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## ABSTRACT

This article examines the content of universal and regional international agreements aimed at preventing torture, as well as domestic legal norms. The author made conclusions on the improvement of national legislation based on international standards.

## KEYWORDS

Torture, human rights, international agreements, national preventive mechanism.

## INTRODUCTION

Under international law, torture is a crime against humanity. Torture is strictly prohibited in all international legal treaties adopted in this regard, and torture is never and under no circumstances allowed to be justified. According to Article 26 of the Constitution of the Republic of Uzbekistan, no one may be subjected to torture, violence, cruel or other forms of oppression degrading human dignity.

The purpose of torturing a person is to trample on his personality and dignity, to gain his honor and dignity, and to humiliate him. Therefore, the UN and

Uzbekistan, which is considered to be its equal member, have always condemned torture as the most inhumane act used by certain people against others.

As the President of the Republic of Uzbekistan Sh. Mirziyoyev stated in his speech at the 46th session of the UN Human Rights Council on February 22, 2021: “As a part of introducing the national mechanism for the prevention of torture we shall continue to strictly suppress all forms of torture, inhuman or degrading treatment. Such crimes shall not have a statute of limitations”.

## Research Article

# INTERNATIONAL AND NATIONAL LEGAL BASIS OF THE RIGHT TO PROTECTION FROM TORTURE

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The subject of this scientific research is international agreements aimed at preventing torture, national legislation of the Republic of Uzbekistan, international and national mechanisms.

International legal basis of prevention of torture. Within the framework of the UN, a number of international agreements related to the protection of human rights and freedoms, explaining the legal nature of the obligations of states, have been adopted. For example, the adoption of the Universal Declaration of Human Rights on December 10, 1948 prohibited the use of torture or cruel, inhuman or degrading treatment or punishment. Article 7 of the International Covenant on Civil and Political Rights enshrines the following provision: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation”. Also, according to Article 6 of the “Draft Declaration on Rights and Duties of States” adopted by the UN International Law Commission at its 1st session in 1949, “every State has the duty to treat all persons under its jurisdiction with respect for human rights and fundamental freedoms, without distinction as to race, sex, language, or religion”.

A number of international treaties on international humanitarian law also contain provisions on the prohibition of torture. In particular, in Article 3 of the Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, the following are prohibited: violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture. Also, the use of torture is prohibited by a number of articles of the Geneva Conventions of August 12, 1949 “Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea”,

“Geneva Convention relative to the Treatment of Prisoners of War” and “Geneva Convention relative to the Protection of Civilian Persons in Time of War”.

An important international treaty adopted at the regional level, the European Convention on Human Rights, was adopted in Rome on November 4, 1950, and entered into force on September 3, 1953. Article 3 of this Convention stipulates that no one may be subjected to torture, inhuman or degrading treatment or punishment, and states must make every effort to implement this norm.

Paragraph 4 of the UN Declaration on the Protection of Women and Children in Emergency and Armed Conflict adopted on December 14, 1974, which is considered the norm of “soft law” in international law, states that “All efforts shall be made by States involved in armed conflicts, military operations in foreign territories or military operations in territories still under colonial domination to spare women and children from the ravages of war. All the necessary steps shall be taken to ensure the prohibition of measures such as persecution, torture, punitive measures, degrading treatment and violence, particularly against that part of the civilian population that consists of women and children”.

Later, the principles of medical ethics were adopted in 1982 based on UN General Assembly Resolution 37/194. In this document, the provisions on the protection of detained persons from torture, cruel, inhumane, degrading treatment and punishment are strengthened. The Tokyo Declaration of the World Medical Association prohibits physicians from actively or passively participating in any form of torture, cruel, inhuman or degrading treatment or punishment.

On May 23, 2006, Honduras and Bolivia ratified the Optional Protocol to the Convention against Torture

and Other Cruel, Inhuman or Degrading Treatment or Punishment. As a result, the number of participating countries reached 20, and this convention entered into force on June 22, 2006. The Optional Protocol to the Convention Against Torture, which provides for the work of the UN Subcommittee on Prevention of Torture, obliges all signatories to establish appropriate national mechanisms.

In addition, Article 37 of the Convention on the Rights of the Child states that “no child shall be subjected to torture, cruel, degrading treatment or cruel punishment”. The convention also stipulates that a person may not be sentenced to death or life imprisonment for a crime committed before the age of 18.

It should be noted that the adoption of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on December 10, 1984 brought the world community's efforts in this regard to a qualitatively new level. Today, the fact that 166 countries have joined this convention indicates the importance of the problem of torture as one of the worst forms of human rights violations.

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines the concept of torture, the obligation of states to prevent torture, criminal liability for torture, and a number of norms for preventing and combating torture.

As a continuation of this convention, on December 18, 2002, UN General Assembly Resolution 57/199 adopted the "Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment." The main goal of the optional protocol is to introduce international and national preventive mechanisms for the prevention of

torture. This optional protocol, which was adopted in New York on December 18, 2002, was ratified by 91 countries of the world in the past period. In turn, more than ten countries such as Armenia, Azerbaijan, Estonia, Georgia, Lithuania, Moldova, Ukraine, Kyrgyzstan, Kazakhstan, Afghanistan, Czech Republic, Finland, France, Germany, Italy, Poland, Spain, Turkey have signed this international legal document. As a result, there was a need to define the concept of this socially dangerous act more broadly, to develop the causes of socially dangerous acts related to torture, and preventive measures.

The above-mentioned international agreements stipulate that each state should establish punishments against torture in its criminal legislation as one of the conditions for ensuring the inviolability of the rights and freedoms of the individual. Therefore, legal definitions of the concept of torture have been reflected in many international documents.

In particular, the legal definition of the concept of torture was given for the first time in the UN Declaration "On the Protection of All Persons from Torture and Other Cruel, Cruel or Degrading Treatment or Punishment" adopted on December 9, 1975. It developed different views on the meaning of the concept of torture. According to Article 1 of the Declaration, “torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons”. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners. This

definition clarified the concept of torture from a legal point of view .

Article 1 of the "Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" further clarified the concept of torture and imposed an obligation on the signatories of this convention to establish the concept of torture and measures of criminal responsibility for torture in their legislation.

Torture is defined in this convention as follows: “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 of or with the consent or acquiescence of a public official or other person acting in an official capacity” .

The concept of torture in international law includes three main aspects:

1. Any act aimed at inflicting severe physical and moral pain or suffering on a person;
2. Intentional commission of this act;
3. This action serves the following purposes:
  - a) obtaining information or confession from the tortured person or third parties;
  - b) punishment for an act committed or suspected to be committed by the tortured person or a third party;

- c) intimidation of the tortured person or a third party;
- d) coercing the tortured person or a third party;
- e) for any reason based on discrimination .

The uniqueness of the convention is reflected in the fact that the definition given to the concept of torture in it is considered binding for the state that signed the convention.

In the dissertation research conducted by Uzbek scientists Kh. Karimov on this issue, the concept of "torture" is defined as follows: “torture - obtaining a confession from any person for committing an offense by a law enforcement officer or an employee of another state body, or with their tacit consent, knowledge or agency, or obtaining a confession for an offense committed by another person, obtaining any information, any -intimidation, humiliation, as well as psychological, physical or mental pressure with the aim of committing or refraining from committing an act, inflicting strong mental suffering or physical pain on a person” .

The concept of torture and cruel treatment degrading human dignity and inhumane punishment are independent concepts that differ from each other. The use of violence is defined as the deliberate, illegal physical, psychological or mental violence against a person against his will .

Organizational and legal measures to prevent torture in the Republic of Uzbekistan.

Extensive work is being done in Uzbekistan to further strengthen the guarantees of citizens' rights and freedoms, including the prevention of torture and other cruel, inhuman or degrading treatment and punishment.

Article 235 of the Criminal Code of the Republic of Uzbekistan is called "Torture and other cruel, inhuman or degrading treatment and punishment". According to it, "torture and other cruel, inhuman or degrading treatment and punishment, i.e. to a person in administrative custody, as well as to a suspect, accused, defendant, convict, witness, victim, other participant in the criminal process or their close relatives by an employee of a law enforcement agency or other state agency, or on his behalf, in order to obtain some information from them or another third party, to obtain a confession that they have committed a crime, to arbitrarily punish them for a crime committed, or to force them to commit an act, or unlawful mental, psychological, physical pressure or pressure in any other way committed by other persons with their knowledge or tacit consent by means of intimidation, beating, torture, torture or other illegal actions".

The fact that member states report to the UN Committee against Torture every four years on the implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment shows how urgent the fight against torture is not only for the international community, but also for individual countries. In connection with the accession of Uzbekistan to the above convention on August 31, 1995, based on its Article 19, Uzbekistan has been submitting periodic reports to the UN Committee against Torture regarding the fulfillment of its obligations under the convention.

The National Preventive Mechanism is the creation of a system of regular visits by independent international and national bodies to places of detention of persons deprived of their liberty in order to prevent any form of torture. It has the following main functions: visiting any

place where persons deprived of liberty are or may be held; advice; propaganda; cooperation.

On March 14, 2019, the Law of the Republic of Uzbekistan "On the Human Rights Representative (Ombudsman) of the Oliy Majlis" was supplemented with Article 209 entitled "Activities of the representative on the prevention of torture and other cruel, inhuman or degrading treatment and punishment". The Ombudsman takes measures to prevent torture and other cruel, inhuman or degrading treatment and punishment through regular visits to places of detention.

On the basis of the expert group under the Oliy Majlis representative on human rights (ombudsman), public groups on identifying and preventing cases of torture under the Ombudsman were established. The main tasks of public groups are to regularly carry out monitoring visits to prevent torture in prisons, special receptions, temporary detention centers, investigative detention centers, penal institutions, disciplinary units, compulsory treatment facilities.

### CONCLUSION

It is necessary to ensure the publicity of trials related to the use of torture, and to publicly announce verdicts in criminal cases related to the use of torture.

Despite the amendments to Article 235 of the Criminal Code of the Republic of Uzbekistan in April 2018, the definition of "torture" does not include all elements of the definition provided for in Article 1 of the UN Convention.

The definition of "discrimination" in the Criminal Code of the Republic of Uzbekistan includes only grounds based on national, racial, religious or social characteristics, while the UN Convention establishes "discrimination of any nature for any reason". This

international agreement stipulates that "discrimination" should not be limited to any form. Article 235 of the Criminal Code of the Republic of Uzbekistan should cover all places of detention of persons deprived of liberty.

Recognizing the primacy of international treaties in the event of a conflict between the international human rights treaties to which the state is a party, it is necessary to ensure the full and direct application of the provisions of the UN Convention in national courts. It is considered appropriate to ensure the independence of the persons responsible for carrying out forensic examination of cases of torture and cruel and inhuman treatment that degrades human dignity from any agency accused of committing such illegal actions.

In order to ensure a quick, impartial and effective investigation, it is proposed to ensure that cases related to torture and cruel and inhuman treatment degrading human dignity are carried out by an institution independent of the direct executioners, and to establish a special department in the prosecutor's office. This department should be tasked with conducting thorough and independent investigations into allegations of torture and cruel and inhuman treatment, as well as dereliction of duty.

Based on the absolute and unlimited nature of the prohibition of torture, as well as taking into account the recommendations of the UN Committee against Torture, it is appropriate not to apply amnesty to prisoners accused of torture.

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