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## RESEARCH ARTICLE

### PROHIBITION OF TORTURE

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#### ABSTRACT

Torture, as a process, is a serious violation of fundamental human rights, especially in cases where torture is committed by civil servants, such as police and other segments of state institutions. The act of torture can be considered as a serious threat to the social and democratic principles of a society. The perpetration of torture by civil servants and institutions suggests that there is a serious omission in the democracy of a given system. It should be noted that no society is immune from cases of torture committed by various persons, especially by police officers who, often, exceed the official powers and apply disproportionate force to individuals of concern. Regarding the legal framework, almost every country that is a signatory to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has adopted an appropriate legal framework for the prevention and punishment of torture, and the same applies to member countries of the European Union who have signed and ratified the European Convention on Human Rights, with special emphasis on Article 3 of this Convention.

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#### INTRODUCTION

Defining torture as a kind of human rights violation is a major challenge, given that there is room left for defining the notion by the state authorities in the direction of including of all relevant international principles. According to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, torture is defined as incorporating three basic elements, intentionally causing great physical or mental pain, the existence of a specific goal for obtaining a certain information or recognition, the punishment of a particular offense, intimidation or exertion of pressure and execution by an official or other person acting in an official capacity.<sup>1</sup> The legal definition of torture has been accepted by all States Parties to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted and opposed to signing, ratification and accession by Resolution of the General Assembly 39/46 of 10 December 1984, and effective from 26 June 1987. It should be noted that torture does not cover only physical or mental pain that are inherent or accompanying elements of legal sanctions; therefore, the definition of torture is incomplete, not comprehensive and does not provide development of the definition in various degrees. In addition, the definition also excludes legal sanctions (sanctions prescribed by national law), which leads to a consideration of whether the sanctions contradict the general spirit of the Convention.

Torture does not involve pain or suffering arising exclusively from enforceable sanctions, which are inseparable part of sanctions and constitutes as their random elements. Often, it is very difficult to determine the precise boundary between "torture" and other forms of "cruel, inhuman or degrading treatment or punishment". These boundaries may depend on the specific circumstances of a given case and the characteristics of the victim in question. The two terms imply mental and physical abuse that is applied by the officials or with the approval of the officials. The "essential elements" of what constitutes torture contained in Article 1 of the Convention include:

- Applying severe mental or physical pain or suffering;
- An act of officials or an act made with their consent or approval;
- Act made for a specific purpose, such as extortion of evidence or confession, punishment or intimidation.

Fierce treatment, as well as inhuman or degrading treatment or punishment, are also legal terms that refers to prohibited treatment that does not have to be done for a specific purpose, but there must be an intention to expose individuals on conditions that are prohibited or are the result of a prohibited act. The essential elements that constitute prohibited treatment, which is not the same as torture, can be reduced to:

- Intentional subversion of significant mental or physical pain or suffering; and

<sup>1</sup> Republic of Macedonia - Ombudsman, Brochure - Torture. Available at: <http://ombudsman.mk/upload/NPM-dokumenti/NPM%20Mkd.pdf>

- An act addressed to officials or an act made with their consent or approval.

Because of the stated elements it is difficult to distinguish the different forms of prohibited procedure, since the assessment of the degree of suffering is necessary, which may depend on the specific circumstances of a given case as well as on the characteristics of the victim itself. Although torture is absolutely prohibited on the basis of international law and on the basis of the legislation of almost every country in the world, it is nevertheless applied. Although torture is publicly condemned, torture is still in use throughout the world, and as a rule, torture is applied by the same entities that are responsible for law enforcement and protection against torture.<sup>2</sup> According to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, torture is committed by civil servants. Torture exists when the official is directly in the course of performing his official duty or when he performs it with the official's expressed or implied consent or when the official incites to commit torture.<sup>3</sup> Here we would like to state what term officials or civil servants means. An official or civil servant is a person who is employed in a state body that performs official duty or a person employed in an institution entrusted with performing a public authorization (for example: prison, psychiatric hospital).<sup>4</sup>

The most commonly reported cases of torture were committed by police officers during the detention, during the duration of the investigation or by the prison staff during their imprisonment for serving a sentence, as well as during war, against prisoners of war. Based on methods of torture, there are numerous, various methods that inflict pain (either physical or psychological) that can be termed as a torture. There is no definite list of acts of torture and punishment, but some of the notorious examples of torture in the police stations are:

- Punching on the palms;
- Foot beating, so called "phalanx";
- Face slapping, punching, kicking, kicking;
- Chaining with handcuffs to the radiators;
- A shortening of the sleep for a long time;
- Extinguishing cigarettes on the body;
- Water restriction (full day);
- Forcing them to be in a certain position;
- Fingers crushing;
- Humiliation.

In addition to torture at the police stations, frequent cases of torture in psychiatric hospitals and institutions have been reported, and it usually occurs in the form of a re-education, or sanctioning some form of behavior. The punishment is carried out chemically (for example: punishment by giving sedatives)

or by physical fixation (for example: binding) of the patient, and often in both ways. Despite the Geneva Convention, the most severe forms of torture were observed against prisoners of war and civilians in military prisons and camps during the wars. Some of the examples that contain an active sadistic component are:

- Choking, tying and tightening with ropes;
- Immersion in water;
- Limb obstruction;
- Burning with cigarettes, open flames or boiling water;
- Cutting off parts of the body;
- Forced teeth extraction;
- Throwing from height;
- Rape.<sup>5</sup>

As there are numerous methods of ill-treatment and torture, the injuries that arise can be different:

- Physical injuries: bone fractures, wounds, burns, cuts, bruises and so on.
- Mental injuries: causing hypersensitivity, anxiety, tension, fear, sleep disturbance, post traumatic stress disorder.

Torture does not leave consequences only to the person who was exposed to the treatment, but also to the family of a person and a closer environment. As mentioned above, what is, and what is not torture, there are also acts that are related to torture. Torture will not exist if pain or suffering occurred during the application of legal injunctions. Thus, for example, in certain law-stipulated situations, the police have the power to apply means that can cause pain or suffering (for example, physical force, handcuffing, use of rubber sticks-batons), but only if the application of the same means is appropriate in force, proportionate to the danger and is in accordance with the law. Apart from the above, there are procedures, that is, situations that are related to torture, but which do not belong to torture, because the conditions regarding the intention to cause pain or suffering are not met, or the pain and the strain are of low intensity or if the purpose of such treatment was different. In these cases, the treatment of the official will not be torture, but it will still be punishable by law, if there is inflicting minor or severe bodily injuries, discrimination, abuse of human rights, unlawful restriction of the freedom, extortion of statements.<sup>6</sup> Judges and prosecutors have a key role in combating torture, as they are an inevitable part of maintaining a rule of law in a state. Nothing acts so fatal as lawlessness, especially the appearance of crimes committed by civil servants. When the state is defeated in the fight against torture, it means breaking international obligations, and those who are responsible for the administration of justice should be aware of their role in preventing the state from finding on a such a way.

**International legal framework for the prohibition of torture:** There are well-developed standards by the International Community to protect people against torture, standards applied in almost all systems around the world, and

<sup>2</sup> Foli, K. (2004). Borba protiv mučenja - Priručnik za sudije i tužioce, Organizacija za evropsku bezbednost i saradnju, Misija u Srbiji i Crnoj Gori, Centar za ljudska prava, Univerziteta u Esekusu, Velika Britanija

<sup>3</sup> United Nations Treaty Collection: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Retrieved September, 2017, from United Nations official website, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-9&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&clang=en)

<sup>4</sup> Article 122 of the Criminal Code of the Republic of Macedonia, Official Gazette of the Republic of Macedonia, number 37/96; Law on Amending the Criminal Code ("Official Gazette of the Republic of Macedonia" No. 80/99, 4/02, 43/03, 19/04, 81/05, 60/06, 73/06, 7/08, 139/08, 114/09, 51/11, 135/11, 185/11, 142/12, 166/12 and 55/13.

<sup>5</sup> Torture in war, consequences and rehabilitation: the Yugoslav experience ", group of authors, IAN International Aid Network Belgrade, 2004, pp. 146

<sup>6</sup> United Nations Treaty Collection: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Retrieved September, 2017, from United Nations official website, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-9&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&clang=en)

incorporated in the various legal systems that exist and lay down minimum guarantees that each system should provide prohibition and protection against torture. Several times in the text we repeated the syntax "almost all countries in the world", which gives us the knowledge that there are countries that have not signed and ratified certain agreements for the prohibition of torture, but that does not mean that those countries have no obligation to respect the ban on torture based on international law. Standards developed have different legal status - some of which are legally binding for countries that have signed and ratified various agreements, while others are contained in some legal instruments, such as declarations, resolutions, principles, and reports. For overseeing compliance with standards and providing guidelines for interpreting standards, the United Nations has set up several bodies based on specific conventions. These bodies provide general comments and recommendations, taking into account the reports of the States Parties to the Convention and to the extent to which a State observes the relevant conventions.<sup>7</sup>

**General prohibition of torture:** The ban on torture is contained in a number of international human rights and humanitarian treaties and is regarded as a principle in international law. The prohibition of torture has a special status in general international law and is treated as *jus cogens*, that is, the "imperative norm" of general international law.<sup>8</sup> The general ban on torture exists in Article 5 of the Universal Declaration of Human Rights (1948) and in international and regional human rights treaties. A number of states have ratified treaties containing prohibitions that prohibit torture and other forms of violence against people, such as the International Covenant on Civil and Political Rights (1966), the American Convention on Human Rights (1978), the European Convention on Human Rights (1950) and the African Charter on Human and Peoples' Rights (1981). The absolute prohibition of torture and ill-treatment is especially emphasized in laws that apply to human rights and cannot be relied upon in any way. Accordingly, there are no possible circumstances in which States may ignore that ban or in some cases limit it, and it cannot be justified in limiting or suspending the ban on torture even during wars or some other emergencies that could be endangering the nation's life.<sup>9</sup>

The general prohibition of torture applies regardless of the status or circumstances, regardless of the status of the victim and regardless of the type of offense committed by the victim.<sup>10</sup> It is strictly forbidden for State officials to commit torture, incitement to torture or other types of cruel punishment, humiliation or inhuman behavior as a form of punishment of another person, and the order for torture given by a superior may not serve as an excuse for performing torture. In addition, it is prohibited to commit torture to any person who is from the other ruling party, based on the Laws

on Armed Conflict (Humanitarian Law). In Humanitarian Law, the ban on torture is precisely indicated in Article 3 and in the various provisions of the Geneva Convention, as well as in the provisions for violation of humanitarian law and in the additional protocols of 1997. Torture under these conventions and provisions is also considered a crime against humanity in the event that torture is committed within a general, wide and systematic attack on the civilian population, regardless of whether they have been involved in an armed conflict. States are obliged to protect the right of any person who is in their jurisdiction and may be held accountable for acts of private persons if the state supports or tolerates some of their ways of torture. The right of individuals for protection against torture or ill-treatment includes the right not to be returned to a country for which there is a reasonable doubt that country will apply a torture method against a person, not be returned to a country where there is a risk of becoming a victim of torture, regardless whether or not the status of a refugee has been confirmed for that person. According to the above, countries that respond to extradition requests must ensure that the country seeking extradition respects the international standards for protection against torture and ill-treatment.<sup>11</sup>

**United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984:**

The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment from 1984, has been signed by 162 countries worldwide until August 2017.<sup>12</sup> This convention provides a precise definition of the torture mentioned above in the text and gives precise directions, i.e. it instructs countries that have signed the convention to prohibit torture in all circumstances. As with the general prohibition of torture, listed in other acts, conventions and agreements, the Convention prohibits torture in any circumstances, such as emergency situations and other exceptional circumstances, and cannot be justified by argument that one is just the following orders given by an official. States, in the event of torture, have "universal jurisdiction", that is, they may prosecute a torture act whereby the alleged perpetrator is not delivered to the country where he should be prosecuted, regardless of the country in which torture was conducted and regardless the citizenship of the perpetrator or victim. States are obliged to detain a person suspected of torture, to initiate an investigation procedure in accordance with the allegations or actual reports and the suspect in the case of torture to be handed over to the prosecution authorities. Under this convention, statements made under torture do not count as evidence in any proceedings, except against a person who is accused of torture. Additionally, victims of torture are entitled to rehabilitation and adequate settlement. The Convention against Torture, in addition to the above, requires States Parties to take effective measures to combat torture. States organize training to familiarize the all members of the public order and law with the ban on torture, as well as medical personnel and other officers who may be engaged in keeping the detainees in custody. Particular attention should be paid to the rules of investigation and detention conditions to

<sup>7</sup> Foli, K. (2004). Combating Torture - A Handbook for Judges and Prosecutors, Organization for Security and Cooperation in Europe, Mission in Serbia and Montenegro, Center for Human Rights, University of Essex, United Kingdom. p.8

<sup>8</sup> Human Rights Committee, General Comment 24 (52), a general comment on reserve issues expressed when ratifying a convention or general protocols or draft conventions and protocols or in relation to declarations contained in article 41 of the Convention, UN Doc. CCPR / C / 21 / Rev.1 / Add.6 (1994), para. 10.

<sup>9</sup> Article 4 of the International Covenant on Civil and Political Rights, Article 15 of the European Convention on Human Rights and Article 27 of the American Convention on Human Rights.

<sup>10</sup> Article 2 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

<sup>11</sup> Foli, K. (2004). Combating Torture - A Handbook for Judges and Prosecutors, Organization for Security and Cooperation in Europe, Mission in Serbia and Montenegro, Center for Human Rights, University of Essex, United Kingdom. p.10

<sup>12</sup> United Nations Treaty Collection: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Retrieved September, 2017, from United Nations official website, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtldsg\\_no=IV-9&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtldsg_no=IV-9&chapter=4&clang=en)

prevent any acts of torture and ill-treatment. States must actively investigate acts of torture and ill-treatment, even in cases where there are no formal reports of torture. Persons who have been subject to torture may file an application, and on this occasion to conduct an investigation and provide protection against further intimidation or abuse. The forms of cruel, inhuman or degrading treatment or punishment that do not constitute acts of torture are also prohibited and the provisions of the prohibitions on torture and inhuman behavior also apply on them.<sup>13</sup>

**Other relevant standards:** In addition to international human rights norms, a number of other rules and standards have been worked out in order to protect the right of all people from torture and other forms of abuse. These rules and standards, by themselves, are not binding, but are principles for which an agreement has been reached and which should be respected by all states, and at the same time they can provide important guidance to judges and prosecutors. This group is about the following documents:

- Standard Minimum Rules for the Treatment of Prisoners (1957, amended 1977).
- Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1975).
- Code of Conduct for the Office of the Prosecutor (1979).
- Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1982).
- Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985).
- Basic Principles for the Independence of the Judiciary (1985).
- 7 Standard Minimum Rules for the Administration of Juvenile Justice - Beijing Rules (1987).
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988).
- Basic Principles for the Treatment of Prisoners (1990).
- Basic principles for the Role of a Lawyers (1990).
- Guidelines on the Role of Prosecutors (1990).
- Rules for the Protection of Juveniles Deprived of their Liberty (1990).
- Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (1990).
- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990).
- Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care (1991).
- Declaration on the Protection of All Persons from Enforced Disappearance (1992).
- Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - Istanbul Protocol (1999).

**Torture as a criminal offense and legal proceedings:** Under the United Nations Convention, each State Party to the Convention characterizes torture as a crime with its own legislation. The same applies to attempts for torture, any act of complicity or involvement in torture. Each State Party to the

Convention provides in its legislation appropriate penalties for the said offense, penalties appropriate to the difficult nature of the offense itself.<sup>14</sup> There are no extraordinary or mitigating circumstances on which the enforcement agent can be re-called to justify the application of torture, nor can an official authority or state authority orders be used as an excuse.<sup>15</sup>

When submitting reports by States Parties to the Convention to the Human Rights Committee, provisions of the criminal law relating to the punishment of torture and cruel, inhuman and degrading treatment or punishment should be clearly stated and data on the penalties should be provided which are provided for the commission of such a crime, regardless of whether the torture or other cruel, inhuman or degrading treatment or punishment was committed by an official person or by another person which acts on behalf of the state or individuals.<sup>16</sup> Those who violate Article 7 of the Convention, regardless of whether through encouraging, ordering, tolerating or committing a criminal offense, must be held liable, and hence those who refused to commit such a crime, that is, orders, they must not be punished, nor should they be subjected to any kind of adverse treatment.<sup>17</sup>

When the state deprives a person of liberty, it should assume responsibility for its security and well-being, and this is an obligation for all those responsible for deprivation of liberty. Where torture or other ill-treatment occurs, the prosecutor should consider the prosecution. Charges can be extended to all those responsible in a given institution in which the person is held, who knew or should have known that torture or ill-treatment had taken place and did nothing to prevent torture or to report to a competent person. In this regard, the charges may include officials as captains of police stations, deputies, officials in detention and prison units, doctors and medical staff as well as other officials in the institutions. The indictment may also include prosecutors and judges, as well as other persons responsible for the inspection of the places where persons are held in detention, if they consciously ignored the evidence or did not pay any attention to the evidence that had come to torture or other forms of abuse on the places that they have visited or ignored the visible signs on the persons who appear in front of them. In order to be able to prove accountability, prosecutors must show that the defendant has committed or attempted to commit a crime, whether as an individual or in communion with others or through other persons or whether he ordered, helped, approves and incited the commission of a criminal act of torture. In addition to the current, if the person did not inform the competent authorities of the committed criminal act, even if the person is neither directly nor indirectly responsible for the offense, but still knows about the crime, the non-notification is also considered a criminal offense, although with a lower degree of weight.

<sup>14</sup> Article 4, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984

<sup>15</sup> Article 2, Ibid.

<sup>16</sup> Article 7, Ibid. The State Party in the territory under whose jurisdiction is found a person alleged to have committed any offense referred to in Article 4 shall find in the cases contemplated in Article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution. These authorities shall take their decision on the same manner as in the case of any ordinary offense of serious nature under the law of that State. In the cases referred to in Article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in Article 5, paragraph 1. Any person in respect of whom proceedings are brought in connection with any of the offenses referred to in Article 4, shall be guaranteed fair treatment in all stages of the proceedings.

<sup>17</sup> Committee on Human Rights, general comment 20, para. 13.

<sup>13</sup> Ibid.

Torture charges are usually raised against specifically identified individuals, and this may prove to be quite complex in cases of torture or other forms of abuse, since those responsible for crimes may obscure their identity to the victim and rely on either the protection by silence by his colleagues or their active cooperation in the preparation of a false statement. Sometimes, in cases where the enforcement agent is identified by the victim, the perpetrator can defend himself with "your words against mine," and this is not enough to prove guilt. Another problem arises where there are no independent witnesses, so the prospects for prosecution charges by the prosecution are very small, i.e. they are not enough to justify the initiation of proceedings. It is considered that if the evidence is merely words against one another, the standards for evidence of a criminal charge will never be satisfied (beyond reasonable doubt, timely conviction). If there is no dispute that the identified person has applied force over the victim, then a new question arises - whether the victim could not be put under control and whether the use of force was necessary, reasonable and transitional, i.e. exemplary. Laws regulating the application of force to certain individuals by officials vary from country to country. However, the prohibition of torture is absolute, and neither the dangerous nature of the individual nor the absence of security measures can serve as justification for torture.<sup>18</sup> In accordance with international standards, force can be applied to persons who are in a given institution only when it is absolutely necessary to maintain the security and order in the institution, in the case of an attempted escape, in cases when there is resistance in the execution of legal order or when personal safety is threatened. In any other case, force can only be applied exclusively when non-violent means have been shown to be ineffective.<sup>19</sup>

According to the Article 5 of the UN Convention against Torture, States Parties that have ratified the Convention have to undertake any measures that may be necessary to establish jurisdiction over the crimes referred to in Article 4 in cases where crimes are committed on the territory under its jurisdiction or on a ship or aircraft registered in that State; when the alleged perpetrators are nationals of that State and where the victim is a national of that State, if that State is considered appropriate. According to all Conventions and Treaties relating to torture, States Parties calls on all states to exercise universal jurisdiction in respect of the "serious violation" of the UN Convention with the procedures to be conducted in front of the national courts. The UN Convention requires States Parties to search for persons suspected of having committed a violation of the Convention, such as treading and inhuman treatment or ordering a violation of a convention or failing to fulfill their duties. On the basis of the Geneva Convention, the obligation to search, find, and prosecute has no limitations, that is, the boundaries of the state do not apply. States that have no obligation under any convention continue to have the right to apply universal jurisdiction if the alleged foreign torture perpetrator is found in their territory, since general and customary international law permits the application of universal jurisdiction in the event of

torture. Prosecutors and judges have special importance and role in providing conditions for fulfilling obligations in relation to criminal prosecution of persons suspected of torture or related crimes.<sup>20</sup> Prosecutors and judges must ensure that the trial of persons accused of torture and related crimes is fair, in accordance with domestic and international law, and the rights of the suspects and interests of the victim and its family will be respected in the proceedings. The suspects must be entitled to legal advice and assistance of their choice at every stage of the criminal proceedings, while the victims must be protected, as well as witnesses and their families. Such safeguards should in no way affect the right of the defendant to a fair trial. Where the trial takes place on the basis of universal jurisdiction, it may be necessary to arrange to bring witnesses from abroad or to establish a link using a video link (where there are technical conditions) so that witnesses can testify as well as right to an interpreter where necessary.<sup>21</sup>

According to all conventions, treaties, protocols and other legal acts, no one should be excluded from the rules on charges of torture. Amnesty and other similar measures that prevent perpetrators of difficult human rights violations, such as torture, to be brought to justice, tried and punished, is absolutely incompatible with the State's obligations arising from international humanitarian law. Immunity or special rights that may be related to the official status of a given person, whether domicile or international law, will not prevent the conduct of a trial by a court over that person.<sup>22</sup> Under this Statute, the criminal offenses falling under the jurisdiction of this court will not be subject to a time limit of validity, that is, an expiry date.<sup>23</sup> Although the Second Protocol to the Geneva Convention states that after the end of the hostilities between parties, the states should provide the widest possible amnesty for persons who have participated in armed conflicts, it is considered that the creators of this official document did not intend to secure the immunity of the perpetrators of facts falling into the category of military (war) crimes.<sup>24</sup>

However, the Human Rights Committee states that some countries are providing amnesty for a crime of torture. The amnesty, viewed as a whole, is incompatible with the duty and obligation of the state to investigate such criminals and to ensure that in the future such acts will not occur in its territory, that is, jurisdiction.<sup>25</sup> The Vienna Declaration of the World Conference on Human Rights calls on all States to abolish their legal provisions that allow those responsible for the difficult violation of human rights, such as torture, to go unpunished and allow criminal prosecution of such a violation of the law, which will provide a solid basis for the rule of law.<sup>26</sup> The Inter-American Human Rights Court concluded that it was unacceptable to use amnesty provisions, obsolete provisions or measures aimed to abandoning criminal responsibility as a means of preventing the investigation and punishment of those

<sup>20</sup> Article 12, Inter-American Convention for the Prevention and Punishment of Torture, 1985

<sup>21</sup> Foli, K. (2004). *Combating Torture - A Handbook for Judges and Prosecutors*, Organization for Security and Cooperation in Europe, Mission in Serbia and Montenegro, Center for Human Rights, University of Essex, United Kingdom. pp.82-83.

<sup>22</sup> Article 27 (2), Statute of the International Criminal Court (ICC)

<sup>23</sup> Article 29, *Ibid*.

<sup>24</sup> Article 6.5, Additional Protocol II 1977, Geneva Convention of 1949

<sup>25</sup> Human Rights Committee, General Comment 20, Article 15.

<sup>26</sup> Vienna Declaration and Action Program, World Conference on Human Rights, Vienna, 14-25 June 1993, UN Doc.A / CONS.157 / 23, 12 July 1993, paragraph 60.

<sup>18</sup> Article 2, *Ibid*; Report of the Committee Against Torture, Mutambo v Switzerland (13/1993) GAOR, 49th Session, Supplement No.44 (1994); Khan v Canada (15/1994), GAOR, 50th Session, Supplement No.44 (1995); Ireland in the UK, ECtHR Series A25, (1978); Chahal v UK, ECtHR Judgment of 15 November 1996; Tomasi v France, ECtHR Series A, No.241-a (1993); Selmouni v France, ECtHR, pressed on July 28, 1999.

<sup>19</sup> Rule 54, Standards for Minimum Rules for Treatment of Prisoners; principles 4, 5 and 9, Basic Principles in accordance with which law enforcement officers can use force and firearms.

responsible for serious human rights violations, such as torture, unlawful and arbitrary execution after a brief trial and disappearance, acts prohibited and qualified as a violation of the inalienable rights recognized by international provisions such as human rights.<sup>27</sup> The punishment for a criminal act of torture is determined on the basis of domestic legislation. However, the UN Convention stipulates that States Parties to the Convention should have an impact in order to give appropriate punishment for such crimes which takes into account the difficult nature of the act itself. Apart from the fact that these crimes include acts of physical and mental violence, these acts often constitute abuse of authority and violate the trust of persons who have committed the crime. Prosecutors and judges, where possible and where they have a legal opportunity, should ensure that the crime of torture is treated in that way. If in the law there is no incrimination called torture, although the facts cannot fit into the domicile definition that is narrower than the international definition, then the first next most serious crime category should be applied, category which can cover all those facts. In this way, it will be ensured that the court can deliver a judgment and impose a sentence that is in accordance with the gravity of the stated facts and prevent the application of the statute of limitations.<sup>28</sup>

### **Mechanisms for protection against torture in the Republic of Macedonia:**

The former system of control and protection against torture of the Republic of Macedonia did not satisfy either the international universal standards or the standards of the European Convention on Human Rights regarding the activities of the institutions for possible cases of torture or other forms of cruel treatment. Therefore, the need for strengthening the mechanisms and the national human rights system was imposed on the protection, prevention, monitoring and proper processing of cases involving torture or other cruel, inhuman or degrading treatment or punishment. The Republic of Macedonia has signed the UN Convention within the Socialist Federal Republic of Yugoslavia, and ratified it in 1991. The signing of the UN Convention as an independent country, i.e. succession took place on 12 December 1994.<sup>29</sup> In 2006, Republic of Macedonia has signed the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (commonly known as the Optional Protocol to the Convention against Torture - OPCAT), and ratification took place in 2008 in Skopje, with the support of the Office of the High Commissioner for Human Rights and the Association for the Prevention of Torture. After several monthly discussions, the Parliament of the Republic of Macedonia ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and appointed the Ombudsman to act as a national preventive mechanism in the Republic of Macedonia.<sup>30</sup>

<sup>27</sup> Case of Barrios Altos (Chumbipuma Aguirre and others in Peru), Inter-Am Ct.H.R., judgment of 14 March 2001, paragraph 41.

<sup>28</sup> Article 4, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984.

<sup>29</sup> Foli, K. (2004). *Combating Torture - A Handbook for Judges and Prosecutors*, Organization for Security and Cooperation in Europe, Mission in Serbia and Montenegro, Center for Human Rights, University of Essex, United Kingdom. pp. 86.

<sup>30</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: List of parties. Retrieved September, 2017, from United Nations official website, [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-9&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en)

In the legislation of the Republic of Macedonia, torture is defined as a serious criminal offense as defined in Article 142 of the Criminal Code of the Republic of Macedonia. This crime is titled "Torture and other cruel, inhuman or degrading treatment and punishment" and states: "Whoever, while performing the official duties, as well as the one who is stated by an official person or on the basis of his consent, will use force, threat or another unlawful means or inadmissible way with the intention of extorting a confession or some other statement from the defendant, the witness, the expert witness or another person, or will cause another severe bodily or emotional suffering to punish him for a criminal offense he has committed or for which he is suspected or another person, or to intimidate or force him to forfeit some of his right, or shall cause such suffering due to any form of discrimination, shall be punished with imprisonment of three to eight years".<sup>31</sup> The National Preventive Mechanism (NPM) in the Republic of Macedonia is established by the Law on Ratification of the Optional Protocol to the Convention against Torture or Degrading Treatment or Punishment. This National Preventive Mechanism acts as a separate and isolated unit whose main task is the prevention of torture and other cruel, inhuman and degrading treatment. This preventive mechanism acts on the basis of its own program and methodology which provides a system of regular visits to all places of deprivation of liberty that are within the competence of the state.<sup>32</sup>

According to Article 21 of the Optional Protocol, it is determined the duty of the state to cooperate with the National Preventive Mechanism, while in this article it is emphasized that no body of authority or official will order, apply, permit or tolerate any sanction against any person or organization for submitting the national mechanism any information, whether they are false or true, and no such person or organization will be harmed in any other way.<sup>33</sup> All state bodies are obliged to provide the National Preventive Mechanism with any kind of evidence, data and information, regardless of the level of confidentiality, and the National Preventive Mechanism is obliged to act in a confidential manner with the personal data, that is, it must not publish any personal data without the expressed consent of the person concerned. This preventive mechanism functions as a draftsman of reports that are further submitted to the competent authorities and proposes measures that should be taken to improve the conditions of a given institution.<sup>34</sup>

### **Conclusion**

Torture is a deliberate infliction of physical or psychological pain in order to meet one's wishes or to make the victim act as the perpetrator wants. Torture is carried out by individuals, groups and civil servants, and the reasons for committing the crime are different. Although torture has been sanctioned in many countries around the world, it has been internationally banned through international law and domestic legislation in most countries.

<sup>31</sup> Article 4, Law on Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Official Gazette of the Republic of Macedonia No. 165/2008

<sup>32</sup> Article 142, Criminal Code of the Republic of Macedonia, "Official Gazette of the Republic of Macedonia" no. 37/96.

<sup>33</sup> Article 21 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the Republic of Macedonia

<sup>34</sup> Mexhiti, I. (2013). *The role of the National Preventive Mechanism (NPM) in society - One year since the establishment of the NPM in the Republic of Macedonia*

The national and international prohibition of torture stems from the consensus that torture and similar acts are immoral as well as impractical, and information obtained through torture is more unreliable than if it were obtained by other techniques. Despite these findings and the existence of international conventions and organizations that serve as observers, it is noted that there is abuse of human rights in many countries of the world. Amnesty International estimates there are around 81 governments around the world who currently practice torture, some of them openly. Torture is criticized both from a moral point of view and a humanitarian point of view, and the application of torture, that is, allowing the criminal act to be committed leads to the emergence of corrupt institutions and fear among the citizens. In some cases, whole societies may be more or less traumatized when torture is applied systematically and on a widespread scale in one country. In the worst case, torture can affect several generations. The physical and mental effects of torture often create fear in entire societies, and children are a particularly vulnerable category. Therefore, it is necessary to eradicate torture as a method applied by states, that is, civil servants for different purposes and strengthen the national legislation and ratify as many legal documents as possible in the field of protection against torture, or similar type of treatment or punishment. Regarding the Republic of Macedonia, it is one of the few countries that, after the ratification of the Optional Protocol to the Convention against Torture, undertakes certain concrete measures for fulfilling the obligations arising from the protocol. However, all individuals have some responsibility in contributing to the realization of human rights, and hence the common interest in eradicating torture and similar serious crimes against humanity, in the direction of creating a free world without suffering.

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