

## **Pene e trattamenti inumani e degradanti nella giurisprudenza della Corte Europea dei Diritti dell'Uomo relativa all'articolo 3 CEDU**

### ***Abstract***

This study engages in the examination of the jurisprudence of the European Court of Human Rights (ECtHR) on the prohibition of «Inhuman or degrading treatment or punishment» as stated in article 3 of the European Convention on Human Rights (ECHR). The focus is mainly on the application of the principle to the European conditions of detention, which nowadays constitute the context where violations of article 3 are most likely to occur.

The work is structured in three main sections.

Firstly, the paper examines the preparatory works of article 3 and the early case law, where the ECtHR found that the alleged ill-treatments fell into the category of inhuman or degrading treatment or punishment within the meaning of article 3 (above all, the 1969 “Greek case and the 1978 *Ireland v. The United Kingdom* case). The Court conceived article 3 as a “living instrument”, a very broad provision that, by virtue of the vagueness of its formulation and without prejudice to the absolute nature of the right guaranteed, could evolve alongside the development of societies and embrace a wide range of ill-treatment. This first case-law shapes a three-level hierarchy in the forms of ill-treatment set out in article 3: torture, which is associated to particularly cruel and intense forms of violence exerted purposively; inhuman treatment or punishment, which is based on the three elements of lack of justification, intentionality and severe distress (physical or psychological); and degrading treatment or punishment, which derives from the serious degradation of the victim.

Secondly, the work of the 1987 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) is taken into consideration and the influence of its principles of interpretation on the caselaw of the ECtHR is examined with regards to the findings of inhuman or degrading treatment or punishment, that the CPT tends to make almost exclusively when assessing environmental custodial conditions. It appears that, despite the original disinclination of the Court to resort to non-judicial standards developed by the CPT in its preventive activity, the impact of the CPT has been strengthening together with the Court’s more positive attitude to find a breach of the prohibition of inhuman and degrading treatment or punishment in poor conditions of detention.

Finally, through an analysis of the recent case law, it is considered the ECtHR’s increased tendency to deal with prison conditions under article 3, especially in the forms of inhuman and degrading treatment originated, for instance, by allegations of lack of adequate sanitary facilities in cells. The trends of the Court clearly go towards a lowering of the threshold required for a violation of article 3, so that a wider spectrum of ill-treatments is more likely to be covered by article 3. The undefined limits of application of article 3, the stress it lays upon the subjective elements of ill-treatment, and its continuous “stretching out” even across policy fields which are deemed to be a State’s own sovereign matter, has led to some criticism around the absolute applicability of article 3.

