

Article 3 of European Convention on Human Rights and Serious Systematic Discrimination —Inhuman or Degrading Treatments in Private Relations

Vivianne Yen-ching Weng

Department of Political Science, National Chengchi University
No. 64, Sec. 2, Zhinan Rd., Taipei 11605, Taiwan
E-mail: vycweng@nccu.edu.tw

Abstract

Article 3 of the European Convention on Human Rights (ECHR) is an absolute protection. Nevertheless, while assessing whether an alleged fact reaches “a minimum level of severity” to invoke Article 3, there must be a proportionality review. Through its dynamic interpretation, the European Court of Human Rights (ECtHR) steadily extends the protection of Article 3 beyond the classical definition of torture, reaching the level of indirect horizontal effect through the development of positive obligations.

Due to the absence of a clause condemning massive and systematic discriminations in the ECHR, the ECtHR has replied to observations from international and European institutions, and even credible NGOs, to apply Article 3 in cases involving serious human rights violations. The Court is concerned about State accountability in disputed enforced disappearance cases. With Article 3, it questions the failures of State protection system vis-à-vis particularly vulnerable individuals and therefore urges States to eliminate systematic discrimination both in private and public spheres.

The failure of mechanisms protecting fundamental human dignity results in serious systematic discrimination. This might have been the core concern of the ECtHR’s application of Article 3 in *ratione materiae* traditionally within the ambit of Article 8. However, concerning the question of which way would best illustrate the Court’s determi-

nation to condemn such discrimination, Article 3 alone, or Article 14 read in conjunction with Article 3, it seems the Court still needs to clarify its approach.

Key Words: inhuman or degrading treatments or punishments, European Convention on Human Rights, horizontal effect, prohibition of discrimination