

Roadmap to the EU: **Advancing procedural rights in Albania**

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Fair Trials is a global criminal justice watchdog with offices in London, Brussels and Washington, D.C., focused on improving the right to a fair trial in accordance with international standards.

Fair Trials' work is premised on the belief that fair trials are one of the cornerstones of a just society: they prevent lives from being ruined by miscarriages of justice and make societies safer by contributing to transparent and reliable justice systems that maintain public trust. Although universally recognised in principle, in practice the basic human right to a fair trial is being routinely abused.

Our work combines: (a) helping suspects to understand and exercise their rights; (b) building an engaged and informed network of fair trial defenders (including NGOs, lawyers and academics); and (c) fighting the underlying causes of unfair trials through research, litigation, political advocacy and campaigns.

In Europe, we coordinate the Legal Experts Advisory Panel – the leading criminal justice network in Europe consisting of over 200 criminal defence law firms, academic institutions and civil society organizations. More information about this network and its work on the right to a fair trial in Europe can be found at: www.fairtrials.org

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A more detailed version of this report is available at: www.fairtrials.org

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Contents

Introduction	4
Overview of findings	7
Interpretation and Translation	9
Access to information	11
Access to a lawyer and legal aid	13
Presumption of innocence	15
Procedural safeguards for children who are suspects or accused persons	16

Introduction

This report assesses how Albanian laws, policies, and practices, compare with the standards of EU laws relating to the procedural rights of suspects and accused people in criminal cases. It identifies key differences between Albanian and EU laws that need to be addressed through legislative changes, and highlights key barriers to their implementation. Based on this research, this report also provides key practical recommendations for reforms.¹

Albania's accession to the EU

Since 2014, Albania has been an official candidate for membership to the European Union and in March 2020, the EU officially opened accession negotiations in recognition of the significant progress made by the country and its “determination to advance the EU’s reform agenda” to become the EU’s newest Member State.²

Throughout the accession process, the rule of law, fundamental rights and justice have been recognised as crucial challenges for Albania. This is reflected in the five key priorities identified by the Commission for the opening of negotiations, all of which related to the administration of justice, human rights, and criminal justice,³ and are being continued to be monitored.⁴ Although improvements made on these priorities were key to the opening of negotiations, it is clear from the Commission’s 2020 enlargement report for Albania that there is still considerable room for improvement, especially with regard to fundamental rights.⁵

It is critical that Albania’s compliance with international and European standards on the rule of law and human rights is subject to close and thorough scrutiny during the negotiations on accession. Threats to the rule of law and human rights in various Member States have become a serious and growing challenge for the EU

¹ A more detailed version of this report is available at https://www.fairtrials.org/sites/default/files/Roadmap_to_the_EU_Membership_through_criminal_justice_reform_in_Albania.pdf

² Council of the European Union, Enlargement and Stabilisation and Association Process – the Republic of North Macedonia and the Republic of Albania – Council Conclusions 7002/20, Brussels, 25 March 2020

³ European Commission, Communication from the Commission to the European Parliament and the Council – Enlargement Strategy and Main Challenges 2013-2014 COM (2013) 700, Brussels, 16 October 2013, p.19

⁴ European Commission, Commission Staff Working Document – Albania 2020 Report accompanying the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – 2020 Communication on EU Enlargement Policy, SWD (1010) 354, Brussels, 6 October 2020

⁵ Ibid.

in recent years, and they are a potent reminder that adherence to the EU's core values cannot be taken for granted. The EU must ensure that candidate countries can be trusted to not only respect those values, but also to give effect to fundamental rights in practice, as strict preconditions for joining the EU. To do so otherwise risks seriously undermining the common values that underpin the foundations of the EU, and that preserve its unity.

Criminal justice and accession

Although criminal justice is clearly a core priority in Albania's accession process, the EU's primary focus has been on the reform of the judiciary to improve its transparency and independence, and on tackling corruption and organised crime. Meanwhile, compliance with minimum standards on defence rights has received less prominent attention.

'Legal guarantees of a fair trial' are, however, an explicit part of the EU's 'acquis'.⁶ As such, they form part of laws and regulations common to all Member States that must be implemented by candidate countries in order to join the EU. In addition to the standards set out in the EU Charter of Fundamental Rights, these common rules are codified in six directives which were adopted pursuant to the EU's 2009 Roadmap to strengthen procedural rights of suspects and accused persons in criminal proceedings. These six '**Roadmap Directives**' are:

- 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 ('**Interpretation and Translation Directive**')
- Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings ('**Right to Information Directive**')

- 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 ('**Access to a Lawyer Directive**')
- Directive 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects and accused persons in criminal proceedings ('**Children Directive**')
- Directive 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 ('**Presumption of Innocence Directive**')
- Directive 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 ('**Legal Aid Directive**').

The EU's interests in Albania's compliance with the Roadmap Directives

The effective implementation of the Roadmap Directives is crucial for Albania's membership to the EU, not just because they are part of the acquis, but also because they complement and support efforts to address the EU's priorities for the accession process highlighted above. An effective mechanism for tackling organised crime and corruption must be underpinned by a fair criminal justice system that guarantees the basic rights of defendants. Improvements on the transparency and the independence of the judiciary will have a limited impact on the fairness of judicial outcomes unless complemented by effective human rights protections in legal proceedings.

⁶ EU acquis, Chapter 23 Judiciary and fundamental rights

European Commission, Commission Staff Working Document – Albania 2020 Report accompanying the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – 2020 Communication on EU Enlargement Policy, SWD (1010) 354, Brussels, 6 October 2020

The transposition of the Roadmap Directives is also central to the effective operation of the EU's criminal justice cooperation mechanisms. In the last two decades, Member States have been cooperating closely on cross-border issues, principally through mutual recognition mechanisms such as the European Arrest Warrant ('**EAW**'). The operation of these mechanisms relies on mutual confidence between Member States' judicial authorities that each will respect the fundamental rights of the people concerned. The effectiveness of such instruments is undermined where judicial authorities do not, in reality, have full confidence in other Member States' compliance with fundamental rights.⁷ A primary objective of the Roadmap Directives is to provide a stronger basis for mutual trust between Member States' legal systems and to reinforce the effective cross-border cooperation on criminal justice matters. As such, the effective implementation of these directives will help to ensure that Albania is a trusted partner on *inter alia* extraditions, evidence-sharing, and the implementation of judicial decisions.

The relevance of the Roadmap Directives extends beyond the borders of the EU and its accession states. On the whole, the Roadmap Directives codify, clarify, and build on existing standards on the right to fair trial that have been set by the European Court of Human Rights ('**ECtHR**'), as well as by other international and regional human rights mechanisms. Albania faces numerous challenges regarding the right to a fair trial in criminal cases. This is evidenced by findings by the ECtHR over recent years of violations in relation to aspects of the right to a fair trial including access to a lawyer,⁸ the presumption of innocence,⁹ and the right to be present at the trial/the right to a retrial following sentencing in *absentia*.¹⁰ Greater compliance with the Roadmap Directives could help to address many of these challenges. In addition to helping to progress Albania's accession to the EU, these Directives could act as a useful

yardstick that could highlight what needs to be done in order to bring local laws in Albania in line with international and European human rights standards more broadly.

Practical implementation

In recent years, Albania has embarked on a major overhaul of its laws to align them with the standards in the Roadmap Directives. There have, for example, been sweeping amendments to the Code of Criminal Procedure,¹¹ and in 2017, a new Criminal Justice for Children Code ('**Children Code**') was adopted to bring the country's standards in line with EU laws on juvenile justice. These are considerable achievements that represent welcome progress on the advancement of defence rights in Albania.

However, experiences of EU Member States show that the implementation of the Roadmap Directives is far from a simple question of amending domestic legislation to bring the law into line with EU standards. The mere existence of laws guaranteeing fair trial rights does not mean that those rights can be exercised in practice. The practical implementation of EU law requires a more holistic approach, ensuring not only that the wording of local laws reflects EU standards, but also that it is supported by a broader framework of measures that ensure real and effective implementation.

⁷ Cf. Court of Justice of the European Union, Case C-216/18 PPU Minister for Justice and Equality v LM and case C-405/15 Aranyosi and Căldăraru

⁸ Laska and Lika. v. Albania, no. 12315/04 and 17605/04, judgement of 20 April 2010, Kaçiu and Kotorri v. Albania, no. 33192/07 and 33194/07, judgment of 25 June 2013

⁹ Mulosmani v. Albania, no. 29864/03, judgement of 8 October 2013, Haxhia v. Albania, no. 29861/03, judgement of 8 October 2013

¹⁰ Shkalla v. Albania, no. 26866/05, judgment of 10 May 2011, Izet Haxhia v. Albania, no. 34783/06, judgment of 5 November 2013, Hysi v. Albania, no. 72361/11, judgment of 22 May 2018, Malo v. Albania, no. 72359/11, judgment of 22 May 2018, Muca v. Albania, no. 57456/11, judgment of 22 May 2018, Topi v. Albania, no. 14816/08, judgment of 22 May 2018, Karemani v. Albania, no. 48717/08, judgment of 25 September 2018

¹¹ Law No. 35/2017 of 30 March 2017

Overview of findings

Changes made to Albanian legislation in recent years have helped to align local laws with the EU's minimum standards in the Roadmap Directives, and Albanian criminal procedure rules now appear to be compliant with EU laws, with only a few exceptions. The accession process, and, in particular the Roadmap Directives, seem to be having a positive impact on defence rights, and they are helping to ensure compliance with existing human rights standards, especially those under the European Convention on Human Rights ('ECHR'). Sweeping reforms introduced by changes to the Criminal Procedure Code in 2017 have greatly enhanced procedural safeguards for criminal suspects and accused persons, and the introduction of the Children Code in the same year has resulted in significant improvements for the rights of children in conflict with the law.

However, a closer inspection of laws, policies, and practices in Albania raises doubts about the practical accessibility of some of the rights contained in the Roadmap Directives. Although domestic laws are mostly compatible with the main operative provisions in the Directives, there are notable practical and legal barriers to effective implementation in several areas. The main challenge for Albania now is to go beyond the process of legislative changes to transpose the wording of the Directives, and to ensure that the standards in the Roadmap Directives are supported by broader legal and practical frameworks that facilitate the real and meaningful exercise of suspects' and accused persons' rights.

These challenges need to be addressed through various methods and by various stakeholders. They range from overhauling the legal aid system to ensure that free legal aid is easily available and making specific changes procedures on the provision of information to suspects, to more practical initiatives, such as the establishment of a functional duty-lawyer scheme and better resourcing of juvenile justice institutions. Many of these changes need to be effected by public authorities and law-makers. Equally crucial is the role of civil society and defence lawyers to ensure oversight of how suspects and accused

persons are being treated in practice. It is important that defence lawyers are trained and mobilised to use the Directives and to demand that the relevant standards are respected, and civil society should be supported in their systemic oversight role and in their role as advocates for change.

The challenges being faced by Albania are by no means unique. Fair Trials has noted that many barriers to effective implementation of the Directives are similar to those identified in current EU Member States, including ineffective quality controls on interpretation and translation, inadequate systems for facilitating early access to legal advice, and the overuse physical restraints in court proceedings.¹² Not all of these issues have yet been successfully addressed in the EU, but the fact that Albania shares many fair trial rights challenges with EU Member States means that there are likely to be considerable benefits to the sharing of experiences, and continued dialogue between activists across different jurisdictions.

It should also be emphasised that although the immediate objective of the Albanian government in transposing the Directives seems to be to progress its application to join the EU, defence rights must not be regarded merely as a tick-box exercise for accession. While the Roadmap Directives can greatly assist the improvement of criminal justice systems, it does not amount to exhaustive guidance on fair trial rights. There are significant challenges, such as pre-trial detention and racial discrimination that are common to criminal justice systems across Europe but which have not yet been addressed sufficiently in targeted EU laws. Improvements to fundamental rights protections and the rule of law cannot be achieved solely through the narrow lens of the Roadmap Directives – these challenges must instead be tackled through wider range of measures and with broader objectives to strengthen fair trial rights.

¹² Fair Trials, *Where's My Lawyer? – Making legal assistance in pre-trial detention effective*, 2019; Fair Trials, *Innocent Until Proven Guilty? – The presentation of suspects in criminal proceedings*, 2019; Fundamental Rights Agency, *Rights in Practice: access to a lawyer and procedural rights in criminal and European arrest warrant proceedings*, 2019

Interpretation and translation

Laws in Albania appear to be broadly compliant with the Interpretation and Translation Directive. The Albanian Constitution, supplemented by provisions in the Criminal Procedure Code, guarantees the right to language assistance in criminal proceedings, both for suspects and accused persons who cannot speak Albanian, and for those with speech and hearing impediments.

There are, however, three major challenges that need to be addressed to ensure that the standards in the Directives are effectively in force:

1. There are inadequate procedures and mechanisms to ensure that interpretation and translation is provided to a sufficiently high standard.
2. Interpretation and translation services are not entirely free, even for those who have to rely on legal aid.
3. There is too much discretion regarding which documents are translated for suspects and accused persons

Quality Control

The poor quality of interpreters has been highlighted as a major issue by several defence lawyers, and it is apparent that there are inadequate frameworks and mechanisms to guarantee that all suspects and accused persons have access to interpretation and translation of a sufficiently high standards. In particular:

- There is no legal distinction between an 'interpreter' and 'translator', which falsely assumes that the same qualifications are needed for both professions.
- There is no requirement to ensure that interpreters and translators have specific training as interpreters or translators, or that they are familiar with legal terminology.
- There is no explicit provision in the Procedure Code that requires interpretation and translation to be of a sufficiently high standard to enable suspects and accused persons to participate effectively in their legal proceedings.

- There is no regulatory body that maintains professional standards for interpreters and translators.
- There is currently no transparent mechanism for appointing interpreters and translators, raising concerns about potential clientelism, the lack of independence, and the quality of language assistance received by suspects and accused persons.

Costs of interpretation and translation

The Constitution and the Procedure Code both state that interpretation and translation should be provided free of charge. However, these services are paid for by the state only pending the outcome of the criminal case. If a defendant is convicted, they are liable to pay back the costs of interpretation and translation to the state. This amounts to a direct conflict with Article 4 of the Interpretation and Translation Directive, which requires relevant costs to be borne by the state *“irrespective of the outcome of the proceedings”*. It is especially concerning that the costs of interpretation and translation can also be recovered even if the defendant is reliant on legal aid. This is likely to deter suspects and accused persons from requesting the appointment of an interpreter, even if it is their right to do so and if the fairness of the criminal proceedings is likely to be seriously undermined without effective interpretation.

Translation of documents

In contrast to Article 3 of the Interpretation and Translation Directive, Albanian law does not specify which documents used in criminal proceedings need to be translated. In practice, most documents regarded as ‘essential’ under the Directive are translated, but the lack of specificity in Albanian law gives too much discretion to the competent authorities to determine what translations should be given, and it could make it more difficult for suspects and accused persons to challenge refusals to provide translations.

Key recommendations

- Laws should expressly recognise that interpretation/translation should be of sufficient quality, and that any failure to meet that standard should itself constitute a basis for challenging resulting evidence, and for requesting the replacement of the interpreter/translator.
- Interpreters/translators appointed for criminal proceedings should be specially trained professionals, and should also be required to take part in trainings on legal terminology.
- A more robust regulatory system for professional interpreters/translators is needed. To that end, the Albanian authorities and other stakeholders should explore the possibility of establishing a self-regulatory body for professional interpreters and translators.
- Albanian laws and policies should recognise the distinction between interpretation and translation more distinctly, and the different qualifications and skills required for each, with a view to promoting more effective and reliable interpretation and translation in criminal proceedings.
- Interpretation and translation should be free of charge irrespective of the outcome of the case, so that any suspect or accused person who lacks sufficient command of Albanian can request an interpreter without financial risks.
- Laws should be amended to set out the documents that need to be translated as a minimum.

Access to information

Albanian law complies with most of the key provisions of the Right to Information Directive. Suspects and accused persons have the right to be informed of their rights (including access to a lawyer, the entitlement to free legal aid and the means of accessing it, the right to be informed of the charge against them and the right to remain silent). All suspects and accused persons must, by law, be provided with a Letter of Rights.

Similar to the provisions in the Access to Information Directive, the Criminal Procedure Code recognises the right to access the case file to challenge arrest or detention, and to ensure the fairness of criminal proceedings.

Information about rights and Letters of Rights

A closer investigation of how suspects and accused persons are provided information about their rights in practice highlights numerous flaws that undermine the ability of many suspects and accused to understand them, and to make informed decisions on the basis of the information they are given:

1. Police are known to interview suspects and accused persons as 'witnesses', but not alerting them about their status, and not informing them of their rights as suspects and accused persons.
2. Letters of Rights do not contain sufficient information that would enable suspects and accused persons to make informed choices in their cases.
3. The same of Letter of Rights is used for all categories of suspects and accused persons, irrespective of their age, and of whether they are detained or at liberty.
4. Letters of Rights are drafted in language that is inaccessible to most suspects and accused persons, and there is no effective process for the police to ensure additional assistance is provided to people who need it to understand their rights.

¹For example, Transform Justice Defendants on video – conveyor belt justice or a revolution in access?; Legal Education Foundation Briefing: Coronavirus Bill, Courts and the Rule of Law; Anne Wallace Courts and Coronavirus: Is Videoconferencing a Solution? ; Advocates Gateway Planning to question someone using a remote link

Access to case files

Although Albanian laws recognise the right of access to case files to safeguard the right to liberty and the rights of the defence, in reality there are several practical challenges that undermine this right. For example:

1. In practice, detained or arrested persons are only granted access to their case file immediately before judicial hearings reviewing the lawfulness of detention. As no information is provided before this, it is much more difficult for people to challenge their arrest and police detention. Where case files are made accessible before judicial hearings, it is typical for lawyers to only be given a few minutes to look through the file in court. This makes it impossible for the defence to gather evidence to counter arguments for pre-trial detention, meaning that suspects and accused persons are not being given meaningful access to the case file to challenge their detention.
2. Albanian law makes it possible for prosecutors to withhold information that are 'state secrets'. This term, however, is interpreted broadly, and allows prosecutors to refuse the disclosure of information about the means and methods for investigating crimes. This undermines defendants' ability to challenge illegal investigative practices, and it could deprive them of access to evidence that is crucial to their defence.

Key recommendations

- There should be clearer prohibitions on the police questioning individuals who are de facto suspects without informing them of their status as suspects. There should be effective remedies (including the exclusion of evidence) if these rules are violated.
- Letters of Rights should contain a more comprehensive list of defence rights, to ensure that suspects and accused persons are able to make better-informed decisions about exercising their rights.
- Letters of Rights should be adapted for different categories of suspects and accused persons. In particular, there should be a separate Letter of Rights for detained persons, and one for children, to reflect that they have different rights and different needs in terms of effective communication.
- Letters of Rights should be written, with the help of legal and linguistic experts, in plain language so that they are accessible to the majority of suspects and accused persons.
- The law should specify that suspects and accused persons must be granted early access to their case file so that they have sufficient time to effectively challenge their arrest or detention.
- The refusal or failure to grant access to a case file should be subject to effective judicial review.

¹For example, Transform Justice Defendants on video – conveyor belt justice or a revolution in access? ; Legal Education Foundation Briefing: Coronavirus Bill, Courts and the Rule of Law ; Anne Wallace Courts and Coronavirus: Is Videoconferencing a Solution? ; Advocates Gateway Planning to question someone using a remote link

Access to a lawyer and legal aid

Albanian laws seem broadly to conform with most of the provisions of the Access to a Lawyer Directive and the Legal Aid Directive. Suspects and accused persons have the right of access to a lawyer from the earliest stages of criminal proceedings, including during questioning by the police. Legal aid is available at all stages that a suspect or accused person has the right of access to a lawyer. However, in practice, there are significant challenges that undermine the effective exercise of these rights, and it is of serious concern that vulnerable suspects and accused persons face serious disadvantages with regard to legal aid.

Access to a lawyer

There are no major inconsistencies between the wording of the Criminal Procedure Code and EU standards regarding the right of access to a lawyer. There were recent reforms under a 2019 decision of the High Prosecutorial Council to make the appointment of lawyers more transparent and fair, through the establishment of a rota system.¹³

However, there are notable practical barriers to effective legal assistance, including the lack of facilities that help to safeguard the confidentiality of lawyer-client communications at police stations and prosecutors' offices.

It is also clear that the practice in respect of waivers of the right to legal assistance fall far short of the standards required in the Access to a Lawyer Directive. Suspects and accused persons are waiving their rights by signing a 'tick-box' form with no other safeguards to ensure that the waiver is given 'voluntarily and unequivocally'.¹⁴

¹³ High Prosecutorial Council's Regulation On Guaranteeing Mandatory Defence and Appointment of the Defence Lawyers from the List of Lawyers Providing Secondary Legal Aid in the Criminal Process on the Basis of the Principle of Rotation, 12 November 2019

¹⁴ Access to a Lawyer Directive, Art 9(1)

Legal aid

There are major challenges regarding the right of access to legal aid. While there are no major provisions in written laws or policies that directly contravene the provisions in the Legal Aid Directive, it is clear that practical access to legal aid is hampered by various complexities and inadequacies in the legal aid systems, and there have also been concerns raised about the quality of legal assistance funded by legal aid.

There are two legal aid schemes in operation in Albania, depending inter alia on the type of legal assistance needed, and the type of suspect or accused person in question. Vulnerable defendants and arrested persons, for example, are entitled to legal aid through mandatory defence under the Procedure Code, whereas most other suspects and accused persons who cannot pay for legal assistance privately appear to be eligible for legal aid under Law no. 111/2017 On State Guaranteed Legal Aid ('Law on Legal Aid'). A key difference between the two legal aid regimes is that costs of mandatory defence under the Procedure Code can be recovered from the suspect or accused person if they are convicted, whereas there is no such risk for legal aid under the 2017 Law on Legal Aid. This is a system that clearly disadvantages vulnerable defendants, and one that could expose them to greater financial hardship on account of their vulnerabilities. The scope of the two legal aid schemes are also unclear. Suspects and accused persons might, during the course of criminal proceedings, be entitled to legal aid under different regimes at different stages.

Key recommendations

- Courts, prosecuting authorities, and the police should ensure that there are adequate facilities for confidential client-lawyer consultations, including in police stations.
- The implementation of reforms introducing a rota for the appointment of lawyers should be monitored. There should be an effective duty lawyer schemes in place to ensure that suspects and accused persons are guaranteed access to impartial legal assistance throughout criminal justice proceedings, especially at the earliest stages.
- There need to be better safeguards to ensure that waivers of the right of access to a lawyer are given unequivocally, knowingly, and intelligently.
- Suspects and accused persons who are unable to pay for legal services privately should not be required to pay back the costs of legal aid if they are convicted.
- The two legal aid schemes currently in operation should be simplified so that there is greater clarity and certainty for suspects and accused persons who are unable to afford private legal assistance, and to ensure that vulnerable defendants are not discriminated against.

Presumption of innocence

The general principles of the presumption of innocence are reaffirmed in the Albanian constitution and the Procedure Code, including the right to remain silent. However, provisions regarding 'specific aspects' of the presumption of innocence in the Presumption Innocence Directive, including the prohibition on public statements of guilt and the use of physical restraints, appear to be inadequately transposed and/or poorly enforced.

Public references to guilt

There is no specific prohibition on public references to guilt being made by public authorities, apart from the state police. Judges and prosecutors are subject to rules that limit the statements they can make about criminal cases, but they are only subject to disciplinary sanctions for violations. According to lawyers and civil rights organisations consulted for this study, public references to guilt are regularly made by public officials, including the prime minister, ministers, and members of parliament.

There are regulations on media reporting to ensure that the press respect the presumption of innocence but these do not seem to be effective, and media outlets are found to be in violation of these standards very frequently.

Use of physical restraints

Although the Criminal Procedure Code provides that physical restraints, such as handcuffs and cages, should be used only to prevent the risk of escape or violence, it appears that they are used in the majority of court proceedings, irrespective of the potential risk or the severity of the accusations.

Key recommendations

- There should be a clear legal prohibition on public references to guilt made by public authorities, including judges, prosecutors, ministers, prime minister, members of parliament, and public servants.
- There should be legal restrictions on statements made by public authorities (judges, prosecutors, ministers, prime minister, members of parliament, public servants) to the media regarding criminal proceedings to ensure that such statements do not violate the presumption of innocence.
- Media regulatory bodies should be empowered to monitor and investigate breaches of the presumption of innocence more actively.
- Journalists should be trained on human rights and ethical reporting on crimes and judicial proceedings.
- There should be stricter standards and more specific guidance on the use of physical restraints, so that they are only applied for security reasons.

Procedural safeguards for children who are suspects or accused persons

The Children Code, which entered into force in January 2018, is largely based on the Children Directive, and it reflects standards in the UN Convention on the Rights of the Child. It consolidates all provisions referring to children who are suspects or accused persons in other legal instruments, including the Criminal Code and the Criminal Procedure Code to provide a comprehensive legal framework for children in conflict with the law.

The Children Code, and practical measures to implement its provisions, provide some encouraging examples of implementing the Children Directive. For example, the Children Code provides that there should be alternatives to the deprivation of liberty through special institutions that facilitate rehabilitation whilst ensuring regular contact with family members. Various police stations have a specialist 'juvenile justice unit' and child-friendly spaces for conducting interviews.

The Children Code is still a relatively new instrument, and further monitoring is required to assess its effectiveness more fully. While many of its provisions align with, or even surpass the standards in the Children Directive, experiences so far suggest that not all of these high standards are being enforced in practice. For example:

1. Contrary to domestic laws and widely accepted international and European standards, children are not always being held separately from adults when they have been deprived of their liberty.
2. Institutions that provide rehabilitative alternatives to detention for children have yet to be built.
3. Facilities to conduct child-friendly interviews are being underused by the police.
4. Police interviews are not being conducted in child-friendly ways, and they can be unduly lengthy.
5. There is a shortage of qualified personnel and medical staff to provide appropriate support at police stations for children in conflict with the law.

Questions have also been raised about the effectiveness of legal assistance given to children. Training for lawyers on juvenile justice does not seem to be provided on a regular basis, and there is no guarantee that legal aid lawyers appointed to assist children have any expertise in working with children.

Key recommendations

- There should be clearer guidance and standards for interviewing children in conflict with the law which limits the number of times minors can be questioned by the authorities.
- There should be more child-friendly facilities at police stations and other places where children in conflict with the law are questioned, and police and prosecutors should be required to use these facilities, if they are available.
- More psychologists, medical personnel and other support staff are needed in police stations to assist during the questioning of minors and to respond to their needs.
- There need to be stronger, more effective measures to ensure that children are not detained with adults.
- State institutions should build special institutions in accordance with the Children Code to ensure that there are alternatives to detention that promote child-specific rehabilitation in an open environment.
- There should be effective mechanisms to ensure that children are assisted by lawyers who have specialist training to represent children who are suspects or accused persons, for example, through a separate register or rota.
- Training should be available to all criminal justice professionals involved in juvenile justice proceedings. These should be mandatory and not dependent on funding from the donor community.



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