

Valentin Bou-Franch*

Article 4 of the Charter of Fundamental Rights of the European Union on the prohibition of torture and inhuman or degrading treatment or punishment

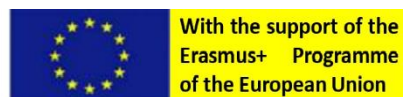
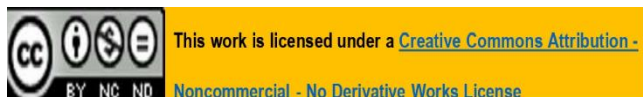
SLIDE 1

Hello, welcome. I am Valentin Bou, and in this video I am going to talk to you about article 4 of the Charter, concerning the prohibition of torture and inhuman or degrading treatment or punishment.

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Article 4 of the Charter of Fundamental Rights of the European Union, entitled "Prohibition of torture and inhuman or degrading treatment or punishment", states: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment".

This right is identical to the right guaranteed in Article 3 of the European Convention on Human Rights, which states that "No one shall be subjected to torture or to inhuman or degra-



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ding treatment or punishment". Therefore, by virtue of Article 52(3) of the Charter, Article 4 of the Charter has the same meaning and scope as this Article of the European Convention on Human Rights.

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Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment states that the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person.

For torture to exist, two requirements must be met. The first requirement is that it is conducted for the purpose of obtaining from the victim, or from a third person, information, or a confession, of punishing the victim for an act he or she has committed or is suspected of having committed, or of intimidating or coercing him or her or others, or for any reason based on discrimination of any kind.

In this regard, the Committee against Torture emphasised that the elements of intentionality and purpose do not involve a subjective enquiry into the motivations of the perpetrators but must be objective findings in the light of the circumstances of each individual case.

The second requirement is that such pain or suffering must be inflicted by, at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity.

This second requirement merits the following four comments. First, the Human Rights Committee stated that it is prohibited for such acts to be inflicted by persons acting in their official capacity, outside their official capacity or even in a private capacity.

Second, the Committee against Torture emphasised that the State's obligation to prevent torture also applies to all persons acting, de jure or de facto, on behalf of, in collaboration with or at the request of the State party.

Third, the European Court of Human Rights indicated that, although the jurisdiction of States is essentially territorial, States are exceptionally also answerable for acts taking place outside their territory, but in an area in which they exercise effective control (e.g. by military occupation, whether lawful or unlawful, of a different territory).

Fourth and finally, the Committee against Torture stressed that it is essential to investigate and establish the responsibility of both those in the chain of command and the direct perpetrators of torture.

SLIDE 4

With regard to the prohibition of degrading or inhuman treatment, five comments can be made.

First, the Committee against Torture recognised that most States parties criminalise or define certain conduct as ill-treatment in their criminal codes. In comparison to torture, ill-treatment differs in the severity of pain and suffering and does not require proof of unacceptable purposes. The Committee stressed that it would be a violation of the Convention to prosecute as ill-treatment conduct in which the constituent elements of torture are also present.

Second, the European Court of Human Rights has held that ill-treatment must be of a minimum degree of severity. It recognised that severe pain or suffering cannot always be assessed objectively. It depends on the negative physical and/or psychological consequences for each individual of suffering violent acts or ill-treatment, taking into account all the relevant circumstances of each case, in particular the type of treatment, the sex, age, state of health and vulnerability of the victim or any other factor or condition.

Third, the Committee against Torture considered that, in practice, the conceptual boundary between ill-treatment and torture is often unclear. It added that experience shows that conditions that lead to ill-treatment often facilitate torture, and therefore the measures necessary to prevent torture must also be applied to prevent ill-treatment.

Fourth, the European Court of Human Rights defined "degrading treatment" as treatment that is of such a nature as to provoke feelings of fear, anguish and inferiority aimed at humiliating, degrading, and possibly breaking the physical or moral resistance of the person to whom it is applied, or at compelling him to act against his will or conscience.

Fifth and finally, the Human Rights Committee affirmed that the prohibition of torture and cruel, inhuman, or degrading treatment or punishment refers not only to acts that cause the victim physical pain, but also to acts that cause moral suffering. Moreover, in the Committee's view, the prohibition should extend to corporal punishment, including excessive punishment imposed for the commission of a crime or as an educational or disciplinary measure. In this regard, it should be emphasized that this article protects, in particular, children, pupils and

patients in educational establishments and medical institutions.

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The prohibition of torture and inhuman or degrading treatment has two important characteristics.

The first is that it is an absolute prohibition since it is an international peremptory norm *-ius cogens-*.

In relation to this characteristic, I have two comments to make. The first is that the Committee against Torture has recalled that the prohibition of torture is absolute. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability, or any other public emergency, may be invoked as a justification of torture. The Committee further recalled that other forms of ill-treatment are also prohibited, and that the prohibition of ill-treatment is also absolute.

Second, the Court of Justice of the European Union has indicated that the rights from which no derogation may be made under Article 15(2) of the European Convention on Human Rights are to be found, *inter alia*, in Article 4 of the Charter of Fundamental Rights of the European Union.

The second relevant feature is the principle of non-refoulement, if there is a suspicion that a person will be tortured or ill-treated.

Thus, on the one hand, the Committee against Torture has two relevant statements. The first is that no State shall expel, return, or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. The second is that persons in respect of whom it is established that they would be in danger of being subjected to torture if expelled to a particular State must be allowed to remain in the territory subject to the jurisdiction, control, or authority of the State in which they are present for as long as the risk persists.

Furthermore, the Court of Justice of the European Union has confirmed that this prohibition also applies to the return of irregular migrants.

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That is all I had to say. Thank you very much for your attention.