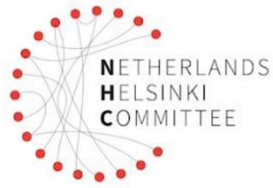




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Combating police ill-treatment in Kosovo: the importance of complying with EU law on criminal procedural rights



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I. Introduction

At the end of January 2021, Kosovar public was shocked by a videotape published in a news site: A police officer instructs the detainee, an 18-year old boy, to keep his head up and stand still. When he abides, the police officer smacks him as sharp as he can, all while the officer is holding his phone to videotape the beating. This is done at a police station in the presence of other police officers—who are videotaping as well. According to the victim, these were only the last minutes of more than 2 hours of constant police ill-treatment.¹

Unfortunately, instances like this one do not seem to be isolated incidents in Kosovo.² There is an ongoing tendency for police officers in Kosovo to engage in ill-treatment. According to the Police Inspectorate of Kosovo (the authority charged with the task of conducting criminal and high-profile investigations of police misconduct), ill-treatment during the exercise of official duty or public authority was one of the top five criminal offences most complained about in 2020, along with abuse of official position or authority, bodily injury, manipulation of evidence, and threats.³ The Inspectorate notes that in the last three years there is a growing trend on complaints of criminal offences ill-treatment during the exercise of official duty or public authority, minor bodily injury, and assault.⁴ The abuse by Kosovo police is reportedly manifested “mostly of severe beatings, punches and kicking, blows with objects and verbal and psychological threats.”⁵

It goes without saying that for the proper functioning of the society it is essential that the police have the power to apprehend, detain and question those suspected of committing criminal offences. Yet, these police powers have inherently within them a risk of ill-treatment and abuse.⁶ Generally, this risk is the greatest in the period immediately following deprivation of liberty.⁷ This stands true for Kosovo as well, where most allegations of police ill-treatment refer to the moment of deprivation of liberty and during police questioning.⁸ Therefore, it is of utmost importance that during this crucial period after deprivation of liberty there are in place necessary safeguards against police ill-treatment.

¹ “Ekskluzive: Pamje se si u keqtrajtua 18 vjeçari nga zyrtari policor Haris Kelmendi” *Sinjali* (January 29, 2021); “I riu që u keqtrajtua nga Haris Kelmendi rrëfen dhunën për Sinjalin: Pasi më rrahën thanë qe një cigare prej neve” *Sinjali* (January 30, 2021).

² UN General Assembly, Human Rights Council, “Visit to Serbia and Kosovo: Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment,” A/HRC/40/59/Add.1 (25 January 2019): ¶99: “In both Serbia and Kosovo, the allegations of torture and ill-treatment received by the Special Rapporteur are not isolated incidents, but suggest the existence of pattern of abuse that is well entrenched in the predominant police culture.” But cf. the Report by the National Preventive Mechanism of Torture (NPMT), which states that “In general, the NPM, based on this year’s visits and earlier visits, the review of complaints received, as well as ex officio investigations, assesses that there is no systematic or widespread physical ill-treatment by the Kosovo Police, but these are isolated cases.” Ombudsperson Institution, “Annual Report of the National Preventive Mechanism against Torture: 2019, no. 3” (2020): p. 160. What is certain, however, is that police ill-treatment occurrences in Kosovo are relatively frequent.

³ Police Inspectorate of Kosovo, “Annual Report 2020” (2020): p. 14.

⁴ *Ibid.*: p. 19.

⁵ UN General Assembly, Human Rights Council, “Visit to Serbia and Kosovo”: ¶71.

⁶ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), “Developments concerning CPT standards in respect of police custody,” CPT/Inf(2002)15-part: ¶33.

⁷ *Ibid.*: ¶41.

⁸ Ombudsperson Institution, “Annual Report”: p. 157.

This paper focuses on the compatibility of Kosovo legislation and practice with European Union Directives on criminal procedural rights, the so-called Roadmap Directives, and the extent the rights granted in these Directives would serve as necessary safeguards against police ill-treatment if implemented properly in Kosovo.

II. The Compliance of Kosovo Legislation and Practice with EU Roadmap Directives: the Relevance on Combating Police Ill-Treatment

1. Generally on Roadmap Directives and Kosovo national framework

Since 2009, European Union started setting common minimum rules governing procedural rights of suspected or accused persons in criminal proceedings. The product of this process is a set of directives regulating certain aspects of criminal procedure in the Member States (the Roadmap Directives). The need for these measures came as a result of the failure of Member States to consistently comply with decisions of the European Court of Human Rights related to criminal proceedings. Thus, to strengthen the mutual trust in the criminal justice systems of the Member States, the Roadmap aims to concretize and reinforce human rights standards in criminal proceedings already established in the case-law of the ECtHR.⁹ Going beyond the original intention, these directives are binding upon Member States in all national criminal proceedings, including those which lack a cross-border element. The Roadmap Directives cover the following rights: the right to interpretation and translation,¹⁰ the right to information,¹¹ the right of access to a lawyer and the right to communicate with a third party upon deprivation of liberty,¹² procedural safeguards for children,¹³ the right to the presumption of innocence and to be present at trial,¹⁴ and the right to legal aid.¹⁵

Kosovo is not an EU Member State, nor a member of Council of Europe. The reason why compatibility of Kosovo legislation with that of EU is relevant is because, as an aspiring member state, Kosovo has signed the Stabilization and Association Agreement (SAA) with EU in 2015, which stipulates, among others, the commitment of Kosovo to ensure the approximation of national legislation to that of EU. On the other hand, although Kosovo is not a member of CoE, the ECHR is directly applicable in Kosovo by virtue of constitutional

⁹ Alex Tinsley, "Protecting criminal defence rights through EU law: opportunities and challenges," *New Journal of European Criminal Law* 4, no. 4 (2013): p. 461-7.

¹⁰ Directive 2010/64/EU of the European parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings OJ 2010 L 280.

¹¹ Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings OJ 2012 L 142.

¹² Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty OJ 2013 L 294.

¹³ Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings OJ 2016 L 132.

¹⁴ Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings OJ 2016 L 65.

¹⁵ Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings OJ 2016 L 297.

provisions. Article 22 of the Constitution provides that the ECHR is one of the international instruments which “are directly applicable in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions.” In addition, all state authorities shall interpret human rights and fundamental freedoms guaranteed by the Constitution consistently with the court decisions of the ECtHR (article 53 of the Constitution).

The rights granted by the Roadmap Directives are, generally speaking, provided in Kosovo legislation. These rights are granted in Kosovo primarily by constitutional provisions (directly and indirectly via ECHR) and the Criminal Procedure Code. However, there are some stark incompatibilities between national legislation and the Roadmap Directives regarding the rights of criminal suspects and the accused in criminal proceedings. These incompatibilities may have consequences not only for the general right to a fair trial of these subjects, but also for properly preventing police ill-treatment and abuse. Before treating these incompatibilities, first we must demonstrate the relevance of the rights provided in Roadmap Directives in preventing ill-treatment by police.

2. The relevance of Roadmap Directives in preventing ill-treatment

At the center of Roadmap Directives is not the aim of preventing ill-treatment. Rather, the ultimate concern of Roadmap Directives is guaranteeing in general the rights of criminal suspects and the accused in order to ensure an overall fairness of criminal proceedings. However, as a byproduct, guaranteeing properly and fully some of the Roadmap rights will necessarily contribute in preventing police ill-treatment.

Undoubtedly, the main Roadmap Directive whose proper implementation can serve as an important safeguard against ill-treatment is Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (hereinafter: the Access to a Lawyer Directive). The right of access to a lawyer, together with the right to notify a third party (family member, friend, consulate) of their deprivation of liberty (and the right of examination by a medical doctor of their choice) are widely considered as the main fundamental safeguards against ill-treatment of detained persons.¹⁶ The Access to a Lawyer Directive grants two out of three of these rights: that of access to a lawyer, and that of informing and communicating with a third party upon deprivation of liberty.

As stated, the risk from police ill-treatment is generally the greatest in the period immediately following deprivation of liberty. In Kosovo, it seems that police’s *modus operandi*, so to speak, is ill-treating victims in a police vehicle, on the way to the police station, where the ill-treatment may continue once inside the station as well. A lawyer’s involvement in this crucial stage seems indispensable. (Whereas in penitentiaries and remand prisons under the authority of the Ministry of Justice there does not seem to be an ill-treatment problem in Kosovo.)¹⁷ The possibility that a lawyer will be involved at the outset of a person’s deprivation of liberty will have a dissuasive effect upon those police

¹⁶ See, e.g., European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), “Police custody” CPT/INF(92)3-part1: ¶36.

¹⁷ UN General Assembly, “Visit to Serbia and Kosovo”: ¶70.

officers minded to ill-treat a detained person.¹⁸ Further, if ill-treatment were to actually occur, a lawyer is well-placed to take appropriate action.¹⁹ This role of the lawyer has been asserted by the ECtHR in its article 6 jurisprudence as well, which explained that the aims pursued by the right of access to a lawyer include, *inter alia*, serving as a counterweight to the vulnerability of suspects in police custody, and as a fundamental safeguard against coercion and ill-treatment by the police.²⁰

From the other Roadmap rights, also relevant in preventing ill-treatment is the right to information, as foreseen in the Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (hereinafter: the Right to Information Directive). In order for a person deprived of liberty to have effective access to a lawyer and their right to communicate with a third person, the starting point is that they are properly informed of their rights to do so. Another relevant right is the right to legal aid, guaranteed with the Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (hereinafter: the Legal Aid Directive). For many people in Kosovo, one of the poorest countries in Europe, the right of access to a lawyer would be rather illusory if they would not have the right to legal aid.

This paper will next analyze the compliance of Kosovo legislation and practice with the Roadmap Directives, with a special focus on the Directives most relevant for preventing police ill-treatment: the Access to a Lawyer Directive, the Right to Information Directive, and the Legal Aid Directive. The ultimate concern of the paper is to see where the incompatibilities between national legislation and these Roadmap Directives lie and how to correct the potential shortcomings in order to help combat police ill-treatment in Kosovo.

3. The Access to a Lawyer Directive and national compliance

a. The scope and content of the right of access to a lawyer

The Access to a Lawyer Directive builds upon the ECtHR ruling in *Salduz v. Turkey* (2008)²¹ which established the right of access to a lawyer during police questioning, leading to a wave of (often panicked) reforms throughout Europe. The right of access to a lawyer guaranteed by article 6(3)(c) of the ECHR is not considered as a self-standing right, but this right will be relevant only and insofar as the lack of the involvement of a lawyer jeopardized the overall fairness of the criminal proceedings. Thus, there will be a violation of the right of access to a lawyer only if incriminating statements that resulted during this period were taken into account for other procedural steps (typically a conviction), i.e. only if the national authorities failed to remedy the earlier failure to provide access to a lawyer.²² Notwithstanding, the fundamental rights protection afforded by the Access to a Lawyer Directive can go above and beyond that afforded by the ECHR in this matter.²³

¹⁸ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), “Developments concerning CPT standards in respect of police custody”: ¶41.

¹⁹ *Ibid.*

²⁰ ECtHR, *Beuze v Belgium*, App. no. 71409/10, Judgement of 9 November 2018, §§125-30.

²¹ ECtHR, *Salduz v. Turkey* App. No 36391/02, (Judgment of 27 November 2008).

²² Fair Trials, “Practitioners’ tools on EU law: Access to a Lawyer Directive” (2020): p. 14-6.

²³ *Ibid.*: p. 7.

The Access to a Lawyer Directive provides that access to a lawyer must be provided without delay to suspects or accused persons in all cases. This right to a lawyer applies to suspected or accused persons from the time they are notified by state authorities that they are suspected or accused of committing a crime (article 2(1)), regardless of whether they are deprived of liberty. In any event, suspects or accused persons must have access to a lawyer in the following situations (article 3(2)):

- a) before they are questioned by the police or by another law enforcement or judicial authority;
- (b) upon the carrying out by investigating or other competent authorities of an investigative or other evidence-gathering act in accordance with point (c) of paragraph 3;
- (c) without undue delay after deprivation of liberty;
- (d) where they have been summoned to appear before a court having jurisdiction in criminal matters, in due time before they appear before that court.

When it comes to the relevance of the lawyer's involvement in preventing ill-treatment, points (a) and (c) above seem most relevant. Hence, it is crucial to determine to what extent Kosovo legislation and practice comply with this provision of the Directive regarding the timing of the right of access to a lawyer.

According to the Kosovo Constitution, everyone charged with a criminal offense enjoys the right "to have assistance of legal counsel of his/her choosing" (article 30(5)). The Criminal Procedure Code (hereinafter: CPC), provides that "[i]n accordance with the provisions of the present Code, any person deprived of liberty shall have the right to the services of a defense counsel from the moment of arrest onwards" (article 11(6)). In addition, the suspect or the accused person have the right of access to a lawyer before every examination of the suspect or the accused person by any authority (the police, prosecutor, judge, etc.) (article 53 of CPC). Thus, the moment of arrest (or questioning, if the person was not arrested initially) seems to be the earliest moments that the CPC grants the right of access to a lawyer.

Kosovo legislation is not fully in compliance with the Directive in this point, since the Directive grants the right of access to a lawyer from the moment the person is notified of their suspect or accused status, irrespective of the person being deprived of liberty or the timing of their questioning. Nevertheless, this aspect is not entirely relevant for this paper, since we are concerned with access to a lawyer after deprivation of liberty, because that is the time when the risk of police ill-treatment is greatest and most possible.

In this regard, where the national legislative framework could be problematic from the perspective of preventing ill-treatment is that it restricts deprivation of liberty in this case to its classical meaning of detention following arrest only. Hence, situations when a person is held in police custody without being formally declared a suspect do not appear to be

included in this notion. Accordingly, the right of access to a lawyer is not granted in cases of temporary police custody (article 20 of the Law on Police), where the police may detain persons for identification purposes or for their own protection or that of others (for up to 12 and 24 hours, respectively).

Nevertheless, it is not entirely clear to what extent this would mean that national legislation is not in compliance with the Access to Lawyer Directive, since for the Directive to be applicable it is required that suspects are made aware of their status as suspects by official notification or otherwise (article 2(1)). It is questionable whether such a status can be inferred from the circumstances of the situation without any (official or unofficial) notification. According to ECtHR case-law, “a person acquires the status of a suspect calling for the application of the Article 6 safeguards not when it is formally assigned to him or her, but when the domestic authorities have plausible reasons for suspecting that person’s involvement in a criminal offence.”²⁴ In our view, it would depend on the objective circumstances of the case whether the police could have temporarily detained a person by (unofficially) suspecting them for a criminal offence, without however declaring officially their arrest and thus without granting them access to a lawyer—when it should have done so. Hence, on a case-by-case basis, the right of access to a lawyer in these cases could be applicable. However, the matter is too sensitive to be left to the circumstances of each case or to the discretion of the police. Accordingly, Kosovo legislation should be amended and provide for the right of access to a lawyer for all persons held in police custody (i.e., from the moment the person is obliged to remain with the police) irrespective of their official status at the moment of apprehension.²⁵

On the other hand, legislative provisions regarding the timing of the right of access to a lawyer are not always properly applied in practice. Thus, in some instances the right of access to a lawyer has been interpreted by police officers as applying not immediately following arrest, but only after criminal investigations have been formally initiated against the apprehended person.²⁶ And while most people are given the possibility of having a lawyer, some police officers refuse this possibility by telling detained persons that they cannot have, or do not need, a lawyer.²⁷ In some instances, the detainees are left without a lawyer from their moment of arrest until the official start of the interrogation—being left in a “legal limbo which, in some instances, facilitated the perpetration of police torture and ill-treatment.”²⁸ And sometimes detainees are granted the right to a lawyer only after being

²⁴ ECtHR, *Truten v. Ukraine*, App. no. 18041/08 (2016): §66.

²⁵ See also European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), “Report to the United Nations Interim Administration Mission in Kosovo (UNMIK) on the visit to Kosovo” (2016): ¶16.

²⁶ *Ibid.*

²⁷ *Ibid.*: ¶17.

²⁸ UN General Assembly, Human Rights Council, “Visit to Serbia and Kosovo”: ¶64.

questioned by the police,²⁹ or even at their first court appearance.³⁰ Therefore, appropriate steps must be taken to ensure that the legally granted rights are properly enforced by all police officers, including training of police officers and the imposition of appropriate disciplinary sanctions when necessary.

Regarding the content of the right, the Directive provides that the right of access to a lawyer shall entail the following (article 3(3)):

(a) Member States shall ensure that suspects or accused persons have the right to meet in private and communicate with the lawyer representing them, including prior to questioning by the police or by another law enforcement or judicial authority;

(b) Member States shall ensure that suspects or accused persons have the right for their lawyer to be present and participate effectively when questioned. [...]

[The other part of this provision is omitted, as it is not relevant for the ill-treatment issue.]

Regarding the right to meet in private and communicate with the lawyer, an arrested person is informed in writing that “you can communicate with your lawyer in private, orally or in writing. The police cannot listen to the conversation between you and your lawyer, but it might supervise you during this time.” In our view, the possibility of supervision by the police, although not necessarily being incompatible with the content of the right of access to a lawyer under the Directive (which provides for a private meeting and communication), from its wording might dissuade the detainee from requesting a lawyer in the first place, thus making this practice as incompatible with the Right to Information Directive and also with the waiver requirements foreseen under the Access to a Lawyer Directive (see also the relevant section below). On the other hand, the right of suspects or the accused to have their lawyer present and participating when questioned seems generally complied with, apart from the shortcomings mentioned above where some police officers fail to properly implement legal provisions in practice.

b. Waiving the right of access to a lawyer

The right of access to a lawyer under the Directive can be waived, in cases where the assistance or presence of the lawyer is not mandatory. However, for the waiver to comply with the Directive, it must fulfill the following requirements (article 9(1)):

²⁹ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), “Report to the United Nations Interim Administration Mission in Kosovo (UNMIK) on the visit to Kosovo”: ¶17.

³⁰ U.S. Department of State, Bureau of Democracy, Human Rights and Labor, “2020 Country Reports on Human Rights Practices: Kosovo” (2020): p. 10.

a) the suspect or accused person has been provided, orally or in writing, with clear and sufficient information in simple and understandable language about the content of the right concerned and the possible consequences of waiving it; and

(b) the waiver is given voluntarily and unequivocally.

Thus, in order for a waiver to be valid under the Directive, the initial informing of the suspect or the accused on their right of access to a lawyer must have fulfilled some minimum standards. First, the information given must have been clear and sufficient enough regarding the content of the right of access to a lawyer (i.e., informing the person that they can communicate with a lawyer in private, have the lawyer present during questioning, etc.). And second, there must have been clear and sufficient information on what are the possible consequences of waiving the right of access to a lawyer. The language used must have been simple and understandable. To this extent, there is an overlap between Access to a Lawyer Directive and the Right to Information Directive.

Kosovo legislation (the CPC) requires that a waiver must be made in writing and in a voluntary manner, while in cases of mandatory defence waiving is not allowed.³¹ The CPC requires additionally that the initial information provided on the right of access to a lawyer must have been “clear and complete” (article 53(3)), similar to the Directive. To a great extent, this proper information requirement is fulfilled in practice for those arrested—but only regarding privacy and presence during questioning, which are relevant for ill-treatment, while other components of the right of access to a lawyer provided in article 3(3) of the Directive (irrelevant for the ill-treatment issue) are not informed about.

The shortcomings lie in using a potentially dissuasive language when informing the arrestee of privacy as a content of their right of access to a lawyer (the possibility of supervision by police mentioned above). But, on the information letters provided to every suspect or accused before each questioning (not at the moment of arrest), the privacy of the meetings and communication between the subject and the lawyer is not mentioned at all (while the presence of the lawyer during questioning is). Again, no mention of other components of the right of access to a lawyer (article 3(3) of the Directive).³² Thus, a suspect or accused who was never formally arrested (hence who did not have access to the information sheet given to arrestees) would risk improperly waiving their right of access to a lawyer, since they would not have had full and proper information on what having a lawyer fully entails (i.e., that they also have the right to meet and communicate with a lawyer in private).

In addition, what is problematic in this regard is that even where information is provided to suspects or the accused regarding access to a lawyer—which is not always the case—³³it does not seem to be individualized and one that takes into consideration the circumstances of each case or the situation of each individual. The language used when informing persons of their right to a lawyer is quite general and vague that it does not seem to even take into account the characteristics of an average Kosovar suspect or accused. Research suggests that the main reasons why a Kosovar suspect or accused does not request a lawyer is that they believe that requesting a lawyer would jeopardize their supposed innocence, or they

³¹ For the instances of mandatory defence in Kosovo *see* footnote 43 below.

³² CPC, article 73(3) in conjunction with article 125(3).

³³ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), “Report to the United Nations Interim Administration Mission in Kosovo (UNMIK) on the visit to Kosovo”: ¶20.

think that they would defend their case better.³⁴ Approximately 65% of defendants in Kosovo are not counseled by a lawyer in any stage of criminal proceedings.³⁵ Letters of information on the rights of the suspects and defendants should take into considerations these findings and provide suspects or accused with proper information on what having a lawyer means and how it helps their case rather than impairing it.

On the other hand, when it comes to properly informing suspects or the accused on the consequences of waiving their right of access to a lawyer, national legislation and practice do not seem compliant with the Directive. No such information is properly provided.

In addition, under the Directive the waiver, “which can be made in writing or orally, shall be noted, as well as the circumstances under which the waiver was given” (article 9(2)). While national legislation and practice provide recording of the waiver itself, it does not provide for a recording of the individual circumstances under which the waiver was given (for instance, the suspect’s personal situation, that they potentially faced a lengthy sentence, etc.).

The Directive provides also that the waiver may be revoked at any point and the person must be informed of this possibility (article 9(3)). According to the CPC, “[i]f a suspect or defendant who has made a waiver subsequently reasserts the right to the assistance of defense counsel, he or she may immediately exercise the right” (article 53(7)). However, national legislation and practice do not seem to comply with the requirement of informing the person that they have the possibility of revoking the waiver. All shortcomings elaborated above could lead suspects or accused persons to improperly waive their right of access to a lawyer, one of the main fundamental safeguards against their ill-treatment.

c. Derogations

Derogations refer to the possibility of authorities to question a suspect or accused person without a lawyer, despite their request to be assisted by one. The circumstances when derogations can validly happen are limited.

First, national authorities may temporarily derogate from the requirement of the Directive that suspects or accused persons must be granted access to a lawyer without undue delay after deprivation of liberty in cases when this is justified by geographical remoteness of a suspect or accused person (article 3(5)). Under this provision, the derogation can happen only during the pre-trial stage and the subject cannot be questioned (it is a derogation on timing, i.e. the undue delay, not on the right itself). The geographical remoteness refers only to those “overseas territories or where the Member State undertakes or participates in military operations outside its territory” (recital 30). In particular, this provision does not justify, for instance, derogations on the right of access to a lawyer without undue delay “when the arrest happens in a rural area with fewer lawyers.”³⁶ Accordingly, undue delays

³⁴ Ehat Miftaraj & Betim Musliu, “Legal Aid in criminal cases and applying European Court of Human Rights standards in Kosovo Courts” (Kosovo Law Institute, 2017): p. 30.

³⁵ Ibid.: p. 14.

³⁶ Fair Trials, “Access to a Lawyer Directive”: p. 48.

that happen in Kosovo because of the inaccessibility of certain lawyers appointed *ex officio*³⁷ cannot be justified under this provision of the Directive.

Further, the second basis for derogation provided in the Directive is as follows (article 3(6)):

In exceptional circumstances and only at the pre-trial stage, Member States may temporarily derogate from the application of the rights provided for in paragraph 3 to the extent justified in the light of the particular circumstances of the case, on the basis of one of the following compelling reasons:

- (a) where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person;
- (b) where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings.

In these cases, the suspect or accused persons can be questioned, in contrast to the geographical remoteness basis. However, a crucial safeguard in place is that the derogation “may be authorised only by a duly reasoned decision taken on a case-by case basis, either by a judicial authority, or by another competent authority on condition that the decision can be submitted to judicial review” (article 8(2)).

In contrast, the CPC provides in article 171(1) that:

During all examinations by the police, an arrested person has the right to the presence of defense counsel. If defense counsel does not appear within two (2) hours of being informed of the arrest, the police shall arrange alternative defense counsel for him or her. Thereafter, if the alternative defense counsel does not appear within one hour of being contacted by the police, the arrested person may be examined only if the state prosecutor or the police determine that further delay would seriously impair the conduct of the investigation.

A grave shortcoming of the CPC in the provision above is that it leaves it to the discretion of the police or the prosecutor the possibility to decide on negating the right of access to a lawyer, without the involvement of judicial review. Another grave shortcoming is that this possibility not only temporarily delays the right of access to a lawyer, but it completely denies the substance of the same right for the period in question. At the least, another independent lawyer should be assigned,³⁸ as it does not seem proportionate nor necessary (contrary to article 8(1)(a) of the Directive) to continue questioning the suspect or the accused person just because the investigation might be impaired (the Directive refers to derogations from the overall content of the access to a lawyer, and not merely to the right to have a lawyer present during questioning). (Perhaps continuing questioning during this time in order to prevent harm to others might have been justified, but the CPC, contrary to

³⁷ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), “Report to the United Nations Interim Administration Mission in Kosovo (UNMIK) on the visit to Kosovo”: ¶17.

³⁸ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), “Developments concerning CPT standards in respect of police custody”: ¶41.

the Directive, does not provide this as a basis for derogation—it simply mentions generally the impairment of the investigation.)

In sum, the “derogations” foreseen in national legislation and practice regarding the right of access to a lawyer do not appear in line with the Access to a Lawyer Directive.

d. The right to inform and communicate with a third party

Besides the right of access to a lawyer, the Access to a Lawyer Directive provides also the right of suspects or accused persons to have a third party (such as a relative or employer, nominated by them) informed upon deprivation of liberty without delay, and the right to communicate with third persons and with consular authorities while deprived of liberty.³⁹ These rights are granted without delay provided that this does not prejudice the due course of the criminal proceedings against the person concerned or any other criminal proceedings. As stated before, together with the right of access to a lawyer, the right to inform and communicate with a third party while deprived of liberty is considered one of the main fundamental safeguards against ill-treatment.

In Kosovo, any person deprived of liberty (including those in temporary police custody) have the right “to notify or to require the police to notify a family member or another appropriate person of his or her choice about the arrest and the place of detention, immediately after the arrest, and about any subsequent change in the place of detention, immediately after such change” (article 168(1) of CPC).⁴⁰ The law provides that the arrestee has such right immediately following arrest, however it is unclear how this right is implemented in practice and whether it is granted immediately after arrest. As it was stated, in Kosovo it is police’s *modus operandi* to ill-treat the apprehended person in a police vehicle, on the way to the police station, where the ill-treatment may or may not continue once there. It is very unlikely that the right to notify a third person of the arrest was properly fulfilled in each of these cases of ill-treatment. What is certain is that in the information sheet given to the arrestee it is explicitly provided that the arrestee has the right to inform a third party of the arrest. However, the uncertainties lie with the timing when the right is granted (i.e., in the police vehicle, or after the arrival in the police station)—or whether it is granted at all.

The law provides that an arrestee may waive their right to notify a third party. However, such a waiver should be made in writing in order to be valid. It is hard to believe that in the midst of hostile police behavior a potential victim of ill-treatment would not have used their right to inform a third party, if given the chance. We think that the police in these cases either did not always inform the arrested person of their rights immediately after arrest, or, despite informing the arrested person, did not grant the right to inform a third party

³⁹ In addition, “[i]f the suspect or accused person is a child, Member States shall ensure that the holder of parental responsibility of the child is informed as soon as possible of the deprivation of liberty and of the reasons pertaining thereto, unless it would be contrary to the best interests of the child, in which case another appropriate adult shall be informed. For the purposes of this paragraph, a person below the age of 18 years shall be considered to be a child” (article 5(2)).

⁴⁰ On the other hand, “[w]hen an arrested person has not reached the age of eighteen (18) years, the police shall notify the parent or legal representative of the arrested person about the arrest and the place of detention immediately after the arrest, and about any subsequent change in the place of detention, immediately after such change. If such notification is impossible, would be detrimental to the interests of the arrested person or is expressly refused by the arrested person, the police shall notify the Centre for Social Work” (article 168(2) of CPC).

immediately after arrest, as the law provides. In the wording of the information sheet given to the arrested person, it states that “the right to notify a family member or a third person can be delayed for up to 24 hours when the state prosecutor determines that the delay is required by the exceptional needs of the investigation of the case.” Nowhere is the arrestee notified that they can use this right immediately, as the law provides. The possibility of delay of up to 24 hours should not be considered automatic, but only if the prosecutor requests this delay beforehand. Thus, this flawed information can, on one hand, potentially dissuade the arrested person from fulfilling this right in the first place considering it pointless or that it would harm his defence, and, on the other hand, can serve as a justification for the police to not grant this right, supposedly because they have to wait for the prosecutor’s confirmation that the delay is not needed. Another possibility (which might complement the above) is that the police, when informing the arrestee of their right to inform a third party, might overemphasize the informing of a “family member,” leaving the impression that one must notify a family member or none at all of their arrest. An arrested person might have problems with informing someone from their family of being a suspect of a criminal offence, thus preferring to not inform anyone at all (i.e., waiving their right). Therefore, it would be more appropriate that the language used when informing an arrested person states clearly that they can inform anyone they wish and that this will not harm their case in any way. It also should provide that they can exercise this right immediately.

4. The Legal Aid Directive and national compliance

For a person with insufficient means, the right of access to a lawyer, one of the main safeguards against ill-treatment, is unattainable without the right to legal aid. Thus, it is also important to assess the compliance of national legislation and practice regarding legal aid with the Legal Aid Directive. As when assessing the Access to a Lawyer Directive, the following assessment will be limited to those aspects of legal aid that might be relevant in preventing ill-treatment by police in Kosovo.

The Legal Aid Directive applies only to those suspects or accused persons who have a right of access to a lawyer under the Access to a Lawyer Directive, and who are (article 2(1)):

- a) deprived of liberty;
- (b) required to be assisted by a lawyer in accordance with Union or national law; or
- (c) required or permitted to attend an investigative or evidence-gathering act, including as a minimum the following:
 - (i) identity parades;
 - (ii) confrontations;
 - (iii) reconstructions of the scene of a crime.

For the purposes of this paper, only points (a) and (b) are relevant.

Under the Directive, legal aid is granted only to those suspects or accused persons “who lack sufficient resources to pay for the assistance of a lawyer ... when the interests of justice so require” (article 4(1)). It is left to states’ wide discretion to determine how legal aid is to be granted in accordance with article 4(1): the states may apply a means test (i.e., whether the person has sufficient means to afford a lawyer), a merits test, or both. When a state

applies a merits test, “it shall take into account the seriousness of the criminal offence, the complexity of the case and the severity of the sanction at stake, in order to determine whether the interests of justice require legal aid to be granted.” (The ECtHR recognizes an additional criterion for a merits test, namely the defendant’s social and personal situation.)⁴¹

When a suspect or accused person fulfills the criteria above, legal aid must be granted “without undue delay, and at the latest before questioning by the police” or by another authority (article 4(5)). Lastly, the granting of legal aid should not be made dependent on a formal request by particularly vulnerable persons (recital 18).⁴²

National legislation recognizes the right to legal aid, however there are some incompatibilities between the national framework and the Directive (here, by extension, also apply the shortcomings mentioned above regarding the right of access to a lawyer). As we saw, for purposes of preventing ill-treatment it is crucial that the person deprived of liberty has access to a lawyer immediately following apprehension. Thus, it is of paramount importance that legal aid is granted without undue delay from this moment to those without sufficient means to afford legal assistance. The CPC provides that legal aid is to be provided the earliest before the first examination by the police or any other authority, to those without sufficient means when the interests of justice so require (article 58). Therefore, national legislation does not seem to provide for legal aid without undue delay after deprivation of liberty—it suffices that the first examination is done in the presence of a lawyer. (Although another article of CPC (167(1)) provides that every arrested person has the right to legal aid, and the arrestees are notified of the same right, it does not provide the moment the right to legal aid is granted for an arrested person.) As such, persons who cannot afford a lawyer seem particularly vulnerable to be left in a sort of “legal limbo” we talked about earlier, being left without legal assistance from their moment of arrest to their questioning by the police, a situation which can facilitate their ill-treatment. This is not in line with the Legal Aid Directive, which provides that legal aid must be granted in principle without undue delay (to those deprived of liberty, or to those in cases of mandatory defence). (On the other hand, national framework seems to grant effectively legal aid to those who cannot afford a lawyer in cases where the law provides for a mandatory defence. However, these instances of mandatory defence do not seem particularly relevant for the issue of police ill-treatment.)⁴³

Besides a means test, the CPC also requires that in each case the “interest of justice” criterion must be fulfilled in order for a suspect or defendant to be granted legal aid. The interest of justice criterion, although being too vague, seems to be within the wide discretion that the Legal Aid Directive grants to Member States. Nevertheless, such a vague criterion appears too arbitrary to stand constitutional scrutiny, and as such seems suspect from a constitutionality point of view. Moreover, this test seems stricter than that of

⁴¹ Fair Trials, “Practitioners’ tools on EU law: Legal Aid Directive” (2020): p. 32.

⁴² *Ibid.*: p. 41.

⁴³ These instances are (article 57(1) of CPC): 1.1. from the first examination, when the defendant is mute, deaf, or displays signs of mental disorder or disability and is therefore incapable of effectively defending himself or herself; 1.2. at hearings on detention on remand and throughout the time when he or she is in detention on remand; 1.3. from the filing of an indictment, if the indictment has been brought against him or her for a criminal offence punishable by imprisonment of at least ten (10) years; and 1.4. for proceedings under extraordinary legal remedies when the defendant is mute, deaf, or displays signs of mental disorder or disability or a punishment of life long imprisonment has been imposed. 1.5. in all cases when a defendant seeks to enter an agreement to plead guilty to a crime that carries a punishment of one (1) year or more of long period imprisonment or life long imprisonment, the defendant must be represented by counsel.

constitutional provisions, which simply provide that “[f]ree legal assistance shall be provided to those without sufficient financial means if such assistance is necessary to ensure effective access to justice.” The “interest of justice” legal criterion, left to the full discretion of national authorities without sufficient legal precision, is way stricter than the “effective access to justice” constitutional criterion, which is more broadly in line with the ECtHR’s case-law. As stated, approximately 65% of defendants in Kosovo are not counseled by a lawyer in any stage of criminal proceedings and the vague “interest of justice” criterion is at least partly to blame.⁴⁴ Thus, legislation should be amended accordingly so that, as a result, more people are granted legal assistance free of charge (which, in the end, is independent from the extremely wide discretion of the authorities). In turn, more people without sufficient means will have less chances of being ill-treated by the police, through an effective participation of the lawyer from the early stages of criminal proceedings.

Further, the CPC provides that for a person to be granted legal aid, they must “complete an affidavit listing his or her assets and declaring that he or she cannot afford legal counsel” (article 58(4)). Contrary to the Legal Aid Directive requirements, in Kosovo legislation there are no exceptions from this formality for particularly vulnerable persons.

5. The Right to Information Directive and national compliance

The Right to Information Directive grants to suspects or the accused the right to be properly informed on their entitled rights. It is a Directive which governs the provision of information on the rights, not the actual rights.⁴⁵ The right to information serves as an essential safeguard in criminal proceedings, as it enables the exercise of other criminal procedural rights, including those which are important for preventing ill-treatment. The right of access to a lawyer, the right to inform a third party and the right to legal aid, among others, would be unattainable for many suspects or accused persons if they would not be properly informed on their entitlement to such rights.

According to the Right to Information Directive, every suspect or accused person must be provided promptly with simple and accessible language on certain rights they are entitled to, orally or in writing. When the suspect or accused person is deprived of liberty, this provision of information on rights must be done in writing (via a Letter of Rights). Regarding the rights most relevant for the ill-treatment issue, the information on rights must contain information on access to a lawyer, any entitlement to free legal advice and the conditions for obtaining such legal advice, to have consular authorities and one person informed of arrest or detention, and to have access to urgent medical assistance (articles 3 and 4 of the Directive).

When provided with a Letter of Rights, the suspects or accused persons must be given adequate time to read the letter and keep it with them throughout the time they are deprived of liberty. The language used, whether informing the suspect or the accused orally or in writing, must be sufficiently clear and precise, while the usage of complex legal terminology and dissuasive language should be avoided. Subjective factors of an arrested or detained person (e.g., their state of mind) should also be taken into account when

⁴⁴ Miftaraj & Musliu, “Legal Aid in criminal cases and applying European Court of Human Rights standards in Kosovo Courts.”

⁴⁵ Fair Trials, “Practitioners’ tools on EU law: Right to Information Directive” (2020): p. 39.

providing information.⁴⁶ In addition, national authorities must record the provision of information in accordance with the Directive.

In Kosovo, the CPC provides that a suspect or accused person has the right to information (orally or in writing) only after their arrest, or, for specific rights (the right of access to a lawyer, legal aid, and to be informed of the nature and reasons for the charge) also before their first questioning (regardless of arrest). Thus, there is a partial incompatibility between the Directive and national legislation in this regard, since the Directive grants the general right to information promptly after a suspect or accused person is made aware of their status (and at the latest before their first official interview), regardless of deprivation of liberty.⁴⁷ (On the other hand, ordinary legislation seems also incompliant with the Constitution, which provides that the right to information is granted promptly after someone is charged with a criminal offense (within its autonomous meaning in ECtHR's jurisprudence) (article 30(2) of the Constitution).)

Regarding information on the rights relevant for preventing ill-treatment, for suspects or accused persons deprived of liberty or before their first questioning national legislation (CPC) requires that they are promptly informed on their right of access to a lawyer, legal aid, and (for arrestees) to inform a third party and have access to medical treatment. Legislation requires that suspects or accused persons are informed orally and in writing. When they are informed in writing, they get to keep the letter throughout the time they are in police custody and the provision of information must be recorded, same as the Directive requires.

The shortcomings regarding compatibility of national legislation and practice with the Right to Information Directive lie in the fact that the language used to inform suspects or the accused on their entitled rights is somewhat complex and at times dissuasive (as we saw above). Also, often, suspects or accused persons are simply notified that they have a certain right, without proper elaboration on what that right (fully) entails, as we saw above, for example, regarding information on the content of the right of access to a lawyer and the right to inform a third party.

Moreover, in practice, a suspect or accused person is not always informed on their rights (orally or in writing) promptly after their apprehension, which, as stated, is considered the most critical period regarding police ill-treatment.⁴⁸ Once in the police station they are to a greater extent informed orally on their rights without undue delay—but not systematically in writing, as the law requires. (There are in several police stations notices on the wall which list the right of detained persons; however, this practice does not fulfill the legal requirement of written notification.)⁴⁹ Thus, national legislation and practice must ensure that any suspect or accused person, (at least) from the moment they are deprived of liberty (i.e., immediately after they are obliged to remain with the police, be that in a police vehicle or elsewhere), is informed fully on their rights.⁵⁰ Informing apprehended persons on their rights is the starting point to help prevent police ill-treatment.

⁴⁶ Ibid.: p. 26-7.

⁴⁷ For more details on the timing of the right to information, *see* Ibid.: p. 18-9.

⁴⁸ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), "Report to the United Nations Interim Administration Mission in Kosovo (UNMIK) on the visit to Kosovo": ¶20.

⁴⁹ Ibid.

⁵⁰ *See also* Ibid.

III. Concluding Remarks

1. Beyond the EU Roadmap Directives

As was argued in this paper, some of the rights enshrined in the European Union Roadmap Directives are also helpful in preventing police ill-treatment, which seems to be a persistent problem in Kosovo. In Kosovo as elsewhere, police ill-treatment is most likely to occur in the period immediately following deprivation of liberty. As was stated, the right of access to a lawyer, the right to notify a third party upon deprivation of liberty, and the right of medical examination, are widely considered as the main fundamental safeguards against ill-treatment of detained persons. Additionally, closely related to these rights are the right of information and the right to legal aid, both of which are also granted with the Roadmap Directives. We argued in this paper that the approximation of national legislation and practice with that of EU in criminal procedural rights will significantly contribute in preventing police ill-treatment in Kosovo. Nevertheless, in our view, in order to fully combat police ill-treatment in Kosovo it is necessary to go beyond the Roadmap Directives and ensure additional safeguards unprovided in the Directives (which Directives, in the end, do not have as a main aim preventing ill-treatment but rather ensuring the overall fairness of criminal proceedings).

Besides safeguards provided in the Roadmap Directives, national authorities in Kosovo must ensure that additional safeguards are in place as well. As was stated, Kosovo police officers who engaged in ill-treatment usually ill-treated victims in the police vehicle, on the way to the police station, where the ill-treatment may continue once inside the station but not necessarily (or directly in the police station, without prior arrest). First, as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has repeatedly reiterated, the audio and/or video recording of interviews is an important additional safeguard in preventing ill-treatment of detainees.⁵¹ The same safeguard has been proposed for the Kosovo context as well, by the Ombudsperson.⁵² It would also be preferable that every police vehicle has video and audio recording. This way, it would be virtually impossible for police officers to ill-treat in a police vehicle as they do now, which is the most frequent mode together with ill-treatment in a police station. Whereas police stations, besides electronic recording of interviews, should also make an individualized contemporaneous recording of events regarding persons held in police custody (e.g., when told of rights, signs of injury, when offered food, when interrogated, etc).⁵³ In addition, as was noted by CPT's visit to Kosovo, fundamental safeguards against ill-treatment were better implemented on those police stations where a custody officer was on duty full-time. Thus, all medium and large stations with detention facilities are

⁵¹ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), "Developments concerning CPT standards in respect of police custody": ¶36.

⁵² Ombudsperson Institution, "Annual Report": p. 161-2.

⁵³ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), "Report to the United Nations Interim Administration Mission in Kosovo (UNMIK) on the visit to Kosovo": ¶24; European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), "Developments concerning CPT standards in respect of police custody": ¶40.

recommended to appoint a custody officer as well, who would see and process every apprehended person after coming to the station and before each interview.⁵⁴

Further, criminal investigations by Kosovo Police often put an overemphasis on confessions. As CPT has stated, “[i]t is self-evident that a criminal justice system which places a premium on confession evidence creates incentives for officials involved in the investigation of crime—and often under pressure to obtain results—to use physical or psychological coercion.”⁵⁵ Thus, in Kosovo “greater emphasis should be given, including during in-service training, to modern, scientific methods of criminal investigation, through appropriate investment in equipment and skilled human resources, so as to reduce the reliance on confessions to secure convictions.”⁵⁶

In addition, as repeatedly stressed by CPT, “one of the most effective means of preventing ill-treatment by police officers lies in the diligent examination by the competent authorities of complaints or other information indicative of ill-treatment.”⁵⁷ This diligent examination will have a strong deterrent effect. On the other hand, “if those authorities do not take effective action upon complaints referred to them, law enforcement officials minded to ill-treat persons in their custody will quickly come to believe that they can do so with impunity.”⁵⁸ In this regard, the Police Inspectorate of Kosovo (PIK) is responsible for reviewing complaints on police behavior, as well as to conduct inspections of KP establishments. PIK is relatively effective. Although there have been many cases of successful investigations by PIK, there are some shortcomings in its operations. For instance, in 2020, from 718 cases related to police criminal activity, around 50% (374) have not been fully investigated but were transferred to 2021. In one case in 2019, PIK recommended to the Police to terminate the suspension measure for six police officers of Gjakova Police Station (one of them a major), after PIK filed a criminal report against them for ill-treatment, arguing that this termination of suspension does not impede the investigation. Thus, these police officers suspected of ill-treatment returned to their work, which included direct contact with the public and detained persons—despite concrete evidence that they actually engaged in ill-treatment (including video recordings). This act was heavily criticized by Kosovo Ombudsperson,⁵⁹ while the case is still ongoing on courts.

Another problem remains the inadequacy of judicial proceedings and sanctions in cases of police ill-treatment, which can lead to impunity and portray the message that police officers who engage in ill-treatment may do so without being held accountable or facing appropriate sanctions, while discouraging other victims of ill-treatment from coming forward. Most police ill-treatment cases analyzed in the past 5 years are still ongoing, and for a few

⁵⁴ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), “Report to the United Nations Interim Administration Mission in Kosovo (UNMIK) on the visit to Kosovo”: ¶21.

⁵⁵ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), “Developments concerning CPT standards in respect of police custody”: ¶35.

⁵⁶ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), “Report to the United Nations Interim Administration Mission in Kosovo (UNMIK) on the visit to Kosovo” (2016): ¶9. Similarly, UN General Assembly, Human Rights Council, “Visit to Serbia and Kosovo”: ¶99, 112.

⁵⁷ See, e.g., European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), “Report to the United Nations Interim Administration Mission in Kosovo (UNMIK) on the visit to Kosovo”: ¶10.

⁵⁸ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), “Developments concerning CPT standards in respect of police custody”: ¶45.

⁵⁹ Ombudsperson Institution, “Annual Report”: p. 158-9.

finished cases the sanctions have usually been minor (most often with suspended sentences). At least in one case in 2019, a court sent a police ill-treatment case in a mediation procedure (the same police officer was previously convicted for corruption).⁶⁰ The courts should treat police ill-treatment cases in an efficient and professional manner, convincing the public and like-minded police officers that police ill-treatment acts are effectively and appropriately punished.

2. Recommendations

As was stated throughout this paper, the greatest risk of police ill-treatment generally lies in the period immediately following deprivation of liberty. This stands true for Kosovo as well, where most cases of police ill-treatment occur in the period immediately after arrest: in a police vehicle, on the way to the police station, where the ill-treatment may continue once inside the station as well (and sometimes, when a person was not previously arrested, ill-treatment can happen directly in the police station once the person arrives there by themselves for questioning). National authorities should keep these findings in mind when adopting and implementing policies aimed to combat police ill-treatment in Kosovo.

From the rights provided in EU Roadmap Directives, the rights most relevant in preventing police ill-treatment are the right of access to a lawyer and to inform a third party, the right to legal aid, and the right to information (which includes also information on the right of access to urgent medical assistance). These are very important safeguards. Nevertheless, to fully combat police ill-treatment in Kosovo it is necessary to go beyond the safeguards provided in the Roadmap Directives. Below are some recommendations for national authorities in Kosovo on bringing national legislation and practice more in line with EU Roadmap Directives and implementing additional safeguards outside EU law which may help in combating police ill-treatment. (The recommendations given regarding EU Roadmap Directives are meant to ensure compliance with these Directives only and insofar that this compliance is relevant on combating police ill-treatment:)

➤ Regarding the right of access to a lawyer under the Access to a Lawyer Directive:

- Kosovo legislation should be amended and provide for the right of access to a lawyer without undue delay for all persons held in police custody (i.e., from the moment the person is obliged to remain with the police) irrespective of their officially-declared status (suspect or accused) at the moment of apprehension.
- Appropriate steps must be taken to ensure that the legal right of access to a lawyer is properly enforced by all police officers (i.e., at least immediately after arrest or before first examination if the person was not previously arrested), including training of police officers and the imposition of appropriate disciplinary sanctions when necessary.
- When informing orally or in writing the arrested person on the content of the right of access to a lawyer, the dissuasive language used regarding the right to meet in private and communicate with the lawyer should be replaced with more appropriate language.

⁶⁰ “Kalon në procedurë të ndërmjetësimit lënda ndaj zyrtarit policor të akuzuar për keqtrajtim gjatë ushtrimit të detyrës zyrtare,” *Betimi për Drejtësi* (July 15, 2019); “20 policë të Kosovës dënohen me 20 vjet burg,” *Zëri* (January 4, 2018).

- A person brought for questioning (but who was never arrested) should be informed properly on the full content of the right of access to a lawyer, including the privacy of meetings and communication.
 - The practice of using rather generic and vague language when informing a suspect or accused on their right of access to a lawyer should be replaced. Instead, such information should take into consideration the circumstances of each case or the situation of each individual.
 - National authorities should take into account preliminary research (or conduct their own research) on why an average Kosovar suspect or accused person waives their right of access to a lawyer and improve letters of information accordingly.
 - Legislation should be amended as to include the obligation of authorities to inform suspects or accused persons on the consequences of waiving their right to a lawyer.
 - The authorities should record not only the waiver of the right of access to a lawyer itself, but also the individual circumstances under which the waiver was given.
 - Legislation should be amended as to include the obligation of authorities to inform suspects or accused persons that they have the possibility of revoking the waiver of their right of access to a lawyer.
 - The national exceptions to the right of access to a lawyer should be brought in line with the derogations provided in the Directive.
- Regarding the right to inform a third party under the Access to a Lawyer Directive:
- Authorities should grant to the arrested person the right to inform a third party immediately after arrest, unless the prosecutor requests a delay for up to 24 hours in necessary cases (i.e., the delay should not be automatic).
 - The language used when informing an arrested person on their right to inform a third party should state clearly that they can inform anyone they wish (i.e., putting less emphasis on family members) and that they have this right immediately (without dissuading them with the potential delay by the prosecutor for up to 24 hours).
- Regarding the right to legal aid under the Right to Legal Aid Directive:
- Legislation should provide the right to legal aid for those in need immediately after deprivation of liberty.
 - Legislation should be amended so the legal “interest of justice” criterion is brought in line with constitutional provisions on the right to legal aid.
 - Particularly vulnerable persons should be excluded from the obligation to fill formal requirements to be granted legal aid.
- Regarding the right to information under the Right to Information Directive:
- Legislation should be amended as to grant the general right to information promptly after a suspect or accused person is made aware of their status (and at the latest before their first official interview), regardless of deprivation of

liberty, in order to bring national legislation more in line with the Directive and constitutional provisions.

- The language used when informing suspects or the accused on their rights should be more simple and accessible. Dissuasive language should be removed.
- Authorities should provide full information on what a certain right entails, instead of simply informing the suspect or the accused that they have such a right without further elaboration.
- Appropriate steps must be taken to ensure that the right to information is properly enforced by all police officers (i.e., at least immediately after apprehension orally and without undue delay in writing), including training of police officers and the imposition of appropriate disciplinary sanctions when necessary.

➤ Regarding other safeguards outside EU law:

- There should be video and audio recordings of police interviews and in police vehicles used to transport arrestees.
- Police stations should make an individualized contemporaneous recording of events regarding persons held in police custody.
- Medium and large police stations with detention facilities should appoint a custody officer.
- Authorities should invest in equipment and skilled human resources in the Police in order to put greater emphasis to modern, scientific methods of criminal investigations, so as to reduce the reliance on confessions to secure convictions.
- Every complaint or other information indicative of ill-treatment should be diligently examined by the competent authorities, especially by the Police Inspectorate of Kosovo.
- The courts should treat police ill-treatment cases in an efficient and professional manner, convincing the public and like-minded police officers that police ill-treatment acts are effectively and appropriately punished.

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