

**Legal Note on the Statute of Limitations relating to Claims for Compensation
as a result of Torture and Inhuman and Degrading Treatment or Punishment**

Copenhagen, 25 March 2022

Introduction

DIGNITY – Danish Institute Against Torture is an independent human rights and development organization whose purpose is to support survivors of torture and ensure that their rights under, among others, the UN’s Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and (hereafter the “UN Convention Against Torture”) and The European Convention on Human Rights (hereafter “ECHR”).

This note concerns the human rights issue of whether the rejection of claims for compensation as a result of torture and inhuman or degrading treatment (hereafter “torture etc.”) pursuant to the Danish statute of limitation rules may entail a violation of torture survivors’ rights under the ECHR and/or the UN Convention Against Torture.¹

The ECHR and UN Convention Against Torture prohibit torture etc. and gives individuals who have been subjected to torture etc. the right to redress and compensation.² If the responsible authorities do not acknowledge these rights on their own initiative and award torture survivors compensation, often, their only opportunity for redress is to raise a claim before national courts. In such cases, the counterparty (the authorities) can choose to present as a procedural counterargument that the torture survivors’ claims for compensation were presented too late and therefore should be considered inadmissible pursuant to national limitation periods, and therefore be rejected before consideration. In Denmark, this particular limitation issue is pertinent in the “Green Desert Case” which concerns the Danish state’s potential liability for torture etc. during a military operation in Basra in Iraq on 25 November 2005 during which a number of Iraqis were detained and subsequently handed over to Iraqi police and subjected to torture. The case is pending in the Danish Supreme Court and is expected to be decided in May 2022.³

Firstly, an account is given of the grave consequences of torture (Section 1), and then the human rights issue of statutes of limitations will be discussed in light of legal claims pursuant to the ECHR (Section 2) and the UN Convention Against Torture (Section 3). Finally, Danish case law (Section 4), DIGNITY’s position regarding the

¹ This note is not concerned with the criminal liability for torture, which cannot be limited under Section 3 of the Danish Penal Code.

² Article 3 and 13 of the European Convention on Human Rights and Articles 1, 14 and 16 of the UN’s Convention Against Torture.

³ See U.2013.3358 H (Annex 3), U.2016.3929 Ø (Annex 4) and case B-3348-14, Eastern High Court’s (Eastern High Court) ruling of 15 June 2018 (Annex 5). See also Juristen 2021/1. Two other cases relating to military operations in Iraq have been ruled on in the Danish Supreme Court (see below).

application of statutes of limitations in cases of torture etc. (Section 5), as well as the note's conclusion (Section 6) will be discussed.

1. Physical and psychological consequences of torture

Torture can have serious physical and psychological consequences, including PTSD (post-traumatic stress disorder), anxiety and depression. DIGNITY has described the typical consequences of a number of torture methods, including *falanga* (whipping the soles of the feet), suspension and isolation.⁴ Serious psychological consequences of torture, which in some cases may manifest themselves with delay, often do not diminish over time and can remain long-lasting.

These afflictions can make it difficult for torture survivors to cope with completely basic things, including keeping things together on a daily basis and looking after themselves and their families. We know that torture often leads to mistrust of public authorities, and that the victims often try to avoid any confrontation with the authorities. Therefore, their afflictions and injuries make it impossible or difficult for them to complain about abuse by the authorities, as stated by the UN's Committee Against Torture (see below). The European Court of Human Rights (ECtHR) and Eastern High Court have acknowledged that the physical afflictions of torture survivors can delay them in lodging their claims:

(...) the Court acknowledges that the psychological effects of ill-treatment inflicted by State agents may also undermine victims' capacity to complain about treatment inflicted on them and may thus constitute a significant impediment to the right to redress of victims of torture (...). Such factors may have the effect of rendering the victim incapable of taking the necessary steps to bring proceedings against the perpetrator without delay.⁵

(...) the physical afflictions suffered by apparently suffered by several of the applicants, may have a bearing on the fact that their claims for redress have not been presented within the standard deadlines set, which follows from the 1908-Act and the Statute of Limitations of 2007.⁶

2. The European Convention on Human Rights (ECHR)

2.1. Introduction

The ECHR is part of Danish law and was ratified by Denmark in 1953. Since its incorporation into Danish law in 1992, the Convention has been applicable on an equal footing with other Danish legislation.⁷ Ongoing compliance

⁴ See, for example, DIGNITY fact sheets, <https://www.dignity.dk/vores-publikationer/#health>

⁵ *Mocanu et al v. Romania*, case nos. 10865/09, 45886/07 and 32431/08, ruling of 17 September 2014, paragraph 274.

⁶ U.2016.3929 Ø (Annex 4).

⁷ Act no. 285 of 29 April 1992.

with the ECHR is ensured, among other things, by the courts directly applying ECHR and interpreting Danish legislation in accordance with the ECHR.⁸ If there is a conflict between ECHR and Danish legislation, ECHR as a general rule takes precedence over the contradictory general national legislation, as a result of the 1992 Incorporation Act.⁹

The ECHR does not include any specific provision on limitation, but the legal claims pursuant to Articles 3, 6 and 16 of the ECHR may limit the legitimacy of national limitation periods in torture cases. Thus, the ECtHR has stated that limitation periods cannot be applied in relation to criminal proceedings of violations of the prohibition in Article 3.¹⁰ According to the ECtHR, national limitation periods outside criminal justice, serve legitimate purposes, including in particular legal certainty and finality, and are therefore not *per se* contrary to the ECHR.¹¹ However, the concrete application of the rules may entail a violation of the Convention, and this depends on, among other things, the concrete evaluation of proportionality. Thus, application of national statutes of limitations must be disregarded, in specific cases (see below).

The three provisions (Articles 3, 6 and 13) are summarised and broadly formulated. It therefore requires a legal interpretation to establish the precise content of the rights. The ECtHR's interpretation of the ECHR is based on the rules in international law on the interpretation of treaties¹² and places emphasis on an objective-oriented interpretation that must ensure a real and effective legal protection of the individual's rights.¹³ According to the ECtHR, the ECHR must ensure rights that are practical and effective - and not just theoretical.¹⁴ In its interpretation, the ECtHR incorporates other human rights conventions, including the UN Convention Against Torture in order to ensure consistency with other legal norms as far as possible.¹⁵

National courts are an important guarantor of an effective protection of torture survivors' rights under the ECHR.¹⁶ The ECtHR has often criticised the national courts for inadequate evaluation of concrete cases, for example, in the case of *Okkali v. Turkey* in which Turkish police officers subjected a 12-year-old boy to serious abuse during interrogation but were only punished with a fine. The ECtHR criticised the Turkish courts' evaluation of Okkali's complaint and pointed out that the fundamental prohibition of torture etc. places great demands on the national courts.¹⁷

⁸ Rytter, *Individets Grundlæggende Rettigheder*, (The Basic Rights of the Individual) (2021), page 53.

⁹ *Ibid*, page 54.

¹⁰ *Okkali v. Turkey*, case no. 52067/99, ruling of 17 October 2006, paragraph 76, and *Abdiülsamet Yaman v. Turkey*, case no. 32446/96, ruling of 2 February 2005, para. 55.

¹¹ *Stubbings et al v. Great Britain*, case 36-37/1995/542-543/628, ruling of 22 October 1996, paragraph 51; *Kamenova v. Bulgaria*, case no. 62784/09, ruling of 12 July 2018, paragraph 48.

¹² The Vienna Convention on the Law of Treaties, Article 31(1).

¹³ Rytter, *Individets Grundlæggende Rettigheder*, (The Basic Rights of the Individual) (2021), page 82.

¹⁴ *Airey v. Ireland*, case no. 6289/73, ruling of 9 October 1979 paragraph 24: "The Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective".

¹⁵ *Selmouni v. France*, case no. 25803/94, ruling of 28 July 1999, paragraph 97.

¹⁶ ECHR, Articles 1 and 3.

¹⁷ *Okkali v. Turkey*, case no. 52067/99, ruling of 17 October 2006, paragraph 66.

2.2. Statutes of limitations and the prohibition of torture etc.

Torture is one of the most serious human rights' violations. The prohibition of torture is regarded as an expression of customary law and belongs to the short list of norms in international law which have achieved the status of a peremptory norm in international law – so-called *jus cogens*, and which, furthermore, is regarded as a so-called *erga omnes* obligation for all states that have a legal interest in ensuring that the prohibition is complied with.

The prohibition of torture etc. is regarded as being one of the ECHR's most fundamental rights and belongs to the core of human rights protection, which in itself is important for the interpretation of legal claims. States have an obligation to refrain from using torture etc. under any circumstances, and additionally have – on the basis of ensuring the effective protection of rights – a number of positive or due diligence obligations to prevent torture etc.¹⁸

The positive obligations of states in torture cases can set limits for the application of national statutes of limitations because rejection of a claim on the basis of statutes of limitations may mean that an allegation of torture will not be investigated, and that the state's potential liability for torture will not be established. Thus, court cases concerning torture may, – by establishing liability and acknowledging the survivors' rights – help preventing torture on longer terms.¹⁹

An example is the case of *Mocanu et al v. Romania*, which concerns an internal Romanian investigation of abuse during a demonstration which took place in Bucharest in June 1990.²⁰ Marin Stoika was subjected to torture etc., and subsequently in 2001 (i.e., 11 years after the events), he complained to the courts about the ineffectiveness of the investigation. However, his complaint was rejected on the grounds of limitation periods. The Grand Chamber of the ECtHR awarded the complainant compensation as a result of violation of Article 3 of the ECHR (and Article 6, see below) referring, among other things, to the national courts' tendency to disregard statutes of limitations in torture cases.²¹

2.3. Statutes of limitations and the right to effective legal remedies

¹⁸ Rytter, *Individets Grundlæggende Rettigheder*, (The Basic Rights of the Individual) (2021), page 151.

¹⁹ Carver and Handley, *Does Torture Prevention Work?* (2016). UN Torture Committee's, General Comment No. 3, paragraph 6: "The Committee emphasizes that the provision of reparation has an inherent preventive and deterrent effect in relation to future violations".

²⁰ *Mocanu et al v. Romania*, case nos. 10865/02, 45886/07 and 32431/08, ruling of 17 September 2014.

²¹ *Ibid*, paragraph 255: "Given the difficult situation of victims, both in terms of their vulnerability and the obstacles to obtaining access to evidence, there was an increased tendency on the part of national courts to take these realities into account and to block limitation periods when agreeing to rule on complaints lodged many years after the events complained of by persons who had been tortured". See also the case *Wisab Binti Silan et al v. Holland*, 354119/HA ZA 09-4171, ruling of 14 September 2011, which concerned the executions carried out by Dutch soldiers in Indonesia back in 1947. In 2008, some of the soldiers' widows raised a claim against the authorities, but their claim was rejected as time barred. The District Court in The Hague concluded that the authorities' plea of limitation deadlines being applicable was unreasonable and unacceptable. See also Eric Svanidze, *Expert Opinion on Definition of Torture and Ill-Treatment and Statute of Limitations*, December 2018, on the stance of countries on the use of limitation deadlines in torture cases.

Torture survivors and others, whose rights under the ECHR have been violated, must have access to effective remedies, cf. Article 13 of the ECHR.²² The legal interpretation of this right, and thus which remedies should be available in a national legal system, depend among other things, on the substance and circumstances of the case. The ECtHR's interpretation of Article 13 of the ECHR reflects the general legal developments in relation to the right to "effective remedy".²³ In a concrete case, the ECtHR will evaluate whether there are any legal remedies and whether they are effective.²⁴ To a certain extent, this evaluation can overlap with Article 6 of the ECHR (see below). At the very least, the requirement means that there must be access to lodge a civil court case in the courts, obtain a decision on a legal claim and thus have it established whether rights under the Convention have been violated.²⁵

The special status of Article 3 of the ECHR is significant to the interpretation of Article 13 of the ECHR in torture cases.²⁶ Among other things, it is related to the fact that, in civil cases concerning the authorities' violation of the prohibition of torture etc., it does not involve a case between two equal parties, but between the state and one or more citizens. Often, the authorities are in possession of some of the crucial evidence in torture cases, and if they do not institute an investigation or examine the facts, a civil lawsuit can be the only legal resource available to the victims. Thus, in ECHR Article 3 cases, torture survivors must have access to raising a civil lawsuit for damages, obtain the court's position on their claim and obtain compensation for economic and non-economic damages if a ruling of violation is decided.²⁷

The ECtHR has ruled violation of Article 13 in a number of cases because no other effective legal remedy was available.²⁸ In particular, in relation to statutes of limitations in Article 3 cases, the case of *Nikitin et al v. Estonia*²⁹ can be mentioned, in which ECtHR concluded that there had been a violation of Article 3 of the ECHR as a result

²² EHRC Art. 13: "Anyone whose rights and freedoms under this Convention have been violated must have access to effective remedies on the part of national authorities for these violations, irrespective of whether the violation was committed by parties acting in an official capacity".

²³ United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (2005), United Nations Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (2005), and Council of Europe, Guidelines of the Committee of Ministers of the Council of Europe on Eradicating Impunity for Serious Human Rights Violations (2011). See also Shelton, *the right to reparations for acts of torture: what right, what remedies*, Torture Journal, Volume 17, issue no. 2, 2007: "The ancient adage *ubi jus, ibi remedium* (where there is a right there is a remedy) is reflected in the importance given in international human rights law to the existence of effective remedies, which are seen as necessary in order to ensure the full enjoyment of other rights".

²⁴ *Aksoy v. Turkey*, case no. 21987/93, ruling of 18 December 1996, paragraph 95: "The remedy required by Article 13 must be "effective" in practice as well as in law".

²⁵ Lorentzen et al, *Bind II*, page 947.

²⁶ *Abdulsamet Yaman v. Turkey*, case no. 32446/96, ruling of 02 February 2005 2006, paragraph 53: "(...) the nature of the right safeguarded under Article 3 has implications for Article 13". More generally, see the ECtHR's Guide on Article 13 of the European Convention on Human Rights (August 2021), page 29, available at https://www.echr.coe.int/Documents/Guide_Art_13_ENG.pdf

²⁷ *Z et al v. Great Britain*, case no. 29392/95, ruling of 10th May 2001; *Aksoy v. Turkey*, case no. 21987/93, ruling of 18 December 1996; *T.P. and K.M. v. Great Britain*, case no. 28945/95, ruling of 10th May 2001; *Abdulsamet Yaman v. Turkey*, case no. 32446/96, ruling of 2nd February 2005. See also Kjølbros, (2020), page 1269 and Lorentzen, et al (2012), page 952.

²⁸ ECtHR Guide on Article 13 of the European Convention on Human Rights (August 2021); Kjølbros, (2020), page 1269; Lorentzen, et al., (2012), page 947.

²⁹ *Nikitin, et al v. Estonia*, case no. 23226/16, ruling of 29th January 2019.

of poor prison conditions in the country and of Article 13 as a result of the national court's acceptance of national statutes of limitations.

2.4. Limitation and access to the courts

Article 6 of the ECHR³⁰ concerns access to the courts, the right to a fair trial and different procedural legal guarantees, with which the state is obliged to comply in their national legal systems. One of the legal guarantees in Article 6 concerns the right to have a case tried in the courts ("right to a court"). The right to judicial review in the courts encompasses, among other, the right to raise a case ("access to courts").³¹ Realistically speaking, in practice, everyone should have the opportunity to exercise this right and have their legal claim tried.

The right to judicial review is not absolute, but limitations under Article 6 must meet certain conditions, including a proportionality requirement, and limitations must not "restrict or reduce a person's access in such a way or to such an extent that the very essence of the right is impaired".³² Generally speaking, the ECtHR has been critical of limitations in cases concerning statutes of limitations including, for example, if account is not taken of the special nature of the case, or if a civil lawsuit will be the only option to obtain redress.³³ If the use of statutes of limitations is to be an expression of excessive formalism, it may also entail violation of Article 6.³⁴

Limitation periods, which can limit access to the courts, must therefore meet the proportionality requirement cf. *Stubbings et al v. Great Britain*.³⁵ In this evaluation, a number of factors are considered, including the nature of the case, the reasonableness of using limitation periods (for example, in light of the serious consequences of torture), the length of the period, considerations that substantiate the period, and whether the civil action is the torture survivor's only legal remedy because a legal pursuit or other course of action in the case is not possible. The states have room for an element of discretion, however, it must be expected that it is limited in Article 3 cases due to the

³⁰ EHRC Article 6, sub-section 1, point 1: "Everyone should, when a decision is made either in a dispute about his civic rights and obligations or regarding a claim made against him for a crime, be entitled to a fair and public trial within a reasonable period of time before a legally created independent and impartial court".

³¹ Kjølbro, (2020), page 559.

³² Lorentsen et al, *Bind I*, page 376.

³³ *Stagno v. Belgium*, case no. 1062/07, ruling of 7 July 2009, paragraphs 28-35. Regarding other case law, see ECtHR's Guide on Article 6 of the European Convention on Human Rights (August 2021) and Kjølbro, (2020), page 577 ff., e.g., *Stubbings et al v. Great Britain*, case 36-37/1995/542-543/628, ruling of 22nd October 1996, *Phinikaridou v. Cyprus*, case no. 23890/02, ruling of 20th December 2007; *Shofman v. Russia*, case no. 74826/01, ruling of 24th November 2005; *Ashindane v. Great Britain*, case no. 8225/78, ruling of 1985; *Bellet c. France*, case no. 23805/94, ruling of 4th December 1995; *Mocanu et al v. Romania*, case no. 10865/09, 45886/07 and 32431/08, 17. December 2014; *Lebergère v. France*, case 16846/02, ruling of 26th September 2006. See also *Yagtzilar et al v. Greece*, case no. 41727/98, 6. December 2001, paragraph 27: "(...) the fact that the applicants were told that their action was statute-barred at such a late stage of the proceedings, which they had been conducting in good faith and with sufficient diligence, deprived them once and for all of any possibility of asserting their right to compensation for their olive grove, which was first occupied and later expropriated by the Greek State". See other cases in paternity cases *Mizzi v. Malta*, case no. 26111/02, ruling of 12th January 2006, *Pavlik v. Slovakia*, case no. 74827/01, ruling of 30th January 2007, *Tavli v. Turkey* case no. 11449/02, ruling of 9th November 2006.

³⁴ *Lebergère v. France*, case 16846/02, ruling of 26th September 2006, paragraph 18-25.

³⁵ *Stubbings et al v. Great Britain*, case 36-37/1995/542-543/628, ruling of 22nd October 1996, paragraphs 50-51. See also Kjølbro, (2020), page 578.

seriousness of the case. Therefore, it does not require much before application of national statutes of limitation rules conflict with Article 6 of the ECHR, cf. *Mocanu et al v. Romania*.³⁶

3. The UN Convention Against Torture

Denmark's ratification of the UN Convention Against Torture in 1987³⁷ means that Danish authorities, under international law, are obligated to comply with the Convention, and that Danish legislation, as far as possible, must be interpreted in such a way that there is no inconsistency between Danish legislation and Denmark's international obligations under the Convention.³⁸

The UN Convention Against Torture does not contain a specific provision relating to statutes of limitation rules, but Articles 2 and 14³⁹, which are closely linked, set the limits for the application of national statutes of limitation rules, in torture cases. States have an obligation to avert and prevent torture and thus an obligation to not place any obstacles in the way of claims lodged by torture survivors being able to have their cases heard by the courts.⁴⁰

Article 14 of the UN Convention Against Torture requires that torture survivors obtain redress and are compensated if their claim is upheld. The UN Committee Against Torture, which monitors implementation of the UN Convention Against Torture, issued the official interpretation of Article 14 in 2012, in the so-called "General Comment No. 3 (2012)", the purpose of which is to aid interpretation of the scope of the provision:

(...) explains and clarifies to States parties the content and scope of the obligations under article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.⁴¹

The UN Committee Against Torture has stated that Article 14 contains both a substantive and a procedural obligation. The substantive obligation entails states have an obligation to ensure that victims of torture etc. obtain, among others, full and effective redress and compensation. The procedural obligation requires states to pass legislation and ensure effective complaint mechanisms and investigative institutions are in place that are able to enforce the right to and award compensation to torture victims.⁴²

³⁶ *Mocanu et al v. Romania*, case nos. 10865/09, 45886/07 and 32431/08, ruling of 17 September 2014.

³⁷ *Folketingstidende* 1986-87, Appendix A, column 4039.

³⁸ See, inter alia U.2016.3929 Ø (Annex 4).

³⁹ Article 14: "Every participant state must ensure, in its legal system, that a victim of torture obtains redress and has an enforceable right to reasonable and adequate compensation which includes having the resources to as full a rehabilitation as possible. In the event of a victim dying due to an act of torture, anyone who is dependent on him must be entitled to compensation.

⁴⁰ UN's Convention Against Torture, Article 2.

⁴¹ Committee against Torture, General Comment No. 3, UN doc. CAT/C/GC/3, paragraph 1.

⁴² *Ibid*, paragraph 5.

The UN Committee Against Torture has stated that due to the long-term consequences of torture, statutes of limitation rules should not be used in torture cases as they can deny victims their rights and thus constitute an infringement of Article 14:

On account of the continuous nature of the effects of torture, statutes of limitations should not be applicable as these deprive victims of the redress, compensation, and rehabilitation due to them. For many victims, passage of time does not attenuate the harm and in some cases the harm may increase as a result of post-traumatic stress that requires medical, psychological and social support, which is often inaccessible to those who have not received redress.⁴³

Therefore, the Committee has stated in recommendations to a number of member states that statutes of limitations should not be used.⁴⁴ The Committee reached the same conclusion in the case of *A v. Bosnia v. Herzegovina*, which concerned a woman who had been subjected to rape and other sexual assaults in 1993 during the war in Bosnia. She suffered very serious consequences and the Committee stated that these attacks should be regarded as torture.⁴⁵ The crucial question for the Committee was whether national statutes of limitations could be applied with the consequence that her claim for compensation was time-barred. An important factor in this case was the ongoing character of the consequences of the torture. The Committee concluded that Bosnia-Herzegovina had violated Article 14 by rejecting her claim:

Given the severity of the act of torture and the complainant's right to obtain her compensation and given the lack of any possibility to enforce her right as full as possible, the Committee concludes that the State party has breached its obligations under article 14 of the Convention.⁴⁶

The Committee Against Torture has directly recommended to Denmark to ensure that civil torture cases in Denmark are not time-barred,⁴⁷ and as a result of this recommendation the Committee in 2018 requested information on measures that had been taken in this regard.⁴⁸ In its response, Denmark referred generally to the fact that the Convention can be used and applied in Danish courts, and specifically in relation to statutes of limitations when 18 Iraqis were awarded compensation in the Green Desert case.⁴⁹ As long as Denmark wishes

⁴³ Ibid, paragraph 40.

⁴⁴ Nowak et al, *The United Nations Convention Against Torture and Its Optional Protocol*, page 396 (Annex 1). See herein, footnote 139 with reference to various concluding observations.

⁴⁵ *A v. Bosnia-Herzegovina*, CAT/C/67/D/854/2017, 11th September 2019, paragraph 7.3.

⁴⁶ Ibid, paragraph 7.5.

⁴⁷ Committee against Torture, Concluding observations on the combined sixth and seventh periodic reports of Denmark, Article 16 and 17, 4th February 2016, paragraph 17.

⁴⁸ Committee Against Torture, List of issues prior to submission of the eighth periodic report of Denmark, UN doc. CAT/C/DNK/Q/6-7, 10th January 2010, paragraph 29: "(...) In the light of the previous concluding observations (paras. 16–17) and paragraph 46 of the Committee's general comment No. 3 (2012) on the implementation of article 14, please provide information on the measures taken to ensure that civil proceedings relating to torture and ill-treatment are not subject to statutes of limitations (...)"

⁴⁹ State Party Report under LoIPR, UN Doc. CAT/C/DNK/8, 9th December 2019, paragraph 274-277: "In cases where the claim for damages or compensation in relation to torture is dealt with during the criminal proceedings, and the accused is found guilty, the perpetrator

to implement its international obligations under the UN Convention Against Torture, the response can be interpreted in such a way that Denmark is of the view that no further measures are required because Danish courts interpret Danish limitation rules in accordance with the UN Convention Against Torture.

The UN Convention on Civil and Political Rights also ensures the right to effective legal remedies, cf. Article 2(3), and to judicial remedy, cf. Article 14 and Article 26.⁵⁰

4. Danish case law

The Danish limitation Act⁵¹ contains a general rule on a 3-year limitation period, cf. Section 3, sub-section 1 of the Danish Limitation Act. The Danish Limitation Act does not take a specific stance on the limitation of civil torture cases concerning economic compensation for violations of the ECHR and the matter was not discussed in connection with the pre-legislative work.⁵² The Danish Criminal Law Council (*Straffelovrådet*) however, commented in its Resolution on Certain Questions relating to Limitation Law (*Betænkning om visse Forældelsesretlige Spørgsmål*), that the more serious a criminal offence is, the greater the need will be to pursue it, even though a long time has passed since it was committed, and the weaker the considerations that can speak against the pursuit will normally be.⁵³

Danish courts have accepted that Danish statutes of limitations must be seen in conjunction with Denmark's international obligations, including Articles 3, 6 and 13 of the ECHR and the UN Convention Against Torture. In a concrete case it can lead to different conclusions. Firstly, if a concrete application of the Danish rules entails a violation of the Convention, they must be disregarded to the benefit of the ECHR, cf. U.2017.3272 Ø concerning a municipality's liability to pay compensation for sexual assaults on three girls placed in their care:

(..) having regard to the age of the claimants in conjunction with the nature of the violations to which they were subjected throughout their childhood, and which have undoubtedly affected them to a significant degree, the High Court finds that the Danish limitation Act should not be applied in the present case as this may be regarded as a violation of Article 13, cf. Article 3 of the ECHR. Further, it is stressed that a civil lawsuit against K Municipality is the claimants' only chance to have the municipality's liability established and thus their only effective legal remedy in accordance with Article 13 of the ECHR, and also that the case

can be ordered to pay damages or compensation to the victim of torture even if the general three-year limitation period has expired. The victim's claim can also be made under separate civil proceedings if they are commenced within one year after the final decision of the criminal case (in which the accused is found guilty). In June 2018, the High Court of Eastern Denmark ordered the Danish Ministry of Defence to pay compensation to 18 Iraqi claimants for Danish complicity in the ill-treatment they had been exposed to by Iraqi police in 2004. The Danish Ministry of Defence has appealed the decision to the Danish Supreme Court and the Court's decision is expected in 2021".

⁵⁰ Manfred Nowak, U.N. Covenant on Civil and Political Rights, CCPR Commentary, 2nd revised edition, 2005, page 311, Section 2.

⁵¹ LBK 2015-11-09 no. 1238 on the limitation of claims. See Eyben, B. V., *Forældelse efter forældelsesloven af 2007* (2019).

⁵² See Legal comments and resolution no. 1460/2005.

⁵³ Betænkning om visse Forældelsesretlige Spørgsmål no. 1441, 2004, page 48.

concerns a violation of Article 3, which is one of the Convention's fundamental rights.⁵⁴ (our translation from Danish to English)

Secondly, a violation of the Convention can be avoided by interpreting the Danish rules in accordance with the international obligations, cf. U.2016.3929 Ø, in which the Eastern High Court (Eastern High Court) rejected the use of limitation periods:

The claimants have – irrespective of whether they were fleeing or still residing in Iraq – thus remained in a particular environment where their real chances of obtaining legal assistance or any other means of lodging any claim may have been severely limited. It is noted, in this regard, that according to the written information in the case, it involves relatively resource-poor persons who, as stated, have presumably been subjected to torture, and that they, according to the information, have been of the belief that their detention was by, or in any case, assisted by Danish military forces. In light of this and of the security situation in Iraq for a lengthy period even after their release, it does not seem unreasonable that – under these exceptional circumstances – up until the proceedings commenced, they have avoided lodging any claim for redress from the authorities they believed were partly responsible for their detention and torture. We find that the aforementioned exceptional circumstances have constituted such hindrances encompassed by Section 14 of the Danish Limitation Act or that there are grounds for regarding the limitation deadline as being suspended as a result of the principle in Section 3, sub-section 2 of the Danish Limitation Act.⁵⁵ (our translation from Danish to English)

A particular factor in the case is that it concerned torture resulting in severe injury to persons, cf. the forensic reports presented in the case, and a potential Danish co-liability for torture related to the fact that the Danish military in Basra in Iraq presumably had detained the claimants and handed them over to Iraqi police, cf. the Eastern High Court's ruling of 18 June 2018, (unpublished, Annex 5). The Danish Supreme Court has, in the same case and with the same reference to the serious nature of the case, ascertained that the use of procedural hindrances in the form of a requirement for the putting up of security for court costs would entail a violation of Article 6 of the ECHR:

The exceptional nature and circumstances of the case – the Danish state's potential liability for the exercising of military power abroad and the presumably resource-poor torture victims abroad in conjunction with the state's limited interest in the providing of security for court costs – means, in the Danish Supreme Court's view, that it would be unreasonable to accommodate the Danish Ministry of Defence's request for security.⁵⁶

⁵⁴ U.2017.3272 Ø. See also Rytter, *Individets Grundlæggende Rettigheder*, (in Danish, English translation of Danish title: The Basic Rights of the Individual) (2021), page 53. The case led to a change in the law and the addition of Section 3, sub-section 5 to the Danish Statute of Limitations, cf. law no. 140 of 28th February 2018.

⁵⁵ U.2016.3929 Ø (Annex 4).

⁵⁶ U.2013.3358 H (Annex 3).

Thirdly, the exceptional circumstances in the case may mean that there is a risk of the international obligations being violated. Thus, in two cases, the Danish Supreme Court has concluded that the descriptions of the alleged attacks appeared completely unreliable “and that the Human Rights Convention and the practice referred to was insignificant to the question of limitation.”⁵⁷

5. DIGNITY’s position

As torture is an extremely serious violation of human rights there is a need to prosecute anyone who has contributed to torture and to ensure effective redress for the survivors of torture. DIGNITY’s standpoint is that civil cases of torture (as with criminal torture cases) should not be time-barred and that national procedural rules, including statutes of limitation rules, should not hinder torture survivors in gaining access to the courts and having their case heard.

In the Green Desert case and in connection with the Danish Supreme Court’s assessment of the procedural questions concerning the provision of security, in 2013 DIGNITY, as co-intervenor in the case, argued that requiring the applicants to put up security of DKK 40,000 would be in contravention of Articles 6 and 13 of the ECHR and Article 14 of the UN Convention Against Torture.⁵⁸ DIGNITY referred to the torture survivors’ rights under the ECHR and the UN Convention Against Torture, and that the civil lawsuit was the claimants’ only effective legal resource as there would be no criminal prosecution of liability in the case. Our argument was further reinforced in 2015 with the closure of the Iraq Commission, which had a mandate to investigate Danish co-liability for torture in Iraq.

DIGNITY has criticized Denmark’s failure to take the necessary judicial measures to ensure that civil torture cases cannot be time-barred, to the UN’s Committee Against Torture.⁵⁹ DIGNITY has also put forward these arguments in other contexts.⁶⁰

6. Conclusion

As discussed above, there are case law and compelling legal arguments to support the belief that torture cases should not be time-barred as torture survivors have the right to have their claims heard before national courts, cf. Article 6 of the ECHR and Article 14 of the Convention Against Torture and to effective remedies without

⁵⁷ The Danish Supreme Court’s ruling, handed down on 10th February 2022 and U.2021.3257 H.

⁵⁸ U.2013.3358 H (Annex 3). DIGNITY’s pleading of 16 August 2013 (Annex 2). Acknowledgement of DIGNITY’s request for co-intervention, see U.2013.3050 H.

⁵⁹ DIGNITY, et al. Alternative report to the Committee Against Torture, November 2015, page 51 ff. and DIGNITY et al’s submission to the Committee Against Torture in relation to LoIPR 2018.

⁶⁰ DIGNITY’s comments to the Minister of Defence’s response in the consultation question regarding the putting up of security and limitation, 4th March 2013. See also Charlotte Aagaard: Kan en tortursag være forældet? (Can a torture case be time-barred?) (Information 16th June 2016).

limitation of time, cf. ECHR Article 13 and Article 14 of the UN Convention Against Torture. Further, states are obligated to prevent torture, cf. ECHR, Article 3 and the Convention Against Torture, Article 2, including by assisting and not putting up any hindrances in the way of the courts hearing torture survivors' claims.

Case law shows that in concrete cases concerning torture etc., it does not require much before the application of national statutes of limitations gets disregarded or interpreted in accordance with the aforementioned rights to the benefit of the victims, cf. the UN's Committee Against Torture in *A v. Bosnia-Herzegovina* and the ECtHR in *Mocanu et al v. Romania* and *Nikitin et al v. Estonia*.

Annexes

- Annex 1 Nowak, M., Birk, M., Monina, G., (2020). *The United Nations Convention Against Torture and Its Optional Protocol - A Commentary*, extract, pages 370-416.
- Annex 2 DIGNITY's written submission of 16th August 2013 to the Danish Supreme Court.
- Annex 3 U.2013.3358 H.
- Annex 4 U.2016.3929 Ø.
- Annex 5 Case B-3348-14, The Eastern High Court's ruling of 15th June 2018, extract, pages 761-818.

1: Court register

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U.2014.3045 Ø.

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U.2016.3929 Ø.

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