

Jurisprudential analysis of torture in Spain and in the European Human Rights system

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Abstract— Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (E.C.H.R.) proclaims that no one may be subjected to torture, punishment or degrading treatment. The legislative correlate in Spain is embodied in Article 15 of the Spanish Constitution, and there must be an overlapping interpretation of both precepts on the ideal plane.

While it is true that there are not many cases in which the European Court of Human Rights (E.C.t.H.R. (The Strasbourg Court)) has sanctioned Spain for its failure to investigate complaints of torture, it must be emphasized that the tendency to violate Article 3 of the Convention appears to be on the rise, being necessary to know possible factors that may be affecting it.

This proposal addresses the analysis of sentences that directly or indirectly reveal the violation of Article 3 of the European Convention. To carry out the analysis, sentences of the Strasbourg Court have been consulted from 2012 to 2016, being able to address any previous sentences to this period if it provided justified information necessary for the study.

After the review it becomes clear that there are two key groups of subjects that request a response to the Strasbourg Court on the understanding that they have been tortured or degradingly treated. These are: immigrants and terrorists. It can not be alien to this study that both the phenomenon of immigration and terrorism respond to patterns that have mutated in recent years, and that national regulations begin to be dysfunctional.

Keywords: E.C.H.R., E.C.t.H.R. sentences, Spanish Constitution, torture.