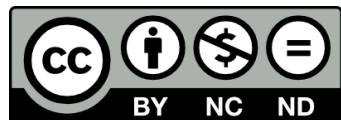




HISTORY OF THE USE AND PROHIBITION OF TORTURE

This work is licensed
under a



**ARTIP: Awareness Raising and Training Measures
for the Istanbul Protocol in Europe**

www.istanbulprotocol.info



Education and Culture DG

Lifelong Learning Programme

Overview

1. Pre-Inquisition Period
2. Inquisition Period
3. Age of Enlightenment
4. 19th to the 21st Century

History of the Use and Prohibition of Torture

1. Pre-Inquisition Period

1. Pre-Inquisition Period

- First records of torture in Ancient Egypt
- In Classical Greece only slaves were tortured
 - A slave's testimony was **only** admissible if extracted by torture.
 - A slave was no subject to law, so any harm done to the slaves was legally affecting their masters.
 - From a procedural point of view, slaves were witnesses (interrogated about crimes their masters were accused of).

1. Pre-Inquisition Period

In Ancient Rome:

- free citizens could be tortured if they were suspected of having committed a serious crime (denying the authority of the king or his representatives).
- lower classes & slaves could also be tortured in other cases.
- torture was seen as a means to preserve the power of the rulers.
- torture was also used to force the early Christians to recall their belief.

History of the Use and Prohibition of Torture

2. Inquisition Period

2. Inquisition Period

- Middle Ages: torture became a formal part of the European justice systems through the adoption of Roman law
- **Ordeals** were common to establish guilt:
 - If the suspect was innocent, God would save him from injuries.
 - Difference: torture was not used to proof the guilt of a suspect but to extract a confession (not God decided the case but man).
 - In 1215, the Pope prohibited use of ordeals by members of the church.

2. Inquisition Period

- In 1252, torture was introduced for the express purpose of obtaining a **confession**.
- Before actually torturing, the accused was first:
 - threatened with torture.
 - presented with torture instruments in a fear-provoking & dark torture chamber.
 - confronted with the executioner (clothed entirely in black with head and face covered).
 - stripped to his/her underwear with hands bound

➡ *Aim: a feeling of complete powerlessness during the interrogation*

2. Inquisition Period

This use of torture was connected to a judicial system which regarded a **confession** as “**the queen of proofs**”.

- For a conviction, they needed concrete **evidence**, congruent **testimonies** of 2 witnesses, or the **confession** of the accused
- The judicial precondition for applying torture was a **degree of circumstantial evidence** which would today be sufficient to convict a suspect
- English common law system: less based on confessions, so nearly no room for torture

2. Inquisition Period

Medieval Inquisitions: Torture became a central component of the judicial system from the 13th up to the 18th century

- Applied against heretic movements
- 1484 the Pope explicitly authorised the use of torture in cases against witches
- If women withstood torture without confessing, this could be interpreted as an "evil influence"
- The heydays of witchcraft proceedings took place in 1562, 1590, 1626 and 1650

History of the Use and Prohibition of Torture

3. Age of Enlightenment

3.Age of Enlightenment

Torture was abolished nearly everywhere in Europe, due to:

- Humanised criminal law – judicial procedures & punishments respected the dignity of the person
- Formal doubts about the usefulness of torture
- Major shift of the legal system, where circumstantial evidence played a bigger role & newly introduced punishments like “punishment on suspicion” (Verdachtsstrafe): Hence the gap was closed between conviction to death and acquittal.

History of the Use and Prohibition of Torture

4. 19th to the 21st Century

4. 19th to the 21st Century

Torture as a formal and legalised technique of interrogation had practically disappeared, with the exception of:

- Russia (1917-1922), fascist Italy and Spain, and National Socialist Germany
- 1950s: French colonial administration subjected many Algerians to torture.
- Cold War era, the period of totalitarianism in Southern America and Africa, and during the Balkan War in the 1990s.

4. 19th to the 21st Century

- Today, torture and ill-treatment are still routine practice in many countries around the world, even though they are ***absolutely prohibited under international law***.
- Purpose & application of torture have changed considerably:
 - Shift towards “**clean torture**” that leaves no visible marks by the US, France and Great Britain, which eventually spread to non-democratic states
 - The purpose of torture shifted (at least in democracies) from obtaining a confession of a *past* crime to surveillance of ***future events***

4. 19th to the 21st Century

“Clean torture” in democratic states to avoid detection, because of

- the need for legitimacy of democracies towards its citizens
- the acknowledgement of human rights
- growing monitoring of the implementation and observance of human rights standards