності. Додатково аналізуються проблеми національної імплементації, зокрема редакція ст. 127 КК України (ККУ), яка не закріплює вимогу щодо спеціального суб'єкта згідно з міжнародно-правовими стандартами, що призводить до дублювання складів злочинів і ускладнює їх належну правову диференціацію. На завершення, дослідження констатує, що сукупність міжнародних правових механізмів та доказової бази створює необхідне правове підґрунтя для забезпечення індивідуальної кримінальної відповідальності винних осіб на міжнародному та національному рівнях.

**Ключові слова:** катування, імперативні норми, воєнний злочин, злочин проти людяності, збройна агресія РФ, міжнародне кримінальне право.

Torture constitutes an international crime, the prohibition of which is enshrined in both treaty and customary law. The absolute prohibition of torture belongs to the category of jus cogens norms of international law, permitting no derogation whatsoever. This prohibition is applicable not only during peacetime or in states of emergency under international and regional human rights law but also extends to situations of international and non-international armed conflicts, a principle further affirmed by the provisions of the Geneva Conventions and their Additional Protocols.

The criminal law principles underpinning the prohibition of torture in international law developed progressively, beginning with the Charter of the Nuremberg Military Tribunal. Article 6 (b) of this document defined the torture of civilian persons and prisoners of war as a form of war crime subject to criminal prosecution. The subsequent evolution of international legal standards occurred with the adoption of the Geneva Conventions of 1949, which categorized torture as a grave breach. Common Articles 49/50/129/146 established a set of obligations for State Parties, including the duty to ensure the adoption of domestic legislation that guarantees the inevitability of criminal liability for persons who commit or order torture; to search for such persons; and to transfer them for prosecution to any other State interested in the administration of justice. This refers to the obligation of national legal implementation of the prohibition of serious breaches, as well

as the establishment of de facto limited universal jurisdiction over the offenders [1, с. 23-24].

In accordance with the norms of customary international humanitarian law (IHL), the prohibition of torture as well as cruel, inhuman, or degrading treatment has long been recognized as a firmly established norm. This principle is explicitly reflected in Rule 90 of the study on customary norms of international humanitarian law, which was prepared by the International Committee of the Red Cross (ICRC) [2].

The most comprehensive and pivotal international instrument in the field of counteracting torture is the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), adopted by the UN General Assembly Resolution 39/46 on December 10, 1984 [3]. Pursuant to Article 1 of the CAT, the term "torture" denotes any act by which severe physical or mental pain or suffering is intentionally inflicted on a person for the specific purpose of obtaining information or a confession from them or a third person, punishing them for an act they or a third person has committed or is suspected of having committed, or intimidating, coercing them or a third person, or for any reason based on discrimination. Such acts qualify as torture if they are 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. However, the concept of torture excludes pain or suffering arising only from, inherent in, or incidental to lawful sanctions. This definition is firmly established at the level of international law. For an act to be classified as torture, it must meet several criteria: cause significant physical or psychological suffering; be intentional; and be carried out by, or with the support, knowledge, or acquiescence of, state officials. Torture serves as an instrument to achieve a specific purpose, and the Convention highlights the following aims: obtaining evidence or confessions, punishment, or the coercion or intimidation of the person or a third party. A positive aspect of the Convention is the introduction of the principle of universal jurisdiction, meaning that individuals guilty of committing torture can be prosecuted and held accountable by any State, regardless of their nationality or the place where the crime was committed.

The Russian President Vladimir Putin signed a law on the denunciation of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), concurrently nullifying the operation of two associated protocols. However, this decision does not lead to the nullification of international legal consequences that have already arisen, pursuant to Article 70 of the Vienna Convention on the Law of Treaties, meaning crimes of torture committed prior to the withdrawal remain under the Convention's jurisdiction. The withdrawal may signify that the State will no longer be subject to monitoring by the Committee for the Prevention of Torture regarding future violations, may decline to recognize the Committee's competence over individual complaints, and is not obligated to ensure specific procedural guarantees for torture prevention. Nevertheless, the fundamental obligation to prohibit torture persists under the norms of peremptory international law (jus cogens).

The Rome Statute of the International Criminal Court (ICC) provides for liability for torture as a war crime. Under contemporary international criminal law, such responsibility is specifically codified in Article 8(2)(a)(ii) for situations of international armed conflict, and in Article 8(2)(c)(i) for non-international armed conflict [4].

The role of torture within the system of war crimes was most pertinently outlined in the jurisprudence of the International Criminal Tribunal for the former Yugoslavia. A prominent illustration is the case concerning the Čelebići detention camp, which established that torture is the most specific of the ill-treatment offenses that constitute «grave breaches», solidifying actions or omissions committed by, or with the consent or knowledge of, an official person, which are perpetrated for a specific prohibited purpose and result in severe physical or mental pain or suffering [5].

The International Criminal Tribunal for the former Yugoslavia (ICTY), in the landmark Furundžija case (1998) [6] underscored that the prohibition of such acts belongs to the category of jus cogens – norms that possess the highest legal force and prevail over any other norms, including treaty provisions and customary law (para. 153) [7].

In the current context of the armed aggression of the Russian Federation against Ukraine, this norm acquires particular significance, given that documented instances of torture demonstrate their systematic and multi-episode nature rather than being isolated incidents. The norms of the UN Convention Against Torture (CAT), the Geneva Conventions, and the European Convention on Human Rights (ECHR) form a comprehensive international legal mechanism, the violation of which entails the international responsibility of the State and the individual criminal liability of the persons guilty of committing acts of torture. In light of the mass violations recorded on the territory of Ukraine, these documents serve not only as a normative foundation but also as a practical tool for the qualification of crimes, allowing the actions of Russian military personnel to be classified as war crimes and crimes against humanity, pursuant to the Rome Statute of the International Criminal Court (ICC) and the established jurisprudence of the ECtHR.

Reports by the Office of the United Nations High Commissioner for Human Rights (OHCHR) [8, 9] spanning 2023–2025 have, for the first time, systematically documented large-scale patterns of torture applied to both civilians and prisoners of war. Victims reported being subjected to beatings, the application of electric current, multiple instances of suffocation, sleep deprivation, prolonged confinement in enclosed spaces, and threats of physical harm. A comparison of these testimonies with the criteria formulated in the ECtHR case law – primarily in Aksoy v. Turkey [10], Selmouni v. France [11], and Gundem v. Turkey [12] – provides grounds to assert that the documented actions attain the level of cruelty required for qualification as torture. In these rulings, the ECtHR emphasized that the defining feature of torture is the intentional infliction of intensive physical or mental suffering for a specific purpose, which fully correlates with the victims' testimonies in Ukraine. Furthermore, in many instances, the methods of influence documented by the UN exhibit signs of systematicity – the repetitiveness, similarity of coercive tools, and uniformity of interrogation approaches – indicating not just individual acts of cruelty, but a targeted practice by Russian security structures in the occupied territories. Following the liberation of Bucha, Izium, and Kherson, Ukrainian law enforcement agencies and international experts discovered numerous basements, utility rooms, and improvised «detention cells» where Russian military personnel unlawfully detained civilians. Evidence included bloodstains on walls and floors, wire insulation, metal pipes, and extension cords used to inflict pain. According to eyewitness accounts, detainees were beaten, subjected to electric torture, and deprived of food, water, and sleep, which aligns with the hallmarks of torture. One of the most striking examples of large-scale violations was Mariupol, where a network of so-called «filtration centers» operated. The «filtration» process itself involved intensive interrogations, psychological pressure, beatings, forced biometric data collection, and, in some cases, subsequent forced deportation. The methods employed are fully consistent with the definition of torture provided by the ECtHR in the El-Masri v. Macedonia case [13], which recognized secret detention and enforced disappearances as forms of torture.

Ukrainian scholars emphasize that torture committed in the temporarily occupied territories possesses a dual legal nature: it constitutes both a war crime and a crime against humanity. This qualification stems from the fact that torture perpetrated by representatives of the Russian Federation's armed

forces in the context of the international armed conflict directly violates the norms of the Geneva Conventions, which prohibit cruel treatment, torture, and inhuman treatment of civilians and prisoners of war. Pursuant to Article 8 of the Rome Statute of the International Criminal Court, the intentional infliction of severe physical or mental suffering upon persons protected by international humanitarian law constitutes a war crime.

Concurrently, the systematic nature, scale, and political orientation of such acts indicate that they transcend the scope of isolated incidents and constitute elements of a crime against humanity as defined in Article 7 of the Rome Statute. Torture, when classified as a crime against humanity, presupposes a widespread or systematic attack directed against any civilian population, carried out knowingly and pursuant to a State or organizational policy. The mass testimonies of victims, unified methods of torture, the existence of a network of «torture chambers» in the occupied territories, and facts of centralized control over «filtration» processes confirm the presence of precisely such a policy. Scholarly research emphasizes that the simultaneous presence of both components – the context of an international armed conflict and the systemic practice of violence against civilians – necessitates the complex qualification of the Russian Federation's actions at the level of both international humanitarian law and international criminal law.

Liability for torture is stipulated in Article 127 of the Criminal Code of Ukraine (CCU). The legislator defines torture as the intentional infliction of physical or mental suffering for the purpose of obtaining information, punishment, intimidation, or discrimination [14]. Importantly, this approach is fully consistent with the position of the European Court of Human Rights (ECtHR) in the cases Afanasyev v. Ukraine [15] and Kaverzin v. Ukraine [16]. Nevertheless, the mere existence of the norm prohibiting torture in the CCU does not allow for the conclusion that an effective mechanism for the criminal-law protection of social relations is in place [17, с. 227–232]. Furthermore, as emphasized in contemporary scholarly research, the ECHR and the ECtHR's case law possess the status of a constitutional instrument of European public order. Such recognition, particularly in the ECtHR judgment in G.I.E.M. S.R.L. and others v. Italy, indicates that the human rights standards established by the Convention prevail over the national provisions and interests of the Contracting Parties. In the context of armed aggression, this means the obligation to protect against torture is fundamental and cannot be circumvented by invoking domestic law or political circumstances. The very nature of the Convention as a 'living instrument' allows the Court to adapt standards, establishing heightened criteria for protection against torture, which has direct relevance for the assessment of crimes in Ukraine [18, с. 827].

The comparative analysis of national and international legal approaches to the definition of torture reveals a crucial supplementary characteristic specific to international law: the special subject of the crime. This subject comprises public officials or other authorized persons who act at the instigation of, with the encouragement, knowledge, or acquiescence of representatives of state power [19, с. 115-118].

In academic criminal law literature, it has been repeatedly stressed that, during the implementation of Article 1 of the Convention Against Torture (CAT), the legislator failed to enshrine the requirement for a special subject for this crime. An analysis of available studies warrants the assertion that establishing criminal liability for torture for any sane natural person who has reached the age of 16 is conceptually unfounded. Acts of such a nature, committed by a general subject, would, in any case, constitute criminally punishable offenses, even in the absence of Article 127 of the Criminal Code of Ukraine. Conversely, the duplication of criminal elements, caused by the current wording of Article 127 of the CCU, creates additional difficulties in their differentiation and complicates the process of proper legal qualification [20, с. 122].

The position of the United Nations Office on Drugs and Crime (UNODC) is also methodologically significant, as it holds that International Humanitarian Law and International Human Rights Law operate in parallel and are mutually reinforcing in the sphere of the prohibition of torture. Thus, during an armed conflict, any form of violence perpetrated by either State or non-State actors must be evaluated through the lens of both legal frameworks [21].

The ECtHR jurisprudence establishes a clear distinction between torture, inhuman, and degrading treatment. The Court has repeatedly emphasized that psychological pressure can be as devastating as physical violence if the suffering is intense and intentionally inflicted for a specific purpose. These approaches are of fundamental importance for the qualification of crimes committed in the context of the Russian aggression against Ukraine.

In summation, it can be concluded that the documented cases of torture attest to the systematic nature of the criminal actions perpetrated by the Russian occupation forces. International treaties, the practice of the ECtHR, and Ukrainian scholarly research collectively establish an adequate legal basis for holding the perpetrators accountable at both the national and international levels.

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