

Karla Zambrano González ¹

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

I. Introduction

The Convention against Torture, to which this publication is devoted, was adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984 and entered into force on 26 June 1987. There are currently 173 States Parties to the Convention.

However, although the term "torture" is not alien to anyone, it is true that the Convention considers it necessary to delimit its definition. Thus, Article 1 indicates that torture is considered to be:

"Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by a public official or other person acting in an official capacity, or to intimidate or coerce him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of

¹ Postdoctoral researcher and Professor of International Public and Environmental Law. University of Valencia (Spain). Research Member of the Jean Monnet Module, Project: ENVEU. Co-funded by the European Union. The views and opinions expressed are those of the author(s) and do not necessarily reflect those of the European Union or the European Executive Agency for Education and Culture (EACEA). Neither the European Union nor the EACEA can be held responsible for them.

or with the consent or acquiescence of a public official or other person acting in an official capacity.

And it expressly excludes from the consideration of torture "pain or suffering arising only from, inherent in or incidental to lawful sanctions".

II. Obligations of the Parties to the 1984 Torture Convention

Among the main commitments made by the Parties, it is possible to find:

The prevention of torture set out in Article 2, which indicates that States Parties "have an obligation to take effective measures to prevent acts of torture in any territory under their jurisdiction". Article 2(2) states that "no exceptional circumstances whatsoever" may be invoked as a justification for torture. For example, in cases of a state of war, political instability or any public emergency, etc., nor an order from a superior officer or a public authority (art. 2.3).

Another obligation of the Parties relates to the principle of "non-refoulement". Thus, according to article 3 of the Convention a State Party "may not expel, return ('refouler') or extradite a person to another State where there are 'substantial grounds' for believing that the person would be in danger of being subjected to torture". In this regard, a clarification should be made on the term "substantial grounds", i.e. "all relevant

considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights".

In addition, the criminalisation of torture, introduced in Article 4, provides for the obligation to criminalise torture in accordance with the State party's domestic law. This provision also applies to attempts to commit torture and to any act of co-perpetration, complicity or participation in torture.

The principle of universal jurisdiction is one of the most important aspects of the Convention. In this regard, article 5 indicates that a State party must establish its jurisdiction over any person in its territory or on board an aircraft or vessel registered in that State who is alleged to have committed acts of torture, regardless of where the alleged act was committed or the nationality or residence of the alleged perpetrator. In addition, this principle operates where the victim is a national of that State and the State considers it appropriate; and if the State is unable to prosecute the offence, it must extradite the alleged offender to a State that is able and willing to prosecute the offence.

The exercise of universal jurisdiction over torture is regulated in articles 6 to 9 of the Convention. These establish obligations such as securing the custody of an alleged perpetrator when it is "satisfied, upon examination of information available to it, that the circumstances so warrant" and is obliged to immediately

initiate a preliminary investigation into the facts (art. 6.2).

It also establishes the obligation to extradite the alleged torturer or, if this is not possible, to prosecute him or her. In the absence of an extradition treaty, the Convention can be used as a legal basis for extradition, in accordance with Art. 8 of the Convention. Finally, the Convention establishes the obligation of States parties to cooperate with each other and to provide all available evidence necessary for criminal proceedings against persons accused of torture.



Cofinanciado por
la Unión Europea

ENVEU
Jean Monnet Module

Project No. 101085459