

# Article 3: Prohibition of Torture



Nicola Kohn

# Article 3

## Prohibition of torture

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

# Torture

“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” Article 1, UN Convention Against Torture

# Torture

- inflicted by or at the instigation of a public official or person acting in an official capacity
- severe pain or suffering, whether physical or mental
- Intention
- Purpose

# Torture or inhuman treatment?

The distinction between torture and other types of ill-treatment will be made on the basis of a “difference in the intensity of the suffering inflicted”.

*Degrading: such as to arouse in their victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance. (Ireland v UK 1978 2 EHRR 25)*

# Inhuman or degrading treatment

- Ireland v UK 1978 2 EHRR 25 - treatment “such as to arouse.... feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance”

# Inhuman or degrading treatment

- *Pretty v United Kingdom* (2002) 35 EHRR 1

“Where treatment humiliates or debases an individual showing a lack of respect for, or diminishing, his or her human dignity or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition of article 3. The suffering which flows from naturally occurring illness, physical or mental, may be covered by article 3, where it is, or risks being, exacerbated by treatment, whether flowing from conditions of detention, expulsion or other measures, for which the authorities can be held responsible.”

- [\*R. \(Limbuela\) v SSHD\* \[2005\] UKHL 66; \[2006\] 1 A.C. 396](#)
- *R (B) v DPP* [2009] EWHC 106 (Admin)
- *VK v Russia* 68059

# Does trafficking inevitably engage A3?

- Torture – requires control
- Inhuman and degrading treatment
  - Minimum level of severity
  - Break down of physical or moral resistance
- Trafficking in Human Beings
- [https://www.echr.coe.int/Documents/FS\\_Trafficking\\_ENG.pdf](https://www.echr.coe.int/Documents/FS_Trafficking_ENG.pdf)



# Article 3 Duty

- Negative obligation on the state to refrain from inflicting torture or inhuman or degrading treatment
- Positive obligation
  - systems duty: to establish a set of laws that will protect individuals from torture/inhuman or degrading treatment
  - operational duty: to investigate alleged instances of ill-treatment

# MC v Bulgaria

- Positive obligation is twofold:
  - i. to enact criminal law provisions to punish the carrying out of torture, inhuman or degrading treatment
  - ii. To carry out a proper investigation and prosecution so that laws can be applied effectively.

(MC v Bulgaria 40 EHRR 20)

# *D v Commissioner of Police of the Metropolis* [2018] UKSC 11

- Failure to conduct a proper inquiry may constitute a breach of Article 3
- The positive obligation to investigate is not confined to cases of ill-treatment by state agents
- “egregious and significant errors” are required, not “simple errors or isolated omissions”

# Article 3 investigative obligation

- One of means not results
- Should be capable of leading to the identification and punishment of those responsible