

Název práce a její resumé v anglickém jazyce

Prohibition of torture in the international law

The prohibition of torture and other forms of ill-treatment is universally recognized and is enshrined in all of the major international and regional human rights instruments. It is also a firmly rooted principle of customary international law, and as such, it is binding on all states at all times, irrespective of whether states have assumed additional treaty obligations in respect of the prohibition.

All international instruments that contain the prohibition of torture and ill-treatment recognize its absolute, non-derogable character. This is reinforced by its higher *jus cogens* status under customary international law which connotes the fundamental, peremptory character of the obligation. The prohibition of torture also imposes obligations *erga omnes*, and every state has a legal interest in the performance of such obligations which are owed to the international community as a whole. This obligation has important consequences under basic principles of state responsibility, which provide e.g. the obligation of all states to prevent torture and other forms of ill-treatment, to bring it to an end, not to endorse, adopt or recognize acts that breach the prohibition. We speak about negative and positive obligations of states resulting from the character of human rights.

The international protection of human rights is generally recognized as a fundamental aim of modern international law. It demonstrates the rapid expansion of this field since the end of World War II. During this period, nearly all global and regional organizations have adopted human rights standards and addressed human rights violations by member states. This thesis does not examine all regimes of protection of human rights, but rather concentrates on two main systems.

At the international level it is the United Nations which provide the universal protection of human rights. Torture and other ill-treatment is prohibited under Article 7 of the International Covenant on Civil and Political Rights from the year 1966 (ICCPR). The rights in the ICCPR are supervised and monitored by the Human Rights Committee (HRC).

Torture and other forms of ill-treatment is also addressed and prohibited by an issue-specific treaty, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment from 1984 (CAT) which is monitored and supervised at the international level by the Committee against Torture (CAT Committee).

At the regional level it is the Council of Europe within which the European human rights system works, built on the foundation of the European Convention on Human Rights (ECHR) that stands out today as the most impressive work of legal and political art. Its Article 3 prohibits the use of torture or inhuman or degrading treatment or punishment by contracting parties. Compliance with the provisions of ECHR is guaranteed by The European Court of Human Rights established in 1998 under the Protocol No. 11. Its judgments are binding and have the force of law in the member states of the Council of Europe. At the Council of Europe level there is also an issue-specific treaty – the European Convention for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Overseeing compliance with its provisions is the task of the Committee for the Prevention of Torture.

There exist several ill-treatments that fall within the scope of the prohibition of torture. We speak about cruel, inhuman or degrading treatment or punishment. All of them are included in the prohibition of torture but they can also exist independently. Distinctive element between these treatments lies in the assessment of the *minimum level of severity* which express the severe pain or suffering, whether physical or mental, inflicted upon the victim. The severest interference with the human integrity constitutes violation of the prohibition of torture.

There are two corollaries flowing from the absolute prohibition of torture. First is the *non-refoulement rule* which prohibits states from returning individuals to countries where they could face a risk of torture. The same applies for the extradition or expulsion cases. The second is the *exclusionary rule* prohibiting use of evidence extracted under torture in any kind of judicial, administrative or other formal proceedings. There are plenty of other questions and concerns regarding to the prohibition of torture. Namely it is the relation and possibility of abusing the death penalty. As long as the death penalty is not worldwide prohibited and its execution is

allowed according to the national law, thorough attention must be held when executed. Such method must constitute the „least possible physical pain and suffering“ in order not to give rise to cruel and inhuman treatment. Corporal Punishment is prohibited by the international community at all.

There is another concept putted together with the death penalty. We speak about the *death row phenomenon* as the increasing mental anxiety and mounting tension over one's impending death when a person is detained on death row for an extended amount of time. This is considered to be breach of the prohibition of torture and other ill-treatment when certain circumstances are met.

Another very dangerous phenomenon must be mentioned. *Enforced Disappearance* is in fact the deprivation of liberty of a person with the concealment of her/his fate or whereabouts, which place such a person outside the protection of the law. Disappearances often result in violation of several human rights as often the right to life, right to liberty and security and almost ever the prohibition of torture and other ill-treatment. Another big issue concerning the violations of above mentioned prohibition is treatment in places of detention, such as police cells or prisons. It is the states' duty to ensure human and vital conditions of detention as well as no violence when interrogations. The worst scenario usually falls within the treatment in the solitary confinement or detention incommunicado. In this cases the complete sensory deprivation coupled with total social isolation can destroy the personality of a detainee and may constitute a form of inhuman treatment.

But always when assessing whether there is a breach of prohibition of torture or not, all circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim must be considered.