


CONCEPT AND CHARACTERISTICS OF TORTURE, CRIMINAL PROSECUTION, OR PUNISHMENT

Abror Mamajanov

Tashkent State Law University Independent Researcher, Tashkent State University Of Law, Uzbekistan

E-mail: mamajanovabror2001@gmail.com

Article Info	ABSTRACT
<p>Article history: Received May 05, 2024 Revised May 20, 2024 Accepted May 25, 2024</p> <p>Keywords: <i>Torture, Criminal prosecution, Punishment, Legal frameworks, human rights</i></p>	<p>Torture, criminal prosecution, and punishment represent critical components of legal and human rights systems, each influencing justice and societal norms. The conceptualization and characteristics of these practices are deeply rooted in legal, ethical, and sociopolitical frameworks, yet they continue to be contentious and complex subjects within criminal justice discourse. Despite extensive examination of these elements individually, there is a lack of comprehensive studies that integrate their conceptual foundations with contemporary applications and implications. This study aims to explore the definitions, characteristics, and interrelationships of torture, criminal prosecution, and punishment, assessing how they are conceptualized in modern legal systems and their impact on justice. The research finds that while torture is universally condemned and criminal prosecution and punishment are widely accepted components of justice, there is significant variation in their application and ethical considerations across different jurisdictions. This study contributes to the literature by providing an integrated analysis of these practices, highlighting how evolving legal standards and human rights norms are reshaping their application and understanding. The findings suggest that a nuanced understanding of these concepts is essential for developing more effective and ethical legal frameworks, ultimately enhancing the integrity and fairness of criminal justice systems globally.</p> <p>This is an open-access article under the CC-BY 4.0 license.</p> 

Corresponding Author:

Abror Mamajanov

Tashkent State Law University Independent Researcher, Tashkent State University Of Law, Uzbekistan

E-mail: mamajanovabror2001@gmail.com

INTRODUCTION

In the Republic of Uzbekistan, the strengthening of this law at the level of the Constitution is obvious. This document in some sense does not completely deny the entire content of this law, which is established by it following the confirmation of human rights on the protection of his dignity. Another negative factor is the fact that the Constitution of the Russian Federation, and other international legal acts, do not use such a privilege, such as "inhumane", and do not operate with the concept of "friendship". It is further noted that the Constitution of the Russian Federation relates torture to a special kind of human or unjust human dignity of treatment or punishment. There is no constitutional prohibition or similar action. As it is defined by the state 26 Constitution, no one may be subject to torture, violence, forced labor, or other unjust human dignity.

So, according to Art. 26 Constitution of the Republic of Uzbekistan the right to life is an inherent right of every person. Human honor and dignity are inviolable. There can be no reason to discriminate against them.

No one shall be subject to torture, violence, or other cruel, inhuman or degrading treatment or punishment.

Medical and scientific experiments may not be conducted on anyone without his consent.

No one can be subjected to medical or scientific experiments without his consent[1].

This means that in this situation we are faced with regulatory and prohibitory legal norms.

Any legal norm consists of the following elements: hypothesis, disposition and sanction[2].

Therefore, the hypothesis of Article 26 of the Constitution provides for legal facts necessary for the direct implementation of the legal norm against torture. This hypothesis is alternative, since it provides for several circumstances, the occurrence of one of which is a condition for the action of the legal norm (the fact of "treatment" or the fact of "punishment"). As for the second legal norm, enshrined in Part 2 of Article 26 of the Constitution of the Republic of Uzbekistan, it is necessary to point out that its hypothesis is presented in the form of "medical, scientific and other experiments", where the facts of conducting the said experiments are determined as legal conditions.

The use of torture is always associated with the restriction and violation of human rights. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted in New York on 10 December 1984 and opened for signature, ratification and accession by Resolution 39/46 of the UN General Assembly. The Republic of Uzbekistan acceded to this Convention in accordance with the Resolution of the Oliy Majlis of the Republic of Uzbekistan dated 31 August 1995 N 130-I. Entry into force for the Republic of Uzbekistan was determined as from 28 October 1995.

Thus, the times have passed when the problem of torture was exclusively under

domestic jurisdiction. At present, the importance of international norms regulating issues of combating torture and other inhuman treatment of people is growing and increasing in international law. It is obvious that torture has been used and is used throughout a long period of human history, and often even today, mainly to intimidate not only a specific person, but also the entire society[3].

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) in Art. 1 provides a more complete definition of torture, disclosing the content of this concept as "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 party information or a confession, punishing him for an act he or a third party has committed or is suspected of having committed, or intimidating or coercing him or a third party, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official acting in an official capacity" [4]. When characterizing torture and other types of cruel and degrading treatment of persons specified in Article 235 of the Criminal Code of the Republic of Uzbekistan (accused, convicted, suspected, etc.), it is necessary to proceed primarily from international norms that enshrine the basic concepts related to this topic. Thus, according to Article 5 of the Universal Declaration of Human Rights, the general principle of human coexistence is enshrined, meaning that "no one shall be subjected to torture or to treatment or punishment that is degrading or cruel, inhuman or ill-treated" [5].

The concept of "cruel, inhuman or degrading treatment or punishment" acts as an evaluative one. In legal literature, an evaluative concept is considered to be one that captures the most general features of generalized legally significant phenomena and is interpreted by means of an evaluation in the process of law enforcement [6]. Neither international, nor regional, nor domestic legal acts contain a normative definition of the concept of "cruel, inhuman or degrading treatment or punishment". However, the UN General Assembly believes that it should be interpreted in such a way as to provide the broadest possible protection against abuses of both physical and psychological nature (Comments on Article 5 of the Code of Conduct for Law Enforcement Officials and Principle 6 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment) [7]. In the process of interpreting evaluative concepts, the role of doctrinal interpretation, as well as judicial practice, is great.

Despite the close connection between criminal law and criminology, there is a need to pay tribute to such scholars as C. Beccaria, C. Lombroso, and others.

As we can see, one of the first scientific definitions of torture is the definition given by Cesare Beccaria in his famous work "On Crimes and Punishments" of 1764. In this work, torture is defined as an action "performed on an accused during the investigation carried out on his case, or in order to extract from him a confession of a crime, or in order to explain the contradictions made by him during interrogation, or to force him to testify about his accomplices, or to discover other crimes of which he is not

accused, but of which he may be guilty" [8].

METHODS

This study employs a comparative legal analysis method to evaluate the alignment of Uzbekistan's constitutional and legal provisions with international norms on torture and inhumane treatment. The analysis focuses on:

1. **Constitutional Provisions:** Examining Article 26 of the Constitution of the Republic of Uzbekistan to understand the scope and limitations of constitutional protections against torture and inhumane treatment.
2. **International Treaties:** Analyzing the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), the Universal Declaration of Human Rights, and relevant judgments from international bodies such as the European Court of Human Rights.
3. **Legal Definitions and Practices:** Reviewing definitions of torture and inhumane treatment in international law and comparing them with Uzbek legal standards, particularly Article 235 of the Criminal Code and Article 951 of the Criminal Procedure Code.
4. **Case Studies:** Investigating judicial and administrative practices in Uzbekistan to identify practical issues in enforcing the prohibition of torture and inhumane treatment.

RESULTS AND DISCUSSION

Practice proceeds from the fact that the more cruel, painful and intentional the action is in fact, the more the court will be inclined to consider such actions as torture.

For example, the European Court of Human Rights considers complaints about violations of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 3 of which also contains a prohibition of torture, inhuman and degrading treatment. In the famous case of *Ireland v. United Kingdom*, the European Court gave the following definitions:

"Torture: intentional inhuman treatment causing very serious and cruel suffering."

"Inhuman treatment: causing severe physical and mental suffering."

Thus, degrading treatment: ill-treatment intended to arouse in the victims feelings of fear, pain and inferiority likely to humiliate and disgrace them and possibly to break down their physical or moral resistance."

In *Ireland v United Kingdom* (1978), the Court found that 'torture' consists of 'deliberate inhuman treatment causing very serious and cruel suffering', which carries a particular stigma. The distinction between torture and other forms of prohibited treatment or punishment under Article 3 is one of degree and intensity and depends, as noted above, on the individual circumstances of the victim. It is therefore not possible to state categorically that a particular type of treatment will always fall into one category or the

other. Moreover, the Court noted that the degree of suffering required to qualify as torture is not fixed in time. The Convention is a living instrument that must be interpreted 'in the light of present-day conditions'. This means that some acts that were previously classified as "inhuman or degrading treatment" rather than "torture" may be classified differently in the future: "As ever higher standards are required in the field of human rights and fundamental freedoms, this will inevitably entail a stricter assessment of violations of the fundamental values of a democratic society" [9]. The Court found that the rape of a woman by her detainers amounted to torture. The Court's decision in the Aydin case reflects the seriousness with which international criminal law treats rape by state agents; rape committed in the context of widespread or systematic aggression against a civilian population is now considered a crime against humanity [10]. The same approach is observed in the law enforcement practice of the Republic of Uzbekistan. Thus, according to Article 951 of the Criminal Procedure Code of the Republic of Uzbekistan, factual data are considered inadmissible as evidence if they are obtained by illegal methods or by depriving or restricting the rights guaranteed by law of participants in criminal proceedings or in violation of the requirements of the Criminal Procedure Code, including those obtained with the use of torture and other cruel, inhuman or degrading treatment or punishment in relation to participants in criminal proceedings or their close relatives. We further consider it necessary to note that when considering the case of Ireland v. Great Britain (1978), the European Court of Human Rights drew attention to the fact that in order to establish violations of the provisions on the prohibition of torture in practice, a minimum level of cruelty must be achieved, taking into account certain factors, such as the gender, age and health of the victim, as well as the duration of such treatment, his physical and mental suffering[11].

Thus, the assessment of this minimum is relative. At the same time, the European Court did not recognize as torture actions that combine the following five methods: 1) forcing suspects to stand against a wall for many hours in an extremely uncomfortable position; 2) forcing suspects to wear a hood over their heads during interrogations; 3) depriving suspects of sleep; 4) exposing suspects to noise; and 5) depriving suspects of necessary food and drink. At the same time, four judges of the European Court expressed the opinion that the combined use of five methods constitutes the practice of inhuman treatment and torture[12].

One should agree with the opinion of E.N. Rakhmanova that the fight against crime should not be carried out at the expense of violating human rights, which are subject to full protection[13]. In practice, there is often no proper criminalization of these acts, which is often perceived as a set of official crimes, such as intentional infliction of bodily harm or other violent actions, abuse of office, in connection with which the fact of torture is latent. And this trend sharply reduces the possibilities of bringing to justice those who committed them, as well as in the organization of statistical accounting in judicial practice. As a conclusion to this point of our study, the following should be said. The right to freedom from torture is associated with the possession of moral, physical and

spiritual security. It is reasonable to assert that in the absence of enshrining the right to personal security in the Constitution of the Republic of Uzbekistan, the right we are considering should have an independent legislative form. All this will allow us to comply with international standards (Article 5 of the Universal Declaration of Human Rights, Article 7 of the International Covenant on Civil and Political Rights).

The problematic aspect is the declarative nature of such an important guarantee as the inadmissibility of torture. Criminal law is closely connected with criminal procedure, while criminal law there, in the practice of investigators, prosecutors, is very weak. Let it be a subjective view, but without a procedural component, the right guaranteed in the criminal law branch will remain written on paper and not understood in practice. For this, it is very important to ensure a unified understanding of criminal law issues among law enforcement officers. Of no less importance are the issues of the correct classification of crimes related to the use of torture (as a rule, official crimes), their clear systematization in science, and separation from the elements of the crime provided for in Article 235 of the Criminal Code. Further, we see the relative ambiguity of approaches to the definition of the word "torture", even despite the legislative resolution of this issue. Let us explain this with the following thesis: although we have not provided many definitions of torture by various scientists, we are inclined to a normative-legal analysis of such an important concept. It is typical for science to have discussions. They, as a rule, lead to a full analysis of existing problems in theory, and only partially bring us closer to practice.

The reason is that if humiliation is not of a permanent nature, its social danger is not high, it would be wrong to assess it as a crime. But for recognizing the infliction of suffering as a crime, the nature of systematicity or one-time occurrence does not matter. This is not difficult to understand from the above definitions of both concepts. We propose replacing the word "humiliation" with the phrase "humiliation of honor and dignity".

Torture is a relatively severe form of cruel treatment... We believe that even a one-time action, depending on its severity and cruelty, can be recognized as torture [14]. We can offer our understanding of torture in two aspects: Torture - in criminal law - is a special composition of a crime, consisting of four elements and regulated by Article 235 of the Criminal Code; it also partly includes a group of official crimes (abuse of power, etc.);

Torture - in the criminal procedural aspect - actions committed by law enforcement officers; violation of the procedural order provided for by the Criminal Procedure Code. It is in this part that criminal law and criminology could play a good role in strengthening the role of prevention of this crime, its timely prevention and the adoption of effective measures to combat this type of crime. The definition of the above-mentioned concepts does not exhaust the possibilities of another scientific interpretation, which in turn allows for the multifaceted nature of research into current issues in criminal law.

CONCLUSION

While Uzbekistan's constitutional provisions against torture and inhumane treatment align with international human rights standards, challenges remain in the practical enforcement of these principles. The lack of specific definitions and effective enforcement mechanisms can undermine the protection offered by the Constitution. By adopting more precise legal definitions, strengthening enforcement measures, and ensuring a unified understanding of relevant legal norms, Uzbekistan can enhance its commitment to human rights and better safeguard individuals from torture and other forms of ill-treatment. The alignment of domestic laws with international standards, coupled with effective implementation and enforcement, is essential for upholding the dignity and rights of all individuals.

REFERENCES

- [1] Constitution of the Republic of Uzbekistan: - T.: "Uzbekistan", 2023. - 76 p.
- [2] Alekseev, S. S. General Theory of Law. In 2 volumes. Vol. 2 / S. S. Alekseev. - M.: Legal Literature, 1982. -- 361 p. // Bratko, A. G. Prohibitions in Soviet Law / A. G. Bratko. - Saratov: Publishing House of Saratov University, 1979. -- 91 p.
- [3] Address of the President of the Republic of Uzbekistan Shavkat Mirziyoyev to the Oliy Majlis. Date: 21.12.2017 Source: <http://uza.uz/uz/politics/>
- [4] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment // The Russian Federation and international cooperation in the field of human rights: documents and materials. – M.: International Relations, 2009. – P. 384–397.
- [5] Universal Declaration of Human Rights (Adopted and proclaimed by Resolution 217 A (III) of the UN General Assembly of December 10, 1948) // Source: www.lex.uz.
- [6] Vitruk, N. V. General Theory of the Legal Status of an Individual / N. V. Vitruk. – M.: Norma, 2018. – 448 p. – P. 152.
- [7] Matuzov, N. I. Legal System and Individual / N. I. Matuzov. – Saratov: Saratov University Publishing House, 2007. – 294 p. – P. 280.
- [8] Beccaria, C. Reasoning about Crime and Punishment / C. Beccaria. – M.: Infra-M, 2004. – 184 p. – P.96-97.
- [9] Elci and Others v Turkey (2003) para. 634 and also Selmouni v France (1999). In this regard, it is noteworthy that in Aydin v Turkey (1997)
- [10] The Prohibition of Torture, Inhuman or Degrading Treatment or Punishment under the European Convention on Human Rights (Article 3) // Guide for Lawyers – The Prohibition of Torture, Inhuman or Degrading Treatment or Punishment under the European Convention on Human Rights (Article 3). December 2008. – P.3-4.

- [11] Judgment in the case of Ireland v. the United Kingdom of 18 January 1978 – Series A. – No. 26. – P. 65, para 162.
- [12] Janis, M. European Law in the Field of Human Rights (Practice and Commentary): trans. from English / M. Janis, R. Kay, E. Bradley. – M.: Human Rights, 2007. – 640 p. - pp. 142, 146, 147.
- [13] Rakhmanova E.N. Crime Control Strategies in the Context of Globalization / E.N. Rakhmanova // Criminal Procedure Strategies: collection of materials of the scientific. conf. for the 160th anniversary of the birth of I.Ya. Foinitsky. - M.: Russian Academy of Sciences. justice, 2018. — P. 149–151.
- [14] Niyozova S.S. Issues of sentencing for a crime in the form of torture and a comparative analysis of the legislation of foreign countries. Information and analytical materials and recommendations. – Tashkent: TDYUU, 2016. – P.11.
- [15] S.S.Niyozova. Prevention of Crime in the Family and the Role of Victimology in the Republic of Uzbekistan. International Journal of Advanced Science and Technology Vol. 29, No. 3, (2020), pp. 3962.
- [16] Salomat Niyozova Sararovna. Reasons for the Murder of a Newborn Child by a Mother and Criminal Liability for it. Accerted: 12 June 2024. The Author(s), under exclusive licence to Srringer Nature B.V. 2024.