

### Prohibition of torture and inhuman and degrading treatment (Article 3)

**Article 3** simply states that “**No-one shall be subjected to torture or to inhuman and degrading treatment or punishment**”.

It is an **absolute** right. Unusually among the Convention provisions, there are **no permitted exceptions** or qualifications, nor have any been implied into it by the Court. That means neither the public interest nor rights of others nor the actions of the victim, however dangerous or criminal, can justify treatment prohibited by the article.

Article 3 has been invoked in many different situations, but the most common context where it arises is **treatment of persons deprived of their liberty**. As a result, police and others responsible for detainees need to take particular care to avoid breaches of the article. It is wise to make an early assessment of the risk of ill-treatment, especially for vulnerable categories.

**“Torture”** has been defined as **“deliberate inhuman treatment causing very serious and cruel suffering”**. The degree of suffering is the main difference between torture and inhuman treatment, but it also has to be deliberate, e.g. to extract information or to intimidate. NB The fact that the information might save innocent lives does not justify torture. Examples of acts found by the Court to amount to torture include **rape, threats of harm to family, being kept blindfolded and mock executions**. The suffering can be mental as well as physical.

**“Inhuman treatment”** must **reach a minimum level of severity, and “cause either actual bodily harm or intense mental suffering”**. It need not be deliberate nor inflicted for a purpose. In the typical case of injuries in custody, where a person is in good health before arrest or detention and is proved to be injured after it, the burden of proof is on the authorities to show force was not used, or was not excessive, or was justified by the victim’s own conduct. Undue restraint during arrest or of a psychiatric patient can also amount to inhuman treatment.

**“Degrading treatment”** involves **humiliation and debasement** as opposed to physical and mental suffering. As with inhuman treatment, it does not have to be deliberate. It is most often the **conditions of detention** that are degrading. The same conditions may also be inhuman if severe enough.

**Discrimination**, e.g. on ethnic grounds, when added to evidence of ill treatment, can make a finding of breach of Article 3 more likely.

**Deportation and extradition:** deporting or extraditing a person to another country where they face a real risk of treatment contrary to Article 3 can result in a breach by the deporting State. The conditions of return of a deportee are often the responsibility of police or immigration officers. Humane conditions should always be ensured and a person who is medically unfit to travel should not be forced to do so.

**Positive obligations under Article 3:** the obligation to **prevent** treatment contrary to Article 3 is mostly a function of government in making laws and regulations. But it can also arise at working level. Where vulnerable groups like children, persons of unsound mind or detainees are concerned, the State's obligation to prevent ill-treatment is strengthened.

**Procedural obligation to investigate:** as with the right to life (Article 2), where there is an arguable breach of Article 3, there is an obligation to carry out an independent, effective and prompt investigation.



The complete toolkit: <http://echr-toolkit.coe.int>

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE