



NAVIGATING CRUELTY: EXAMINING ECHR PRACTICE IN DEFINING A MINIMUM THRESHOLD FOR TORTURE FACILITATED BY STATE AGENTS

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ARTICLE INFO

Article History:

Received 01.03.2024

Accepted 15.03.2024

Published 31.03.2024

Keywords:

Torture, State agents, Cruelty threshold, Legal interpretation

ABSTRACT

This article critically examines the European Court of Human Rights (ECHR) practice in defining a minimum threshold for torture. It goes in-depth with torture facilitated by State agents, as stipulated in Article 3 of the European Convention on Human Rights. While the identification of torture typically involves severe cases, the majority of instances under Article 3 pertain to degrading or inhuman treatment. Focusing on threshold cases related to freedom from degrading treatment or punishment, this article seeks to delineate the effective guarantee provided by this fundamental right within the Strasbourg organs' judicial policy. The analysis underscores the dynamic and adaptive nature of the ECHR in interpreting and expanding the provisions of the Convention. By capitalizing on the graduated scale of degrading treatment, the Strasbourg organs have extended the protective scope of Article 3, contributing to the development of a progressive European public order. Ultimately, this exploration provides valuable insights into the judicial approach of the Strasbourg organs in defining the minimum threshold for torture perpetrated by State agents, shedding light on the evolving landscape of human rights protection in Europe.

INTRODUCTION

The purpose of this article is to Examine the concept of torture employed by the European Court of Human Rights. One of the main tenets of the human rights framework is the necessity of protecting individuals from torture and maltreatment; this is best expressed in Article 3 of the European Convention on Human Rights (ECHR). Amid the challenges associated with defining the parameters of legally permitted official acts, the European Court of Human Rights (ECtHR) has become a key arbiter, actively involved in the interpretation and definition of the minimal bar for torture enabled by state agents. This article explores the complex legal precedents surrounding Article 3, attempting to analyse the subtle aspects of the right to be free from torture and other forms of ill-treatment.

Although Article 3 forbids torture, it is not often easy to apply this article in practice because it deals with situations that fall under the category of humiliating or inhuman treatment. Understanding the effectiveness and scope of this safeguard requires an analysis of threshold circumstances pertaining to freedom from degrading treatment or punishment, which is a basic but less severe absolute right under Article 3. This article examines how the European Court of Human Rights' jurisprudential framework has interpreted and applied the minimum threshold for torture, with a focus on cases involving State agents. This investigation highlights the Strasbourg organs' adaptability in changing legal interpretations and social norms, demonstrating their dedication to establishing a progressive European public order. A thorough grasp of the complexities surrounding the definition of torture in the European context emerges as we set out on this voyage through the complex judicial policies of the European Convention on Human Rights. A thorough grasp of the complexities surrounding the definition of torture in the European context emerges as we set out on this voyage through the complex judicial policies of the European Convention on Human Rights. Through this analysis, the article aspires to contribute to the ongoing discourse on human rights protection within the European context, shed light on the evolving standards and challenges the ECtHR faces in addressing this critical issue, and give certain recommendations.

1. ARTICLE 3 OF THE EUROPEAN CONVENTION: CRAFTING LEGAL FRAMEWORK

The European Convention for the Protection of Human Rights and Fundamental Freedoms (The European Convention) embodies all of the rights and freedoms that people should be guaranteed. One of the cornerstone rights is the prohibition of torture and other forms of ill-treatment, enshrined in Article 3 of the European Convention. "No one shall be subjected to torture or inhuman and degrading treatment or punishment", states Article 3.¹

Article 3 must be read with Article 15 of the European Convention. The prohibition of torture has achieved the status of *jus cogens* or a peremptory norm in international law (Advisory opinion on the applicability of statutes of limitation to prosecution, conviction and punishment in respect of an offence constituting, in substance, an act of torture [GC], § 59, 2022) The prohibition is absolute. No derogation from it is permissible even in the event of a public emergency threatening the life of the nation or in the most difficult circumstances, such as the fight against terrorism and organized crime or the influx of migrants and asylum-seekers, irrespective of the conduct of the person concerned.² Therefore, European Convention imposes an absolute prohibition on torture, inhuman and degrading treatment or punishment.

Article 3 of the Convention imposes substantive positive obligations on the State, which include the following: (1) establishing a legislative and regulatory framework of protection; and (2), under specific and well-defined circumstances, taking operational measures to safeguard individuals against the risk of treatment that violates that provision.³ Creating a thorough legal and regulatory framework is the affirmative requirement outlined in Article 3 of the European Convention on Human Rights. This structure is essential for giving people strong protection and preserving their mental and physical well-being.

1 European Court of Human Rights. (n.d.). Convention for the Protection of Human Rights and Fundamental Freedoms (as amended by Protocols Nos. 11 and 14). Retrieved from https://www.echr.coe.int/documents/d_echr/convention_ENG.

2 A. and Others v. the United Kingdom [GC]. 2009. § 126.

3 X and Others v. Bulgaria [GC]. 2021. § 178. (24 pg.)

This obligation is especially important when it comes to public services that are tasked with protecting children's health and welfare, especially when those youngsters are extremely vulnerable and under the sole custody of authorities. This affirmative requirement might, in some cases, require the installation of extra precautions and safeguards. The necessity of this duty has been emphasized by the European Court of Human Rights (ECtHR), particularly in situations involving child sexual abuse in which the offender is in a position of power over the victim. The European Court of Human Rights (ECtHR) has highlighted the significance of adequate detection and reporting systems in successfully implementing pertinent criminal laws in delicate situations, as demonstrated by the case of *X and Others v. Bulgaria* [GC], 2021, § 180. In a similar vein, the European Court of Human Rights has ruled that, in the case of domestic abuse, domestic authorities have a positive obligation to take proactive steps to safeguard victims under the criminal law. Among these steps are the criminalization of domestic abuse and the implementation of fair, reasonable, and deterrent penalties, as stated in *Volodina v. Russia*, 2019, section 78.

Additionally, regarding safeguards, the European Court of Human Rights requires national legal systems to provide an extensive array of legal and practical remedies. As explained in *Tunikova and Others v. Russia*, 2021, § 95, this range of choices guarantees that authorities have a variety of adequate and proportionate measures aligned with the assessed level of risk in each particular case. The jurisprudence of the ECtHR highlights the proactive role of states in crafting and enforcing legal frameworks to fulfil their positive obligations under Article 3, particularly in contexts where vulnerable individuals are at heightened risk.⁴

2. INTERPRETING THE MINIMUM CONDITIONS FOR TORTURE UNDER ARTICLE 3 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

To determine whether a particular form of ill-treatment should be qualified as torture, the Court will have regard to the distinction embodied in Article 3 between this notion and that of inhuman or degrading treatment. It was the intention that the Convention should, using this distinction, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering. The Convention's aims and purposes, intended to serve as a mechanism for safeguarding individual human rights, necessitate interpreting and applying its provisions that ensure practical and meaningful protection. This imperative should guide the Court's approach to understanding Article 3, emphasizing the importance of rendering its safeguards both realistic and effective.⁵ The same distinction is drawn in Article 1 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment "UNCAT".⁶ In addition to the severity of the treatment, there is a purposive element, as recognised in the UNCAT, which defines torture in terms of the intentional infliction of severe pain or suffering with the aim, inter alia, of obtaining information or a confession, inflicting punishment or intimidation.⁷ With regard to the fact that the Convention is a living instrument which must be interpreted in the light of present-day conditions, acts which were classified in the past as "inhuman and degrading treatment" as opposed to "torture" could be classified differently in future. The Court has taken the view that an increasingly high standard is required to protect human rights and fundamental liberties. It inevitably requires greater firmness in assessing breaches of the fundamental values of democratic

4 Council of Europe. (n.d.). Guide on Article 3 of the European Convention on Human Rights: Prohibition of torture. Retrieved from <https://www.echr.coe.int/documents/d/echr/Guide_Art_3_ENG> pg.6.

5 Council of Europe. (n.d.). Guide on Article 3 of the European Convention on Human Rights: Prohibition of torture. Retrieved from <https://www.echr.coe.int/documents/d/echr/Guide_Art_3_ENG> pg.6.

6 Ireland v. the United Kingdom. 1978. § 167. Selmouni v. France [GC]. 1999. § 96. Ilaşcu and Others v. Moldova and Russia [GC]. 2004. § 426.

7 Selmouni v. France [GC]. 1999. § 97. Salman v. Turkey [GC]. 2000. § 114. Al Nashiri v. Poland. 2014. § 508 and Petrosyan v. Azerbaijan. 2021. § 68.

societies.⁸ In this respect, the Court has emphasized that the prohibition of torture has achieved the status of *jus cogens* or a peremptory norm in international law. Various acts, behaviours, or occurrences can be perceived as torture under specific circumstances, while they may not qualify as torture in different situations. It is crucial to underscore that, in legal contexts, torture is often associated with cruel, inhuman, and degrading treatment or punishment or ill-treatment. “Torture is not an act in itself, or specific type of acts, but it is the legal qualification of an event or behaviour, based on the comprehensive assessment of this event or behaviour”. This classification is determined through a comprehensive assessment of the specific circumstances surrounding the event or behaviour. The distinction between these various classifications—torture, cruel, inhuman, and degrading treatment or punishment—depends on the unique circumstances of each case and is not always straightforward. It becomes evident that the qualification of torture may be readily assigned in certain instances due to the specific intensity or nature of certain acts. However, in other cases, factors such as the victim’s vulnerability (age, gender, status, etc.), the surrounding environment, and the cumulative impact of various elements must be considered. These factors collectively contribute to determining whether a particular case rises to the level of torture or falls short of this ultimate threshold, warranting classification as cruel, inhuman, or degrading treatment or punishment.⁹

Before the Court can decide that a given act or series of actions constitute torture, a number of factors must be proven. These factors include the “purpose” of the acts, the extent of “state responsibility”, and the status of the offender or perpetrators. However, the threshold questions of first the minimum conditions to fall under Article 3 and second the degree of injury required to establish torture are preliminary to each of these factors. These prerequisites are not only necessary for a finding of torture, but they are also fundamental concerns that shed light on how the Court

interprets questions of harm and human rights, such as its disproportionate emphasis on bodily or psychological harm and its expansion of Convention jurisprudence beyond the basic focus on state-centre, public-oriented forms of abuse. Because these threshold questions deal with contentious issues of rape comparison and proper tactics for apprehending offenders, they also provide significant challenges for feminist researchers and activists. Lastly, and perhaps most obviously, these threshold concerns establish the admissibility of a claim and the extent of any damages awarded to an applicant.¹⁰

The European Convention on Human Rights (ECHR) Article 3 has been applied in various contexts, the most common of which is the treatment of people who are deprived of their freedom. This chapter explores the complex situations in which Article 3 is used, highlighting how often it occurs in the context of detained people and calling on law enforcement and other custodial authorities to exercise caution. It is especially important for those in charge of detainees—police, jail guards, immigration agents, and patients in secure psychiatric units—to determine the likelihood of maltreatment as soon as possible, especially for vulnerable populations. According to Article 3, “torture” is defined as intentional inhuman treatment that results in extreme and painful suffering, frequently for coercive or information-gathering reasons. The degree of suffering sets torture apart from inhuman treatment, which necessitates a minimum degree of severity resulting in actual physical harm or severe mental distress, regardless of deliberate action. The chapter also examines how these terms’ thresholds are changing, emphasizing how dynamic the standards are.

Distinguishing “degrading treatment” from bodily and emotional anguish entails debasement and humiliation. It could be brought on by solitary imprisonment, strip searches, or other forms of detention. An Article 3 breach is more likely when there is evidence of maltreatment coupled with discrimination, especially on ethnic grounds. The chapter also discusses how Article 3 is used

8 *ibid.*

9 UN HCHR. (2011). Interpretation of torture in the light of the practice and jurisprudence of international bodies. United Nations publication. Retrieved from <http://www.ohchr.org/Documents/Issues/Torture/UNVFVT/Interpretation_torture_2011_EN.pdf>

10 McGlynn, C., & García-Lozano, S. T. (2009). Rape, Torture and the European Convention on Human Rights. *The International and Comparative Law Quarterly*. 58(3). 565-595 <<https://www.jstor.org/stable/2562227>> pg. 566.

in deportation and extradition proceedings, highlighting that sending people to nations where they may violate Article 3 is a breach on the part of the deporting State.

Additionally, the chapter highlights positive obligations of Article 3, stating that dealing with vulnerable populations increases the State's obligation to avoid mistreatment. Similar to the right to life (Article 2), where a plausible violation of Article 3 requires an independent, efficient, and timely investigation, the procedural duty to investigate is emphasized. This procedural responsibility emphasizes several important elements, including medical examinations, proper record-keeping, and collaboration with investigations.¹¹

3. CHALLENGES IN DETERMINING 'DEGRADING TREATMENT' UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS

Another difficulty with this strategy is figuring out where exactly "threshold" is located under Article 3. In particular, it can be challenging to determine whether some instances of maltreatment are sufficiently minor to be considered "degrading". This raises the related problem of determining the degree of seriousness for each of the three components listed in Article 3. The argument is about determining, unless there are extremely minor cases, at what point the inflicting of physical or mental pain is likely to be considered at least degrading treatment. The case of *Costello-Roberts v UK* serves as an example. In this case, the Court considered whether the 7-year-old had received a minor reprimand with a slipper from the headmaster in a private school. Acts not involving the intentional infliction of physical or mental suffering may also be considered degrading, yet these instances necessitate evaluation on distinct grounds. In a case where a detainee was handcuffed, like *Raninen v. Finland*, the Court established a standard, saying that the important thing to look at is whether the treatment in question shows disre-

spect or contempt for the person and whether or not it intends to humiliate rather than just accomplish a legal goal. This nuanced assessment emphasises how difficult it is to determine when behaviour falls outside of what constitutes degrading treatment under Article 3, especially when it does not involve intentional physical or mental injury.¹² At first, the Convention appeared to draw a clear difference, reserving the term "torture" for intentional acts of inhuman treatment that result in extreme and terrible suffering. However, the Court's position has changed in the last few months. The Court stated in *Selmouni v. France* (1999) that some actions that were previously categorised as "inhuman and degrading" rather than "torture" might be reclassified in the future. The Court underlined that a more accommodating approach to evaluating violations of the core principles of democratic societies is necessary, given the strict standards necessary to safeguard human rights and fundamental liberties. *Selmouni v. France* is a significant case because it shows that the Court is prepared to review and maybe amend earlier interpretations of the Convention. This constitutes a noteworthy addition to the developing body of legal knowledge about torture. That being said, it can be wise to avoid being unduly fixated on the particular name associated with a given type of maltreatment. *Selmouni* has wider ramifications, implying a greater universal importance that merits careful thought.¹³

The European Convention on Human Rights, which places a strong emphasis on preventing torture, serves as a cornerstone for protecting people from violations of their human rights. This chapter explores the potential extraterritorial duties that nations may be subject to under the ECHR when deciding whether to admit evidence that was obtained by torture. The main focus is on a hypothetical situation in which the European Convention draws a clear link between torture and the use of that evidence in Court. The European Convention has continuously demanded that states look into reports of torture, thereby reiterating the outright ban on this horrible practice. This chapter con-

11 Council of Europe. (n.d.). Prohibition of torture. Retrieved from <<https://www.coe.int/en/web/echr-toolkit/interdiction-de-la-torture>>

12 Evans, M. D., Cakal, E., NEWBERY, S., Moran, C. R., Murphy, C. J., Kelly, T., & Parry, J. T. (2002). Getting to Grips with Torture. *The International and Comparative Law Quarterly*. 51(2). 365-383. <<https://www.jstor.org/stable/3663233>> pg. 371.

13 Ibid.

siders applying a similar obligation to situations when the evidence has been corrupted by torture. Making comparisons with earlier rulings such as *Soering*, where the United Kingdom was mandated to assess foreign conditions before extradition, it is conceivable that the ECHR might advocate for thorough investigations into torture-related claims linked to evidentiary proceedings. An important topic covered in this chapter is the possibility of putting states—especially the UK—under the burden of proof to prove that evidence presented in Court was voluntary. This is consistent with long-standing procedures seen in both domestic and international legal systems, giving weight to the reliability and impartiality of the evidence, particularly in situations involving allegations of coercion or torture.

This chapter explores the potential obstacles that nations may face while acknowledging the necessity of looking into evidence that was caused by torture. It considers how the ECHR might examine and possibly contest exceptions claimed by governments, particularly when faced with solid arguments like the grave threat of terrorism. The debate assesses whether security considerations can justifiably take precedence over the need to inspect the procedures thoroughly used to obtain the evidence.

In navigating the intricate landscape of extra-territorial obligations under the ECHR concerning evidence obtained through torture, this chapter provides comprehensive insights. By drawing on legal precedents and envisioning hypothetical scenarios, it aims to illuminate potential developments and challenges in ensuring compliance with human rights standards, particularly in the delicate realm of using evidence tainted by torture in legal proceedings.

4. REASSESSING SEVERITY: ARTICLE 3 JURISPRUDENTIAL CONTEXT-SENSITIVE METHOD

The claim that maltreatment must reach a minimum degree of severity is the basis of the European Court of Human Rights (ECtHR) requirements under Article 3. This criterion highlights the relative character of evaluation, considering elements

like time, bodily or mental impacts, and the victim's demographics. It has been reinforced since the historic *Ireland v. UK* decision.

According to the 'all the circumstances' formula, the victim's vulnerability was examined along with the type, context, and delivery of the treatment. The Court has made a distinction between "degrading" treatment—which degrades or humiliates, so undermining human dignity—and "inhuman" treatment, which results in physical pain or severe suffering.

Although 'degrading' treatment is frequently argued to be the least severe under Article 3, the Court's approach offers a more nuanced view. The concept of the minimum degree of severity' establishes boundaries for humiliating treatment, meaning that a specific threshold of humiliation or debasement must be reached.

It is critical to recognise the qualitative differences between inhumane and degrading treatment. 'Degrading' mainly refers to being subjected to terror, agony, or humiliation, whereas 'inhuman' refers to causing pain or suffering. But these components are related, and in some cases, a combination is involved.

In evaluating severity, the Court in the *Bouyid v. Belgium* decision placed more emphasis on the type of treatment than the extent of harm. In this sense, severity refers to the wrong of inhuman and degrading treatment that goes beyond quantifiable effects. The misuse of authority and the nature of the treatment indicate how serious the breach is.

Bouyid emphasises that the character of the treatment is inextricably tied to its severity, which is not only determined by the injury caused. The minimum level of severity is a complex, context-specific criterion that considers vulnerability and power relationships while determining the appropriate course of action. It functions as an objective criterion, with the Court evaluating severity individually in relation to the particular circumstances.

In conclusion, the Court's approach to severity in Article 3 involves a careful consideration of the wrongs perpetrated, acknowledging the nuanced interplay between objective criteria and context-sensitive evaluation.¹⁴

14 Mavronicola, N. (2021). Torture, Inhumanity

Article 3 of the European Convention on Human Rights prohibits treatment that falls under its purview, regardless of the victim's conduct or the alleged public interest. The European Court of Human Rights (ECtHR) has consistently upheld these strict criteria. This in-depth examination delves into the complex equilibrium the European Convention on Human Rights (ECtHR) upholds between categorical proscriptions and complex factors when establishing a minimal bar for torture enabled by state actors. The definitive language of Article 3 highlights the ECtHR's steadfast position that the means should never justify the ends and makes the purpose of the alleged treatment irrelevant. However, inserting a severity level that requires satisfaction under Article 3 tempers this stringent approach. The ramifications of this cut-off are crucial in establishing state accountability. By introducing the notion of proportionality inside the absolute framework of Article 3, the European Court of Human Rights treads carefully when defending cruel treatment. The nuanced perspective on proportionality also encompasses positive duties, such as establishing minimum standards in different contexts, such as hospitals where isolation is a common occurrence. When the ECtHR examines seclusion practices in the healthcare industry, it expects institutions to follow minimal requirements that include needing "cogent" justifications for seclusion and taking known risks associated with extended isolation into account. Decisions made in healthcare settings have consequences that require a balanced approach and are carefully considered in light of their effect on the patients receiving such treatment.¹⁵

Examining the ramifications of positive obligations under Article 3, this approach emphasises that participation is independent of victim behaviour. In deciding whether authorities had a duty to safeguard against maltreatment or should have, the applicability of the proportionality test is examined. There are concerns regarding what the state must do when it engages in its responsibility

due to exploring the hazy boundary between positive and negative responsibilities.

Ultimately, this approach offers a thorough examination of the ECtHR's practice in defining a minimum threshold for torture facilitated by state agents. Navigating through the nuances of proportionality, positive obligations, and the delicate balance required in addressing instances of ill-treatment, the ECtHR's evolving approach reflects the ongoing quest for a robust framework that upholds human rights while acknowledging contextual challenges.¹⁶

In summary, whether or not torture and inhuman or degrading treatment or punishment are expressly forbidden under Article 3 of the Convention depends on how the term is used. Since Article 3 ECHR does not resolve the issue of competing rights and/or obligations under this article, it cannot be regarded as fully absolute. Nonetheless, the current dissertation proposes and recommends to the Court a revised interpretation of what it means for a right to be absolute in the context of Article 3 ECHR. While it does not include positive responsibilities, it adheres to the principle of absoluteness and would give the Court a practical definition that is consistent with its case law.¹⁷

If a statement acquired under torture is declared inadmissible by the European Court of Human Rights (ECHR), the next difficulty is to establish who bears the burden of proof in establishing whether or not torture occurred. This approach, which proposes a burden-shifting analysis, guarantees a fair and balanced examination, protecting the interests of the inmates and the United Kingdom. This proposed paradigm requires detainees first to demonstrate an arguable claim that the authorities coerced them into providing evidence through torture. This lays the groundwork for detainees to offer circumstantial evidence, considering their limited understanding of the facts against them and the difficulties they encounter. The argu-

and Degradation under Article 3 of the ECHR. See: <https://library.oapen.org/bitstream/handle/20.500.12657/62913/9781509903054.pdf?sequence=1&isAllowed=y> pg. 90-93.

15 Palmer, S. (2006). A Wrong Turning: Article 3 ECHR and Proportionality. *The Cambridge Law Journal*. 65(2). 438-451 <<https://www.jstor.org/stable/4509209>> pg. 450-45.

16 Palmer, S. (2006). A Wrong Turning: Article 3 ECHR and Proportionality. *The Cambridge Law Journal*. 65(2). 438-451 <<https://www.jstor.org/stable/4509209>> pg. 450-451.

17 Theory and Practice of the Absolute Prohibition of Torture, Inhuman or Degrading Treatment or Punishment under the European Convention of Human Rights. Retrieved from <<https://repository.gchumanrights.org/server/api/core/bitstreams/a7e24207-49dd-4efa-ba69-68311d817e38/content>> pg. 71.

able claim standard acknowledges the challenges detainees face as a result of sealed evidence and restricted access to vital information.¹⁸

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5. STATE-FACILITATED TORTURE-EXAMINING LAW ENFORCEMENT ACTIONS

Using physical force against someone who is being detained or comes into contact with law enforcement when their actions do not strictly require it degrades their human dignity and, in theory, violates their right as stated in Article 3 of the Convention. The Court emphasizes that the phrase “in principle” does not refer to circumstances where a violation finding can be disregarded because it does not satisfy the severity level. Any violation of human dignity immediately challenges the fun-

damental principles of the Convention. Therefore, regardless of the effect on the person in question, any actions by law enforcement officials towards an individual that erode human dignity, especially through the needless use of physical force, constitute a breach of Article 3 of the Convention.²⁰

For example, the Court found that the police’s use of batons to restrain the person while conducting an identity check was considered an excessive use of force. This ruling was predicated on the fact that the subject, although having bitten one of the police officers, was unarmed and had exhibited a largely passive manner until being subdued on the ground.²¹

On the other hand, the Court decided that the amount of force used on the concerned individuals who also happened to be bodybuilders was judged necessary. These people had actively resisted and assaulted police officers during an arrest, which led to the judgement that they should be held accountable (*Berliński v. Poland*, 2002, § 62). Cases like *Barta v. Hungary*, 2007, § 72, where the petitioner was injured during an arrest for resisting arrest, and *P.M. and F.F. v. France*, 2021, § 88, where the petitioner was arrested for destroying private property while intoxicated, both involved similar considerations.

Furthermore, the Court has previously recognized the importance of taking into account the possibility that family members, particularly children, may be present at the arrest scene within the context of a police operation pursuing lawful objectives like carrying out an arrest, conducting a search and seizure of items, and serving the public interest goal of prosecuting criminal offences. It is important to consider children’s psychological susceptibility when organizing and carrying out such activities because of their young age.²²

In the 2013 case of *Gutsanovi v. Bulgaria*, the Court observed that the early-morning police operation, which involved special agents wearing masks, increased the children’s sense of terror and anxiety as they watched their father be taken into custody. In this case, the children’s treatment exceeded the necessary severity level (§ 134). Similar factors were taken into account in *A v. Russia*, 2019,

18 Gasper, B. (2005). Examining the Use of Evidence Obtained Under Torture: The Case of the British Detainees May Test the Resolve of the European Convention in the Era of Terrorism. *American University International Law Review*. Retrieved from <<https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1051&context=auilr>>

19 Gasper, B. (2005). Examining the Use of Evidence Obtained Under Torture: The Case of the British Detainees May Test the Resolve of the European Convention in the Era of Terrorism. *American University International Law Review*. Retrieved from <<https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1051&context=auilr>>

20 Bouyid v. Belgium [GC]. 2015. §§ 100-101.

21 Dembele v. Switzerland. 2013. § 47. (pg. 13)

22 Gutsanovi v. Bulgaria. 2013. § 132.

§ 67, a case in which a nine-year-old girl saw her non-resistant father be forcibly arrested. On the other hand, the Court took a different stand in the case of *Ilievi and Ganchevi v. Bulgaria*, 2021, § 60, when all family members who witnessed their relatives' detention were adults.

For detailed examinations of the use of force in the specific context of detention, refer to the Case-Law Guide on Prisoners' Rights. Likewise, for insights into the application of force in the context of public assemblies and demonstrations, consult the Case-Law Guide on Mass Protests.²³

The utilization of specific instruments or measures of restraint, such as handcuffing, typically does not raise concerns under Article 3 of the Convention does not give rise to concerns under Article 3 of the Convention as long as it does not involve excessive force, public exposure, or measures beyond what is reasonably necessary in the particular circumstances (*Shlykov and Others v. Russia*, 2021, § 72). The Court evaluates whether limits are necessary based on each case's circumstances, considering those factors carefully (*Pranjić-M-Lukić v. Bosnia and Herzegovina*, 2020, § 72). Notably, elements including the possibility of resisting arrest, the danger of escaping, the chance of causing harm, the possibility of hiding evidence, and any individual risk assessments based on behaviour are considered.²⁴

According to the Court's ruling in *Shlykov and Others v. Russia*, 2021, § 73, the use of handcuffs may be appropriate in certain situations, such as transfers outside of jail, when used for brief periods, or as a one-time, periodically reviewable measure based on a personal risk assessment. Numerous factors are taken into account when determining the severity in this case, such as the seriousness of the sentence, the applicant's health, criminal history, compliance with domestic law, proportionality to the individual's conduct, lawfulness of detention, public nature of the treatment, health consequences, and the length of time the applicant will be in handcuffs.²⁵

The Court agrees with the European Commit-

tee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment's (CPT) recommendations regarding the use of pepper spray by police enforcement. According to *Tali v. Estonia*, 2014, section 78, pepper spray is considered potentially hazardous and should not be used in confined areas. If it is used in an open location, obvious precautions must be in place. In particular, it should never be used against someone who is currently facing controversy.²⁶

Similarly, the Court has voiced concerns regarding the application of electroshock weapons, especially when they are in contact mode, as they result in severe pain and momentary unconsciousness (*Anzhelo Georgiev and Others v. Bulgaria*, 2014, §§ 75-76). The Court highlights that when skilled law enforcement personnel are around an individual who needs to be subdued, they have access to alternate control methods. The Court has determined that placing someone in a metal cage during a trial is objectively degrading and incompatible with the norms of civilized behaviour. As such, it violates Article 3 of the Convention and is an affront to human dignity (*Svinarenko and Slyadnev v. Russia [GC]*, 2014, § 138). Defendants may be placed in glass cabins or behind partitions, but this is not always humiliating; instead, it may be brought to the minimum degree of severity if the circumstances result in more distress or hardship than the inevitable suffering that comes with being in custody (*Yaroslav Belousov v. Russia*, 2016, § 125).

When carried out in a way that respects human dignity and has a justifiable purpose, a strip search or intimate body search carried out during an arrest is compatible with Article 3, as stated in *Wieser v. Austria*, 2007, § 39. As highlighted in *Roth v. Germany*, 2020, § 65, and further explained in the Case-Law Guide on Prisoners' Rights, this principle is restated in relation to incarceration.

The initial concern relates to a substantial enlargement of the area encompassed by the phrase "act of a public official". This used to include cases when a police officer or jail warder had abused someone. But there's a discernible change in emphasis from concentrating only on the official acts to taking a more comprehensive look at what the

23 Council of Europe. (n.d.). Guide on the case-law of the European Convention on Human Rights: Mass protests. Retrieved from <https://www.echr.coe.int/documents/d/echr/Guide_Mass_protests_ENG>

24 *Svinarenko and Slyadnev v. Russia [GC]*. 2014. § 117.

25 *Shlykov and Others v. Russia*. 2021. § 73.

26 *İzci v. Turkey*. 2013. §§ 40-41 and *Ali Güneş v. Turkey*. 2012. §§ 39-40.

state is ultimately accountable for. This change is explained via the perspective of “state responsibility”, which emphasizes the state’s liability for any acts or inactions that result in a breach. The changing view acknowledges that a state may violate Article 3 in some situations when it fails to stop extreme ill-treatment from happening, even if others still maintain that direct actions by state actors are required for a violation of the article. This understanding includes situations requiring extradition or expulsion, in which a state may violate the law if it intentionally puts a person in danger of maltreatment. Furthermore, incidents of corporal punishment in schools once thought to be unusual are now recognized as a part of a larger pattern. When a state fails to safeguard a person from the possibility of mistreatment by a non-state agent, the Court can establish a violation of Article 3 due to the change in the discourse towards state responsibility. In *Mahmut Kaya v. Turkey*, for example, the state was found liable for not intervening to stop the applicant’s brother from being mistreated and dying at the hands of unidentified individuals, even though the dead himself had warned of the danger.

Notably, the Court’s conclusion in *Z v UK* that the local authorities violated Article 3 by neglecting to shield children from abusive parental behaviour portends a potentially significant consequence. According to the Court, states must put policies in place to guarantee that people living under their authority are protected.²⁷

6. ECHR JURISPRUDENCE ON STATE-AIDED TORTURE

The European Court has rendered rulings in multiple cases pertaining to torture and maltreatment, and its rulings have significantly impacted the development of global standards. The distinction between torture and cruel, inhuman, or humiliating treatment has been examined in a number of significant rulings rendered by the European Court. The European Court has emphasised that an evol-

ving criterion should be used to examine conduct in light of current realities and human rights norms while admitting that a unique stigma is reserved for conduct constituting torture.²⁸ Under the Convention, a Contracting State is accountable for any infringement of human rights that arise from acts carried out by its agents while performing official duties. The Court has ruled that in cases where an agent of the State is shown to have engaged in unlawful behaviour, assigning blame to the State requires a thorough analysis of the relevant facts. The nature and context of the issue conduct are considered during this assessment. Furthermore, a number of factors—none of which are inherently decisive—are considered when determining whether an individual meets the requirements to be considered an agent of the State as defined by the Convention. The primary standards utilised to determine State accountability for an individual’s conduct, regardless of whether they are technically designated as a public official or not, are the appointment, oversight, and accountability processes, as well as the person’s objectives, powers and functions.²⁹

The Classic Case of GÄFGEN V. GERMANY

*Gäfgen v. Germany*³⁰ is a troubling case in which the state’s actions, specifically those of law enforcement, raised serious moral and legal concerns. This case can be better understood by applying the critical case review perspective. This chapter explores the case’s minute intricacies, revealing the complexities around a crime the state perpetrated in the name of justice. In the *Gäfgen* case, police officials use the threat of torture as a cover for saving the life of an innocent kid, leaving the suspect caught in a web of moral quandaries after committing a serious crime.

Examining the legal justifications used by the ECtHR in *Gäfgen* takes up much of the case review. It explores the meaning and implementation of Articles 3 and 6 of the European Convention on Human Rights, highlighting how strongly torture is

27 Evans, M. D., Cakal, E., NEWBERY, S., Moran, C. R., Murphy, C. J., Kelly, T., & Parry, J. T. (2002). Getting to Grips with Torture. *The International and Comparative Law Quarterly*. 51(2). 365-383. <<https://www.jstor.org/stable/3663233>> pg. 379.

28 Weissbrodt, D., & Heilman, C. (2011). *Defining Torture and Cruel, Inhuman, and Degrading Treatment*. University of Minnesota Law School Scholarship Repository. Retrieved from <https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1370&context=faculty_articles> pg. 17.

29 V.K. v. Russia. 2017. § 174.

30 *Gäfgen v. Germany*. 2010.

forbidden. The chapter takes a nuanced approach to the subject, challenging the moral and practical justifications for torture, particularly in extreme hypothetical situations like the so-called “ticking time bomb” situation.

Moreover, the critical examination also encompasses the dissenting views expressed in the Grand Chamber, providing a more profound investigation of the disparate viewpoints in the legal discourse. This review section considers the possible effects of opposing viewpoints on the larger field of human rights law, adding a degree of nuance and variation to the dominant legal interpretations.

One significant aspect of the case review is an analysis of the application of the ECtHR’s ruling, specifically with regard to the admissibility of evidence derived from inhumane treatment. In cases where the state is involved in acts that violate basic values, the chapter poses important considerations concerning state accountability and the broader ramifications for human rights norms.

This case analysis essentially acts as a thorough investigation into the nuances of *Gäfgen v. Germany*, illuminating the murky areas where government activities, moral principles, and the unwavering ban on torture collide. It provides readers with an insightful examination of the case’s ramifications for the larger conversation about justice, human rights, and the state’s responsibility to protect fundamental values.³¹

Mindadze and Nemsitsveridze V. Georgia

Both applicants were arrested in 2004 and faced charges related to an incident connected to a Georgian Parliament Member. Their conviction by the national Court included an attempt at murder under aggravating circumstances. The wife of the initial petitioner subsequently stated in Court that she saw her husband’s bandaged wrists and bitten and blackened nails, which he attempted to hide, on May 16, 2004. However, upon the first applicant’s transfer to jail number 7, the prison doctor noted no violent tendencies.³²

The initial applicant requested a comprehensive medical investigation to ascertain the degree of his injuries after claiming he suffered electric shocks and severe beatings on May 13, 2004. On

September 27, 2004, the mother of the second applicant filed a lawsuit, claiming that a Member of Parliament had given the first applicant money to keep him in prison so he would continue to confess. The Court underscores that Article 3 of the Convention forbids torture and inhuman treatment, even under challenging circumstances.

A meticulous examination is crucial in cases involving Article 3 claims. The Court found that the state medical personnel’s failure to timely and adequately examine and document the first applicant’s injuries deprived him of a crucial guarantee against Article 3 violations.

The first applicant’s methodical display of signs of the maltreatment he alleged is justified, according to the Court. Failure is indicated by the domestic authorities’ inadequate and belated inquiry, which did not offer a counterargument. The Court determines that during the first applicant’s detention at the Tbilisi Police Department on May 13, 2004, there was police brutality against him, taking into account the duty to account for injuries sustained while in prison.

The Court asserts that the use of electric shocks and beatings with iron shackles to extract a confession constitutes a serious violation of the applicant’s physical integrity, qualifying as torture under Article 3 of the Convention. Consequently, there was a violation of both the substantive and procedural aspects of Article 3.³³

CONCLUSION

The European Court of Human Rights is essential to protecting the fundamental rights included in the European Convention on Human Rights and determining the boundaries of justice in the complex field of human rights litigation. In particular, this article has examined the guarantee of Article 3 against cruel treatment or punishment, critically analysing the European Convention on Human Rights’ method of determining a minimal standard for torture committed by agents of the state.

Harmonious ideas are urgently needed to identify the minimum threshold for torture enabled by State actors, given the constantly changing legal environment created by the ECHR. The European

31 Gäfgen v. Germany. 2010.

32 Mindadze and Nemsitsveridze v. Georgia. 2017.

33 Ibid.

Convention on Human Rights can strengthen the legal system by improving its process as the supreme authority in human rights decision-making. To improve the harmonious development of human rights protection, the European Court of Human Rights should scrutinise cases with discriminatory intent more closely. The Court should emphasise how important it is to look into any apparent prejudices, especially where they are the driving force behind actions. There must be a surge in public awareness. The ECHR needs to attempt to disseminate its rulings properly so that more people are aware of the legal harmonies it creates. This guarantees that justice reverberates across society and supports respect for human rights.

The smooth application of ECHR rulings depends on cooperation with state authorities. To guarantee that its legal melodies are heard and incorporated into the national legal symphonies, the Court should promote a collaborative echo and collaborate closely with national bodies.

Legal practitioners should be given symphonic training through a concentrated effort. This includes training programmes, conferences, and workshops to acquaint legal professionals with the subtleties of the ECHR's case law. An accomplished lawyer ensemble ensures a more harmonious interpretation and application of human rights standards.

To keep legal instruments in line with modern legal harmony, the ECHR should conduct thorough reviews of them regularly. Periodic adjustments are necessary for a dynamic legal system, and the Court should take the lead in coordinating these changes.

By incorporating these suggestions into the legal composition, the European Court of Human Rights (ECHR) can enhance its position as the human rights defender and guarantee that its jurisprudential frameworks are characterised by precision, coherence, and a solid dedication to justice.

BIBLIOGRAPHY:

Normative Materials:

1. European Court of Human Rights. (n.d.). Convention for the Protection of Human Rights and Fundamental Freedoms (as amended by Protocols Nos. 11 and 14). Retrieved from <https://www.echr.coe.int/documents/d/echr/convention_ENG>
2. Council of Europe. (n.d.). Guide on Article 3 of the European Convention on Human Rights: Prohibition of torture. Retrieved from <https://www.echr.coe.int/documents/d/echr/Guide_Art_3_ENG>
3. UN HCHR. (2011). Interpretation of torture in the light of the practice and jurisprudence of international bodies. United Nations publication. Retrieved from <http://www.ohchr.org/Documents/Issues/Torture/UNVFVT/Interpretation_torture_2011_EN.pdf>
4. Council of Europe. (n.d.). Prohibition of torture. Retrieved from <<https://www.coe.int/en/web/echr-toolkit/interdiction-de-la-torture>>

Court Decisions:

1. A. and Others v. the United Kingdom [GC]. 2009.
2. X and Others v. Bulgaria [GC]. 2021.
3. Ireland v. the United Kingdom. 1978.
4. Selmouni v. France [GC]. 1999.
5. Ilașcu and Others v. Moldova and Russia [GC]. 2004.
6. Selmouni v. France [GC]. 1999.
7. Salman v. Turkey [GC]. 2000.
8. Al Nashiri v. Poland. 2014.
9. Petrosyan v. Azerbaijan. 2021.
10. Bouyid v. Belgium [GC]. 2015.
11. Dembele v. Switzerland. 2013.
12. Gutsanovi v. Bulgaria. 2013.

13. Svinarenko and Slyadnev v. Russia [GC]. 2014.
14. Shlykov and Others v. Russia. 2021.
15. İzci v. Turkey. 2013.
16. Ali Güneş v. Turkey. 2012.

Scientific Literature:

1. McGlynn, C., & García-Lozano, S. T. (2009). Rape, Torture and the European Convention on Human Rights. *The International and Comparative Law Quarterly*. <<https://www.jstor.org/stable/25622227>>
2. Evans, M. D., Cakal, E., NEWBERY, S., Moran, C. R., Murphy, C. J., Kelly, T., & Parry, J. T. (2002). Getting to Grips with Torture. *The International and Comparative Law Quarterly*. <<https://www.jstor.org/stable/3663233>>
3. Palmer, S. (2006). A Wrong Turning: Article 3 ECHR and Proportionality. *The Cambridge Law Journal*. 65(2). 438-451. <<https://www.jstor.org/stable/4509209>>
4. Mavronicola, N. (2021). Torture, Inhumanity and Degradation under Article 3 of the ECHR. See: <<https://library.oapen.org/bitstream/handle/20.500.12657/62913/9781509903054.pdf?sequence=1&isAllowed=y>>
5. Gasper, B. (2005). Examining the Use of Evidence Obtained Under Torture: The Case of the British Detainees May Test the Resolve of the European Convention in the Era of Terrorism. *American University International Law Review*. Retrieved from <<https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1051&context=auilr>>
6. Weissbrodt, D., & Heilman, C. (2011). Defining Torture and Cruel, Inhuman, and Degrading Treatment. *University of Minnesota Law School Scholarship Repository*. Retrieved from <https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1370&context=faculty_articles>
7. Additional Materials:
8. REDRESS. (n.d.). European Court Finds Russia Responsible for Torturing of Gay Man “Solely on Account of his Sexual Orientation”. Retrieved from <<https://redress.org/news/european-court-finds-russia-responsible-for-torturing-of-gay-man-solely-on-account-of-his-sexual-orientation/>>