

STOP TORTURE

Tbilisi

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STOP TORTURE



“Torture leaves the indelible trace in the life of a human. Elimination of physical consequences of torture is possible, however, as it usually is, but the moral pain always follows the victim of torture; the far-reaching psychological and social consequences of torture are very grave and often irreversible.”

What are the international mechanisms which can protect us from torture?

On December 12, 1997 the General Assembly of the United Nations Organization declared the day of 26th of June the International Day for Support of Torture Victims (the UN General Assembly Resolution 52/

149). Just on this day of June 26, 1987 the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment entered into force..

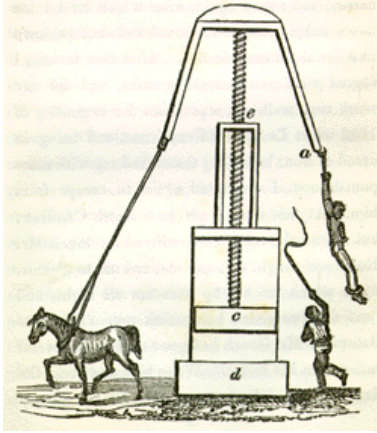
However, this Convention is still among those most important agreements of the UNO which are less ratified by the state-parties. Out of 190 state-parties only 120 countries acceded to it.

➤ *This Convention provides the following definition of “torture”:*

“PART I

Article 1

1. ... the term “torture” means 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 or at the instigation or of with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or



suffering arising only from, inherent in or incidental to lawful sanctions.”

➤ *The UN Convention against torture is the only one out of international conventions which shall be effective in any case and its force cannot be restricted.*

“PART I

Article 2

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political in stability

or any other public emergency, may be invoked as a justification of torture.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture.”

➤ *Under this Convention in any case extradition of a person to a country where he may be in danger of being subjected to torture is prohibited.*

“Article 3

1. No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account 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.”

It should be also mentioned that on December 18, 2002 took place the significant event – after the ten-year preparatory period on the 57th Session of the UN General Assembly was adopted the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which objective was to establish a system of regular visits to be undertaken by independent international and national bodies to the places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment

or punishment. This protocol is opened for ratification and it is very important for Georgia to ratify this document and to create such preventive mechanisms which are provided by this protocol. Such action will play a significant role in the struggle of Georgia against torture.

➤ *The Optional UN Protocol to the Convention against torture*

This Protocol concerns the monitoring of places of deprivation of liberty, such as prisons, police lockup wards or pre-trial confinement places.

It is also the unique bilateral mechanism for prevention of torture. On the one hand, by means of this Protocol the international monitoring system is established, which includes the special mechanism – the UN subcommittee which shall implement the regular visits to the countries and shall promote the dialogue between the state and the national visit structures.

On the other hand, the country which will accede to this protocol shall establish the national mechanisms for prevention of torture. Those mechanisms shall include the groups of experts and represent the independent and impartial monitoring structures.

Those two mechanisms, both international and national, will play a significant role in prevention and extermination of tortures.

European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

Turin, 18.10.1961

Having regard to the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms, recalling that, under Article 3 of the same Convention, “no one shall be subjected to torture or to inhuman or degrading treatment or punishment”;

Noting that the machinery provided for in that Convention operates in relation to persons who allege that they are victims of violations of Article 3;

Convinced that the protection of persons deprived of their liberty against torture and inhuman or degrading treatment or punishment could be strengthened by non-judicial means of a preventive character based on visits,

The member States of the Council of Europe, signatory hereto, have agreed to establish a special European Committee for the Prevention of Torture. This Committee (CPT) shall, by means of visits and monitoring, examine the treatment of



persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment, to draw up the reports and provide recommendations which shall be binding upon the countries-parties of the Council of Europe. If the Party fails to co-operate or refuses to improve the situation in the light of the Committee's recommendations, the Committee may decide to make a public statement on the matter.

Universal Declaration of Human Rights

Adopted and proclaimed by General Assembly resolution 217A (III) of 10 December 1948

(Article 5)

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Istanbul protocol

The important document of the international manual on the effective investigation and medical and legal documentation of the facts of torture is the Istanbul protocol submitted to the United Nations High Commissioner for Human Rights on August 9, 1999.

Currently is implemented the significant campaign for adoption of this Protocol as the guidelines for the countries. This campaign is implemented under the aegis of the International Rehabilitation Council for Torture Victims with participation of other leading international partners. The project involves 5 countries, including Georgia. The main partner in implementation of this project in Georgia is the center "Empathy".

The provisions of the Convention against torture were reflected in other significant international treaties which constitute the list of documents for prevention of torture. Those are: The International Humanitarian Law; War Crimes and Outrages upon Humanity, Including Genocide; The Convention on the Rights of the Child and so on.

Noteworthy also are the international principles of the medical ethics, namely:

- 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 – adopted by the United Nations Organization; Resolution 37/194, December 18, 1982;
- World Medical Association Declaration – Guidelines for Medical Doctors Concerning Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Relation to Detention and Imprisonment – adopted by the 29th World Medical Assembly, Tokyo, Japan in October, 1975;
- World Medical Association Declaration Concerning Support for Medical Doctors Refusing to Participate in, or to Condone, the Use of Torture or Other forms of Cruel, Inhuman or Degrading Treatment – adopted by the 49th WMA General Assembly, Hamburg, Germany in November 1997, - this Declaration provides the important protective mechanism for the medical personnel working in the “risk zones” – prisons, expertise and others.

Very significant international protective mechanisms also are the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”) and the Recommendations of the Council of Europe and the World Health Organization of health care in prisons.

What about the national protective standards?

Constitution of Georgia

Article 17

1. The human honor and dignity shall be inviolable.
2. Torture of any human, use of any inhuman, cruel or degrading treatment or punishment towards him shall be prohibited.

Criminal Code of Georgia

Article 335 (e)

Compelling Explanation, Testimony or Opinion

1. Compelling of any person to give explanation or testimony or of any expert to provide his opinion through threat, deception, squeeze or another illegal act by an official or a person equated to him,

shall be punishable by deprivation of freedom for the term from two to five years with deprivation of the right to hold office or carry out activity for the term up to 5 years.

2. The same action committed:

- a) by violence dangerous for life or health or by threat of such violence;
- b) by torture of a victim,

shall be punishable by deprivation of freedom for the term from four to ten years with deprivation of the right to hold office or carry out activity for the term up to 5 years.”

Are those measures the adequate one?

What shall be done to ensure our protection and to create the effective mechanisms against torture?

Georgia acceded to the UN Convention against torture in 1994 and along with entering the Council of Europe in 1999 Georgia acceded to the European Conventions and treaties, thus undertaking obligations provided by all those international legal acts. However, the relevant changes in the Georgian legislation have not been made yet that impedes the struggle against torture in Georgia. We need the significant joint

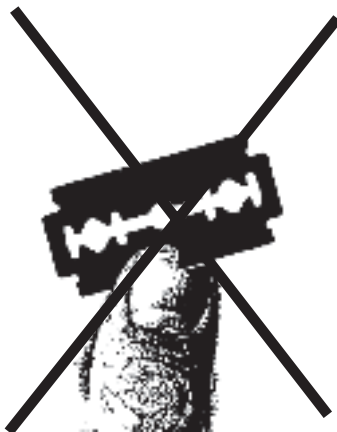
efforts of the governmental and non-governmental structures, international organizations, mass media and the whole community.

Noteworthy is that after the Revolution of Roses Georgia has faced a wide perspective for the democratic development. The great role in the building of new Georgia shall be played in the sphere of protection of human rights. We think it is the time for the persistent struggle for elimination of torture in Georgia.

General Comments and Recommendations;

➤ As it is known, under PART II (Article 17) of the UN Convention against torture there was established





a Committee against Torture (CAT) which shall study the facts of torture and provide recommendations, request explanations from the states.

➤ Unfortunately, as we are informed, Georgia has not ratified Article 22 of the UN Convention against torture, which includes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction.

➤ Georgia has not also ratified the Optional Protocol to the Convention against Torture on the mechanisms of monitoring of places of deprivation of freedom and visits for prevention of tortures.

- It has not recognized the Istanbul Protocol.
- The Georgian judicial system has not adopted the vertical principle of the European Court, which implies the obligation of the state to prove the non-availability of torture.

All those international principles shall be recognized and adopted.

More important recommendations:

Making changes in the national legislation on the level of the Criminal Code, Criminal Procedure Code and other normative acts.

Guidelines:

- Precise definition of torture;
- Implementation of relevant articles of the Convention, as their majority is not reflected in the Georgian legislation;
- Independent forensic psychiatric expertise and relevant legislation;
- Perfection of the legislation base in consideration of the international principles of the medical ethics;
- Elaboration of the mechanism of protection of medical and other personnel working in the risk zones;
- Introduction of the Istanbul Protocol principles for the legal and forensic psychiatric expertise and documentation;

- Creation of the national prevention mechanisms on the governmental and nongovernmental professional level in compliance with the Optional Protocol to the UN Convention against torture.

And finally:

- Breach of silence and commencement of the irreconcilable struggle against torture;
- Effective and efficient work of mass media, state structures which are responsible for human rights, nongovernmental organizations and whole community for elimination of the torture problems;
- The firm position of international organizations towards the state in connection with the facts of torture;
- The political goodwill of the state in implementation of the plan of struggle against torture; creation and operation of sound and effective structures for protection of fundamental human rights;
- The relevant reforms:
 - in the police structure;
 - in the judicial structure;
 - reform of the prosecutor’s office;
 - reform of penitentiary institutions;
 - health care reform;
 - increase of the role of defense counsels and doctors-independent experts in documentation of facts of torture for torture victims;



- assistance to the torture victims in lodging claims to the court;
- the immediate appeal to the European Court after three national court instances;
- special recommendation for torture victims
- break silence and speak aloud about tortures, apply to all structures and people concerned in protection of your rights.

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Address: 62, Chavchavadze Ave. 0161, Tbilisi ,
Georgia

Tel/Fax: +(995 32) 22 67 47;

E-mail: center@empathy.ge

www.empathy.ge