

Compliance of the Current Conditions in Penitentiary Institutions of Georgia with the Article Three of the European Convention on Human Rights

According to the Article 17 of the Constitution of Georgia, a human's torture, inhumane, brutal or degrading treatment is impermissible [1, article 17]. Torture is an object of the European Convention focusing on the protection of human rights and freedom. According to the Article 3 of the Convention, no one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Absolute prohibition of torture, inhumane and degrading treatment clearly requires fighting against impunity wherever it is violated. Concern is expressed for the huge number of complaints giving the facts that states do not implement proper justice on individuals violating human rights.

According to one of the fundamental principles of the European Convention on Human Rights, as a rule, human rights are protected within a particular country; otherwise, it can be subject of consideration in international organizations on the international level. The number of appeals has been increased in European courts. It is conditioned by collapse of the Soviet Union in 1989. It is obvious that human rights are not properly protected in post-Soviet countries. In Georgia, jurisprudence of the European Court started from 1999. This made the base for citizens of Georgia to perform certain activities to reinstate their violated rights.

Many cases concerning violating the Article 3 of the Convention in prison conditions can be discussed on the example of Georgia. It is noteworthy that while making a verdict, the European Court takes into consideration both – positive and negative obligations of the Convention. Violation of negative obligations implies that state bodies should not use the facts of improper treatment considered by the article 3. Positive obligations imply taking active measures by the state in order to effectively protect human rights [2, 2]. Strasbourg Court does not prove any case of violating negative obligations in Georgia. Though, there are a lot of cases of unfulfilled positive obligations. According to the case-law of the European Court, a state takes full obligation to ensure a prisoner's healthcare and his/her medical treatment in case of necessity [3, 62]. The case "Pogosian against Georgia" can serve as a good example. According to the case materials, proper medical treatment was not provided to the convict by the prison administration. Inadequate medical treatment of a prisoner can lead to deterioration of his/her health or can even cause death. Concerning the mentioned case the Court stated: "Taking into consideration about 40 appeals against Georgia existing in Strasbourg Court related to inadequate medical treatment in prisons of Georgia, the Court stated that we are facing the systematic problem – inadequate medical treatment provided to prisoners" [4]. To sum up, the Court ascertained the fact of violation of the Article 3 of the Convention.

It is natural that an individual's imprisonment always causes torture. The measures taken for an individual's imprisonment can include such an element but it does not contradict the absolute essence of the Article 3. A prison officer violated the article on prohibition of torture, improper and degrading treatment if his/her actions go beyond the limits of the inevitable element of torture and degrading treatment. Prohibition of torture in its essence is an absolute right. According to the criteria of Strasbourg Court, an action is torture when the following issues are accumulated: 1. Special severity and torture within a certain period of time; 2. Deliberate action; 3. Purpose – obtaining information or confession; or punishing a victim. It is also necessary the minimum level of severity be qualified by the article 3.¹

At the beginning the European Court hesitated to ascertain that the issue of prison conditions was disputable according to the Article 3 of the Convention. Later, the development of the standards of human rights and the case-law had the impact on the European Court. As a result, it was ascertained that placing an individual in such conditions which violate the international standards may violate the statutes of the article 3 of the Convention.

The article 15 of the Imprisonment Code of Georgia considers the living conditions of the accused/convict. It is clearly stated that in the code that an individual has a right to live in normal conditions what will not degrade his/her dignity. In the case “Gorgiladze against Georgia” the rights and the living conditions considered by the imprisonment Code are violated. According to the appellant, 60-70 prisoners were placed in 48 square meter cell where natural source of light did not reach. The toilet was not isolated from the cell. In summer the temperature reached 35-40C⁰; none of the prisoners was allowed to use the right of going for a stroll. Such imprisonment conditions can cause the violation of the statutes of the Article 3 of the Convention. That is why the Court ascertained that such a situation violated the positive obligations of the Article 3. According to the Court, the fact that the plaintiff had to live, sleep and share facilities with other prisoners in the same cell was enough to cause torture. This exceeds the level of torture that is meant under being in prison; it also causes fear and pain that offends and humiliates a prisoner.

As the European Court stated, positive obligations are not result-oriented. They imply maximum interference from the state's side in the given situation. Any state should take into consideration the fact that the list of positive obligations is not complete and can be increased alongside the increasing standards of human rights [3, 87].

¹ Minimum level of severity as a term was established in the European Court practice long ago. To qualify an action as violation of the article 3 of the Convention, there should be high intensity of improper treatment. Every new case should be studied thoroughly to decide whether an action corresponds to the article 3 of the convention.

Thus, on the basis of the abovementioned consideration, we hope that the number of appeals against Georgia considering violation of not only imprisonment conditions but also other fundamental human rights will decrease in Strasbourg Court.

References

1. Constitution of Georgia. 1995.
2. Mowbray A. 2004. The Development of Positive Obligations under the ECHR by the European Court of Human Rights.
3. Bokhashvili B. 2009. Positive Obligations Considered by the articles 2 and 3 of the European convention on Human Rights – the Newest Standards Established by the Case-Law. *Modern Challenges of protection of Human Rights*. Editor Kekelia K. Tbilisi.
4. The Third General Comment of the European Committee against Torture.