



This project is funded by the European Union.



Technical Assistance for Strengthening  
Fundamental Rights Sector Coordination Project

# PREVENTION OF TORTURE AND ILL-TREATMENT

FACTSHEET



WEglobal





## Introduction

International law states the absolute and unequivocal right of individuals not to be tortured. This right is inalienable and inviolable under any circumstances, of an absolute nature. The international community has developed many legal instruments and mechanisms to effectively fight against torture and ill-treatment. The foundations of this right are established and guaranteed by international legal documents at universal level as well as at regional level. To this end, in addition to the United Nations (UN) documents setting universal standards mentioned below, regional-level documents such as the American Convention on Human Rights, the African Charter on Human and Peoples' Rights, and the European Convention on Human Rights similarly emphasize the "prohibition of torture".



## International Standards

### Protection Provided by United Nations (UN) and Efforts of the UN against Torture

The UN aims to establish universal standards against torture and other cruel, inhuman or degrading treatment. The UN conventions, declarations and resolutions declare that there can be no exceptions to the prohibition of torture. In addition to prohibiting torture, the UN imposes a number of obligations on States to provide protection against similar violations. The important legal instruments such as



prohibit torture and ill-treatment and imposes various obligations on States.

The "Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" (Istanbul Protocol), which is the official document of the UN, was prepared to enable States to more effectively protect individuals from torture and ill-treatment and to hold criminals accountable for their actions, constitutes the first international guide on the documentation of torture and its consequences. Moreover, the Protocol also establishes minimum standards that states and health officials must comply with to effectively prove torture and ill-treatment.

## Monitoring Mechanisms Established within the UN Framework

The main mechanism of the UN for preventing torture is the Subcommittee on Prevention of Torture (SPT), established for the effective implementation of the “Convention against Torture”. The Subcommittee is responsible for monitoring the implementation of the Convention against Torture in the States Parties and is composed of 10 experts who are competent in the field of human rights and possess high moral values.

The Subcommittee regularly evaluates the measures taken by the States Parties and allegations of torture and may make recommendations. Moreover, the Subcommittee may make general comments and recommendations, which can be included in annual reports submitted to States Parties and the UN General Assembly. All of these processes take place in public meetings.

The Special Rapporteur on Torture is authorised by the UN through special procedures and monitors the practices of States Parties regarding the prohibition of torture and ill-treatment.

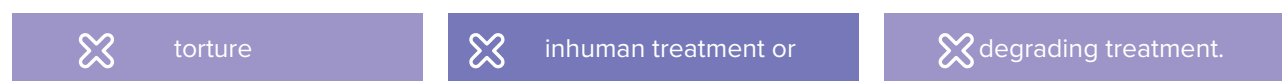
## Prevention of Torture within the Framework of the European Convention on Human Rights (ECHR) and the Case-law of the European Court of Human Rights (ECtHR)



Article 3 of the ECHR treats the prevention of torture as an absolute right or prohibition that leaves no room for exceptions, stating “no one shall be subjected to torture or to inhuman or degrading treatment or punishment”. No conflict or terrorism-based allegation takes away the right of individuals not to be subjected to ill-treatment.

Article 3 of the ECHR guarantees one of the fundamental values of democratic societies. Even in the most difficult conditions, such as the fight against terrorism and organised crime, the ECHR absolutely prohibits torture and inhuman or degrading treatment or punishment.

Protection under the ECHR and the case-law of the ECtHR includes three distinct types of ill-treatment:



The difference between these types of ill-treatment is the “level of severity” of suffering caused by the treatment. In order for ill-treatment to fall within the scope of Article 3 of the ECHR, it must reach a certain level of severity. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim.

The ECtHR evaluates a number of issues regarding the prohibition of torture and decides on applications. These issues include the non-refoulement in immigration cases, situations in places of deprivation of liberty, disproportionate use of force during the dispersal of meetings and demonstrations, domestic violence, sexual abuse and violence against women.

According to the case-law of the ECtHR, the states’ negative obligation is not to engage in torture or ill-treatment. In cases where state officials use torture and ill-treatment, the state violates its negative obligation.

The positive obligation of the states is divided into two, as material and procedural:

- ✓ The positive material obligation of the states is to establish a legal mechanism to prevent torture and to take the necessary measures in legislation and practice.
- ✓ The positive procedural obligation of the states is to conduct an effective investigation in order to identify the perpetrators and prevent impunity. To this end, the effective investigation obligation includes initiating an ex officio investigation, conducting the investigation independently and impartially, transparency, identifying people responsible for the violation in a qualified manner, and conducting investigations promptly and diligently.

## Protection Provided for by the Council of Europe (CoE) and Specific International Documents and Mechanisms: European Convention for the Prevention of Torture and European Committee for the Prevention of Torture

- ✓ CoE adopted the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment as a specific binding international law instrument to prevent torture.
- ✓ To this end, CoE established the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). The CPT regularly visits member states of the Council of Europe, sometimes for short periods of time and for ad hoc purposes, to evaluate and report on the treatment of persons under surveillance.
- ✓ Moreover, the CPT sets general standards for persons deprived of their liberty, makes recommendations and evaluates the responses of States.
- ✓ The States respond in writing to the report prepared by the CPT. Thus, a dialogue begins between the CPT and the State that will last until the next visit.
- ✓ The CPT abides by the principles of cooperation and confidentiality throughout its activities. The State itself may decide to publish the CPT's report, together with its own response
- ✓ The CPT has also established general standards for the treatment of persons deprived of their liberty. These standards include three basic safeguards for individuals under police custody:
  - ✓ 1. The right to have the fact of his/her detention notified to a third party,
  - ✓ 2. The right of access to a lawyer,
  - ✓ 3. The right of access to a doctor or a doctor of his/her choice.

## Main Policy Goals, Regulations and Protection Mechanisms of the European Union (EU) Fundamental Policies and Goals



### Fundamental Policies and Goals

The EU's prohibition of torture and ill-treatment is based on democratic values and international law. The policy priorities of the EU are determined as prohibition, prevention and punishment of torture as well as accountability and compensation of damage.

EU aims to completely eliminate torture and ill-treatment.	EU aims to establish and implement effective mechanisms to prevent torture.	EU aims to ensure that violations of torture and ill-treatment are severely punished.
EU pays attention to ensuring accountability against torture.	EU aims to compensate victims of torture.	EU adopts a holistic and proactive approach to the prevention of torture, focusing on the prevention of torture and ill-treatment, as well as the protection and rehabilitation of victims.
EU attaches importance to the integration of the prohibition of torture and ill-treatment into the strategies of Member States.	EU attaches importance to awareness-raising measures against torture, and to public-civil society cooperation.	EU aims to take effective measures to prevent torture in other countries and emphasizes compliance with international standards.
EU encourages third countries' accession to conventions prohibiting torture and supports the removal of reservations (if any) to these conventions.	EU encourages the abolition of the death penalty in third countries.	EU adopts a holistic approach that focuses on victims of torture and includes components such as prevention, protection and rehabilitation.

In the fight against terrorism, EU Member States are committed to fully complying with international obligations prohibiting torture and other cruel, inhuman or degrading treatment or punishment.

## EU Acquis

The EU acquis on the prohibition of torture and ill-treatment consists of two mutually supporting components. First of all, the above-mentioned universal and European international legal documents and instruments form the basis of the EU's fundamental objectives and policies for the prevention of torture, as well as a part of the EU acquis in a broad sense. The second component of the EU acquis is the acts adopted by the EU in this field. EU adopts the legally binding and soft law sources listed below as part of its acquis.



The declared importance of the prohibition of torture and ill-treatment led to the wide coverage of this prohibition in the EU acquis. Article 1 of the EU Charter of Fundamental Rights ensures that 'human dignity' cannot be violated and is respected. In parallel with Article 3 of the ECHR, Article 4 of the EU Charter of Fundamental Rights also regulates the prohibition of torture or inhuman or degrading treatment or punishment. Article 4 states that "No one shall be subjected to torture or to inhuman or degrading treatment or punishment". The legal acts regarding this prohibition are adopted by the EU as an important legal framework aiming to protect human rights and fundamental freedoms.

EU has accepted the prohibition of torture as a policy priority, and published the "Guidelines on EU Policy Towards Third Countries on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment", which was revised in 2019. With the Guidelines, EU reaffirms its strong commitment to combating torture and other forms of ill-treatment in line with relevant international and regional agreements and standards. EU aims to completely eliminate torture and ill-treatment. In this context, it seeks to establish and implement effective mechanisms to prevent torture and to severely punish violations of torture and ill-treatment.

These Guidelines should be taken into consideration together with the "EU Guidelines on Death Penalty". This policy document pursues an approach that covers all elements regarding prevention, punishment, ensuring accountability and redressing the damage suffered by the victims of torture. To this end, the relevant regulations strictly prohibit torture, inhuman or degrading treatment and aim to enable Member States to prevent and punish such violations. Moreover, another act related to the compensation of damage suffered by victims of torture is Directive 2012/29/EU of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime.

Laying down positive and negative obligations on Member States regarding the prohibition of torture and ill-treatment to reinforce the understanding of respect and protection of human rights and to secure the rights of all individuals, these legal acts enable Member States to effectively implement this prohibition in their domestic laws and to be accountable at the international level when necessary. EU adopts a holistic and proactive approach to the prevention of torture, focuses on prevention, protection and rehabilitation of victims, and aims to compensate victims of torture.

Regarding institutional mechanisms, one of the most important institutions is the European Union Agency for Fundamental Rights (FRA) which is an independent body that promotes and protects human rights. The Report titled "Criminal detention conditions in the European Union: rules and reality" published by the FRA should be taken into account as a tool explaining the practices in Member States.