

# A Comparative Analysis of Mental and Psychological Suffering as Torture, Inhuman or Degrading Treatment or Punishment under International Human Rights Treaty Law

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## Abstract

After years of relative silence, psychological torture has recently attracted wide attention. In this article, the author offers a comparative study of the way in which the different major human rights systems deal with this phenomenon. As each case has its own characteristics, factors such as the nature, purpose and severity of the treatment become important in making an assessment. The author deals with the approach of the Human Rights Committee, the Inter-American Commission on Human Rights and the European Court of Human Rights and discusses the different factors that determine whether the treatment is to be classified as torture or as inhuman or degrading treatment or punishment.

## 1. Introduction

The prohibition of torture, cruel, inhuman and degrading treatment or punishment is one of the basic human rights principles, which is included in many international<sup>1</sup> and regional<sup>2</sup> treaties. The articles on this prohibition are non-derogable. Article 4(2) of the International Covenant on Civil and Political Rights (hereafter ICCPR) does not permit any derogation from Article 7. There can not be any excuse for the violation of this article.<sup>3</sup> Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter ECHR) also allows no derogation, even in the event of a public emergency threatening the life of the nation. Nothing can justify any form of ill-treatment, including the fight against terrorism, even if the victim is involved in terrorist or other criminal activities.<sup>4</sup>

The Human Rights Committee (hereafter HRC) states that a sharp distinction between different prohibited forms of treatment or punishment may not be necessary.<sup>5</sup> The differentiation between these terms in this study never implies that one is less bad

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Art. 5 of the 1948 Universal Declaration of Human Rights (UDHR), Arts. 7 and 10 of the 1966 International Covenant on Civil and Political Rights (ICCPR), Art. 5(b) of the 1966 International Convention on the Elimination of All Forms of Racial Discrimination (CERD), Art. 2 of the 1984 UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment (UNCAT), Art. 37 of the 1989 Convention on the Rights of the Child (CRC), Art. 10 of the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

<sup>2</sup> Art. XXVI of the 1948 American Declaration on the Rights and Duties of Man (ADRDM), Art. 3 of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Art. 5 of the 1969 American Convention on Human Rights (ACHR), Art. 5 of the 1981 African Charter on Human and People's Rights (ACHPR), Art. 6 of the 1985 Inter-American Convention to Prevent and Punish Torture (IACPPT), the 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT).

<sup>3</sup> ICCPR General Comment No. 20, 10 Apr. 1992.

<sup>4</sup> *Aksoy v. Turkey*, 18 Dec. 1996, Reports of Judgments and Decisions 1996-VI, para. 62.

<sup>5</sup> Report of Human Rights Committee, UN Doc. A/47/40 (1992), para. 4.

than the other. On the other hand, it is not easy to make a clear list of different mental and psychological methods under the headings of torture, inhuman and degrading treatment, or punishment. However, the non-physical methods are relatively neglected, while there has been considerable success in the prevention of physical ill-treatment. This paper aims to find out what kind of mental and psychological forms of ill-treatment constitutes torture, inhuman or degrading treatment under international human rights treaty law. As a comparative study, the article also examines which factors are taken into consideration by the international human rights treaty based bodies to define infliction of mental or psychological ill-treatment.

The first chapter analyses the definition and prohibition of different forms of ill-treatment by international human rights treaties, with specific reference to mental and psychological ill-treatment. The following chapters examine the approach of three important monitoring bodies to mental and psychological torture, inhuman and degrading treatment, or punishment respectively. The UN approach is examined together with the comments and jurisprudence of HRC. At a regional level, the Inter-American and European convention systems are examined. The section about the approach of the European Commission and Court of Human Rights is comparatively longer, since there is a rich jurisprudence on the three different forms of ill-treatment, with much more detailed reference to mental and psychological suffering.

## I. 2. Prohibition and Definition of Torture, Inhuman and Degrading Treatment or Punishment by International Human Rights Treaties

The main target of any kind of ill-treatment, physical or psychological, is human dignity. However, the infliction of physical pain attracts more attention than mental suffering. Torture is the most serious form of physical ill-treatment which directly hurts human dignity. The individual is reduced to a position of extreme helplessness and distress, which causes his cognitive, emotional and behavioural functions to deteriorate.<sup>6</sup> The victim is treated as an object at the hands of the torturer. At this point, the psychological destruction of the victim becomes no less important than the physical pain. Cruel and inhuman treatment is somewhere between physical and psychological ill-treatment, but includes both. When compared with torture and cruel and inhuman treatment, degrading treatment is much more related to human psychology. It consists of subjective psychological elements such as humiliation and debasement.

The human rights treaties prohibit the different forms of ill-treatment with almost similar formulations. With Article 3 ECHR as an exception, Article 5 of the Universal Declaration of Human Rights, Article 7 ICCPR, Article 5(2) of the American Convention on Human Rights (hereafter ACHR) and Article 5 of the African Charter on Human and People's Rights (hereafter ACHPR) include the term 'cruel' in addition to torture and inhuman and degrading treatment. Article 10(2) of the UN Convention against Torture (hereafter UNCAT) obliges states to take effective legislative, administrative, judicial and other measures to prevent torture. Article 10(1) ICCPR stipulates treatment with humanity and respect for human dignity.

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<sup>6</sup> 'Psychological Evidence of Torture' in *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (The Istanbul Protocol), Physicians for Human Rights website, [http://www.phrusa.org/research/istanbul\\_protocol/isevidence.html](http://www.phrusa.org/research/istanbul_protocol/isevidence.html), accessed 9 Nov. 2006.

Although many international and regional human rights treaties include articles on the prohibition of different forms of ill-treatment, only torture conventions provide for definitions. Article 1 UNCAT mentions physical or mental suffering together while defining torture. The distinctive feature of torture is that severe pain or suffering is inflicted for a specific purpose, such as obtaining information or confessions, punishment or intimidation, either by a public official or with the consent of the state authorities. When compared with other forms of ill-treatment, torture is ‘an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment’.<sup>7</sup>

During the drafting of Article 7 ICCPR, the discussion was mainly about medical and scientific experimentation against an individual’s will. The state representatives did not make any proposal about mental suffering. The Commission on Human Rights’ comment made it clear that the word ‘torture’ means not only physical but also mental torture.<sup>8</sup> The Human Rights Committee’s approach has not been to draw up a list of prohibited acts or to establish sharp distinctions between the different forms of punishment or treatment. The HRC jurisprudence makes a categorisation depending on ‘the nature, purpose and severity of the treatment applied’.<sup>9</sup>

The meaning of torture, inhuman and degrading treatment or punishment was not particularly discussed during the drafting period of the European Convention on Human Rights. According to Evans and Morgan, there was no clear understanding on the meanings of these terms.<sup>10</sup> In *Ireland v. The United Kingdom*, Judge Fitzmaurice says that the lack of definition in Article 3 ECHR results in ‘the virtual impossibility of arriving at any completely satisfactory definition of the notions involved’.<sup>11</sup> Judge Zekia refers to the impossibility of an ‘exact and comprehensive definition’ of torture.<sup>12</sup>

The IACHR does not define the forms of ill-treatment. Article 5(1) makes reference to the respect for the physical, moral and mental integrity of every person. The IACPPT defines torture more broadly than UNCAT does. It puts more emphasis on mental pain and suffering by expanding the definition of torture to ‘the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish’.<sup>13</sup>

Except in UNCAT, human rights treaties do not define the inhuman or degrading treatment or punishment. Article 16 UNCAT describes it as including the ‘acts ... which do not amount to torture as defined in Article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity’.

There is a consensus that certain methods of physical ill-treatment are accepted as torture. The same cannot be said for those that cause mental suffering. With psychological ill-treatment, the subject of the torture is as important as the applied method. The special circumstances of each case are taken into consideration. Therefore, infliction of mental suffering may produce a different result for different persons subjected to this ill-treatment.

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<sup>7</sup> UNGA Res. 3452 (XXX), 9 Dec. 1975.

<sup>8</sup> M.J. Bossuyt, *Guide to the ‘Travaux Préparatoires’ of the International Covenant on Civil and Political Rights* (Dordrecht: M. Nijhoff, 1987), at 150.

<sup>9</sup> General Comment 20, n. 3 above, para 4.

<sup>10</sup> M.D. Evans and R. Morgan, *Preventing Torture: A Study of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* (Oxford: Clarendon, 1998), at 73.

<sup>11</sup> *Ireland v. The United Kingdom.*, 18 Jan. 1978, Series A No. 25, Separate opinion of Judge Fitzmaurice, at 115, para. 12.

<sup>12</sup> *Ibid.*, Separate opinion of Judge Zekia, at 97.

<sup>13</sup> Article 2 IACPPT, OAS Treaty Series, No. 67.

The international and regional human rights treaties that define or prohibit ill-treatment do not make any reference to the content of moral, mental or psychological suffering. The Human Rights Committee says that Article 7 ICCPR protects not only the physical but also the mental integrity of the individual. It also states that the prohibition in this article is not only about the acts that cause physical pain, but also about the acts that inflict mental suffering on the victim.<sup>14</sup> The Convention against Torture takes physical or mental pain and suffering together when defining torture in Article 1. In the same manner, Article 5(1) ACHR protects mental, physical and moral integrity. Article 3 ECHR, however, does not explicitly mention mental and psychological suffering.

The relevant jurisprudence, comments and reports are examined in this essay, not to make a clear distinction or categorisation between different methods of causing mental suffering as torture or other forms of ill treatment, but to describe the approach of treaty based bodies.

### 3. Mental and Psychological Suffering as Torture

#### 3.1 The UN System under the Approach of the Human Rights Committee

The Human Rights Committee is the monitoring body of the ICCPR. It examines the state reports, individual complaints and inter-state communications. It sometimes clarifies the rights with general comments. The state reports indicate the measures adopted for the effective enjoyment of rights and the difficulties of implementation. The section about Article 7 ICCPR contains information about physical and psychological ill-treatment. However, neither the reports nor the Committee's comments make a categorisation. The approach of the HRC can be derived in more detail from its jurisprudence.

*Estrella v. Uruguay* is the only case in which the HRC clearly mentions the application of psychological torture. In addition to electric shocks, beatings with rubber truncheons, punches and kicks, and being hung up with his hands tied behind his back, the victim was subjected to methods of psychological torture including the threat of torture, the threat of violence to relatives or friends, the threat of being despatched to his home country to be executed, the threat of making him witness the torture of friends and finally repeated threats of death by an officer. This kind of ill-treatment made the victim lose sensitivity in both arms and hands for the period of eleven months. It also caused permanent discomfort in the right thumb and severe pain in the knees. The HRC concluded that the victim was subjected to severe physical and psychological torture<sup>15</sup> and considered the threats serious enough to amount to psychological torture. It did not make any detailed comment about the specific methods of psychological torture. As a matter of fact, in another case the Committee defined the death threats with physical ill-treatment as inhuman and degrading treatment.<sup>16</sup>

In another case, Sra. Gilboa applied to the HRC on behalf of her niece Lucia Arzuada Gilboa, a 26-year-old woman who had been subjected to physical violence including electric shocks. During the detention period she also had to remain naked in front of the guards and torturers. She was insulted and threatened with further acts of cruelty. The HRC found a violation of Article 7 ICCPR, recognizing that the victim had

<sup>14</sup> General Comment 20, n. 3 above, paras. 1 and 5.

<sup>15</sup> *Estrella v. Uruguay*, Communication No. 74/1980 (17 July 1980), U.N. Doc. Supp. No. 40 (A/38/40) (1983), at 150, paras. 1(6) and 8(3).

<sup>16</sup> *Hylton v. Jamaica*, Communication No. 407/1990, U.N. Doc. CCPR/C/51/D/407/1990 (1994), para. 9(3).

been subjected to torture and to cruel and degrading treatment.<sup>17</sup> Since the term torture is used for electric shocks, the 'cruel and degrading treatment' may refer to threats of further torture and making the victim remain naked. However, it is not made clear which acts are accepted as psychological forms of torture or cruel and degrading treatment. In another case, the victim was forced to listen to the shrieks of tortured people and was himself threatened with torture, in addition to physical ill-treatment. The HRC considered the physical and psychological suffering together and affirmed the existence of torture in this case.<sup>18</sup>

In the *Acosta v. Uruguay* case, it is claimed that the victim was subjected to psychological as well as physical torture. With regard to the psychological torture, the applicant stated that he was told that he had been granted freedom, and that a subsequent explanation was given to his family 'that there had been a mistake'. The Committee considered all the claims and concluded that there had been a violation of Article 7, because Omar Berterretche Acosta was subjected to torture and to cruel, inhuman and degrading treatment and punishment.<sup>19</sup>

The applicant of another case claimed to be the victim of psychological torture because she had not been informed of the whereabouts of her daughter, who was detained by the police. The HRC accepted 'the anguish and stress caused to the mother by the disappearance of her daughter and by the continuing uncertainty concerning her fate and whereabouts' and the mother's right to know what had happened to her daughter. It therefore concluded that the mother was also a victim. However, it did not make any comment as to whether the treatment amounted to torture, inhuman or degrading treatment, or punishment. In this case, HRC member Bertil Wennergren added in his individual opinion that the author of the communication, as a mother of a disappeared victim, suffered from psychological torture because she did not know the whereabouts of her daughter.<sup>20</sup>

In a case where the victim was kept in doubt as to the result of his appeal, the HRC recognized a violation of Article 7. At first, the applicant was convinced that his sentence had been commuted but later, without an explanation on the part of the state, he was informed that it was not, and was then returned to death row after having stayed in the long-term section for two years. The Committee considered the negative psychological impact on the applicant and stated that leaving him in such continuing uncertainty, anguish and mental distress amounted to cruel and inhuman treatment.<sup>21</sup>

In *Ambrosini v. Uruguay*, the HRC examined the relation between detention conditions and health. The applicant was the victim's wife. She submitted the communication on her own behalf, as well as on behalf of her husband, her stepfather and her mother. She claimed that her husband was subjected to various forms of torture. The HRC concentrated on the detention conditions and found a violation of Articles 7 and 10(1) ICCPR, saying that the victim 'was detained under conditions seriously detrimental to his health'.<sup>22</sup> The applicant further alleged that her mother had not been allowed to receive

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<sup>17</sup> *Gilboa v. Uruguay*, Communication No. 147/1983 (1 Nov. 1985), U.N. Doc. Supp. No. 40 (A/41/40) at 128 (1986), paras. 4(3), 14.

<sup>18</sup> *Cariboni v. Uruguay*, Communication No. 159/1983 (27 Oct. 1987), U.N. Doc. Supp. No. 40 (A/43/40) (1988), at 184.

<sup>19</sup> *Acosta v. Uruguay*, Communication No. 163/1983 (31 Mar. 1983), U.N. Doc., CCPR/C/34/D/162/1983 (1988).

<sup>20</sup> *Quinteros v. Uruguay*, Communication No. 107/1981 (17 Sept. 1981), U.N. Doc. Supp. No. 40 (A/38/40) (1983), at 216, para. 14.

<sup>21</sup> *Chisanga v. Zambia*, Communication No. 1132/2002 (18 Nov. 2005) CCPR/C/85/D/1132/2002 (2005).

<sup>22</sup> *Bazzano v. Uruguay*, Communication No. R.1/5 (15 Feb. 1977), U.N. Doc. Supp. No. 40 (A/34/40) (1979), at 124, para. 2.

visits for a long time. She suffered from the inadequate diet and the prevailing state of unhealthy working conditions. Therefore her health had been weakened. The HRC found the violation of Article 10(1), stating that the applicant's mother was held *incommunicado* and was denied visits by any family member.

According to the HRC, prolonged judicial proceedings do not *per se* constitute cruel, inhuman or degrading treatment, and, in capital cases, even prolonged periods of detention on death row cannot generally be considered to constitute cruel, inhuman or degrading treatment.<sup>23</sup> It depends on the particular circumstances of each case. For example, in the *Barrett and Sutcliffe v. Jamaica* case, the Committee stated that if the judicial system of a state provides for a review of criminal convictions and sentences, an element of delay between the lawful imposition of a sentence of death and the exhaustion of available remedies is inherent in the review of the sentence. Therefore, even prolonged periods of detention under a severe custodial regime on death row cannot generally be considered to constitute cruel, inhuman or degrading treatment if the convicted person is merely availing himself of appellate remedies.<sup>24</sup>

The HRC classifies the methods of ill-treatment as torture and otherwise. The communications about psychological suffering also mention physical ill-treatment. The HRC makes its decision by considering both of them. However, the decisions usually do not include a specific comment or explanation about the level of psychological suffering. Therefore it is not possible to say that a certain form of mental or psychological suffering alone constitutes torture according to the Committee. It must reach a certain point of severity and be supported by some other factors increasing the vulnerability of the victim, or the HRC ignores these allegations and can only find a violation of Article 7 by making reference to the physical methods.<sup>25</sup>

### 3.2 Inter-American System

The Inter-American Commission on Human Rights has an obligatory competence to examine individual communications for the rights set forth in the ACHR and the American Declaration on the Rights and Duties of Man (hereafter ADRDM). The inter-state complaint is optional. The Inter-American Court of Human Rights has an optional jurisdiction for the contentious cases that, after examination by the Commission, are referred by a contracting party. Almost all of the following cases have been examined by the Commission. Although not mentioned, all cases also include allegations of physical ill-treatment.

In *Alfaro and Flores v. El Salvador*, the first applicant, a 38-year-old single woman, alleged that she had been ordered to take off her clothes during the interrogation. Then the interrogator began to touch her and asked her whether she was ashamed or not. Later, a uniformed soldier sexually assaulted her. She was also subjected to physical torture. The Commission accepted the existence of psychological torture during the interrogation and found a violation of Article 5 ACHR, the right to humane treatment and personal liberty.<sup>26</sup>

In the *Blandino* case, the applicant was isolated for a period of more than one month and was exposed to continuous noises during a certain time of the day. Another victim's family was not informed about his detention. It took six months for his family to

<sup>23</sup> *Pratt and Morgan v. Jamaica*, Communication No. 210/1986 and 225/1987 (6 Apr 1989), U.N. Doc. Supp. No. 40 (A/44/40) (1989), at 222.

<sup>24</sup> *Baret and Sutcliffe v. Jamaica*, Communication No. 271/1988 (6 Apr 1992) CCPR/C/44/D/271/1988.

<sup>25</sup> *Soogrim v. Trinidad and Tobago*, Communication No. 362/1989, U.N. Doc. CCPR/C/47/D/362/1989 (1993).

<sup>26</sup> *Alfaro and Flores v. El Salvador*, Case 10.257, Report No. 10/92, Inter-Am.C.H.R., OEA/Ser.L/V/II.81 rev.1 Doc. 6 (1992), at 125, paras. 1, 5.

discover his whereabouts. Two applicants were physically tortured. The Commission found the violation of Article 5 ACHR, without any comment on mental suffering.<sup>27</sup> In another case, the physical torture was accompanied by the denial of family visits. The applicant had not been allowed to see any member of his family or his defence attorney since the beginning of his detention. The Commission decided that the treatment constituted a grave violation of Article 5 ACHR.<sup>28</sup>

Another applicant complained about psychological methods of torture such as threats against him and his family, blackmail and other forms of pressure. He also mentioned some other 'sophisticated psychological methods used to unhinge his mind. The Commission recognized that the treatment was a violation of Article XXVI ADRDM, which offers protection from cruel, infamous, or unusual punishment, but it did not make any reference to the alleged methods of causing psychological suffering.<sup>29</sup>

In *Govardhan v. Surinam*, the Commission established a special commission to search the facts of the case. After interviewing the eyewitnesses, the special commission reported severe physical and psychological torture practices. The latter included the firing of machine guns at the victims' feet, threats against the wives, mothers and other relatives of the victims, threats of summary execution, being forced to lie in freshly dug graves and finally an attempt at homosexual rape by a military policeman.<sup>30</sup> The Commission decided that this is a violation of Article XXVI ADRDM.

If the allegations of mental suffering are, however, not severe enough and not associated with other factors, the Commission sometimes ignores them. For example, in *Abarca v. Chile*, a 16-year-old student was beaten, insulted and repeatedly threatened with being given electric shocks during the interrogation. The interrogators threatened him by saying that many people had died in that place of detention as a result of electric shocks. The Commission found a violation of Article I ADRDM, the right to life, liberty and personal security, and a violation of Article XXV, the right to protection from arbitrary arrest. It did not consider the allegations of ill-treatment in this case.<sup>31</sup>

The approach of the Inter-American Commission is similar to that of the HRC. Its jurisprudence is not clear enough to find out which forms of mental or psychological ill-treatment amount to torture, cruel, inhuman or degrading treatment, or punishment. The mental sufferings are taken into consideration by the Commission, but only together with the physical methods.

### 3.3 European Convention System

Unlike the HRC and Inter-American Commission on Human Rights, the European Court and Commission of Human Rights have detailed jurisprudence on the different forms of ill-treatment and their relation to mental and psychological suffering. The Court and Commission consider the Convention as a living instrument and they interpret it in the light of present day conditions.<sup>32</sup> In other words, any form of ill-treatment which is accepted as inhuman or degrading may be classified differently in future.<sup>33</sup> They make a distinction between different forms of not only ill-treatment, but also punishment. The categorisation is based on the severity of the infliction and on the vulnerability of the

<sup>27</sup> *Blandino and others v. Nicaragua*, Res. No. 3/86, Case 9170 (16 Apr. 1986), para. 1.

<sup>28</sup> *Jean v. Haiti*, Res. No. 45/82 Case 3096 (9 Mar. 1982).

<sup>29</sup> *Valladares v. Cuba*, Res. No. 2/82 Case 2300 (8 Mar. 1982), para. 7.

<sup>30</sup> *Gobardhan v. Surinam*, Res. No 1/85 Case No 9265 (1 July 1985), para. 6.

<sup>31</sup> *Abarca v. Chile*, Res. No. 52/81 Case 4666 (Oct. 16, 1981).

<sup>32</sup> *Tyrer v. The United Kingdom*, 25 Apr. 1978, Series A No. 26, para. 31.

<sup>33</sup> *Selmouni v. France* (Application no. 25803/94), 28 July 1999, para. 101.

victim, depending on different factors.<sup>34</sup> Whether or not any kind of ill-treatment is prohibited by Article 3 ECHR depends on the objective nature of the treatment, its effects on the persons subjected to it and the purpose of the authority which resorted to the measure.<sup>35</sup>

There is a hierarchy between torture, inhuman and degrading treatment, or punishment. Evans and Morgan refer to 'a progression, starting with degrading treatment'. Once ill-treatment reaches a certain threshold, it becomes inhuman. Torture is the most serious form. It is 'at the apex of a pyramid of suffering'.<sup>36</sup> Torture is an aggravated form of inhuman or degrading treatment and has a purpose, such as obtaining information or a confession, or to punish the victim.<sup>37</sup>

The Court and Commission stipulate the existence of a minimum level of severity in order to examine a case within the scope of Article 3 ECHR. The assessment of this minimum is relative and depends on all the circumstances of the case including the duration of treatment, its physical or mental effects and the sex, age and state of health of the victim.<sup>38</sup> Judge Zekia objects to the idea that extreme intensity of physical or mental suffering is a requisite for a case of ill-treatment to amount to torture within the purport and object of Article 3 ECHR. He gives the example of a sick elderly person and a young person, and says that beating is to be accepted as torture for the former while it is inhuman and degrading for the latter.<sup>39</sup> Therefore the objective test, examining only the seriousness of the ill-treatment, may in itself not always be enough to classify it. Judge Fitzmaurice states that 'the age, general health, bodily characteristics and current physical and mental condition of the person concerned' are to be taken into consideration as factors that increase or diminish the intensity.<sup>40</sup> Lantrip claims that deciding on the threshold between different types of ill-treatment is subjective and 'evolving along with society's conceptions', so it will always be open to criticism.<sup>41</sup>

The ECHR jurisprudence on Article 3 defines torture as a 'deliberate inhuman treatment causing very serious and cruel suffering'.<sup>42</sup> There is a certain amount of preparation and exertion and the aim is to obtain admissions or information from the applicant.<sup>43</sup> Evans and Morgan emphasise the purpose of inflicting suffering rather than the degree. They define the torture as 'the purposive act of inhuman treatment'.<sup>44</sup> If the aim is not to extract a confession, then it is not defined as torture.<sup>45</sup>

In the *Greek* case, the Commission defined the non-physical torture as an infliction of mental suffering by creating a state of anguish and stress by means other than a bodily assault. The non-physical torture included mock executions and threats of death, various humiliating acts and threats of reprisals against a detainee's family.<sup>46</sup>

<sup>34</sup> *Keenan v. The United Kingdom* (Application no.27229/95) 3 Apr. 2001 ECHR 2001-III, *Ognyanova and Choban v. Bulgaria* (Application no.46317/99) 23 Feb. 2006, *Salman v. Turkey* (Application no. 21986/93) 27 June 2000 ECHR 2000-VII, *Robde v. Denmark* (Application no. 69332/01) 21 July 2005.

<sup>35</sup> *Raninen v. Finland*, 16 Dec. 1997, Reports 1997-VIII, para. 52.

<sup>36</sup> Evans and Morgan, n. 10 above, at 82.

<sup>37</sup> The *Greek* case, Comm Rep, 5 Nov. 1969, (1969), 12 ECHRYb, at 186.

<sup>38</sup> *Ireland v. UK*, n. 11 above, para. 162.

<sup>39</sup> *Ibid.* Separate opinion of Judge Zekia, at 99.

<sup>40</sup> *Tyrer v. UK*, n. 32 above, Separate opinion of Judge Fitzmaurice, at 22, para. 3.

<sup>41</sup> J. Lantrip, 'Torture and Cruel, Inhumane and Degrading Treatment in the Jurisprudence of the Inter-American Court of Human Rights' (1999) *Journal of International & Comparative Law* at 566.

<sup>42</sup> *Ireland v. UK*, n. 11 above, para. 167.

<sup>43</sup> *Aksoy v. Turkey*, n. 4 above, para 64.

<sup>44</sup> Evans and Morgan, n. 10 above, at 77.

<sup>45</sup> *Egmez v. Cyprus*, (Application no. 30873/96) 21 Dec. 2000, ECHR 2000-XII, para. 79.

<sup>46</sup> The *Greek* case, n. 37 above, at 186.

In *Ireland v. The United Kingdom*, the Irish Government submitted an application to the Commission contesting some techniques used against Irish people during the initial arrests and the subsequent interrogations in 228 cases concerning incidents between 9 August 1971 and 1974. The so-called ‘five techniques’ consisted of wall-standing, hooding, subjection to noise, deprivation of sleep and deprivation of food and drink. The Commission examined the psychological effects and unanimously decided that the combined use of the five techniques had constituted a practice of inhuman treatment and of torture. The Court concluded that the recourse to the five techniques amounted to a practice of inhuman and degrading treatment, but not to torture due to lack of severity.<sup>47</sup> Judge Matscher disagreed with the majority, stating that the application of the ‘five techniques’ caused at least intense physical and mental suffering for the victims and also led to acute psychiatric disturbances, which constitute a typical example of torture within the meaning of Article 3 of the ECHR.<sup>48</sup>

In the *Akkoc* case, the female victim was blindfolded, stripped naked and forced to walk naked between officers who touched her and abused her verbally. Photographs were taken of her when she was naked. She was handcuffed to a door, forced to listen to the sounds of other persons who were being ill-treated and was told that her children had been brought into detention and were being tortured. The ill-treatment included playing loud music and physical methods. The Commission decided that the applicant had been subjected to physical and psychological ill-treatment during the detention period. The Court specially emphasised the threats concerning her children and stated that it caused intense fear and apprehension for the applicant. Considering the severity, seriousness and cruelty of the suffering, the Court affirmed the existence of torture.<sup>49</sup> In the *Aydin* case, the applicant, a 17-year-old girl, alleged that in addition to physical ill-treatment, a soldier had removed her clothes by force and had raped her. The victim complained about debasement and the long-term psychological damage. The Commission accepted that the treatment was an attack on the victim’s physical and moral integrity and found it a cruel form of ill-treatment. Article 3 ECHR, however, does not include the term ‘cruel’. The Commission probably preferred this term in order to place the ill-treatment somewhere between torture and inhuman treatment. The Court also considered the deep psychological effects of rape that may last longer than other forms of physical and mental violence. It also referred to the mental anguish, physical and emotional suffering and it decided that all together they amounted to torture.<sup>50</sup>

The Court examined the mental suffering together with the physical ill-treatment in *Selmouni v. France*. The applicant was forced to kneel down in front of a young woman and was insulted. One police officer then showed him his penis, saying ‘Look, suck this’, and then urinated over him. He was also threatened with a blowlamp and then a syringe.<sup>51</sup> The Court defined this kind of treatment as humiliating. It stated that the severe pain and suffering caused by physical and mental violence were serious and cruel enough to be considered as torture.<sup>52</sup>

The case studies prove that mental and psychological suffering alone may constitute torture, depending on its severity, seriousness and cruelty and the vulnerability of the victim. The *Ireland* case, for example, does not mention any physical methods of

<sup>47</sup> *Ireland v. UK*, n. 11 above, paras. 147, 168.

<sup>48</sup> *Ibid.* Separate opinion of Judge Matscher, at 140.

<sup>49</sup> *Akkoc v. Turkey*, (Application nos. 22947/93 and 22948/93), 10 Oct. 2000, ECHR 2000-X, paras. 25, 116, 117.

<sup>50</sup> *Aydin v. Turkey*, 25 Sept 1997, Reports of Judgments and Decisions 1997-VI, paras. 83-86, see also *Aksoy v. Turkey*, n. 4 above, para. 64.

<sup>51</sup> *Selmouni v. France*, n. 33 above, para. 24.

<sup>52</sup> *Ibid.*, para. 105.

torture. Although the Court found the treatment inhuman and degrading, one judge opposed the decision by defining the treatment as torture.

## II. 4. Mental and Psychological Suffering as Inhuman and Degrading Treatment or Punishment

### 4.1 The UN System under the Approach of the Human Rights Committee

The HRC only makes a distinction between torture on one side and other forms of ill-treatment on the other. It considers inhuman and degrading treatment and punishment together. In *Francis v. Jamaica*, the soldiers beat the victim in his cell and then emptied a urine bucket above his head, threw his food and water on the floor and his mattress out of the cell. The HRC decided that those actions amounted to degrading treatment within the meaning of Article 7 ICCPR.<sup>53</sup> In another case, it concluded that the prevention of the victim's contact with family members and with the outside world constituted cruel and inhuman treatment.<sup>54</sup>

Albert Womah Mukong was held in an approximately 25 square metre cell together with twenty five to thirty other detainees. The cell did not have sanitary facilities and the victim was not given food for several days. He was also threatened with being taken to the torture chamber or being shot if any unrest were to develop among the population. The HRC defined this treatment as cruel, inhuman and degrading.<sup>55</sup>

In another case, Mr. Hylton was repeatedly and increasingly threatened with death by warders. Moreover, he alleged that he suffered psychological torture by the warders but did not give specific examples. The HRC decided that the threats and the ill-treatment amounted to cruel and inhuman treatment.<sup>56</sup>

The HRC examined the death row phenomenon in the *Linton v. Jamaica* case. The applicant claimed that he had experienced physical abuse and psychological torture throughout the years spent on death row. When five inmates were transferred to the death cells, there was a rumour that a warrant had been issued for the execution of the inmate in the neighbouring cell and him. The applicant claimed that the warders had begun to tease him and his neighbouring inmate by explaining the details of an execution. The HRC considered the mock execution together with the denial of adequate medical care and decided that it constituted cruel and inhuman treatment within the meaning of Article 7 ICCPR.<sup>57</sup>

<sup>53</sup> *Francis v. Jamaica*, Communication No. 320/1988, U.N. Doc. CCPR/C/47/D/320/1998, para. 3(4).

<sup>54</sup> *Tshishimbi v. Zaire*, Communication No. 542/1993, U.N. Doc. CCPR/C/53/D/542/1993(1996), para. 5(5).

<sup>55</sup> *Mukong v. Cameroon*, Communication No. 458/1991, U.N. Doc. CCPR/C/51/D/458/1991 (1994), para. 9(4). In the *Muteba v. Zaire* case, solitary confinement, mock executions, lashings morning, noon and night and food deprivation together were accepted as inhuman. *Muteba v. Zaire*, Communication No. 124/1982 (25 Mar. 1983), U.N. Doc. Supp. No. 40 (A/39/40) (1984), at 182, paras. 8(2) and 12.

<sup>56</sup> *Hylton v. Jamaica*, n. 16 above, para. 9(3).

<sup>57</sup> *Linton v. Jamaica*, Communication No. 255/1987, U.N. Doc. CCPR/C/46/D/255/1987 (1992), paras. 2(6) and 3(3).

In another case, the HRC found a violation of Article 7 ICCPR, because victims were not informed about the postponement of the death penalty until forty five minutes before their scheduled execution.<sup>58</sup> With regard to solitary confinement, the HRC stated that the humiliation and debasement must exceed a particular level to be accepted as inhuman and degrading.<sup>59</sup>

## 4.2 Inter-American System

When the Inter-American Commission and Court do not define an action as torture, they prefer the terms ‘cruel and inhuman’ or ‘inhuman and degrading’. The Court considered prolonged isolation, deprivation of communication and involuntary disappearance as harmful to the psychological and moral integrity of a person and defined them as cruel and inhuman treatment.<sup>60</sup> The Commission argued that, where methods of physical and psychological torture were used to obtain extrajudicial statements from innocent people, this constituted a violation of Article 5 ACHR, but it did not elaborate on the methods of psychological torture.<sup>61</sup>

With regard to searches in prison, the Commission examines the special conditions of each case. It says that the search should not generate a greater degree of anguish and humiliation than that which is inevitable. In *X and another v. Argentina*, the applicants were the wife and the 13-year-old daughter of a prisoner. They were subjected to vaginal searching before the visit. This was compulsory for visitors who wanted to have personal contact with the prisoner. The Commission stated that this was to be done in a way that did not affect the mental and moral integrity of the searched person. The Commission considered the absence of judicial decision for such a search and the fact that the search was not done by a qualified member of staff, and therefore concluded that the physical and moral integrity of the victims had been infringed in a way contrary to Article 5 ACHR.<sup>62</sup>

## 4.3 European Convention System

### 4.3.1 *Mental and Psychological Suffering as Inhuman Treatment or Punishment*

A threshold of severity differentiates inhuman and degrading treatment.<sup>63</sup> Any treatment must cause severe mental and physical suffering and has to be inflicted deliberately for it to be defined as inhuman.<sup>64</sup> If the suffering is inflicted for the benefit and with the consent of the recipient, then it is not a matter of ill-treatment.<sup>65</sup>

A sufficiently real and immediate threat of torture ‘that generates enough mental suffering’<sup>66</sup> and ‘the use of psychological interrogation techniques’<sup>67</sup> may be accepted as inhuman treatment. The Court accepted the five techniques as inhuman in *Ireland v. The United Kingdom* because they caused intense physical and mental suffering to the victims. Judge Fitzmaurice objected to the definition of the five techniques as inhuman. He asked ‘if

<sup>58</sup> *Pratt and Morgan v. Jamaica*, Communication No. 210/1986 and 225/1987 (6 Apr. 1989), U.N. Doc. Supp. No. 40 (A/44/40) (1989), at 222, para. 14.

<sup>59</sup> *Vuolanne v. Finland*, Communication No. 265/1987 (7 Apr. 1989), U.N. Doc. Supp. No. 40 (A/44/40) (1989), at 249.

<sup>60</sup> 20 Jan. 1989, Doc. (Ser. C) No. 5 (1989), paras. 164, 197.

<sup>61</sup> *Murcia v. El Salvador*, Case 10.447, Report No. 14/92, Inter-Am.C.H.R., OEA/Ser.L/V/II.81 rev.1 Doc. 6 (1992), at 149, para. 1.

<sup>62</sup> *Butterworths Human Rights Cases*, Vol. 6, (London: Butterworths, 1998), at 314-335.

<sup>63</sup> *Evans & Morgan*, n. 10 above, at 87.

<sup>64</sup> The *Greek* case, n. 37 above, at 186.

<sup>65</sup> N.S. Rodley, *The Treatment of Prisoners under International Law* (Oxford: Clarendon, 1986), at 80.

<sup>66</sup> *Campbell & Cosans v. UK*, 25 Febr. 1982, Series A, No.48, para. 26.

<sup>67</sup> D.J. Harris, M. O’Boyle and C. Warbrick, *Law of the European Convention on Human Rights* (London: Butterworths, 1995), at 62.

anything that causes an appreciable amount of aching, strain, discomfort etc. or of deprivation of sleep or sustenance is to be regarded as “inhuman” then what words will be used for graver treatment that includes the infliction of mental or physical harm or stress.’ He claimed that inhuman treatment should be confined for the actions that ‘no member of the human species ought to inflict on another or could so inflict without doing grave violence to the human, as opposed to the animal, element in his or her make-up’.<sup>68</sup>

The Court and the Commission examined some cases about the destruction of homes and possessions by security forces in south-east Turkey. In the *Bilgin* case, the Commission considered the deep effects of the loss of his house and possessions on a poor man, and affirmed the existence of inhuman treatment. The Court added that such a deprivation caused the applicant to suffer sufficiently severely for the treatment to be considered to be inhuman.<sup>69</sup> The applicants in *Mentes & others v. Turkey* alleged that the security forces had burned their houses and that they had not been allowed to save their personal belongings.<sup>70</sup> The Commission referred to the anguish and suffering caused by the destruction and the traumatic circumstances of watching it and not being permitted to do anything. The applicants were also deprived of their livelihoods. The Commission therefore defined it as inhuman and degrading treatment.<sup>71</sup> However, the Court found a violation of Article 8 and did not examine whether there was also a violation of Article 3 ECHR. In a similar case, the Court concentrated on the respect for the feelings of the applicants who had just watched the destruction by security forces of their homes with most of their property. It specifically mentioned the victims’ feelings of upheaval and insecurity following the destruction of their homes, stemming from being taken unprepared, standing by and watching the burning of their homes, and from inadequate precautions to secure their safety. The Court defined the suffering caused by such an action as inhuman treatment.<sup>72</sup>

In *Akdivar and others v. Turkey*, the Commission considered the compulsory migration of the applicant to another city, where he faced dire personal circumstances with almost no state assistance. It concluded that the treatment amounted to inhuman and degrading treatment.<sup>73</sup>

In some other cases against Turkey, the Commission and the Court examined the mental distress and anguish caused of to the victims by the disappearance of their relatives. With regard to the disappearances, the Court made reference to some objective factors, independent from the emotional situation of victim, such as proximity of the family tie ..., the particular circumstances of the relationship, the extent to which the family member witnessed the events in question [whether he/she was present or not], the involvement of the family member in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those enquiries.<sup>74</sup>

The reaction of the official authorities in disappearance cases is an important factor. The indifference of authorities is accepted as the main reason for the mental anguish and distress caused by disappearances, as the following cases show.

In *Timurtas v. Turkey*, the applicant was the father of the disappeared person. The authorities did not treat him kindly when he enquired for his son. The Commission decided that the uncertainty, doubt and apprehension suffered by the applicant for a long

<sup>68</sup> *Ireland v. UK*, n. 11 above, Separate opinion of Judge Fitzmaurice, para. 26.

<sup>69</sup> *Bilgin v. Turkey*, (Application no. 23819/94), 16 Nov. 2000, paras. 90, 203.

<sup>70</sup> In the *Dulas* case, the applicant’s home and property were destroyed before his eyes and he was obliged to leave the village. The Court found the suffering caused by the destruction severe enough to be categorised as inhuman treatment. *Dulas v. Turkey*, (Application no. 25801/94), 30 Jan. 2001, para. 55.

<sup>71</sup> *Mentes and others v. Turkey*, 28 Nov. 1997, Reports of Judgments and Decisions 1997-VIII, para. 76.

<sup>72</sup> *Selcuk and Asker v. Turkey*, 24 Apr. 1998, Reports of Judgments and Decisions 1998-II, paras. 77, 78.

<sup>73</sup> *Akdivar and others v. Turkey*, Comm. Rep., 26 Oct. 1996, para. 224.

<sup>74</sup> *Cakici v. Turkey*, (Application no. 23657/94), 8 July 1999, ECHR 1999-IV, para. 98.

period of time caused him severe mental distress and anguish, which amounted to inhuman and degrading treatment.<sup>75</sup> In *Kurt v. Turkey*, the mother had even witnessed the detention of her son with her own eyes, but the public prosecutor had given no serious consideration to her complaint. The Court made reference to the anguish of the mother. However, it just decided on a breach of Article 3 ECHR, without any further explanation as to whether the treatment was inhuman or degrading.<sup>76</sup> The Court concentrated on the discouraging approach of the security forces towards the case and the denial of the detention, contrary to the truth. It also took the length of time into consideration as a factor increasing the applicant's anguish.

In *Taş v. Turkey*, the applicant was the father of the disappeared person, but was absent at the time of detention. The public prosecutor prevented his attempts to see his son. A month later, the public prosecutor told the father that his son had escaped. The father expressed his fear that his son had probably been killed, and wanted the public prosecutor to investigate the case. The Court made reference to the authorities' indifference and the applicant's suffering of acute anguish and uncertainty. It concluded that there had been a violation of Article 3 ECHR.<sup>77</sup>

In the *Cakici* case, the applicant was the brother of the disappeared person. He was not present when the security forces took his brother. The Court referred to the absence of the applicant at the time of detention and absence of an aggravating response from the authorities, and found no violation of Article 3 ECHR.<sup>78</sup>

The case of *Taniş and Others v. Turkey* concerned the disappearance of Serdar Taniş and Ebubekir Deniz. The applicants included the father, brother and wives of the disappeared and they complained that they had suffered inhuman and degrading treatment as a result of their relatives' disappearance, and also that they had suffered severe mental distress and anguish as a result of the manner in which the authorities had responded to their enquiries. The Court concentrated on the responses of the authorities to the case rather than on the disappearance itself. While considering whether the relatives were victims or not, it also considered the special objective factors which it enumerated in the *Cakici* case. The applicants' anguish concerning their relatives' fate and the slow and inefficient investigation by the authorities led the Court to decide that the applicants had personally suffered inhuman and degrading treatment in violation of Article 3 of the Convention as a result of their relatives' disappearance.<sup>79</sup>

In the case of *McGlinchey and Others v. The United Kingdom*, the applicants complained about the treatment of Judith McGlinchey during her imprisonment. They defined the treatment as inhuman and degrading by claiming that 'she had been given insufficient and inadequate medical care and was thereby put through unnecessary suffering, including seven days of continued vomiting, an inability to eat or drink and acute fear and mental distress, including the belief that she was going to die.' The Court found a violation of Article 3 ECHR in respect of shortcomings in the treatment which Judith McGlinchey received while in prison, because of the failure of the prison authorities to take more effective steps to combat her withdrawal symptoms, and considering that her deteriorating condition must have contributed to her pain and distress.<sup>80</sup>

With regard to solitary confinement, the Court's general approach is that it is undesirable. However, whether it is inhuman or not depends on the special conditions of

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<sup>75</sup> *Timurtas v. Turkey*, (Application no. 23531/94) 13 June 2000, ECHR 2000-VI, para. 94; see also *Kurt v. Turkey*, 25 May 1998, Reports 1998-III para. 131.

<sup>76</sup> *Kurt v. Turkey*, 25 May 1998, Reports of Judgments and Decisions 1998-III, para. 134.

<sup>77</sup> *Taş v. Turkey*, (Application no. 24396/94), 14 Nov. 2000, para. 80.

<sup>78</sup> *Cakici v. Turkey*, n. 77 above, para 99.

<sup>79</sup> *Taniş and Others v. Turkey*, Application no. 65899/01 (2 Aug. 2005).

<sup>80</sup> *McGlinchey and Others v. UK*, Application no. 50390/99, 27 July 2003, ECHR-2003-V.

the case. The Court checks the balance between the security requirements and the basic individual rights. During their detention, Ensslin, Baader and Raspe were sometimes deprived of all contacts with each other and with the outside world. Later, the restrictions were partially expanded. After a kidnapping and murder event in Germany, again there was a suppression of all contacts with each other and with their lawyers. Radios and televisions were removed from their rooms. The Commission argued that an absolute sensory isolation, associated with complete social isolation, destroys human personality and therefore constitutes an inhuman treatment. However, it claimed that the applicants had been deprived of all contacts 'only on five occasions' since their admission to prison, therefore there had not been true solitary confinement in this case. The applications were declared inadmissible.<sup>81</sup> Similarly, in *Krocher and Moller v. Switzerland* the applicants were not allowed any contacts with each other or with the outside world, including no television and radio during the first month of their detention. The Commission accepted the existence of isolation for this period, but did not find a violation of Article 3 ECHR. Judges Tenekides, Melchior, Sampaio and Weitzel, however, criticised this approach. They claimed that if isolation is prohibited and it is applied for a certain period, then a gradual relaxation does not prevent the violation.<sup>82</sup>

Judge Fitzmaurice says that 'a prolonged wait for a sentence' may 'cause mental anguish and, if this was deliberately caused ... might constitute inhuman treatment'.<sup>83</sup> On the other hand, in *Ireland v. The United Kingdom*, he defined fear, anguish and inferiority as subjective feelings that are common and part of ordinary life and suggested that the nature of the treatment should be concentrated on, rather than the result.<sup>84</sup>

#### 4.3.2 *Mental and Psychological Suffering as Degrading Treatment or Punishment*

Humiliation and debasement are two fundamental concepts in the definition of degrading treatment. The treatment is accepted as degrading if there is an intention to humiliate<sup>85</sup> and if it grossly humiliates the victim before others or drives him to act against his will or conscience.<sup>86</sup> The Commission defines degrading treatment as an action that 'lowers [the victim] in rank, position, reputation or character, whether in his own eyes or in the eyes of other people',<sup>87</sup> with the condition of reaching a certain level of severity.

The threat of corporal punishment is a good way of explaining the level of severity for degrading treatment. The Court accepted that if the threat was sufficiently real and immediate, it might constitute at least inhuman treatment. After examining the possibility of humiliation and debasement of an applicant in his own eyes, the Court concluded that the victim must be an exceptionally sensitive person who might be deeply affected by a threat. As a disciplinary measure, corporal punishment has been used for a long time and there is even general approval for it. The Court also considered the absence of medical reports that showed the adverse psychological or other effects on two children and decided that there was no violation.<sup>88</sup>

<sup>81</sup> *Ensslin, Baader and Raspe v. FRG*, European Commission on Human Rights Decisions and Reports, (1979), vol. 14, at 109-110.

<sup>82</sup> *Krocher and Moller v. Switzerland*, European Commission on Human Rights Decisions and Reports, (1982), vol. 26, at 24.

<sup>83</sup> *Tyrer v. UK*, n. 32 above, Separate opinion of Judge Fitzmaurice, at 28-20, para. 9.

<sup>84</sup> *Ireland v. UK*, n. 11 above, Separate Opinion of Judge Fitzmaurice, at 126, para. 28.

<sup>85</sup> In *Abdulaziz, Cabales and Balkandali v. UK*, the Court stated that there was no intention to humiliate the victim. So the treatment could not be accepted as degrading. *Series A, No. 94 (1985)*, para. 91.

<sup>86</sup> The *Greek* case, n. 37 above, at 186.

<sup>87</sup> *East African Asians v. the U.K.*, Comm. Rep., 14 Dec. 1973, CM DH 77, para. 189.

<sup>88</sup> *Campbell & Cosans v. UK*, n. 68 above.

The Court has stated that the treatment of a person as an object by the authorities constitutes an assault on his dignity and physical integrity, which are under the protection of Article 3 ECHR.<sup>89</sup> The assessment depends on ‘the nature and context of the punishment itself and the manner and method of its execution’.<sup>90</sup> Publicity of the punishment is a relevant, but not necessary condition of degrading treatment. The victim may be humiliated in his own eyes, but not necessarily in the eyes of others.<sup>91</sup> Culture and traditions may be decisive here.

The humiliation and debasement must reach a particular level of severity to be accepted as degrading.<sup>92</sup> This depends on the circumstances of the case, ‘in particular, on the nature and context of the punishment itself and the manner and method of its execution’.<sup>93</sup> Judge Fitzmaurice argues that the degrading treatment should be:

seriously humiliating, lowering as to human dignity or disparaging, like having one’s head shaved, being tarred, feathered, smeared with filth, pelted with muck, paraded naked in front of strangers, forced to eat excreta, deface the portrait of one’s sovereign or head of State, or dress up in a way calculated to provoke ridicule or contempt.<sup>94</sup>

According to him, being deprived of sleep and nourishment for limited periods, being placed for a time in a room where a continuous noise is going on, or even being ‘hooded’ cannot be accepted as degrading.

In *Ireland v. The United Kingdom*, the Court found the five techniques also degrading because of their humiliating and debasing effects on the individuals. In addition to feeling fear, anguish, and inferiority, and the possibility of breaking the victim’s physical and moral resistance, they caused ‘at least intense physical and mental suffering to the persons subjected thereto and also led to acute psychiatric disturbances during the interrogation’.<sup>95</sup>

The Commission examined the sanitary deprivation in the *Hurtado* case. In addition to physical injuries, the police action had caused the applicant to defecate in his trousers. He had not been provided with clean clothes on the day of his arrest. The Commission came to the conclusion that this was humiliating and debasing for the applicant. It was therefore degrading within the meaning of Article 3 ECHR.<sup>96</sup>

The Commission examined a case about the search procedure in prison. The applicant complained about the stripping and close body searches, including the rectum, before and after visits and before being transferred to a new wing. The responding government defended the application on grounds of security reasons. At that time, there had been threats to prison guards by the Irish Republican Army, and some of them were even murdered. The search was carried out in the presence of a senior prison officer, with a metal detector and a mirror. No other prisoner was allowed to be present. If the prisoner was suspected of concealing something in his rectum, the prison doctor examined him. The Commission concluded that the authorities took the necessary measures to provide the minimum level of humiliation.<sup>97</sup>

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<sup>89</sup> *Tyrer v. UK*, n. 32 above, para. 33.

<sup>90</sup> *Ibid.*, para. 30.

<sup>91</sup> *Ibid.*, para. 32.

<sup>92</sup> *Campbell and Cosans v. UK*, n. 68 above, para. 28.

<sup>93</sup> *Tyrer v. UK*, n. 32 above, para. 30.

<sup>94</sup> *Ireland v. UK*, n. 11 above, Separate opinion of Judge Fitzmaurice, para. 27.

<sup>95</sup> *Ireland v. UK*, n. 11 above, para. 167.

<sup>96</sup> *Hurtado v. Switzerland*, Comm. Rep. 8 July 1993, para. 68, 28 Jan. 1994, Series A280-A.

<sup>97</sup> *Mc Feeley v. UK*, *Digest of Strasbourg Case Law*, Vol. 1, at 165-166.

## CONCLUSION

There is a great struggle for the complete eradication of torture and other forms of ill-treatment throughout the world. Significant progress has been achieved on the prevention of specific physical methods. However, the psychological forms of ill-treatment attract less attention. Torture or ill-treatment not only consist of electric shocks or beatings. The human rights system is based on the principle of respect for human dignity. The mental forms of ill-treatment aim to destroy the moral integrity of the victim. Although they do usually not leave any physical sign, the recovery from the mental suffering may take longer than the effects of physical methods. The jurisprudence of international human rights treaty law proves that the severity of mental or psychological anguish, stress or discomfort may amount to torture.

The common methods of causing mental or psychological distress mentioned by the treaty bodies are deprivation (of food, drink, sleep etc.), threats (of execution, rape etc.), mock execution, causing mental distress by the disappearance of a close relative, being stripped naked, being forcing to do something, solitary confinement, insults, humiliation and debasement. Whether they constitute torture, inhuman or degrading treatment or not depends on different factors, such as the nature, purpose, duration and severity of the treatment applied, the vulnerability of the victim, depending on his or her age, state of health etc., and the physical or mental effects on the victim.

The UN human rights treaty monitoring bodies have relatively less jurisprudence on mental and psychological suffering. This may be a result of the nature of the applications that mainly consist of complaints about physical torture.

The regional monitoring bodies are in a more advantageous position to develop standards and really cope with the problem of mental suffering. The approach of the Inter-American system is similar to that of the HRC. Both systems broadly classify the ill-treatment as torture or otherwise. This implicitly means that the emphasis is still on the physical forms. Therefore, their jurisprudence does not present enough information on the severity of different levels of mental and psychological suffering that extends to torture, inhuman or degrading treatment or punishment.

The European Court and Commission on Human Rights, on the other hand, has paid a great deal of attention to the mental anguish and stress caused by the ill-treatment. It has tried to develop some objective and subjective conditions in order to assess this anguish. The severity test is applied to both physical and psychological forms of ill-treatment. It is clear from the jurisprudence that bodily injury is not a precondition of the consequences of torture. Severe mental anguish may also constitute torture. Moreover, acts that include a certain amount of humiliation and debasement may be accepted as inhuman or degrading. The ECHR jurisprudence, and the Court's approach which can be abstracted from it, present improved standards and a good model for other systems.

It is not meaningful to attempt a clear categorisation of different methods of mental or psychological suffering as being either torture, inhuman or degrading treatment. Treaty based bodies examine different factors such as the severity, duration, and the victim's vulnerability. Each case has its own characteristics. However, it is clear that mental and psychological suffering is attracting more attention and jurisprudence is being developed independently from the physical forms of ill-treatment.