

INTERNATIONAL LEGAL COOPERATION IN COMBATING TORTURE WITHIN THE FRAMEWORK OF THE COUNCIL OF EUROPE

МІЖНАРОДНО-ПРАВОВЕ СПІВРОБІТНИЦТВО У БОРОТЬБІ З КАТУВАННЯМИ В РАМКАХ РАДИ ЄВРОПИ

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Today, it can be stated that within the Council of Europe system the norms of Article 5 of the Universal Declaration of Human Rights (1948), Article 7 of the International Covenant on Civil and Political Rights (1966), and the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) – in particular the principle of the absolute prohibition of torture – are effectively implemented. The absolute prohibition of torture enshrined in Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) has subsequently been reflected in its practical application through the relevant organizational-legal and institutional human rights protection mechanisms.

The article analyzes the regulation of the above-mentioned prohibition and the corresponding practice of the organizational-legal and institutional mechanisms for the protection of human rights. Particular attention is devoted to the activities of such mechanisms as the European Court of Human Rights and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

The article reveals the role of the practice of the European Court of Human Rights in specifying the content of Article 3 of the European Convention on Human Rights, including its clarification of the minimum threshold of severity and the differentiation between the concepts of "torture", "inhuman", or "degrading treatment or punishment" (the judgment in Ireland v. the United Kingdom, 1978). It also examines the Court's assessment of specific methods of torture (the judgment in Aksoy v. Turkey, 1996) and the evolution of international legal standards on the prohibition of torture (the judgment in Selmouni v. France, 1999). The preventive model set out in the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987) is examined separately, in particular the powers of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment – including the right to visit places of deprivation of liberty, conduct their inspection, formulate relevant recommendations, and publish reports – as well as the obligations of States to cooperate with the Committee.

The article separately highlights the Council of Europe "soft law" instruments as an important mechanism for specifying the prohibition of torture.

Key words: prohibition of torture, Council of Europe, European Convention on Human Rights, European Court of Human Rights, European Committee for the Prevention of Torture.

Сьогодні можна констатувати, що у системі Ради Європи ефективно втілюються норми ст. 5 Загальної декларації прав людини 1948 р., ст. 7 Міжнародного пакту про громадянські і політичні права 1966 р., положення Конвенції ООН проти катувань та інших жорстоких, нелюдських або таких, що принижують гідність, видів поводження та покарання 1984 р., зокрема принцип абсолютності заборони катувань. Абсолютна заборона катувань, закріплена у ст. 3 Європейської конвенції про захист прав людини і основоположних свобод 1950 р., в подальшому знайшла своє відображення під час її реалізації відповідними організаційно-правовими та інституційними механізмами захисту прав людини.

У статті проаналізовано регламентацію зазначененої вище заборони та відповідну практику організаційно-правових та інституційних механізмів захисту прав людини. Особлива увага приділяється діяльності таких механізмів, як Європейський суд з прав людини та Європейський комітет із запобігання катуванням.

Розкривається роль практики Європейського суду з прав людини у конкретизації змісту ст. 3 ЄКПЛ, у тому числі щодо мінімального рівня жорстокості та розмежування понять «катування», «нелюдського» або такого, що «принижує гідність поводження чи покарання» (рішення у справі Ірландія проти Сполученого Королівства) (Ireland v. the United Kingdom) 1978 р.), а також оцінки конкретних методів катування (рішення у справі «Аксоу проти Туреччини» (Aksoy v. Turkey) 1996 р.) і еволюції міжнародно-правових стандартів заборони катування (у справі «Селмуні проти Франції» (Selmouni v. France) 1999 р.). Окремо висвітлюється превентивна модель, закріплена Європейською конвенцією про запобігання катуванням та нелюдському або такому, що принижує гідність, поводженю чи покаранню 1987 р., зокрема, повноваження Європейського комітету із запобігання катуванням (право відвідувати місця позбавлення волі, проводити їх інспекцію, формулювати відповідні рекомендації, публікувати звіти) та обов'язки держав співпрацювати із Комітетом.

У статті окремо акцентовано увагу на міжнародно-правових актах «м'якого права» Ради Європи як на інструменті конкретизації заборони катувань.

Ключові слова: заборона катувань, Рада Європи, Європейська конвенція з прав людини, Європейський суд з прав людини, Європейський комітет із запобігання катуванням.

The development of international legal standards in the field of the prohibition of torture is systemic in nature and is pursued at both the universal and regional levels. While the fundamental principles of the absolute nature of this prohibition were enshrined in Article 5 of the Universal Declaration of Human Rights () [1], Article 7 of the International Covenant on Civil and Political Rights (1966) [2], and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) [3], their further elaboration and interpretation is usually carried out within the framework of regional intergovernmental organizations. Particular attention should be devoted to the activities of the Council

of Europe, is the core mission of which consists in the protection and implementation of human rights and fundamental freedoms.

The active formation and development of international legal norms and regional mechanisms for the protection of human rights is driven by the States' commitment to implementing common approaches to the protection of human rights, taking into account the universal international legal standards of the United Nations, as well as by the objective of ensuring compliance with the relevant human rights protection standards within their territories in accordance with the principles of humanity, the rule of law and respect for human dignity.

The prohibition of torture is recognized as a norm of *jus cogens* [4], that is, one permitting no derogations whatsoever. The provisions of international legal treaties, as well as the practice of the relevant mechanisms of the Council of Europe, confirm the peremptory character of this norm.

As previously noted, the absolute nature of the prohibition of torture, enshrined in universal international legal instruments, found its further reflection in the European Convention on Human Rights (1950) (hereinafter – the ECHR). Article 3 of the Convention proclaims: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment” [5].

The practice of the European Court of Human Rights (hereinafter – the ECtHR) has consistently clarified the content of this norm, emphasizing that torture may take both physical and psychological forms. Moreover, the absolute prohibition of torture imposes on States a positive obligation to conduct effective investigation into instances of ill-treatment (the ECtHR judgment in *Selbouni v. France*, 1999, paras. 95–101) [6].

An important international legal instrument in the field of the prohibition of torture is the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987). This Convention established an appropriate monitoring mechanism – the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter – the Committee), which has the competence of unhindered access to places of deprivation of liberty, conducts inspections, formulates recommendations and publishes reports with the consent of the State (Arts. 1, 2, 8, 10–11) [7].

Thus, the Council of Europe system ensures both judicial and quasi-judicial supervision over compliance with the absolute prohibition of torture, combining mechanisms of punishment for violations with preventive measures.

The ECHR became the first international legal treaty within the European regional system to enshrine the absolute prohibition of torture as a peremptory norm of international law [5]. The European Convention on Human Rights consists of the Preamble and three Sections, among which Section I “Rights and Freedoms” contains 18 Articles. It is precisely Article 3 of the European Convention on Human Rights that establishes the categorical prohibition of torture, stipulating that “No one shall be subjected to torture or to inhuman or degrading treatment or punishment” [5].

Thus, violations of the right guaranteed under Article 3 are often linked to other Articles of the ECHR, in particular Article 5 (the right to liberty and security) and Article 6 (the right to a fair trial). This is due to the fact that breaches of the above-mentioned rights frequently lead to instances of torture, given that torture is frequently employed in the course of criminal investigation or for the purpose of obtaining confessions.

The European Convention on Human Rights provides for the possibility of temporary derogation from obligations under certain conditions. Thus, pursuant to paragraph 1 of Article 15, “the States Parties may take measures derogating from their obligations under this Convention only to the extent required by the exigencies of the situation and provided that such measures are not inconsistent with their other obligations under international law”. However, paragraph 2 of the same Article clearly stipulates that this possibility does not extend to Article 3 of the European Convention on Human Rights, meaning that the prohibition of torture is absolute and does not permit any derogation, even in a state of emergency [5]. This provision constitutes direct evidence of the absolute nature of the prohibition of torture, in particular at the European level.

In accordance with Article 19 of the ECHR, “to ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto, the European Court of Human Rights is hereby estab-

lished, functioning on a permanent basis. The Court consists of a number of judges equal to that of the States Parties (Article 20), is elected by the Parliamentary Assembly of the Council of Europe for a term of nine years without the possibility of re-election (Article 22), and considers both individual (Article 34) and inter-State applications (Article 33). Its judgments are binding, and the supervision of their execution is carried out by the Committee of Ministers of the Council of Europe (Article 46) [5].

The judicial practice of the ECtHR has developed a substantive interpretation of the concept of “torture”. A landmark decision in this regard is *Ireland v. The United Kingdom* (1976) [8], in which the Court establishes the criteria of a “minimum level of severity” necessary for classifying acts as torture and distinguishing between the concepts of “torture” and “inhuman” or “degrading treatment”. In this case, the ECtHR assessed the treatment of detainees associated with the Irish Republican Army in Northern Ireland who had been arrested by the British law-enforcement authorities. Among other measures, the detainees were subject to: wall-standing, hooding, exposure to noise, sleep deprivation, and deprivation of food and drink. In para. 167 of its judgment, the ECtHR set out the definitions of “inhuman treatment”, that is, treatment intentionally causing severe physical and mental suffering that goes beyond the ordinary forms of cruelty, and “degrading treatment”, that is, treatment which arouses feelings of fear, humiliation and inferiority in the victim, capable of breaking the physical or moral resistance of the individual. Furthermore, this case established the minimum level of severity required for the application of Article 3 of the ECHR: the treatment must reach a certain threshold of severity. This threshold depends on the duration of the treatment, its physical and mental effects on the victim, as well as the sex, age and state of health of the person concerned (para. 162).

In case of *Aksoy v. Turkey* (1996), the ECtHR determined that the use of “suspension” during interrogation amounted to torture [9].

In case of *Selbouni v. France* (1999), it was confirmed that the permissible limits of State action narrow as human rights standards evolve. Thus, the European Court of Human Rights explained that human rights protection standards are constantly rising and consequently, the assessment of severity must become stricter. Therefore, acts that may previously have been classified as “inhuman or degrading treatment” may, under the new standards, constitute torture. The Court emphasized that the intensity of treatment is assessed cumulatively, taking into account the duration and repetition, the methods used (including humiliation and sexualized violence), the vulnerability of the victim, medical consequences, and the context of detention. The ECtHR found that prolonged beatings, multiple injuries to different parts of the applicant’s body, medically documented and consistent with his claims of being beaten with fists, feet, a baton, and a baseball bat over several days, constitute “torture”, even if similar acts had previously been regarded as “inhuman treatment”. It is this dynamic, “evolutionary” interpretation that enabled the Court to conclude that torture occurred in the present case (paras. 95–101) [6].

The aforementioned judgments have formed a precedential basis for the development of the European Court of Human Rights’ consolidated approach to assessing the intensity of suffering, the purpose of State conduct and its impact on human dignity.

An important place within the regional system of protecting individuals from torture and other forms of ill-treatment is occupied by the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987) (hereinafter referred to as the European Convention for the Prevention of Torture) [7]. The Preamble to the Convention emphasizes that “the protection of persons deprived of their liberty against torture and inhuman or degrading treatment or punishment could be strengthened

by non-judicial means of a preventive character based on visits.” The Convention established the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment as an independent preventive body empowered to visit places of deprivation of liberty for the purpose of preventing torture and other forms of cruel or degrading treatment. The Committee does not examine individual applications but assesses the general state of compliance with international legal standards arising, in particular, from Article 3 of the European Convention on Human Rights. Thus, according to Article 1 of the Convention, the purpose of the Committee is “to examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment.” Article 2 imposes an obligation on all States Parties to the Convention to permit “visits to any place within their jurisdiction where persons are deprived of their liberty by a public authority” [7].

Articles 8–10 of the Convention establish a detailed procedure for the conducting visits, as well as guarantees of unimpeded access to places where persons deprived of their liberty are held. Following each visit, the Committee draws up a report on the facts established during the inspection, containing specific recommendations. The Government is obliged to submit its observations and to take appropriate measures to remedy any violations of Article 3, that may have been identified. These reports are usually addressed to the state concerned and remain confidential; however, if a state refuses to implement the recommendations of the European Committee for the Prevention of Torture, it has the right to publish the report without that State’s consent [7].

Since 1989, as a result of regular inspections of places of deprivation of liberty, the European Committee for the Prevention of Torture has developed and elaborated a comprehensive system of international legal standards for the treatment of persons deprived of their liberty. These standards concern, *inter alia*, the minimum living space requirements, adequate sanitary and hygienic conditions, limits on the duration of solitary confinement, as well as rules governing the treatment of persons with mental (psychosocial) disorders held in psychiatric institutions. The Committee’s recommendations serve as guidelines for States in preventing torture and inhuman or degrading treatment in places of deprivation of liberty [11].

The significance of the activities of the European Committee for the Prevention of Torture is confirmed by the fact that its reports are actively used by the ECtHR when assessing conditions of detention. In particular, in case of *Kalashnikov v. Russia* (2002), the Court referred to the findings of the European Committee for the Prevention of Torture concerning the overcrowding and unsanitary conditions of the cells in the remand facility where the applicant was held. These findings were taken into account in determining that the conditions of detention reached the threshold of “inhuman and degrading treatment”, leading to a finding of a violation of Article 3 of the ECHR [10]. This approach demonstrates the institutional interaction between the preventive mechanism of the European Committee for the Prevention of Torture and the judicial protection ensured by the ECtHR: the Committee provides the factual basis and expert standards, whereas the Court gives them legally binding effect in its judgments.

The relevance of the activities of the European Committee for the Prevention of Torture is also confirmed by its latest report on Ukraine, issued following the visit to the country conducted from 16 to 27 October 2023. In its Report to the Government of Ukraine, the Committee focused on the conditions of detention of persons deprived of their liberty, as well as on the treatment of detainees in the context of martial law. Particular emphasis was placed on the risks of cruel or degrading treatment during arrest and interrogation, on the issues of overcrowding in remand prisons, access to a lawyer and adequate medical care. The European Committee

for the Prevention of Torture stressed the need to strengthen preventive safeguards, to ensure the proper recording of bodily injuries by medical professionals and to improve the documentation of detainees’ complaints [12].

The absolute prohibition of torture, enshrined in the ECHR (1950), provided the foundation for the adoption of subsequent international legal instruments within the framework of the Council of Europe that reinforced this prohibition. Thus, the European Social Charter, 1961 (as amended in 1996), in Article 17, guarantees children the right to protection against all forms of violence, which also encompasses the prohibition of torture and ill-treatment [13].

Within the European regional human rights protection system, similarly to the universal level, the mechanisms for implementing the prohibition of torture are based not only on “hard” law norms, such as the European Convention on Human Rights (1950) and the European Convention for the Prevention of Torture (1987), but also on a substantial body of “soft law” instruments. These include, *inter alia*, the standards and general reports of the European Committee for the Prevention of Torture, the Recommendations of the Committee of Ministers of the Council of Europe, the positions and thematic reports of the Council of Europe Commissioner for Human Rights, as well as the resolutions of the Parliamentary Assembly of the Council of Europe. Taken together, these documents constitute the conceptual and methodological basis of State policies in the field of torture prevention, defining appropriate standards of treatment of persons deprived of their liberty and guiding States in improving national protection mechanisms.

The body of international legal “soft law” acts is extensive, but particular attention should be given to Recommendation No. R(2006)2 of the Committee of Ministers of the Council of Europe, which establishes minimum standards for the treatment of prisoners. These standards include, *inter alia*: the primacy of respect for human dignity, the prohibition of justifying inadequate conditions of detention by a lack of resources, the obligation to provide immediate medical examination for newly arrived detainees, and the proper documentation of bodily injuries and complaints of ill-treatment [14]. These rules form the foundation of policies in national penitentiary systems worldwide and are widely used by the ECtHR and the European Committee for the Prevention of Torture when assessing conditions of detention.

An important role in regulating the prohibition of torture is also played by Recommendation Rec(2006)13 of the Committee of Ministers of the Council of Europe to member States concerning the use of pre-trial detention, the conditions of its application, and the guarantees against abuse. The Recommendation is aimed at minimizing the use of pre-trial detention and introducing: the presumption in favour of alternative measures (house arrest, bail, supervision), judicial control over the grounds for and duration of detention, and procedural safeguards against torture and coercion during the investigation. In effect, the document calls for pre-trial detention facilities not to be used as “a means of pressure” [15].

An important “soft law” instrument in the field of torture prevention is also Committee of Ministers of the Council of Europe Recommendation CM/Rec(2012)5 on the European Code of Ethics for Prison Staff, adopted on 12 April 2012. This document establishes professional and ethical standards of conduct for the staff in penitentiary institutions, emphasizing their key role in ensuring proper treatment of persons deprived of their liberty. The Code enshrines the obligation to treat prisoners humanely and with respect, prohibits torture, inhuman or degrading treatment, as well as forbids any form of psychological pressure. Particular attention is devoted to the need for proper documentation of potential cases of ill-treatment and effective responses to the relevant complaints.

The content of the Recommendation directly follows from the principle of the absolute prohibition of torture laid down

in Article 3 of the ECHR and in international customary law: no circumstances, including a state of emergency, war or lack of resources, can justify cruel or degrading treatment. In this context, the document underlines the importance of professional training and continuous skill development of staff, highlighting that the effective implementation of the absolute prohibition of torture begins with fostering a sustained culture of respect for human rights within the penitentiary system [16].

An important component of “soft law” in the field of torture prevention is the Committee of Ministers of the Council of Europe Recommendation CM/Rec(2021)2 on the prevention of trade in goods which could be used for torture or capital punishment, adopted on 31 March 2021. The document aims to restrict the manufacture, export, import and distribution of equipment that could be used to inflict physical or psychological suffering on detainees and prisoners (including, *inter alia*, electric shock batons, handcuffs excessively restricting movement, and devices for immobilization in stress positions). The Recommendation provides for the establishment of State control mechanisms over the circulation of such goods, including lists of prohibited and restricted equipment, as well as a requirement to assess the risks that such goods may be used in torture practices. Accordingly, the document emphasizes that the prevention of torture must be implemented not only at the level of staff conduct and internal procedures, but also at the level of the material and technical equipment of law enforcement and security agencies, since the mere availability of such means constitutes a potential threat to the absolute prohibition of torture, which allows no exceptions [17].

Thus, within the European regional system, the norms concerning the absolute nature of the prohibition of torture, as enshrined in universal international treaties, in particular in the Convention against Torture (1984), are effectively implemented. For this purpose, the Council of Europe has adopted a series of international legal instruments, first and foremost

the European Convention on Human Rights (1950), the European Convention for the Prevention of Torture (1987), as well as various “soft law” instruments.

The absolute nature of the prohibition, enshrined in Article 3 of the ECHR, has been further developed through the judgments of the ECtHR: the criteria for a minimum threshold of severity have been established, the distinction between torture and other forms of ill-treatment have been clarified, and specific methods of torture have been assessed. Furthermore, the European Convention for the Prevention of Torture (1987) introduced preventive international legal mechanisms. Thus, the European Committee for the Prevention of Torture conducts inspections of places where persons deprived of their liberty are held, formulates recommendations and prepares reports, while States are obliged to cooperate and remedy any identified violations.

The combination of judicial supervision by the ECtHR and monitoring by the European Committee for the Prevention of Torture creates effective international legal mechanisms, since the standards developed by the Committee serve as a point of reference for the Court when determining violations of Article 3 of the ECHR, while the binding force of the Court’s judgments ensures the implementation of the Committee’s recommendations into national practice.

The issue of ensuring the absolute prohibition of torture remains extremely relevant, as evidenced by the significant number of applications submitted to the ECtHR, as well as numerous cases of violation documented by the European Committee for the Prevention of Torture during its monitoring visits. These facts indicate the need for the further improvement of national systems for implementing international legal standards in this field, primarily through the strengthening of preventive mechanisms, guarantees of effective investigation, and the inevitability of liability for acts of torture and ill-treatment.

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