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STRENGTHENING THE PREVENTION OF TORTURE IN SOUTH-EAST EUROPE: FOR THE EFFECTIVE MONITORING OF SAFEGUARDS IN POLICE CUSTODY

FINAL REPORT

This report has been produced in the framework of the Project “Strengthening the Prevention of Torture in South-East Europe: for an Effective Monitoring of Safeguards in Police Custody”. The project was implemented on the occasion of the Croatian Chairmanship of the South East Europe NPM Network (SEE NPM Network) by the Croatian National Preventive Mechanism, in cooperation with the Ludwig Boltzmann Institute of Fundamental and Human Rights, the Association for the Prevention of Torture and with the financial support of the Joint Project “European NPM Forum”, funded by the European Union and the Council of Europe, and implemented by the Council of Europe.

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INTRODUCTION

Within the criminal justice system, the first hours of police custody bear the highest risks of torture and other forms of ill-treatment. Fundamental safeguards can greatly mitigate such risks and contribute to preventing potential abuses during police custody. Relevant fundamental safeguards encompass the rights of access to a lawyer, the right of access to a doctor, the right to notify the detention to a third party as well as the right to be informed about these rights. First identified by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the importance of the safeguards in preventing ill-treatment was confirmed in a major academic study on the impact of torture prevention measures.¹

Safeguards in police custody have been increasingly discussed in international and regional fora over the past years; and there is currently a momentum for strengthening and implementing them.²

¹ Richard Carver and Lisa Handley, *Does Torture Prevention Work?* (Liverpool University Press 2016).

² At the United Nations (UN) level, safeguards against ill-treatment during police custody and pre-trial detention were the focus of Human Rights Council torture resolution A/HRC/RES/31/31 of March 2016; as well as a primary focus of the former Special Rapporteur on Torture Juan E. Méndez's last report to the General Assembly (A/71/298 of October 2016), which called for the development of a set of international guidelines on investigative interviewing and associated legal and procedural safeguards. The guidelines developed as part of a multidisciplinary independent expert-led process coordinated by the APT, the Anti-Torture Initiative (ATI) and the Norwegian Centre for Human Rights (NCHR) were adopted in May 2021, available at: https://www.apr.ch/sites/default/files/inline-files/PoEI_final_2021.06_0.pdf. At the regional level, safeguards and police custody were addressed during a meeting co-organized by the CPT and the Danish Chairmanship of the Council of Europe in May 2018, and were the focus of the CPT's 30th anniversary event in November 2019, that was co-organized by the APT. Safeguards in police custody were also the focus of the EU-funded project "Strengthening the rights of persons suspected or accused in criminal proceedings – the role of National Human Rights Institutions" coordinated by the Ludwig Boltzmann Institute of Human Rights (BIM) in cooperation with the Hungarian Helsinki Committee (Hungary), the Helsinki Foundation for Human Rights (Poland), and the Peace

Yet, whilst most States have enshrined the safeguards in their national legislation, their operationalization remains challenging.

National Preventive Mechanisms (NPMs) can play an essential role in this regard, due to their extensive monitoring powers allowing them to have access to all places of detention, all persons deprived of liberty, and all information. The monitoring of safeguards, however, is a peculiar exercise involving various practical challenges: How can NPMs monitor the safeguards if, when visiting a police station, they find no detainee to interview? What tools can be used to make the most of a monitoring visit? How to follow-up effectively?

Building on past initiatives, the Project “Strengthening the Prevention of Torture in South-East Europe: for an Effective Monitoring of Safeguards in Police Custody” aimed to tackle these open questions and foster an exchange on promising practices and monitoring methodologies among the NPMs. The project was implemented on the occasion of the Croatian Chairmanship of the South-East Europe National Preventive Mechanism Network (SEE NPM Network or Network) by the Croatian NPM in cooperation with the Ludwig Boltzmann Institute of Fundamental and Human Rights (LBI GMR), the Association for the Prevention of Torture (APT) and with the support of the Council of Europe’s “European NPM Forum” Project. It focused specifically on the situation of the countries of the SEE NPM Network, i.e. Albania, Austria, Bulgaria, Bosnia and Herzegovina, Croatia, Greece, Hungary, Kosovo, Montenegro, North Macedonia, Romania, Serbia, and Slovenia.³

In this framework, the Partners conducted two workshops:

- ‘Monitoring fundamental safeguards during the first hours of police custody’, held on 12 - 14 October (online);
- ‘Monitoring safeguards in the first hours of police custody – Follow-up and responding to Covid-19-related challenges’, held on 7 December 2020 (online).

In addition, the LBI GMR conducted research on the latest CPT and UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) recommendations issued to the countries of the SEE NPM Network as well as a survey that was sent to the members of the Network. The results of the survey served as a basis for the discussions held during the first workshop.⁴

This Final Report aims to collect in one single document the most relevant findings, promising practices and conclusions that emerged from the project consultations. As the guidance included in the document is the result of the fruitful peer-to-peer exchange among the NPMs of the Network and was provided from monitors to monitors, we hope this Final Report will offer a useful tool for NPMs and support them in setting up better strategies and methodologies for the monitoring of safeguards against ill-treatment.

Institute (Slovenia), available at: <https://bim.lbg.ac.at/en/project/current-projects-projects-human-dignity-and-public-security/strengthening-rights-persons-suspected-or-accused-criminal-proceedings-role-national-human-rights-institutions>.

³ The SEE NPM Network is composed of 11 members and 2 observers (Bosnia and Herzegovina and Kosovo).

⁴ 7 NPMs replied to the survey, i.e. the NPMs from Croatia, Hungary, Montenegro, North Macedonia, Romania, Serbia and Slovenia.

A. MONITORING SAFEGUARDS: GENERAL CONSIDERATIONS

KEY MESSAGES

- ✓ Reflect on the goal of the visit;
- ✓ Gather all relevant information before the visit;
- ✓ Pay attention to the criteria used to select the police stations to be visited;
- ✓ Pay attention to the time of the visit to the police stations;
- ✓ If during visits to police stations, no detainees are usually found, investigate the reasons behind it and think of alternative ways to monitor safeguards in police custody. Alternatives could be, for instance, visits outside working-time, or retrospective monitoring techniques (i.e. visits in remand facilities and prisons to inquire about the implementation of safeguards at earlier stages of detention).

1. SELECTING THE FACILITIES

NPMs 'should establish a **work plan/programme** which, over time, encompasses visits to all, or any, suspected, places of deprivation of liberty, as set out in Articles 4 and 29 of the Optional Protocol, which are within the jurisdiction of the State.'⁵ It is thus important that NPMs include visits to police stations in their work plan. The SPT further recommended that 'NPMs develop criteria for selecting the facilities to be visited, which will ensure that all such facilities are visited periodically; these criteria should be based on the type and size of the institutions and the severity of the human rights issues of which the NPMs are aware, including the risk of ill-treatment, while not excluding any types of institutions or any geographical areas from the scope of their work'.⁶

Several NPMs of the Network reported to apply the following criteria when selecting police stations, namely:

- The size of the facilities – big centres or central police stations frequently host more detainees;
- Geographical considerations – to ensure that no region or police station is left unmonitored for a considerable period of time;
- The number and type of individual complaints received by Ombuds Institutions – individual complaints may point to systemic issues in one or more police facilities;
- The information gathered from other actors, such as civil society organizations and Ombuds Institutions;
- The information gathered from previous visits.

PROMISING PRACTICES

SLOVENIAN NPM:

"At the beginning of the year, we make a **work plan** for the visits of all the facilities that we would like to visit that year. We usually allocate certain time slots for police stations. However, the final selection of police station is made on a monthly basis. We usually select the particular police station on the basis of the information that we have received from the Ombudsman, NGOs etc. This is what gives us an opportunity to actually select those police stations where there is a need for us to be present. We are very flexible about selecting police stations, and if there is a need we make ad hoc visits."

⁵ Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), 'Guidelines on national preventive mechanisms' (2010), CAT/OP/12/5, para 33.

⁶ Office of the United Nations High Commissioner for Human Rights (OHCHR), 'Preventing Torture: The Role of National Preventive Mechanisms' (2018), available at: https://www.ohchr.org/Documents/HRBodies/OPCAT/NPM/NPM_Guide.pdf.

2. CHOOSING THE APPROPRIATE TIME FOR THE VISIT

Several NPMs of the Network conduct visits both during and outside working hours (i.e. early in the morning, at night, or during the weekend or a holiday). Although the final decision will always depend on a case-by-case assessment, the NPMs reported advantages and disadvantages for each type of visit.

Table No 1 “Time of the visit”

VISITS DURING WORKING TIME	PROS	... are a good option if the NPM wishes to conduct a full inspection of all premises and all relevant documentation (e.g. registers, records etc.). During working times, the head of the police station and most police officers are likely to be on duty.
	CONS	... may not be an appropriate tool if the NPM wishes to find persons in custody to interview. Arrests often happen overnight and, during day visits, NPMs may risk not to find detainees, for instance because they were released or were moved to remand facilities.
VISITS OUTSIDE WORKING HOURS	PROS	... are a good option if the NPM wishes to find persons in custody to interview. It is more likely to find persons in police custody early in the morning, at night, as well as during the weekend, or on a holiday. It also gives a more realistic view of the operation of police stations during these time-periods when the risk of ill-treatment is highest.
	CONS	... may not be appropriate if the NPM wishes to conduct a full inspection of all premises and all relevant documentation (e.g. registers, records etc.). Outside working hours, it may be harder to talk to the head of the police station and fewer officers may be present. This could make it more difficult for NPMs to be given full access to detention places and documentation.

For these reasons, it is important for NPMs to carefully plan the appropriate time of a visit based on the country specific situation and in light of the desired goal. In most cases, a combination of visits during and outside working time may be the best approach. To have a good picture of how safeguards are applied in practice, in fact, it is essential to have direct testimonies from the persons in custody, but full access to detention places and documentation.

3. CHOOSING THE VISITING TEAM

Among the consulted NPMs, the visiting team monitoring police custody are generally composed by NPMs representatives, mostly with legal or psychological background. In certain cases, the team can be complemented by NGO representatives with different expertise or external experts, such as academics or doctors, including forensic doctors. The size was not always specified, but several NPMs mentioned the team is usually composed by 2 to 3 persons.

PROMISING PRACTICES

At the project workshops, there was consensus that the **presence of a medical doctor in the team** is of utmost importance. The presence of a doctor during NPM visits not only allows to more easily check whether detainees have access to a doctor and whether medical confidentiality is respected, but also to select detained persons for interviews and, if required, to document medical evidence of ill-treatment.

CROATIAN NPM: If necessary, in performing its OPCAT mandate the Croatian NPM cooperates with other specialized domestic mechanisms, such as the Ombuds for children, persons with disability and gender equality. The NPM can include other independent experts in the visiting team, in accordance with OPCAT.

B. MONITORING SAFEGUARDS: AT POLICE STATIONS

KEY MESSAGES

- ✓ Interviews with detainees in police custody are a key source of information. It is important to conduct such interviews, as far as NPMs are mindful of the risk of reprisals and the “do not harm” principle can be respected. To enhance the chances of finding detainees in police custody, NPMs should reflect on the appropriate time of the visits (e.g. visits outside working-time);
- ✓ During all interviews it is important not to ask “if” but rather “how” questions;
- ✓ It is important that monitors are familiar with the type of registers or documentation used by the police staff in order to know what to look for;
- ✓ Audio-video footage can be very useful to cross-check information, especially when the monitors receive different accounts from police staff and detainees, or allegations regarding a specific moment and/or location;
- ✓ The existence of similar cases from unrelated detainees can also be a strong indication of an underlying problem that needs to be verified by the NPM.

1. INTERVIEWS WITH DETAINEES

Interviews with detainees in police custody are a key source of information with regard to safeguards. Even if a general assessment for the SEE region is not possible, several NPMs of the Network reported one main challenge: often it is difficult to find detainees to interview in police stations during day visits (e.g. Croatia, Serbia, Montenegro). To overcome this challenge, several NPMs have started conducting unannounced visits outside working hours (i.e. early mornings, at night, or during weekends or holidays). Some NPMs also reported that it is useful to conduct visits to police stations on the occasion of public protests, festivals, sport or other big events.

Although present in all detention contexts, the risk of reprisals is particularly high in police custody, especially if there are only a few detainees in custody at the time of the visit. NPMs have to be mindful of this risk and fully apply the “do not harm” principle to make sure that those who engage with them in the OPCAT activities are not subjected to any form of reprisal.

PROMISING PRACTICES

SPT: In 2016, the SPT has adopted a comprehensive policy on reprisals.⁷ The policy includes a number of measures that can be adopted in order to protect individuals from reprisals and or raise awareness on the matter. Amongst others, the policy mentions:

- Appointing one members as focal point on reprisals;
- Preparing a short information sheet on reprisals for distribution during the visit;
- At the conclusion of the visit, reiterating the concerns in the final debriefing with the authorities;
- Bringing the concern to the immediate attention of the authorities;
- Returning to facilities previously visited and plan follow-up visits.

CPT: To prevent reprisals, the CPT often returns to facilities previously visited. In one case, the team went back to a police station four times in a row, including at night-time. Each time there were new findings.

MONTENEGRIN NPM: In Montenegro there are not so many custody units, thus, the NPM highlighted how important it was to talk to “all” detainees. To do so, the visiting team usually enters all cells and talks to everyone detained in a certain unit to reduce as much as possible the risk of reprisals. In this way, the police officers cannot know which detainee provided a certain piece of information. Moreover, at the end of each visit, the NPM specifically points out again to the police officers that the arrested persons and the police officers who talked to the NPM cannot suffer any

⁷ SPT, ‘Policy of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on reprisals in relation to its visiting mandate’ (2016), CAT/OP/6/Rev.1.

consequences over the fact that they have engaged with it. The NPM staff also make clear that the NPM will double check if reprisals have taken place.

As mentioned below, another way to overcome the problem of not finding detainees in police custody and the risk of reprisals is to conduct interviews with pre-trial detainees and prisoners about their experience in police custody (see below, Part C).

2. INTERVIEWS WITH POLICE OFFICERS

Interviews with police officers may also be an important source of information. To make such interviews more effective, it was recommended not to ask “if” but rather “how” questions.

PROMISING PRACTICES

CPT: Monitors can do a role-play with police officers. Monitors can put themselves in the shoes of somebody who is recently arrested and ask the police officer to explain step by step how the arrested person would be treated upon arrival at the police station. Some of the the following questions could be asked: I have recently been arrested, how do you deal with me? How do you inform third parties, for instance my family? Does this not jeopardize your criminal investigation against me? Do you have to first check with the prosecutors? When does this happen?

3. CHECKING THE DOCUMENTATION

All NPMs of the Network reported that they check all relevant documentation as a way to monitor procedural safeguards. In particular, the following documents were mentioned:

- Custody/detention registers;
- Medical and trauma registers;
- Letter of rights and other information leaflets;
- List of duty lawyers.

PROMISING PRACTICES

AUSTRIAN NPM: It is important that the members of the visiting team know which documentation and registers the police staff use in that facility and what to look for in the documentation. To achieve this, the Austrian NPM trains the members of the monitoring commissions on how the regular content of the documentation should look like and where to find gaps.

It should be possible to verify the proper application of the safeguards in practice; thus it is important that detainees are asked to confirm this with their signature. If a detainee refuses to sign the relevant document, the police should be able to explain the absence of the signature.

PROMISING PRACTICES

SLOVENIAN NPM: The NPM reported several deficiencies in the documentation of several police stations visited, for instance incomplete information form/or use of old forms. In one case, the form was incomplete, because it was lacking specific information on whether the detainee was granted this right and/or had waived it. Police documents showed that the foreign nationals were informed of the rights of a detained person, including the right to notify family members, however, the form did not request the detainee to confirm whether it had made use or waived this right with a signature. The Ministry of Interior explained that this was not specifically anticipated in the existing forms. After the recommendation of the Slovenian NPM, the form was updated and now includes the possibility of adding the detainee’s signature.

When it comes to irregularities concerning signatures, monitors should consider if they are dealing with an isolated case or rather with a systemic issue. If there are a dozen of similar cases from unrelated detainees, NPMs have a strong indication that there might be an underlying problem.

4. CHECKING AUDIO-VIDEO FOOTAGE

Audio-video footage can be very useful to cross-check information, especially when the monitors receive different accounts from police staff and detainees. For example, it can be a useful tool to:

- To understand if the person was informed about his/her rights and why he/she refused to sign the protocol;
- To understand the reasons why the person refused to sign the form where the implementation of the safeguards are documented;
- To understand if the detainee was examined by a doctor in private or if a police staff was present during the examination;
- To understand if the medical examination was of sufficient quality. Sometimes detainees complain that they were examined only in a very superficial manner: “I was asked only very few questions and I have said basically nothing. The doctor checked some boxes and that was all”. A video footage could be helpful to understand if the detainee was right.

PROMISING PRACTICES
<p>CPT: There might be several obstacles to access and review video footage (e.g. the video is centrally located on a server, there is a password required etc.). Before the visit, NPMs can request information from the Ministry of Interior on any existing policies on storage, access to, and the possibility to review video footage.</p> <p>CROATIAN, MONTENEGRIN AND SERBIAN NPMs: The NPMs recommended that CCTV should be introduced in all rooms where people are deprived of liberty in police custody, including those questioning takes place and other areas such as corridors. Yet they reported this as a “difficult recommendation to implement” (see also below, Part E).</p>

C. MONITORING SAFEGUARDS (RETROSPECTIVELY): AT REMAND AND PRISON FACILITIES

KEY MESSAGES

- ✓ Bearing in mind that, in several countries, it is likely to encounter a small number of persons deprived of their liberty during visits to police stations and that detainees at police stations may not be willing to share information due to fear for reprisals, NPMs should consider monitoring safeguards also retrospectively, especially at remand facilities but also in prisons;
- ✓ Retrospective monitoring can effectively complement visits to police stations and offer a very useful way to monitor safeguards against ill-treatment. It may be used to find out what police stations should be visited first and what patterns and trends monitors should look into during such visits;
- ✓ Detainees in remand custody often have a very vivid memory of how safeguards were implemented and signs of alleged ill-treatment may still be visible to the eyes of a medical doctor.

Some NPMs of the Network are monitoring safeguards retrospectively, that is while conducting visits in pre-trial detention facilities or prisons with a view to inquire about the treatment in police custody. Retrospective interviews may have a number of advantages:

- Detainees stay in remand detention and prisons for longer periods of time, hence, it is easier for monitors to find enough detainees to interview and identify trends and patterns;
- In remand facilities, detainees may still have a very vivid memory of how their rights were implemented and signs of alleged ill-treatment may still be visible;
- As they are no longer held by police staff, detainees in remand facilities may feel more confident to talk about any abuse they might have suffered during their time in police custody and are at a lower risk of being subjected to reprisals.

When visiting a remand facility or prison, the question may arise as to how to select the detainees to be interviewed. The monitors consulted recommended to consider the following criteria:

- Recently arrived detainees;
- Detainees in quarantine cells/solitary confinement;
- Detainees convicted for certain types of crimes (e.g. sexual violence);
- Detainees that have shown a relevant profile after the screening of the trauma register;
- If applicable, detainees that have shown a relevant profile in previously conducted surveys by the NPM.

PROMISING PRACTICES

CPT: When visiting remand facilities, medical doctors should start screening the trauma registers of the past 15 days as soon as possible. They should particularly look at the types of injuries. They should then provide the findings of this first screening to the rest of the visiting team, who can then use it as a lead in their further monitoring activities and during interviews.

MONTENEGRIN NPM: In the past years, the Montenegrin NPM conducted research on the application of safeguards against ill-treatment in police custody. All the research was conducted with persons detained in remand facilities. The research included two surveys as well as retrospective interviews. Retrospective interviews were conducted only if the survey showed some relevant findings. The NPM cooperated with a university professor to this extent.

D. MONITORING SAFEGUARDS: COMBINING DIFFERENT APPROACHES

KEY MESSAGE

- ✓ Combining visits at police stations, remand facilities and prisons offers the possibility to monitor the treatment of the detainees in police custody across time and places, acquiring a more complete picture of what happened, identifying patterns and trends, and cross-checking the information obtained in the different facilities.

Although retrospective monitoring can be very effective and is recommended (see above Part C), it should not fully replace visits to police stations. Rather monitors should consider combining the different approaches.

NPMs of the Network and international monitors reported that combined targeted visits focusing on safeguards — that is having visiting teams monitoring safeguards in different types of facilities within a short interval — are particularly effective. In fact, combining visits at police stations, remand facilities and/or prisons of the same area offers the possibility to monitor the treatment of the detainees across time and places, acquiring a more complete picture of what happened, and cross-check information obtained in the different facilities.

It was further recommended to start by visiting a remand detention facility or central police station first, and when patterns or specific problems have been identified, continue by choosing one or several local police stations where this information can be cross-checked.

PROMISING PRACTICES

CPT: “We work our way backwards to specific police stations.” The representative of the CPT explained that it is the practice of the Committee to start in a remand centre or the central police station. There, if the visiting team received allegations of ill-treatment concerning a certain police station, the team would then go back to this police station, check the registers, try to verify the information that was given to it. This however also means that often a police station is selected at the last minute, because the team has received specific allegations and has to cross-check the information on the ground in these police stations.

SERBIAN NPM: The Serbian NPM reported to conduct combined visits in police stations and other facilities. This in practice means that the same team goes first to a prison or remand facility and then to the relevant police station. Initially the NPM conducted combined visits by sending two different teams in different facilities at the same time. To avoid coordination and communication issues between the two teams, this practice was dismissed in favour of consecutive visits conducted by the same team as described above.

E. FOLLOW-UP

KEY MESSAGES

- ✓ To enhance impact, it is important that NPMs develop follow-up strategies to secure the implementation of their recommendations about safeguards against ill-treatment;
- ✓ Certain recommendations may be particularly difficult to implement, in those cases it is important that NPMs think strategically and use all tools at their disposal, for instance:
 - Investigate the root causes of the problem behind the non-implementation of the recommendations;
 - Continue the dialogue with the relevant authorities;
 - Seek the cooperation and support of other stakeholders, including international (e.g. SPT, CPT, CAT Committee) and national ones (e.g. other national human rights bodies, bar associations, medical associations, NGOs etc.);
 - Consider escalating the situation and “go public”, by referring to the recommendation in the annual report, speaking out in front of the Parliament, publish statements, etc.;
 - Look at windows of opportunity and any other momentum that may support the implementation of the recommendation.

There are many comprehensive studies on how to follow-up to NPM visits and recommendations effectively as well as more generally on the various tools that NPMs can use for this purpose.⁸ These tools equally apply to the follow-up to the recommendations concerning safeguards against ill-treatment. During the project consultations the following tools were mentioned:

Immediate follow-up

- Drafting SMART recommendations, i.e. recommendations that are Specific, Measurable, Achievable, Relevant and Time-bound, to facilitate their implementation;
- Setting up criteria to prioritize the follow-up of recommendations concerning safeguards against ill-treatment, e.g. large number of ill-treatment cases or risk;
- Setting up tools to track the level of implementation of the recommendations, e.g. databases;
- Written dialogue and exchange of information, e.g. with the Ministry of Interior but also with the management of the police authorities;
- Conducting follow-up visits to police facilities, e.g. especially frequent follow-up visit, that include in the composition of the follow-up visiting team as many staff members as possible from the previous visit.

Strategies to follow up on recommendations

- Holding regular meetings and personal exchanges with the relevant authorities, e.g. by appointing contact persons, participating in working groups or similar and by being active in Parliamentary Committees;
- Conducting training activities, e.g. training to police officers;
- Submitting proposals and observations concerning draft legislation or advocating for an amendment of existing laws;
- Engaging with courts, e.g. appeal concerning an individual violation of human rights before the Constitutional Court, third party intervention in legal proceedings;

⁸ See e.g. BIM and Human Rights Implementation Centre (HRIC) at the University of Bristol, ‘Enhancing impact of National Preventive Mechanisms Strengthening the follow-up on NPM recommendations in the EU: strategic development, current practices and the way forward’ (2015), available at: https://bim.lbg.ac.at/sites/files/bim/attachments/enhancing_impact_of_national_preventive_mechanisms.pdf APT, ‘Strategies and tools for effective follow-up to recommendations’ (2020), available at: <https://www.apr.ch/en/resources/publications/strategies-and-tools-effective-follow-recommendations>.

- Cooperation with other national actors, e.g. with NGOs, Ombuds department, other human rights departments or bodies;
- Cooperation with international actors, e.g. CPT, SPT;
- Building outreach strategies and using media, publicity and raising awareness on the NPMs recommendations, e.g. introduce a separate chapter on follow-up in the annual report, present the annual report to the parliament, write public statements.

The NPMs of the Network also reported that certain **recommendations** they made concerning safeguards against ill-treatment were or still are **particularly difficult to implement**. The following main recommendations were repeatedly mentioned.

1) The application of safeguards from the very beginning of the detention: the situation of persons summoned for informative talks by the police

MONTENEGRIN NPM: The NPM reported that a persistent issue in Montenegro is the circumvention of the law regarding the summoning of informed persons for “informative talks”. To tackle this issue, the NPM recommended that the safeguards against ill-treatment, i.e. the right of access to a lawyer, a doctor and the notification to a third party, should be applicable from the very start of the deprivation of liberty, even to the summoned persons. In its recommendation, the NPM was critical about the national legislation that provided the applicability of the safeguards only from the moment the person is officially considered as a suspect. Lastly, the Montenegrin NPM criticized the practice of not recording summoned persons who are escorted to police facilities for the purpose of “informative talks”. The implementation of this recommendation is notably difficult as it requires a change in the law and States have an interest in maintaining the secrecy of investigations.

2) Ensuring confidential medical visits – medical visits out of the hearing and sight of police officers

HUNGARIAN NPM: The NPM criticized that medical examinations were conducted in the presence of police officers, who could also hear the conversation between the patient and the medical doctor. The NPM recommended that medical visits should be conducted out of the hearing and – unless the medical doctors request otherwise – out of sight of police officers. It reported that the police accepted the recommendation to conduct the visits out of hearing but considered it necessary that the medical visit remains within sight to ensure the safety of the medical doctors. The implementation of this recommendation was said to be difficult due to the lack of appropriate rooms, and the difficulty to verify whether the security issues were raised by the medical doctor or from the police officer.

3) Audio-visual recording

SEVERAL NPMs (e.g. CROATIAN, MONTENEGRIN AND SERBIAN NPMs): The NPMs recommended that CCTV should be introduced in all rooms where people are deprived of liberty in police custody, including those questioning takes place and other areas such as corridors. This was reported as a “difficult recommendation to implement”. There may be several reasons for it, such as audio-visual recording of questioning of suspects and accused is not yet mandatory by law or its implementation is costly as it requires the necessary technical equipment, sufficient personal resources and know-how.

To enhance their impact and increase the probability that their recurring recommendations are implemented, it was emphasized to:

- Investigate the root causes of the problem behind the non-implementation of the recommendations;
- Continue the dialogue with the relevant authorities, by making contact with the Ministry of Interior/Police leadership or other relevant stakeholders to ensure that the recommendations are understandable and it is clear what steps are needed to implement them;

- Repeat the recommendations on different occasion, for instance, in follow-up reports;
- Seek the cooperation and support of other stakeholders, including international (e.g. SPT, CPT, CAT Committee) and national ones (e.g. other national human rights bodies, bar associations, medical associations, NGOs etc.);
- Consider escalating the situation and “go public”, by referring the recommendation in the annual report, speaking out in front of the Parliament, publishing statements, etc.

PROMISING PRACTICES

CROATIAN NPM: The NPM realized that often the lower ranks of the police were not aware of the recommendations of the NPM, as the NPM reports are usually sent to the Ministry of Interior and the police management only. To address this issue, the Croatian NPM decided to work on ways to reach out also to those police officers directly in contact with detainees, and arranged a training dedicated to the police officers working in the police stations. The training covered the mandate of the NPM and the relevant recommendations issued by it. There was great interest among police staff and the training provided a useful opportunity for exchange.

To further enhance impact, it is important for NPMs to additionally **look at any windows of opportunity** that may facilitate the implementation of their recommendations. This may be a similar recommendation of another international body, a judgment or a legislative and policy development at the national and international level. With regard to safeguards, two international developments are worth mentioning:

- At the regional level, since 2009 the EU has adopted a series of secondary law instruments, covering the right to information, the right to interpretation and translation, the right of access to a lawyer and legal aid, the right to inform a third party, the right to presumption of innocence as well as the rights of persons in especially vulnerable situations. EU instruments bring several advantages vis-a-vis other international instruments: EU law is binding and provides concrete sanctions when a State fails to implement the Directives or a decision by the CJEU (e.g., infringement proceedings by the European Commission including financial penalties imposed by the CJEU). Therefore, States have stronger incentives for the timely and correct transposition of EU law into national law and implementation of CJEU judgements.⁹ Although not legally bound by them, the States of the SEE NPMs Network that are not EU Member States but candidate or potential candidate countries may nonetheless have an interest in harmonizing their laws with EU standards and rules in the framework of the accession processes.
- At the UN level, the former SRT Juan E. Méndez called for the development of a set of international guidelines on investigative interviewing, including also safeguards against ill-treatment during police custody. The guidelines were adopted in May 2021 as part of a multidisciplinary independent expert-led process coordinated by the APT, the Anti-Torture Initiative (ATI) and the Norwegian Centre for Human Rights (NCHR).¹⁰

⁹ See also BIM, ‘Strengthening the rights of persons suspected or accused in criminal proceedings – the role of National Human Rights Institutions’ (2019), available at: <https://bim.lbg.ac.at/en/project/current-projects-projects-human-dignity-and-public-security/strengthening-rights-persons-suspected-or-accused-criminal-proceedings-role-national-human-rights-institutions>.

¹⁰ Principles on Effective Interviewing for Investigation and Information Gathering, adopted in May 2021, and available at: https://www.apr.ch/sites/default/files/inline-files/PoEI_final_2021.06_0.pdf. See also above, fn 2.

ANNEX: KEY INTERNATIONAL STANDARDS AND RECOMMENDATIONS

This Annex was designed as a resource document for the projects workshops conducted in the framework of this project and shared with the participants as background information.

RIGHT TO INFORMATION	
STANDARDS	SELECTED SOURCES
WHEN should detainees be informed about their rights?	
At the very outset of the deprivation of liberty, i.e. the moment from which the detainee is de facto required to remain with the police /is not free to leave at will	CPT (2002) 12th General Report, CPT/Inf(2002) 15, para 44; CPT (2020) Country Report: Hungary, CPT/Inf(2020) 8, para 29 Directive 2012/13/EU on information, Art 2
WHAT should detainees be informed about?	
Information should cover: <ul style="list-style-type: none"> ✓ The right of access to a lawyer ✓ The right to free legal advice and the conditions for obtaining such advice ✓ The right to interpretation and translation ✓ The right of access to medical assistance ✓ The right to inform a third person of own choice ✓ The right to inform consular authorities/relevant international agencies (for foreign nationals/refugees) ✓ The right to be informed of the accusation ✓ The right to remain silent ✓ The maximum number of hours/days suspects or accused may be deprived of liberty before being brought before a judicial authority ✓ Legal remedies (lawfulness of arrest, review of detention, request for provisional release) 	CPT (2002) 12th General Report, CPT/Inf(2002) 15, para 44; CPT(2015) Country Report: Austria, CPT/Inf(2015) 34, para 27; CPT (2018) Country Report: Bulgaria, CPT/Inf(2018) 15, para 36-37; Directive 2012/13/EU on information, Arts 3, 4 and 6
HOW should the information be provided?	
Verbally/orally (at the time of or immediately after apprehension or arrest)	CPT (2002) 12th General Report, CPT/Inf(2002) 15, para 44; CPT (2019) Country Report: Albania, CPT/Inf(2019) 28, para 24; Directive 2012/13/EU on information, Arts 3 and 4
In writing (as soon as possible before, or at the moment the person arrives at the detention facility) <ul style="list-style-type: none"> ✓ Information leaflet/letter of rights should be provided ✓ Available in different languages ✓ Displayed in police detention facilities (e.g. posters, LCD monitors) 	SPT (2018) Country Report : Romania, CAT/OP/ROU/1 para 29; CPT (2002) 12th General Report, CPT/Inf(2002) 15, para 44; Directive 2012/13/EU on information, Arts 3 and 4
Information about rights should be provided in a simple and accessible language. Officials should proactively ensure that a person deprived of liberty has effectively understood his or her rights	Directive 2012/13/EU on information, Arts 3, 4 and 5
The person should be allowed to keep a copy of the information leaflet	CPT (2012) Country Report: Albania, CPT/Inf (2012) 11, para 25

Recordings in registries / custody records: <ul style="list-style-type: none"> ✓ If the person was informed about his/her rights ✓ If the person was given the Letter of Rights on arrest/in Arrest Warrant proceedings ✓ If the person was given information about the accusation 	CPT (2018) Country Report: Serbia, CPT/Inf(2018) 21, para 38; Directive 2012/13/EU, Art 8
The person should sign a statement attesting that they have been informed of their rights.	CPT (2002) 12th General Report, CPT/Inf(2002) 15, para 44; CPT(2017) Country Report: Slovenia, CPT/Inf (2017) 27, para 19
If a person is in a situation of vulnerability, the authorities should be prepared to provide the information through other means, and in a manner that is appropriate to their needs.	CPT(2015) Country Report: Austria, CPT/Inf (2015) 34, para 26 (children); CPT (2018) Country Report: Bulgaria, CPT/Inf (2018) 15, para 36-37 (foreign suspect/accused); Directive 2012/13/EU, Art 3(2); <u>Directive (EU) 2016/800</u> on children, Art 4; <u>Recommendation from 27 November 2013</u> on vulnerable persons, Art 3(8)

KEY RECOMMENDATIONS

Providing information promptly

[CPT, Country Report, Montenegro, 2019](#)

27. Information sheets in several languages containing a reference to all the above-mentioned safeguards against ill-treatment were available during the 2017 visit. Custody officers and detained persons were required to record that these forms had been distributed. Nonetheless, the vast majority of detained persons interviewed alleged that they had not been provided with a written information sheet and had been given no information on their rights from the outset of their deprivation of liberty by the police. In some police stations visited (for example, Danilovgrad), over half of the signatures attesting receipt of the information by detained persons were missing.

The CPT once again calls upon the Montenegrin authorities to take steps to ensure without further delay that all persons detained by the police are fully informed of their rights. **This should be ensured by the provision of clear verbal information at the very outset of deprivation of liberty, to be supplemented upon arrival at police premises and by the systematic provision of the above-mentioned information sheet.**

Providing information in a simple, clear, and easily understandable language

[CPT, Country Report, Austria, 2015](#)

26. Moreover, as was the case during previous visits, many juveniles interviewed by the delegation indicated that they had not (fully) understood the contents of the standard information sheet on the rights of detained persons which they had been given and the receipt of which they had to acknowledge by signature.

In the CPT's view, this does not come as a surprise at all, given the length (three full pages in A4 format) and the convoluted and legalistic language used, which is not easy to understand even for adults who do not have a legal background.

In their response to the report on the 2009 visit, the Austrian authorities acknowledged that they "are aware of the problems regarding the lack of intelligibility of the information sheets due to the use of legal terminology. An adequate balance between the intellectual comprehension of the

written information of the persons it is addressed to (juvenile suspects find it harder to understand the legal terms than adults) and the requirement to provide correct and complete information has to be found. In doing so, it has to be borne in mind that simplification of the wording in an official information sheet is sometimes limited as too many simplifications could lead to imprecise and eventually also misleading or even incorrect (incomplete) information. In the currently used information sheet an attempt was made to choose understandable wording which is based, in all material aspects, on the provisions of the law.”

The CPT’s acknowledges the endeavors of the Austrian authorities to elaborate an information sheet which is comprehensive and precise from a legal standpoint. However, when looking at the existing wording of the information sheet, the risk of juveniles not grasping certain legal details appears to be secondary compared to the risk of not understanding at all crucial elements of it. If the Austrian authorities consider it essential, for legal reasons, to provide juveniles with a very long and rather legalistic information sheet, juveniles should be provided with an additional information sheet which is very short, simple and drafted in a straightforward manner. [...]

The CPT reiterates its recommendation that a specific version of the information sheet, setting out the particular position of detained juveniles, be developed in the light of the above remarks and given to them without delay upon arrival at a police establishment. The information sheet should be available in a variety of languages. Special care should also be taken to explain the information carefully to ensure comprehension.

RIGHT TO ACCESS TO A LAWYER AND LEGAL AID	
STANDARDS	SELECTED SOURCES
WHEN should access to a lawyer and legal aid be granted?	
The right should be granted without undue delay. This means from the very outset of the deprivation of liberty, i.e. by anyone who is under a legal obligation to attend and remain at (i.e. not free to leave at will) a police establishment, e.g. as a “witness” or for “informative talks”.	CPT (2002) 12th General Report, CPT/Inf(2002) 15, para 44; CPT (2011) 21 st General Report, CPT/Inf(2011) 28-part1; CPT (2018) Country Report: Bulgaria, CPT/Inf (2018) 15, para 32; CPT(2020) Country Report: Greece, CPT/Inf (2020) 15, para 94-96; CPT(2019) Hungary, CPT/Inf (2020) 8, para 31 Directive 2013/48/EU on access to a lawyer, Arts 1, 3(2); Directive (EU) 2016/1919 on legal aid, Art 2(3); Directive 2016/800 on children, Art 2(2) and (1)
It should be enjoyed by all persons who are deprived of their liberty, no matter how “minor” the offence of which they are suspected	CPT (2011) 21 st General Report, CPT/Inf(2011) 28-part1, para 20
WHAT does it cover?	
Right to contact, consult with and retain the assistance of a lawyer of one’s choice	Directive 2013/48/EU on access to a lawyer, Art 3
Legal aid/free legal representation, i.e. Member States funds the assistance of a lawyer, enabling the exercise of the right of access to a lawyer, including at the police custody and pretrial stages of the investigative process, for those lacking sufficient resources. This implies the obligation to put in place an effective system of free legal aid.	CPT (2002) 12th General Report, CPT/Inf(2002) 15, para 44; CPT (2011) 21 st General Report, CPT/Inf(2011) 28-part1; CPT (2020) Country Report: Greece, CPT/Inf (2020) 15 para 98; CPT(2018)

	Country Report: Serbia, CPT/Inf (2018) 21, para 36; Directive (EU) 2016/1919 on legal aid, Art 3 and 4
Right to meet in private and communicate/confidentiality with the lawyer	CPT (2011) 21 st General Report, CPT/Inf(2011) 28-part1; CPT (2015) Country Report: Austria, CPT/Inf (2015) 34, para 29; Directive 2013/48/EU on access to a lawyer, Art 4
Right to have the lawyer present and participating effectively during questionings	CPT (2011) 21 st General Report, CPT/Inf(2011) 28-part1; CPT (2010) Country Report: Austria, CPT/Inf (2010) 5, para 24 Directive 2013/48/EU on access to a lawyer, Art 3(3), 10(2)
Recordings in registries / custody records: ✓ If/how the right was communicated ✓ If the lawyer participated in questioning & hearings ✓ If the right was temporarily derogated ✓ If the right was waived and under what circumstances	CPT (2011) 21 st General Report, CPT/Inf(2011) 28-part1; Directive 2013/48/EU on access to a lawyer, Arts 3, 8, 9, 10
Specific safeguards for persons in a situation of vulnerability, e.g. mandatory presence of a trusted person/lawyer for juveniles	CPT (2017) Slovenia, CPT/Inf (2017) 27; CPT (2015) Country Report: Austria, CPT/Inf (2015) 34, para 25; CPT (2019) Country Report: Romania, CPT/Inf (2019) 7, para 10
Waiver and Derogations	
It may be waived by the suspect/accused. But only if the waiver is given unequivocally, knowingly and intelligently. The possibility to waive the right to a lawyer should be restricted for persons in a situation of vulnerability.	ECtHR, <i>Saman v Turkey</i> ; <i>Panovits v Cyprus</i> ; <i>Zaichenko v Russia</i> ; <i>Stojkovic v France and Belgium</i> ; <i>Kaciu and Kotorri v Albania</i> ; <i>Plonka v Poland</i> ; Directive 2013/48/EU on access to a lawyer, Arts 9(3), Rec 41; EU Recommendation 27 Nov 2003: Section 3
It may be delayed or derogated from in order to protect the legitimate interests of the police investigation. However, such exceptions should be clearly defined and strictly limited in time, and resort to them should be accompanied by appropriate safeguards. It should not result in the right of access to a lawyer being totally denied. EU law further specified under what cases and conditions derogations can occur.	CPT (2002) 12th General Report, CPT/Inf(2002) 15, para 44; CPT (2011) 21 st General Report, CPT/Inf(2011) 28-part1 Directive 2013/48/EU on access to a lawyer, Arts 3(5) and (6), 5(3), 8
KEY RECOMMENDATIONS	
<u>Access to a lawyer at the outset of the detention</u> <u>CPT, Country Report: Bulgaria, 2018</u>	
32. Similar to the situation observed on previous visits, access to a lawyer was generally granted at best at the end of the 24-hour custody (i.e. the period when persons detained by the police faced the highest risk of being ill-treated) and, sometimes, only during the first court hearing. As already mentioned above, this resulted from the wording of current legal provisions which continued to give	

grounds to an interpretation of the 24-hour police custody as a sort of “administrative” detention to which (in particular) free legal aid was not applicable.

Consequently, as a rule, lawyers (almost always *ex officio*) usually only arrived after the detained person had already been interviewed and after his/her confession or statement had already been drafted by the police. The delegation had the same impression as during the previous visits, namely that the lawyer’s presence was of a purely formal nature, aimed at ensuring that the detention protocol was “duly” filled in and that it contained the lawyer’s signature. Further, the delegation again heard complaints from detained persons (who had benefited from the services of *ex officio* lawyers) about the quality of the lawyers’ work.

The Committee must reiterate its view that access to a lawyer during police custody is not only a fair trial issue but, even more importantly, a fundamental safeguard against ill-treatment. The CPT once again calls upon the Bulgarian authorities to step up their efforts to ensure that the right of access to a lawyer for all persons deprived of their liberty by law enforcement officials is rendered fully effective in practice, as from the very outset of their deprivation of liberty.

[CPT, Country Report: Greece, 2020](#)

94. The CPT’s delegation again received many complaints from persons who were – or had recently been – in police custody, according to which they had not been entitled to notify promptly a close relative or a third party of their custody and to access a lawyer during the initial period of their deprivation of liberty – and particularly prior to or during questioning by security police officers – when the risk of intimidation and physical ill-treatment is greatest. These rights were generally granted only once the detained persons had made and signed a first statement (*apologia*), i.e. at the moment they were formally accused by the police with an offence [...]

95. This situation can mainly be explained by the argument regularly put forward by police officers and by the central authorities in Greece that Greek law – based on its literal interpretation – only allows for these safeguards to be applied from the moment a person has been formally “accused” with a criminal offence rather than from the very outset of police custody as advocated by the CPT. The Ministry of Citizen Protection, once again, reaffirmed this position during the April 2019 end-of-visit talks. The revised Criminal Procedure Code, adopted on 6 June 2019, does not change that situation.

96. In the CPT’s view, this argument is not convincing. Firstly, in their previous responses to the Committee, the Greek authorities acknowledged that the right of access to a lawyer was “inviolable” for every detained person and was “established at all stages of the criminal and administrative proceedings”. In particular, they admitted that it applied as from the outset of deprivation of liberty (i.e. as soon as a person has been brought into police custody) and included the right to communicate with the lawyer and the right to have the lawyer present during questioning. Secondly, this position – based on a purposive interpretation of the law – is further supported by the fact that the abovementioned EU Directive, which is binding on Greece (including through its “direct effect”) and which also protects the rights of notification of custody and access to a lawyer of suspects, has been transposed into Greek law. This in turn would suggest that the Greek authorities have either inadequately transposed the provisions of the Directive into domestic law, by limiting the scope of these two rights to the “accused” only, or that these two fundamental safeguards become indeed effective as from the very outset of deprivation of liberty, notwithstanding of whether the person is a suspect or an accused person.

97. In the light of the foregoing, the CPT recommends that the Greek authorities take the necessary steps to clarify the legislative provisions on the rights of notification of custody and access to a lawyer by extending their application to criminal suspects [and not only to accused persons] as from the very outset of deprivation of liberty [...]

Mandatory access to a lawyer to persons in a situation of vulnerability

[CPT, Country Report: Slovenia, 2017](#)

17. As regards the **specific situation of juveniles** being questioned by the police, the delegation was informed that the juvenile’s parents (or guardian or a representative of the competent social centre)

were usually present. That said, the CPT is concerned that, according to police staff interviewed by the delegation, a lawyer was not always present during questioning of a juvenile.

Given the particular vulnerability of this age group, the CPT recommends that the necessary measures be taken to guarantee that juveniles deprived of their liberty by the police are never subjected to police questioning or requested to make any statement or to sign any document concerning the offence(s) they are suspected of having committed without the presence of a lawyer and, in principle, a trusted adult person. This should also be reflected in the relevant legislation.

Information about the right of access to a lawyer and legal aid

CPT, Country Report: Austria, 2015

27 [...] The specific information sheet which was in use at the time of the visit explicitly mentioned in bold that (only) the initial counselling by a lawyer over the telephone was free of charge. As was the case in 2009, several persons interviewed by the delegation considered it to be pointless to make use of the hotline, since they had no money to pay for the presence of the lawyer during police questioning. [...]

By letter of 28 January 2015, the Austrian authorities informed the CPT that “[i]n principle, the lawyer services [which go beyond the initial telephone counselling] are charged to the accused at an hourly rate of EUR 100,--, plus VAT, but once legal aid is granted, the State takes over the costs on a preliminary basis”. [...] However, **the visit brought to light that neither detained persons nor police officers met by the delegation were aware of any such possibility.**

The CPT recommends that the Austrian authorities take the necessary steps – in consultation with the Bar Association – to ensure that indigent persons can effectively benefit from the presence of a lawyer free of charge throughout their police custody, including during police questioning. To this end, the text of the specific information sheet on the hotline of the Bar Association should be amended accordingly.

Legal aid system

SPT, Country Report: North Macedonia, 2019

19. The Subcommittee notes that while detainees appear to be informed of their right to a lawyer at the outset of their apprehension, the majority appear not to retain one, either for financial reasons and/or a belief that it is not worthwhile. As acknowledged by the State party during the mission, the free legal aid system (under the Law on Free Legal Aid, Official Gazette No.161/09 and 185/11) is not yet operational. Legal services are only provided by lawyers on a pro bono basis (a list drawn up by the Bar Association). These lawyers are often inexperienced, slow to arrive and sometimes do not appear at all. The Subcommittee is concerned that this situation may contribute to the apparent trend of plea bargaining, which may lead to an over-reliance on confessions by the police and judiciary.

(a) Ensure that detainees have access to a lawyer of their choice immediately after their arrest and that their lawyer is present during interrogation;

(b) Operationalize the legal aid system, to ensure prompt, effective and quality representation for all detainees, on an equal basis;

(c) Provide adequate legal safeguards to defendants in the context of plea bargaining, to ensure the transparency of the process and prevent any abuse and coercion.

Confidentiality, quality and competence of a lawyer

CPT, Country Report: Albania, 2019

22 [...] The delegation also heard complaints from detained persons, who were provided with *ex officio* lawyers, that they did not have – and the lawyers did not insist on having – a private consultation during police custody and that the lawyers’ role was essentially limited to signing the police interview protocol. Moreover, it would appear that in some cases the detained persons’ first contact with the *ex officio* lawyer only took place at the initial court appearance. [...]

Further, appropriate steps should be taken – in consultation with the Bar Association of Albania – to ensure that lawyers appointed to represent persons in police custody perform their functions in a diligent and timely manner. The Committee would like to be informed of the concrete steps taken by the Albanian authorities in this regard.

RIGHT TO NOTIFY A THIRD PARTY	
STANDARDS	SELECTED SOURCES
WHEN should the right to notify a third party be granted?	
At the very outset of the deprivation of liberty	CPT (2002) 12 th General Report, CPT/Inf(2002)15-part Directive 2013/48/EU on access to a lawyer, Art 3(2)
WHAT should it cover?	
Right to inform without delay one person (relative or third party of their own choice, as well as consular authorities if foreign nationals) about the deprivation of liberty	CPT (2002) 12 th General Report, CPT/Inf(2002)15-part, para 43; CPT (2017) Country Report: Croatia, CPT/Inf (2018) 44, para 16; Directive 2016/1919 on access to a lawyer: Art 5
Right to communicate with a third person	Directive 2016/1919 on access to a lawyer: Art 6
For foreign nationals, the right to have consular authorities and a third person informed For refugees, the right to contact relevant international agencies	Directive 2016/1919 on access to a lawyer: Art 7
The authorities should register: <ul style="list-style-type: none"> • The exercise of the right, with the mention of the exact time and the person who was notified. • Any delay in notification of custody to be recorded in writing with the reasons therefor, and to require the approval of a senior police officer unconnected with the case or a prosecutor Under EU law, the authorities should register if the right to communicate with a third person was temporarily derogated with a duly reasoned decision	CPT (2002) 12 th General Report, CPT/Inf(2002)15-part, para 43; CPT (2018) Country Report: Bulgaria, CPT/Inf (2018) 15, para 31; Directive 2016/1919 on access to a lawyer: Art 8(2)
Derogations	
Derogations from this right are only exceptionally permitted in order to protect the legitimate interests of the police investigations; and they must always be clearly defined, strictly limited in time, and accompanied by appropriate safeguards (e.g. any delay in notification of custody should be recorded in writing with the reasons therefor, and to require the approval of a senior police officer unconnected with the case or a prosecutor). EU law further specified under what cases and conditions derogations can occur.	CPT (2002) 12 th General Report, CPT/Inf(2002)15-part, para 43; CPT (2020) Country Report: Hungary, CPT/Inf (2020) 8, para 25; Directive 2016/1919 on access to a lawyer: Arts 5(3), 6 and 8
KEY RECOMMENDATIONS	
Prompt notification	
CPT, Country Report: North Macedonia: CPT/Inf (2016) 8	
21. Section 34 of the 2006 Law on the Police guarantees to persons deprived of their liberty by the police the right to inform a member of his/her family or another close person about their situation. However, the information gathered during the 2014 visit suggests that this provision is not fully	

implemented in practice. More particularly, several allegations were received that persons in police custody were denied this right until the moment they were brought before a judge.

The CPT recommends that the national authorities take the necessary steps to ensure that all persons deprived of their liberty by the police, for whatever reason, are granted the right to notify a close relative or third party of their choice about their situation as from the very outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with the police).

Foreign nationals

[2017, Country Report: Croatia: CPT/Inf \(2018\) 44](#)

16. Most persons met by the CPT’s delegation confirmed that they had been able to inform a third party (i.e. a family member) of their custody soon after their deprivation of liberty by the police. That said, the delegation received several complaints, in particular from foreign nationals, that they had not been able to notify their consular authorities of their deprivation of liberty. The draft amendments to the CCP which are currently under discussion in the Croatian Parliament contain provisions aimed at reinforcing the right of detained persons to communicate with a third person upon their arrest and for foreign nationals to inform in addition the competent consular authorities of their deprivation of liberty.

The CPT recommends that the Croatian authorities ensure that all persons deprived of their liberty by the police, for whatever reason, be granted the right to notify a close relative or third party of their choice (as well as the relevant consular authorities in the case of foreign nationals) about their situation as from the very outset of the deprivation of liberty (that is, from the moment when they are obliged to remain with the police). Further, the police should record in writing in the relevant registers whether or not notification of custody has been carried out in each individual case, with the indication of the exact time of notification and the identity of the person who has been contacted.

RIGHT OF ACCESS TO A DOCTOR	
STANDARDS	SELECTED SOURCES
WHEN should the right of access to a medical doctor be granted?	
As soon as possible after arrest and immediately after the person is admitted to a place of detention.	CPT (2002) 12 th General Report, CPT/Inf(2002)15-part, para 42; CPT (2019) Country Report : Romania, 2019, para 30
A doctor should always be called without delay if a person requests a medical examination; police officers should not seek to filter such requests.	CPT (2002) 12 th General Report, CPT/Inf(2002)15-part, para 42; CPT (2019) Country Report: Montenegro, CPT/Inf (2019) 2, para 26; CPT (2016) Country Report: North Macedonia, CPT/Inf (2016) 8, para 20
It is also important that persons who are released from police custody without being brought before a judge have the right to directly request a medical examination/certificate from a recognized forensic doctor.	CPT (2002) 12 th General Report, CPT/Inf(2002)15-part, para 42
WHAT should it cover?	
Access to medical assistance, routinely granted to all detainees upon admission to the police holding facility.	Body of Principles, 24; SPT (2019) Country Report: North Macedonia, CAT/OP/MKD/1, para 21; SPT (2015) Country Report: Gabon, para 41; CPT

	(2002) 12 th General Report, CPT/Inf(2002)15-part, para 42
Right of access to a medical doctor of own choice, if the person detained so wishes, in addition to the examination by medical staff appointed by the police.	CPT (2002) 12 th General Report, CPT/Inf(2002)15-part, para 42
If the doctor who has examined the detainee has reason to believe that the person has been subjected to torture and/or ill-treatment, there should be exhaustive investigations by qualified forensic doctors and psychologists.	SPT (2019) Country Report, North Macedonia, CAT/OP/MKD/1, para 21; CPT (2002) 12 th General Report, CPT/Inf(2002)15-part, para 42
The exercise of this right should be recorded in the custody records	CPT (2018) Country Report: Croatia, CPT/Inf (2018) 44, para 19
HOW should it be provided?	
Medical visits should be conducted by an independent and competent medical practitioner	CPT (2019) Country Report: Albania, CPT/Inf (2018) 44, para 40-41; CPT (2011) Country Report: Romania, CPT/Inf (2011) 31, para 23 (in French).
Medical visits should be confidential <ul style="list-style-type: none"> ➤ All medical visits include the right to be visited out of hearing and – unless the health-care professional concerned expressly requests otherwise in a given case – out of sight of police officers ➤ The results (e.g. medical diagnoses or injury reports) should not be brought to the attention of the police, and it is recommended that they are only made available to the detained persons and his/her lawyer 	CPT (2002) 12 th General Report, CPT/Inf(2002)15-part, 42; CPT (2020) Country Report: Hungary, CPT/Inf (2020) 8 , paras 36-37

KEY RECOMMENDATIONS

Prompt access

[CPT, Country Report: Romania, 2019, CPT/Inf \(2019\) 7](#)

30. The CCP still does not contain a specific provision on the right of access to a doctor for detained persons as from the outset of their deprivation of liberty. In practice, detained persons were allowed to consult a doctor only at the time of their transfer to the arrest detention centre (i.e. after 24 hours of their deprivation of liberty), with only emergency medical assistance provided beforehand. Access to a doctor during the first hours of deprivation of liberty is still not viewed as a safeguard against ill-treatment. In this respect, the specific provisions of Article 106, paragraph 1, of the CCP cannot be a substitute for an express right of access to a doctor from the very outset of deprivation of liberty, even when taking into consideration the specific features of the Romanian legal system.

The CPT calls upon the Romanian authorities to adopt a legal provision which expressly guarantees the right of access to a doctor to all persons deprived of his or her liberty by the police as from the outset of his or her deprivation of liberty (i.e. from the time at which the person concerned is obliged to remain with the police), as opposed to the obligation for the police to provide medical assistance.

Filtering of requests

[CPT, Country Report: Montenegro, 2019 CPT/Inf \(2019\) 2](#)

26. With regard to the right of access to a doctor, Article 25 of the Law on Internal Affairs stipulates that police officers will facilitate medical assistance to the persons requiring it, through referral to a medical institution. The information sheet distributed to detained persons in police establishments also refers to the right of detained persons to request medical care from a doctor. Article 268, paragraph 6 of the CCP affords the possibility for criminal suspects, legal counsel or family members

to request a medical examination in front of the State Prosecutor; however, persons may be detained for up to 24 hours before being brought before the prosecutor.

In most of the police stations visited no register existed to record whether detained persons had requested, or had had access to, a doctor. An exception was Ulcinj Police Station, which had proactively created a register of people requesting to see a doctor.

As was the case in 2013, persons who alleged physical ill-treatment by the police claimed that they had not been offered the possibility of seeing a doctor during their initial custody by the police, and that they only saw a doctor after they had been brought before the prosecutor (who could order a medical examination) or upon admission to the Remand Prison.

The CPT calls upon the Montenegrin authorities to ensure that persons deprived of their liberty by the police are expressly guaranteed the right of access to a doctor from the very outset of their deprivation of liberty. In addition, it should make clear that a request by a detained person to see a doctor would always be granted; it is not for police officers, nor for any other authority, to filter such requests.

[CPT, Country Report: North Macedonia: CPT/Inf \(2016\) 8](#)

20. The information gathered during the visit suggests that individuals requiring medical assistance during the time of police custody were promptly granted access to a doctor. A few persons also confirmed that they had been given the opportunity to contact a doctor of their own choice.

That said, several complaints were heard that access to a doctor was not granted by police officers if they considered that the detainee concerned did not require medical assistance. [...]

The CPT calls upon the national authorities to supplement the general legal provision of Section 34 of the 2006 Law on the Police with specific instructions on the right of access to a doctor, stipulating inter alia that:

- a doctor must be called or a person taken to a medical facility without delay if a detained person requests a medical examination; it is not for police officers, nor for any other authority, to filter such requests;
- a person taken into police custody has the right to be examined, if he or she so wishes, by a doctor of his or her own choice, in addition to any medical examination carried out by a doctor called by the police authorities (it being understood that an examination by a doctor of the detained person's own choice may be carried out at his/her own expense); if it is considered necessary in the interests of the investigation, the doctor of a detained person's choice could be accompanied by a medical officer appointed by the police; [...]

Confidentiality

[CPT, Country Report: Serbia, 2018 CPT/Inf \(2018\) 21](#)

37. The right of access to a doctor, including access to a doctor of his/her own choice, is laid down in Section 69, paragraph 4, of the CCP. The CPT's delegation found that detained persons requesting access to a doctor or in need of medical care were usually brought by police officers to the local emergency clinic. However, as was the case in 2015, these medical examinations were carried out in the presence of the police officers, who were often the same police officers who had allegedly ill-treated the detained person. The lack of confidentiality is not surprising given the duty of police officers to be present during medical examinations and to supervise all medication contained in Section 26, paragraphs 2 and 4, of the 2012 Instruction on the Conduct of Police Officers towards Apprehended and Detained Persons.

The CPT must stress once again that all medical examinations should be based on the principle of confidentiality and be conducted out of the hearing and – unless the doctor concerned expressly requests otherwise in a given case – out of the sight of police staff. The presence of police staff during medical examinations of detained persons could discourage a detained person who has been ill-treated from saying so and, more generally, is detrimental to the establishment of a proper doctor-patient relationship; alternative solutions can and should be found to reconcile legitimate security requirements with the principle of medical confidentiality. For example, the establishment of a secure consultation room within an emergency clinic or hospital. Further,

under no circumstances should a copy of the medical report be given to the law enforcement officials accompanying the detained person. All doctors should have a clear obligation to record all injuries on persons brought to hospital by police officers in accordance with the approach set out in paragraphs 59 and 60 below.

In the CPT's view, information concerning detained persons' health should be kept in a manner which ensures respect for medical confidentiality. Ideally, health-care staff may inform custodial police officers on a need-to-know basis about the state of health of a detained person; however, the information provided should be limited to that necessary to prevent a serious risk for the detained person or other persons, unless the detained person consents to additional information being given. Further, non-medical staff should not be involved in the distribution of medication. The CPT recommends that the Serbian authorities ensure that the principle of medical confidentiality is strictly respected, in the light of the above remarks. To this end, the Instruction on the Conduct of Police Officers towards Apprehended and Detained Persons should be amended accordingly.

SELECTED BIBLIOGRAPHY

APT, 'Safeguards to prevent torture' <www.apt.ch/en/detention-safeguards/> accessed 29 September 2020

APT, 'Right to an independent medical examination upon request', June 2018, <https://www.apt.ch/sites/default/files/publications/doc-3_right-to-a-medical-examination_en_final.pdf> accessed 29 September 2020

APT and Penal Reform International (PRI), 'Pre-trial detention: Addressing risk factors to prevent torture and ill-treatment' (2edn, 2015) <<https://www.tortureprevention.ch/en/resources/detention-monitoring-tool-addressing-risk-factors-to-prevent-torture-and-ill-treatment/?cat=62>> accessed 19 July 2019

APT and PRI, 'Video recording in police custody: Addressing risk factors to prevent torture and ill-treatment' (2nd edn, 2015) <https://apt.ch/content/files_res/factsheet-2_using-cctv-en.pdf> accessed 19 July 2019

BIM (2019) "Strengthening the rights of persons suspected or accused in criminal proceedings – the role of National Human Rights Institutions", <https://bim.lbg.ac.at/sites/files/bim/attachments/guidebook_strengthening_the_rights_of_suspects_and_accused_in_criminal_proceedings_english_0.pdf> accessed 29 September 2020

Carver R, Handley L (eds), Does Torture Prevention Work? (Liverpool University Press 2016)

CPT (1992) "Police custody, Extract from the 2nd General Report of the CPT, published in 1992", CPT/Inf(92)3-part1, <<https://rm.coe.int/16806cea2f>> accessed 29 September 2020

CPT (2002) "Developments concerning CPT standards in respect of police custody, Extract from the 12th General Report of the CPT, published in 2002, CPT/Inf(2002)15-part, <<https://rm.coe.int/16806cd1ed>> accessed 29 September 2020

CPT (2011) "Access to a lawyer as a means of preventing ill-treatment, Extract from the 21st General Report of the CPT, published in 2011", CPT/Inf(2011)28-part1, <<https://rm.coe.int/16806ccd25>> accessed 29 September 2020

CPT (2019) "Preventing police torture and other forms of ill-treatment, Extract from the 28th General Report of the CPT, published in 2019", CPT/Inf(2019)9-part, <<https://rm.coe.int/16809420e3>> accessed 29 September 2020

Kozma J and Rachlew A, 'Combating Torture during Police Custody and Pre-Trial Detention' (2018) <<https://rm.coe.int/1680797130>> accessed 29 September 2020

Lloyd-Cape E, 'Inside Police Custody 2: An empirical study of suspects' rights at the investigative stage of the criminal process in nine EU countries' (2018) <<http://hrmi.lt/wp-content/uploads/2019/02/Inside-Police-Custody.pdf>> accessed 29 September 2020