**Une image contenant Bleu électrique, Bleu Majorelle, Bleu cobalt, drapeau

Description générée automatiquementSUMMARY SHEETS : ARTICLE 4 ECHFR**

***“Prohibition of torture and inhuman or degrading treatment or punishment***

*No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”*

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| **Content and scope of the article** |
| **EChFR vs ECHR: content of the prohibition**  Article 4 of the EChFR enshrines the prohibition against torture and inhuman or degrading treatment or punishment. According to the Court of Justice of the European Union (CJEU), the content of this prohibition is intrinsically linked to respect for human dignity, which is enshrined in Article 1 of the EChFR (CJEU Judgement, *C.K. and Others v. Slovenia*, C-578, para. 59).  Article 4 of the EChFR mirrors the exact wording of Article 3 of the ECHR , maintaining consistency between the two instruments. It is also important to note that Article 52.3 EChFR stresses that the meaning and scope of the Charter should align with those of the ECHR. As such, the full body of ECtHR case law must be considered when interpreting the prohibition of torture and inhuman or degrading treatment and punishment within the European Union.  **The jurisprudence on the European continent**  The prohibition of torture and inhuman or degrading treatment or punishment enshrined in Article 4 EChFR, encompasses several conducts that need to be specified. Through its case law, the ECtHR has established the gravity of suffering inflicted on the victims as the key parameter for classifying the different conducts prohibited by Article 3 ECHR.  The starting point for the definition of torture is provided in the *Greek Case (i.e. 3321/67 Denmark v. Greece, 3322/67 Norway v. Greece, 3323/67 Sweden v. Greece, 3344/67 Netherlands v. Greece)*  According to the ECtHR, “*the word torture is frequently used to describe inhuman treatment which has a particular purpose, such as obtaining information or a confession or inflicting punishment, and generally results in an aggravated form of inhuman treatment*”. However, it should be noted that, the ECtHR has consistently identified two essential elements required to qualify the treatment of the victim as torture:  (1) injury causing long-term consequences and  (2) an act carried out with a specific purpose (*Portu and Sarasola v. Spain* of 13 February 2018).  In terms of authorship, acts carried out – whether directly or indirectly- by both public officials and private individuals are considered torture, as reaffirmed by the ECtHR in *Pretty v. United Kingdom.* The ECtHR further also requiresStates to take measures even when the treatment is inflicted by private individuals*.*  Based on above, it can be inferred that several elements must be present for an action to constitute torture. Firstly, the act must be caused intentionally and involve a certain level of severity causing severe pain or suffering (physical or mental). In other words, **the aggression must be both severe and intentional**. Secondly, the purpose or objective of the act of torture must be considered: usually **to obtain information, intimidating or inflicting punishment.** Both elements are essential to qualify an act as torture in line with the Council of Europe.  Another form of conduct prohibited by Article 3 ECHR - and thus by Article 4 EChFR is inhuman or degrading treatment. These concepts have often been used interchangeably, though they are not synonymous. The ECtHR’s case law is somewhat unclear, as it sometimes applies both terms as a different concepts, while in other cases they are treated as synonyms. In Ireland v United Kingdom (1978) it was alleged that the interrogation methods used by the RUC in Northern Ireland to fourteen people suspected to be involved with the IRA were a breach of Article 3. The RUC used ‘five techniques’ to obtain information:  1. Forcing detainees to stand against a wall with their arms outstretched for numerous hours.  2. Covering the detainee’s heads with a bag, only removing it during the interrogations.  3. Keeping detainees in a room that played continuous stressful noises.  4. Depriving detainees of sleep.  5. Depriving detainees of food and water.  The ECtHR held that the combined use of these ‘five techniques’ amounted to inhuman and degrading treatment, not torture. At paragraph 167 the Court outlined:  *Although the five techniques, as applied in combination, undoubtedly amounted to inhuman and degrading treatment, although their object was the extraction of confessions, the naming of others and/or information and although they were used systematically, they did not occasion suffering of the particular intensity and cruelty implied by the word torture as so understood.*  This finding was revisited forty years later, in Ireland v United Kingdom [2018]. The applicant government newly submitted that medical evidence of the lasting after effects of the treatment was withheld by the respondent government in the original case and argued that this evidence may have caused the Court to come to a different conclusion.  Had the Court known the new facts at the time it would in all probability have come to the conclusion that the application of the five techniques amounted to torture and not “only” to inhuman and degrading treatment. The ECtHR upheld the original decision that the treatment constituted inhuman and degrading treatment, not torture, on the basis that the applicant government’s new evidence would not have influenced the original decision.  However, in *Jalloh v. Germany*, the Court held that inhuman treatment occurs when it “*was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering*”. Degrading treatment, on the other hand is characterised as treatment that “*arouses in its victims’ feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance [...] or when it was such as to drive the victim to act against his will or conscience*”. Thus, the **distinguishing feature for inhuman treatment is** **the intensity of the acts inflicted** when they do not reach the threshold of torture. **Degrading treatment**, meanwhile, is characterised by the **perpetrator’s intent to diminish the victim’s self-pride**.  In summary, **“torture” refers to acts of greater severity, deliberately inflicted to cause cruel and severe suffering on the victim for a specific purpose**, while “**inhuman or degrading treatment” refers to acts of lesser severity, but still sufficient to cause feelings of humiliation in the victim often resulting in significant physical and mental consequences.** However, the final legal classification of the acts lies with the ECtHR, which must always consider other specific aspects of the case, such as intentionality, duration of the treatment, physical or psychological consequences and the victim’s sex, age, or health. This list is not exhaustive, and some cases have led to convictions for treatment that lacked a physical component. For example, in *Mubilanzila Myeka and Kaniki Maqitunga v. Belgium*, the ECtHR classified the separation of a five-year old child from her mother in a foreign country as “inhuman treatment” due to the severe psychological consequences of being left without parental care.  Finally, Article 3 of the ECtHR also prohibits inhuman or degrading punishment, which the Court defines as punishment that, by violating the dignity of the person to whom it is applied, exceeds the suffering and humiliation inherent in the punishment itself, such as the death penalty and life imprisonment.  **Unconditional and absolute prohibition**  Moreover, two particularities inherent in the prohibition stipulated in the ECHR should be highlighted: the unconditional and absolute nature of Article 3.  The unconditionality of the prohibition is established in Article 15 ECHR. In accordance with these provisions, **under no circumstances, including situations of war or public danger posing a threat to the state, does the obligation to protect citizens from acts amounting to torture or inhuman or degrading treatment or punishment cease**.  The absolute nature of the prohibition means that the content of Article 3 ECHR cannot be conditioned, restricted, or repealed. While the unconditionality of the prohibition is explicitly stated in the Convention, the absolute nature is inferred from ECtHR case law. The ECtHR has consistently held that Article 3 ECHR does not allow any exceptions. The **prohibition therefore cannot be subjected to a balancing of interests against other provisions of the Convention, and its violation cannot be justified on any grounds**, including the victim’s conduct or situations in which other lives are at risk. Similarly, **Article 4 EChFR provides absolute protection, with no scope for derogation** **or restriction.** The CJEU has described this as an “absolute privilege” (C-112/00, Schmidberger, para. 80).  The importance of the Article 4 EChFR is linked to the development of the Area of Freedom, Security and Justice as well as the Common Foreign and the Security Policy in the European Union. Its main areas of application include immigration and asylum, border control and surveillance, counter terrorism policies, participation in military operations and judicial cooperation within the European Arrest Warrant framework. For instance, Article 4 of the Charter must be interpreted in a way that Member States are not permitted to transfer an asylum seeker to a State where there are serious and substantiated reasons to believe that the applicant would face a substantial risk of inhuman or possible degrading treatment, also called the principle of non-refoulement. The same provision can also justify the refusal to execute an EAW due to the conditions of detention in a Member State’s prison. |
| **CJEU Case Law** |
| * **European Arrest Warrant**   **CJEU Judgment, *Pál Aranyosi and Robert Căldăraru v Generalstaatsanwaltschaft Bremen*, Cases C-404/15 and C-659/15 PPU, ECLI:EU:C:2016:198**  *Key words: Reference for a preliminary ruling — Police and judicial cooperation in criminal matters — Framework Decision 2002/584/JHA — European arrest warrant — Grounds for refusal to execute — Charter of Fundamental Rights of the European Union — Article 4 — Prohibition of inhuman or degrading treatment — Conditions of detention in the issuing Member State*  **CJEU Judgement, *E.D.L*, C-699/21, ECLI:EU:C:2023:295.**  *Key words: Duty of sincere cooperation – Postponement of the execution of the European arrest warrant– Serious, chronic and potentially irreversible illness – Risk of serious harm to health affecting the person concerned by the European arrest warrant.*  **CJEU Judgment, *ML,* Case C-220/18 PPU, ECLI:EU:C:2018:589*.***  *Key words: Grounds for non-execution —Detention conditions in the issuing Member State — Scope of the assessment undertaken by the executing judicial authorities — Existence of a legal remedy in the issuing Member State — Assurance given by the authorities of that Member State.*   * **Migration and Asylum**   **CJEU Judgment, *X., Y. and Z. v Minister voor Immigratie en Asiel,* Joined Cases C 199/12 to C 201/12, ECLI:EU:C:2013:720**  *Key words: Directive 2004/83/EC — Minimum standards relating to the conditions for granting refugee status or subsidiary protection status —Membership of a particular social group — Sexual orientation — Reason for persecution — Concept of ‘persecution’ — Well-founded fear of being persecuted on account of membership of a particular social group — Acts sufficiently serious to justify such a fear — Legislation criminalising homosexual acts — Individual assessment of the facts and circumstances*  **CJEU Judgment, *MP v Secretary of State for the Home Department*, Case C-353/16, ECLI:EU:C:2018:276.**  *Key words: Directive 2004/83/EC — Eligibility for subsidiary protection —Risk of serious harm to the psychological health of the applicant if returned to the country of origin — Person who has been tortured in the country of origin.*  **CJEU Judgement, *C.K. and Others v. Republika Slovenija*, C-578, ECLI:EU:C:2017:127.**  *Key words: Dublin system — Transfer of a seriously ill asylum seeker to the State responsible for examining his application — No substantial grounds for believing that there are proven systemic flaws in that Member State — Obligations imposed on the Member State having to carry out the transfer.*  **CJEU Judgement, *Milkiyas Addis v Bundesrepublik Deutschland*, Case C-515/2017, ECLI:EU:C:2020:579**  *Key words: Common procedures for granting and withdrawing international protection — Directive 2013/32/EU —Obligation to give applicants for international protection the opportunity of a personal interview before the adoption of a decision declaring the application to be inadmissible — Failure to comply with that obligation in the procedure at first instance — Consequences.*   * **Others**   **CJEU Judgement, *UD v XB*, Case C-393/18 PPU, ECLI:EU:C:2018:835**.  *Key words: Judicial cooperation in civil matters — Regulation (EC) No 2201/2003 — Jurisdiction in matters of parental responsibility — Concept of ‘habitual residence of the child’ — Requirement of physical presence — Detention of the mother and child in a third country against the will of the mother — Infringement of the fundamental rights of the mother and child.*  **CJEU Order, Nexans France and Nexans v European Commission, Cases C-65/18 P(R) and C-65/18 P(R)-P, ECLI:EU:C:2018:426.**  *Key words: Application for interim measures — Competition — European market for power cables — Decision of the European Commission finding an infringement of Article 101 TFEU — Publication — Partial rejection of the request for confidential treatment of certain information appearing in the decisión — Suspension of operation of a measure — Connection between the condition of a prima facie case and that of urgency.* |
| **Highlights** |
| Article 4 of the Charter must be interpreted in conjunction with the other articles in the Chapter dedicated to dignity, including the right to life (Art. 2), the right to integrity (Art. 3) and the prohibition of slavery (Art. 5). As a starting point, it should be remembered that the CJEU has recognised human dignity as a general principle of law. Furthermore, all the rights contained in the first Chapter of the Charter are rooted in the inviolability of human dignity.  The relationship between Article 4 and Article 5 is particularly evident in cases of human trafficking, as certain instances of human trafficking may result in torture, inhuman or degrading treatment if the State fails to act with due diligence in protecting the victims. |
| **Correspondence with other European/International instruments** |
| * European Convention on Human Rights, Article 3 * Universal Declaration of Human Rights. A/RES/217(III) of 10 December 1948, Article 5 * International Covenant on Civil and Political Rights. A/RES/2200(XXI), of 16 December 1996, Article 7 * Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. A/RES/39/46, of 10 December 1984. * European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. ETS no. 126, of 26 November 1987. |
| **Further readings** |
| * Manfred Nowak and Anne Charbord; “*Article 4, Prohibition of torture and Inhuman or Dergrading Treatment or Punishment*”, in Steve Peers, Tamara Hervey, Jeff Kenner and Angela Ward (eds.), *The EU Charter of Fundamental Rights,* Hart, 2014, pp. 61-100*.* * René Santamaría Arinas and María del Carmen Bolaño Piñeiro, “*Artículo 3. Prohibición de la tortura*”, in Lasagabaster Herarte, Iñaki (Ed.), *Convenio Europeo de Derechos Humanos. Comentario sistemático*. Civitas, Thomson Reuters. 2021, pp. 58-102. * Mirenxtu Jordana and Georgina Rodriguez Muñoz:, “The prohibition of torture and inhuman or degrading treatment”, in Jordana, Mirentxu (Ed.), *Respect for Human Rights in Spain. A critical analysis from an international law perspective*, Generalitat de Catalunya, 2023, pp. 121-158. |