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### **Measures for the metering of telephone calls and the interception of telecommunications in criminal proceedings: Legal aspects and implications for human rights and public safety – The case of Kosovo**

This paper deals with the measures of metering of telephone calls and interception of telecommunications in Kosovo, in particular the legal framework, as well as the impact they have on human rights and public safety. From the study of domestic legislation, ECHR standards, and ECtHR jurisprudence, it is evident that investigative measures should be applied only when there are no other less intrusive means to achieve the same goal. The paper deals with the content of the standards of Directive 2014/41/EU on the European Investigation Order, assessing that, although Kosovo has no formal obligations towards it, as it is in the pre-accession phase, the harmonization of its legislation in this field with European standards is necessary. The results of this study show that, although these measures are necessary for the fight against organized crime and the strengthening of public safety, they carry real risks for fundamental rights, in particular the right to privacy, freedom of expression, and freedom of thought. Their misuse can damage citizens' trust in state institutions and violate the essence of guaranteed rights. In conclusion, it is recommended to strengthen judicial oversight, increase institutional transparency, and harmonize Kosovo's legislation with international standards.

*Metering of telephone calls – Interception of telecommunications – Right to privacy – Public safety – Human rights*

### **Misure di acquisizione dei dati di traffico telefonico e intercettazione delle telecomunicazioni nel procedimento penale: aspetti giuridici e implicazioni per i diritti umani e la sicurezza pubblica – L'esperienza del Kosovo**

Il contributo analizza le misure di acquisizione dei dati di traffico telefonico e di intercettazione delle telecomunicazioni nel procedimento penale in Kosovo, con riguardo al quadro normativo e al loro impatto sui diritti umani e sulla sicurezza pubblica. Dall'analisi della legislazione nazionale, degli standard della CEDU e della giurisprudenza della Corte EDU emerge che tali misure investigative dovrebbero essere applicate solo quando non siano disponibili altri strumenti meno invasivi. Sono esaminati inoltre gli standard previsti dalla Dir. 2014/41/UE sull'Ordine europeo di indagine penale, rilevando che, sebbene il Kosovo non sia formalmente vincolato a essa, risulta comunque necessaria un'armonizzazione della normativa nazionale con gli standard europei. Lo studio evidenzia che, pur essendo essenziali per contrastare la criminalità organizzata e rafforzare la sicurezza pubblica, tali misure comportano rischi per i diritti fondamentali, in particolare per il diritto alla vita privata e le libertà di espressione e di pensiero. Un loro uso improprio o sproporzionato può compromettere la fiducia dei cittadini nelle istituzioni pubbliche e incidere sull'essenza dei diritti. In conclusione, si raccomanda di rafforzare il controllo giurisdizionale, incrementare la trasparenza istituzionale e armonizzare ulteriormente la legislazione del Kosovo con gli standard internazionali ed europei in materia.

*Acquisizione dei dati di traffico telefonico – Intercettazione delle telecomunicazioni – Diritto alla privacy  
Sicurezza pubblica – Diritti umani*

**SUMMARY:** 1. Introduction. – 2. Methodology. – 3. Definition of the measure of metering of telephone calls and interception of telecommunications. – 4. Fundamental principles for the implementation of the measure of interception of telecommunications. – 5. Circumstances and conditions for authorizing the implementation of measures of metering of telephone calls and interception of telecommunications. – 6. EU Directive on the European Investigation Order in criminal matters. – 7. Human rights exposed to risk during the implementation of special investigative measures. – 8. The strategic combination of special investigative measures in criminal investigations. – 9. The role and impact of measures of interception and metering of telephone calls on public safety. – 10. Conclusion.

## 1. Introduction

Contemporary states are increasingly confronted with serious forms of criminality, such as criminal offenses related to terrorism, corruption, and organized crime. The societal necessity to address criminality in an effective manner has led to the inclusion of covert and technical surveillance and investigative measures within the repertoire of mechanisms for the detection and evidentiary substantiation of criminal offenses in almost all contemporary criminal procedural legislations<sup>1</sup>. Traditional investigations, which are essentially reactive, have become increasingly ineffective in tackling modern crime, particularly organized and complex crime. This has made it necessary to advance proactive investigations led by intelligence and the use of covert investigative measures<sup>2</sup>. The modern evolution of organized crime, as well as corruption, has led to the implementation of proactive intelligence-led investigations, as well as the use of special investigative techniques, including communications interception, as essential tools for securing evidence<sup>3</sup>. Intelligence-led and data-driven investigative techniques, when insufficiently supported by empirical verifica-

tion and lacking appropriate procedural safeguards, can lead to investigative bias, tunnel vision and, in some cases, serious miscarriages of justice. This reinforces the need for strict legal regulation, effective judicial oversight and proportionate enforcement of these measures<sup>4</sup>. Furthermore, research shows that advanced investigative techniques, when implemented without sufficient institutional capacity, without procedural guarantees and without effective judicial control, often remain largely formal and fail to achieve the objectives for which they were intended in practice<sup>5</sup>.

In the context of technological developments and the increase in criminal offences related to their use, measures of metering of telephone calls and interception of telecommunications have become important legal instruments for criminal investigation and prosecution in Kosovo. The Criminal Procedure Code and the Law on Interception of Electronic Communications constitute the legal basis for the implementation of these measures, which play an important role in the detection of criminal offences, especially in the fight against organized crime and corruption. However, the

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1. SAHITI–MURATI–ELSHANI 2014.

2. Council of Europe, *Deployment of Special Investigative Means*, Council of Europe Office in Belgrade, 2013.

3. CONTE 2010.

4. DEVERY 2010.

5. MAGUIRE–KING 2013.

implementation of these measures should not be treated as an instrument that is easily used for investigative purposes. Their use should only be considered when other less intrusive means have proven unsuccessful or for other justified reasons<sup>6</sup>. The balance between public security interests and the protection of human rights is essential, given that a democratic society cannot rely solely on the power of surveillance, but must at the same time guarantee fundamental freedoms and rights. Another important issue that has emerged in the efforts to prevent and combat terrorism and organized crime is precisely related to this balance between security interests and human rights. Today, there are different approaches to this relationship, which try to define stable boundaries and clear guarantees between the protection of fundamental rights and freedoms and the interests of national security<sup>7</sup>. In light of these contemporary developments, the Republic of Kosovo has foreseen in its legislation the possibility of applying special investigative measures, when the legal conditions are met, including, among others, the implementation of measures of metering of telephone calls and interception of telecommunications.

The Republic of Kosovo has included these measures in its legislation, aiming to harmonize with international human rights standards, such as those set out in the ECHR and the jurisprudence of the ECtHR. However, challenges in the fair and proportionate implementation of these measures remain, including the need for effective judicial oversight and transparency in investigative procedures.

This study aims to identify and analyze the legal provisions that regulate the measures of telephone call metering and telecommunications interception in Kosovo, examining in particular their compatibility with the Constitution of the Republic of Kosovo and the ECHR. It also aims to analyze the impact that these measures have on public security and the protection of human rights. Through this research, it is intended to contribute to the development of a fairer and more effective legal framework, which guarantees a sustainable balance between the need for public safety and the protection of the fundamental rights of citizens.

## 2. Methodology

This study is based on an in-depth examination of Kosovo's legal framework and international standards regulating the measures of metering of telephone calls and interception of telecommunications. Legal Analysis Method: Domestic laws, including the Criminal Procedure Code of Kosovo and the Law on Electronic Interceptions, have been reviewed to identify definitions, rules, and procedures governing the implementation of these measures. Additionally, the Constitution of the Republic of Kosovo and the provisions of the European Convention on Human Rights have been analyzed to assess the compliance of national legislation with international standards. Comparative Method: The paper includes a comparison of Kosovo's legislation with European Union directives, particularly Directive 2014/41/EU on the European Investigation Order in Criminal Matters. This comparison aims to identify gaps and opportunities for improving Kosovo's legal framework. Jurisprudence Analysis: The study examines decisions of the European Court of Human Rights related to electronic surveillance and interception, identifying best practices and standards that Kosovo's institutions should follow. Literature Review: The research is also supported by analyses of legal doctrine and relevant scholarly literature addressing issues of human rights, public safety, and special investigative measures. Through this methodology, the paper aims to provide a comprehensive overview of metering and interception measures in Kosovo, offering concrete recommendations for improving the legal framework and institutional practices in line with international standards.

## 3. Definition of the measure of metering of telephone calls and interception of telecommunications

The measures of "metering of telephone calls" and "interception of telecommunications" are two special investigative measures provided by the Criminal Procedure Code of Kosovo. Essentially, both measures are similar, but they differ in the type of

6. United Nations Office on Drugs and Crime, *Current practices in electronic surveillance in the investigation of serious and organized crime*, United Nations Publications, 2009.

7. SELVADURAI-KISSWANI-KHALAILEH 2016.

evidence that can be obtained from each measure, as well as in the authorities that authorize these measures.

This distinction becomes increasingly blurred in technologically advanced investigative practices. As highlighted in comparative legal scholarship, digital investigative tools are often capable of simultaneously collecting metadata, intercepting communications, and accessing stored data, thereby expanding the scope of intrusion far beyond traditional interception measures<sup>8</sup>.

The measure of “metering of telephone calls” refers to the collection of data from telephone calls made from a specific phone number (incoming and outgoing), including but not limited to the verification of the specific number’s identification, telephone number verification, geographic location, device location, subscriber verification, or device identification marks (IMEI)<sup>9</sup>. For the purposes of this paper, metering of telephone calls refers to traffic and location data (metadata) and does not include the content of communications, whereas interception of telecommunications refers to accessing the content of communications. The measure of “interception of telecommunications” refers to the interception of voice communications, text communications, or other forms of communication through fixed or mobile telephone networks. This includes any technological means or similar systems that transmit data primarily intended to be private<sup>10</sup>. A similar definition to that provided by the Criminal Procedure Code is given by the Law on Electronic Interceptions, which stipulates that the interception of electronic communications refers to the interception of voice communications, text communications, or other forms of communication through fixed or mobile telephone networks. This includes any technological means or similar systems that transmit data primarily intended to be private<sup>11</sup>.

#### 4. Fundamental principles for the implementation of the measure of interception of telecommunications

The Law on the Interception of Electronic Communications establishes two fundamental principles on which interception can be conducted. The first principle is the respect for human rights and freedoms, and the second is the principle of legality, specifically the issuance of a judicial order for the implementation of the interception<sup>12</sup>. The law clarifies the first principle, which implies the full implementation and respect of the constitutional principles, rules, and standards that guarantee the freedoms and human rights defined by the Constitution and the jurisprudence of the European Court of Human Rights (ECHR). The jurisprudence of the ECHR is one of the judicial practices that must be respected by the justice system in Kosovo, particularly by the judiciary, as Article 53 of the Constitution of the Republic of Kosovo stipulates: “Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted in harmony with the judicial decisions of the European Court of Human Rights”<sup>13</sup>. The Law on Electronic Interceptions also places special emphasis on the respect for the principle of legality, while incorporating judicial oversight of the measure to be implemented, in this case, the interception measure. This is in line with the Criminal Procedure Code, as the CPC explicitly requires adherence to all rules governing special investigative measures; otherwise, “Evidence obtained through a special investigative measure shall be inadmissible if the order for the measure and its implementation is unlawful”<sup>14</sup>.

In addition to adhering to the procedures for authorizing a specific order, the Law on Electronic Interceptions also prescribes special conditions

8. FLOR-PANATTONI 2023.

9. Art. 85(12), Criminal Procedure Code, Official Gazette of the Republic of Kosovo, No. 24/2022, 17 August 2022, Code No. 08/L-032.

10. *Ivi*, Art. 85 (4).

11. Art. 3(1)(3), Law on Interception of Electronic Communications, Official Gazette of the Republic of Kosovo, No. 18/2015, 13 July 2015, Law No. 05/L-030.

12. *Ivi*, Art. 4 (1).

13. Art. 53, Constitution of The Republic of Kosovo, Official Gazette of the Republic of Kosovo, No. 20/2008, 15 June 2008, Act No. K-09042008.

14. Art. 95(1), Criminal Procedure Code.

that must be respected when issuing the order, which are in accordance with the Constitution of the Republic of Kosovo and the European Convention on Human Rights. These special conditions include situations that contain the following elements. When making the decision for interception, the competent court has the obligation to ensure:

- the essence of the rights and freedoms of the individuals for whom the interception request has been made;
- the importance, necessity of the interception, and proportionality;
- the nature, means, and scope of the interception;
- the relationship between the intended objective and the possibility of achieving this objective through other investigative methods; and
- the confidentiality and objectivity during the execution of the interception<sup>15</sup>.

### **5. Circumstances and conditions for authorizing the implementation of measures of metering of telephone calls and interception of telecommunications**

The measure of “metering of telephone calls” can be ordered only by the State Prosecutor in accordance with Article 86 (1)(9), while the measure of “interception of telecommunications” can be ordered only by the pre-trial judge in accordance with Article 86 (2)(3). Regarding the order for the interception of telecommunications, the law stipulates that only the state prosecutor may submit a request for the authorization of the interception measure. The law explicitly specifies the institutions or agencies that may submit a request to the state prosecutor to initiate the procedures for the interception order. In this regard, the law provides that the authorized institutions to propose a request to the State Prosecutor for lawful interception for the purposes of criminal procedure are: the Kosovo Police, the Kosovo Customs, the Kosovo Police Inspectorate, the Kosovo Tax Administration, and the European Union Rule of

Law Mission in Kosovo (EULEX), in accordance with the competencies granted by the legislation in force in the Republic of Kosovo<sup>16</sup>.

Both of these special investigative measures may be authorized for implementation within the legal deadlines specified in Article 91 of the Criminal Procedure Code. They must begin to be implemented within 15 days from the date the order is issued and are valid for a period of up to 90 days. The duration may be extended for an additional 90-day period, with all extensions falling within a total period of one calendar year, i.e., 365 days. The order for metering of telephone calls must include all elements necessary for identifying each specific phone. The order for the interception of telecommunications must contain all elements required for identifying each phone subject to interception<sup>17</sup>.

The order for the interception of telecommunications and the use of the IMSI (International Mobile Subscriber Identity) catcher used to identify mobile users, the interception of telecommunications through computer networks, the metering of telephone calls, the inspection of postal deliveries, the controlled delivery of postal items, or the disclosure of financial data must include an additional written instruction for individuals, other than authorized police officers, whose assistance may be necessary for the implementation of the order. This written instruction must be sent to the director or responsible official of the telecommunications system, computer network, postal service, bank, or other financial institutions and should include only the information required to assist in the execution of the order<sup>18</sup>.

When implementing the order for the interception of telecommunications and the use of the IMSI catcher, the interception of telecommunications through computer networks, the inspection of postal deliveries, the controlled delivery of postal items, and the metering of telephone calls, the individuals responsible for managing telecommunications, computer networks, or postal services must facilitate the execution of the order under the supervision of the director or the re-

15. Art. 4 (2), Law on Interception of Electronic Communications.

16. *Ivi*, Art. 8 (1) and (2).

17. Art. 90 (6), Criminal Procedure Code.

18. *Ivi*, Art. 90 (10).

sponsible official of the telecommunications system, computer network, or postal service<sup>19</sup>.

At the request of the State Prosecutor, the order for the interception of telecommunications and the use of the IMSI catcher may include only a general description of the phones that can be intercepted when the pre-trial judge of the competent basic court determines that there is a well-founded suspicion that the suspect is using multiple phones to evade surveillance by authorized police officers; and that the phone or phones specified in the order are being used or will be used by the suspect<sup>20</sup>.

When the order for the interception of telecommunications and the use of the IMSI catcher has been issued by the pre-trial judge, after the execution of the order for a specific phone, the authorized police officers must immediately inform the judge in writing about the relevant facts, including the phone number<sup>21</sup>. It is very important to emphasize that every order issued by the judge must be executed in full compliance with the contents of the issued order, and the conditions and procedures under which such an order is issued must not be exceeded. In this regard, it cannot be used to intercept the telecommunications of a person who is not a suspect, as this would be in violation of the rules established by the Criminal Procedure Code on this matter.

According to Kosovo legislation, the competence to authorize and supervise special investigative measures belongs exclusively to the prosecutorial and judicial authorities, and their implementation is carried out through special technical equipment deployed and administered by public authorities, namely the Kosovo Police. In this sense, the execution of the measure remains under state institutional control and does not involve operational cooperation with private entities. Contemporary literature has noted that modern surveillance practices increasingly operate through forms of structural integration between state authorities and “private surveillance intermediaries”. As Keenan argues, the material basis of surveillance has gradually shifted from direct state-controlled

interception to a systemic dependence on privately owned communication infrastructure and digital platforms<sup>22</sup>. Although Kosovo has a clear system whereby only public authorities authorize these measures, their implementation in practice depends on private technological infrastructure. This raises important issues regarding transparency and effective judicial oversight. For this reason, proportionality must not only be assessed at the moment of formal authorization, but also during the implementation of the measure, ensuring that it remains within the limits established by law in a democratic society.

## 6. EU Directive on the European Investigation Order in criminal matters

The European Union has established specific standards and rules that serve as a basis for developing national legislation, specifically to harmonize them with EU directives in the field of surveillance. In this regard, Directive 2014/41/EU of the European Parliament and the Council, dated April 3, 2014, concerning the European Investigation Order in criminal matters, is of particular importance.

This directive stipulates that the European Investigation Order is a judicial decision issued or validated by a judicial authority of a Member State to carry out one or more specific investigative measures in another Member State (“the executing state”) to obtain evidence for criminal matters in accordance with the directive. The European Investigation Order may also be issued for the collection of evidence already in the possession of the competent authorities of the executing state, evidence that has already been gathered through another procedure conducted by national authorities but is relevant to criminal proceedings in other states. Member States shall execute a European Investigation Order based on the principle of mutual recognition and in accordance with the directive<sup>23</sup>.

This directive also addresses the issue of interception of telecommunications in Chapter V. It deals with the interception of telecommunications

19. *Ivi*, Art. 91 (5).

20. *Ivi*, Art. 90 (7).

21. *Ibidem*.

22. KEENAN 2025.

23. Art. (1)(3), Directive 2014/41/EU.

in the context of mutual cooperation between the Member States of the European Union and does not include third countries that are not part of the EU. In this regard, this instrument cannot serve as a basis for cooperation with third countries that do not have legal ties with the European Union as its Member States. All the 27 EU Member States can use this instrument as a platform for implementing special investigative measures in accordance with the EU legal framework and the internal legal rules governing national procedures.

The Republic of Kosovo has no obligations toward this directive and cannot use it as a basis for cooperation, specifically for requests for assistance or technical support with EU Member States. However, such requests must be made in accordance with the specific rules of international criminal law that govern the aspect of inter-state cooperation in criminal matters.

A European Investigation Order may be issued for the interception of telecommunications in the Member State from which technical assistance is required. When more than one Member State is capable of providing the full technical assistance necessary for the same interception of telecommunications, the European Investigation Order shall be sent to only one of them. Priority shall always be given to the Member State where the subject of the interception is or will be located. Such a European Investigation Order shall also include the following information:

- (i) information for the purpose of identifying the subject of the interception;
- (ii) the desired duration of the interception; and
- (iii) sufficient technical data, in particular the identifier of the target, to ensure that the European Investigation Order can be executed<sup>24</sup>.

The issuing authority, in this case the state issuing the order, shall clarify in the European Investigation Order the reasons why it considers such an investigative measure important for the purpose of the criminal proceedings. Additionally, on well-founded grounds, the state from which such assistance is requested may refuse to execute such an order<sup>25</sup>. In

addition, recent case law of the Court of Justice of the European Union has highlighted that access by competent authorities to retained traffic and location data represents a substantial interference with the rights to privacy and data protection. Consequently, such access may be justified only for the purpose of combating serious crime or preventing serious threats to public safety. The Court further emphasized that access to such data must be subject to prior review by a court or an independent administrative authority. A public prosecutor's office that directs the pre-trial procedure and subsequently acts as a party to the proceedings does not meet the required standard of independence<sup>26</sup>.

In this context, early academic commentary on the proposed European Investigation Order warned that a "one-size-fits-all" mutual recognition model, adopted in the absence of harmonized admissibility and procedural standards, could undermine equality of arms and the effective protection of fundamental rights<sup>27</sup>. These concerns reflected broader structural tensions inherent in the mutual recognition framework, particularly in the absence of fully harmonized criminal procedural safeguards across Member States.

The European Investigation Order is founded on the principle of mutual recognition but does not fully harmonize the legal criteria allowing the use of intrusive investigative measures. As Armada points out, the Directive gives cross-border effect to national decisions on the gathering of evidence, while the assessment of necessity and proportionality remains primarily within the competence of the issuing authority. This may lead to differences in the level of fundamental rights protection between Member States, in particular with regard to the right to respect for private life under Article 8 of the European Convention on Human Rights. Although the Directive provides for the possibility of refusing execution on grounds of fundamental rights protection, the practical effectiveness of this guarantee depends on its interpretation and practical implementation by national law enforcement authorities<sup>28</sup>.

24. *Ivi*, Art. (30)(1-3).

25. *Ivi*, Art. (30)(4-5).

26. CJEU, *H.K. v. Prokuratuur*, Case C-746/18 (Grand Chamber), ECLI:EU:C:2021:152.

27. HEARD-MANSELL 2011.

28. ARMADA 2015.

Furthermore, the Directive does not expressly regulate the so-called principle of speciality in the context of cross-border gathering of evidence, namely the limitations on the use of evidence obtained through the European Investigation Order for purposes or proceedings other than those for which it was initially requested. As Barbosa e Silva notes, this silence has generated doctrinal debate and divergent practices among Member States, in particular as regards the further use of evidence once it has been transferred on the basis of the principle of mutual recognition. In the absence of a clear limitation, the free movement of evidence within the European Union framework may raise concerns not only in terms of legal certainty but also in relation to procedural fairness under Article 6 of the ECHR and, depending on the nature of the investigative measure, regarding the protection of private life under Article 8 of the ECHR. For this reason, a clearer expression of the principle of speciality within the framework of the European Investigation Order would contribute to strengthening safeguards against possible abuse and to enhancing the effective protection of fundamental rights<sup>29</sup>.

Such a European Investigation Order may be executed by: (a) immediately transmitting the telecommunications to the issuing state; or (b) intercepting, recording, and subsequently transmitting the results of the interception of telecommunications to the issuing state. When issuing a European Investigation Order, the issuing authority, if there is a specific reason to do so, may also request a transcription, decoding, or decryption of the recording, subject to the agreement of the executing authority. Additionally, in all situations where the state conducting the interception in another country does not require technical assistance and carries it out independently, it is obligated to notify the state where the interception is being conducted about such a measure and, after the interception is completed, to inform it of the results of the interception<sup>30</sup>.

## 7. Human rights exposed to risk during the implementation of special investigative measures

The ECtHR has consistently examined the compatibility of electronic communications interception with Article 8 of the ECHR, in particular in the context of the use of interception in the context of national security and the fight against serious crime. In the cases of *Big Brother Watch and Others v. the United Kingdom* and *Centrum för Rättvisa v. Sweden*, the Court set advanced standards for the assessment of mass interception regimes. According to the content of the judgment, the interception and mass collection of communications are not in principle incompatible with Article 8 of the Convention, but their lawfulness depends entirely on the existence of sufficient and effective safeguards against their arbitrary and abusive use<sup>31</sup>.

In these decisions, the Court identified a set of minimum criteria that must be met to ensure effective control and oversight at all stages of the surveillance process, including authorization, selection of data, storage, analysis and destruction. The Court accepted that sharing intelligence with partners from other states is, in principle, permissible, provided that domestic legal safeguards are met and that sufficient mechanisms exist to guarantee and protect privacy<sup>32</sup>.

In the light of the above-mentioned cases, the assessment of special investigative measures requires the application of a structured proportionality test to determine whether the fundamental principles governing the restriction of the rights guaranteed by the Convention are actually respected in practice. The European Court of Human Rights has made it clear that such an assessment must examine not only the legal basis of the measure but also its necessity, proportionality, and the existence of effective safeguards against abuse. Some of the rights guaranteed by the Convention are particularly exposed to increased risks in the

29. BARBOSA E SILVA 2019.

30. Art. 31, Directive 2014/41/EU.

31. European Court of Human Rights, *Big Brother Watch and Others v. the United Kingdom*. Nos. 58170/13, 62322/14 and 24960/15, Judgment, 13 September 2018; European Court of Human Rights, *Centrum för Rättvisa v. Sweden* No. 35252/08, Judgment, 19 June 2018.

32. European Court of Human Rights, *Big Brother Watch and Others v. the United Kingdom*. Nos. 58170/13, 62322/14 and 24960/15, Judgment, 13 September 2018.

context of secret surveillance, in particular the right to respect for private and family life (Article 8), freedom of thought, conscience, and religion (Article 9), and freedom of expression (Article 10).

During the implementation of special investigative measures, these rights are most at risk of being inappropriately restricted, as the rules governing such limitations may not be sufficiently fulfilled. Contemporary scholarship increasingly emphasizes that traditional frameworks based solely on the right to privacy and personal data protection are no longer sufficient to regulate highly intrusive digital investigative measures. As Flor and Panattoni argue, modern digital investigations – particularly those involving advanced technological tools – may compromise not only individual privacy, but also the security, integrity, and reliability of digital systems themselves. Therefore, the authors propose that cybersecurity should be recognized as an autonomous interest that must be balanced alongside public safety and fundamental rights, especially when law enforcement authorities gain covert access to private devices and communication infrastructures<sup>33</sup>.

In this regard, concerning the right to respect for private and family life, the ECHR stipulates that public authorities cannot interfere with the exercise of this right except to the extent provided by law and when necessary in a democratic society, in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others<sup>34</sup>. Similarly, regarding freedom of thought, conscience, and religion, the ECHR provides for the possibility of limiting this right, as it stipulates that the freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health, or morals, or for the protection of the rights and freedoms of others<sup>35</sup>. Furthermore, freedom of expression also provides for the possibility of limiting this right, as the exercise of these freedoms, which carries duties and responsibilities,

may be subject to such formalities, conditions, restrictions, or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity, or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of confidential information, or for maintaining the authority and impartiality of the judiciary<sup>36</sup>.

All these rights are also guaranteed by the Constitution of the Republic of Kosovo, specifically: The right to privacy (Article 36), freedom of belief, conscience, and religion (Article 38), freedom of expression (Article 40), and freedom of the media (Article 42).

Article 55 of the Constitution of the Republic of Kosovo provides for the possibility of limiting these rights under conditions specified by the Constitution itself. In this regard, even when the principle of implementing special investigative measures applies, fulfilling one of the fundamental conditions set by the Constitution is necessary, but not sufficient unless other constitutional conditions are also met. The Constitution outlines specific criteria for how constitutionally guaranteed rights can be restricted. Human rights and fundamental freedoms may be limited by law only if such limitation is permitted by the Constitution, but in most cases, the Constitution delegates this authority to the law. These rights and freedoms can only be restricted for purposes allowed by the Constitution and to the extent necessary to achieve the constitutional purpose of the restriction in an open and democratic society. What is particularly important to emphasize is that such limitations must not affect the essence of the guaranteed right. All state bodies, especially the courts, are obligated to ensure the preservation of the essence of the rights or freedoms being limited. Additionally, these bodies must consider the importance of the purpose of the limitation, the nature and extent of the limitation, the relationship between the limitation and its purpose, and, in

33. FLOR-PANATTONI 2023.

34. Art. 8 ECHR.

35. Art. 9 ECHR.

36. Art. 10 ECHR.

particular, whether the purpose of the limitation can be achieved through less restrictive means<sup>37</sup>.

In this regard, to fulfill the conditions that ensure the restriction is in accordance with the Constitution, the following criteria must be met collectively in every situation:

- a right can only be restricted if it is explicitly defined by law;
- a right can only be restricted to the extent necessary to achieve the purpose for which the restriction is allowed, in an open and democratic society;
- the restriction of a right cannot be made for purposes other than those for which it has been defined;
- when restricting human rights and interpreting such limitations, all public authorities, especially the courts, are obliged to pay attention to the essence of the right being restricted, the importance of the purpose of the restriction, the nature and extent of the restriction, the relationship between the restriction and the intended purpose, and to examine whether the purpose can be achieved through a less restrictive means; and
- the restriction of rights and freedoms guaranteed by this Constitution must in no way deny the essence of the guaranteed right<sup>38</sup>.

## 8. The strategic combination of special investigative measures in criminal investigations

Given the complexity involved in proving criminal offences for which special investigative measures are applied, it is recommended that these measures be combined with one another in order to establish a functional and complementary linkage, thereby enabling the collection of the widest possible range of evidence supporting suspicions of criminal conduct. In this context, the measures of metering of telephone calls and interception of telecommuni-

cations may be combined with other special investigative measures, which are authorized either by the State Prosecutor or by the pre-trial judge, in accordance with the competencies defined by the Criminal Procedure Code.

Depending on the nature of the criminal offense being investigated through these special investigative measures, the measures should be combined to ensure that the offense under investigation is proven through multiple methods. The management of a criminal case during the investigation phase of criminal offenses is the responsibility of the State Prosecutor, who leads the investigation of criminal offenses. This responsibility is grounded in the powers derived from the Constitution of the Republic of Kosovo<sup>39</sup>, the Criminal Procedure Code of Kosovo, the Law on the State Prosecutor<sup>40</sup>, and the Law on the Special Prosecution of the Republic of Kosovo<sup>41</sup>.

This approach is also consistent with the standards of the Council of Europe on the use of special investigative measures, which emphasize that the combination of covert investigative techniques should form part of a coordinated investigative strategy, based on reasonable suspicion, proportionality, and the use of less intrusive means whenever such measures are sufficient to achieve the investigative objective<sup>42</sup>.

## 9. The role and impact of measures of interception and metering of telephone calls on public safety

The measures of metering of telephone calls and interception of telecommunications play a significant role in strengthening public safety, particularly in the prevention, detection, and prosecution of serious criminal offences such as organized crime, terrorism, drug trafficking, and corruption. In these forms of criminality, the complexity of criminal activity and the closed structure of criminal

37. HASANI-ČUKALOVIĆ 2013.

38. Art. 55, Constitution of The Republic of Kosovo.

39. *Ivi*, Art. 109.

40. Law on State Prosecutor, Official Gazette of the Republic of Kosovo, No. 11/2023, 17 May 2023, Law No. 08/L-167.

41. Law on The Special Prosecution Office of the Republic of Kosovo, Official Gazette of the Republic of Kosovo, No. 27/2008, 3 June 2008, Law No. 03/L-052.

42. Council of Europe, Committee of Ministers *Recommendation CM/Rec (2017)6 to member States on “special investigation techniques” in relation to serious crimes including acts of terrorism*, adopted on 5 July 2017.

networks often make the use of covert investigative measures indispensable, as they enable the collection of evidence and the identification of criminal links and networks.

However, the impact of these measures on public safety is also accompanied by serious challenges. Interference with individual privacy, the covert nature of interception, and the potential for selective or politically motivated use pose genuine risks to democracy and to the protection of human rights. In this context, European standards have consistently emphasized the need for robust legal and procedural safeguards in order to prevent arbitrary and abusive practices in the application of special investigative measures<sup>43</sup>. In this regard, the jurisprudence of the European Court of Human Rights has emphasized that even when interception and recording measures are aimed at combating serious crime, interference with privacy must not only pursue a legitimate aim but must also be “in accordance with the law”, which requires the existence of a clear, accessible legal basis accompanied by safeguards against arbitrary interference. In *Khan v. the United Kingdom*, the Court found a violation of Article 8 precisely due to the absence of a statutory legal framework governing the use of covert listening devices, holding that a non-binding and not directly accessible guideline was insufficient to meet the “in accordance with the law” standard. The Court further found a violation of Article 13 on account of the lack of an effective and independent remedy against abuse of this form of interference<sup>44</sup>. These standards reinforce the necessity of judicial control and institutional oversight as essential conditions for maintaining the balance between public safety and fundamental rights. This approach is also consistent with United Nations guidelines on criminal investigations, which emphasize that the use of intrusive measures by law enforcement authorities must be necessary, proportionate, and accompanied by effective safeguards for the protection of human rights, in order for investigations to remain legitimate in a democratic society<sup>45</sup>.

For this reason, the implementation of interception measures and the metering of telephone

calls must be grounded in the principles of proportionality and necessity, and limited exclusively to cases in which such measures are indispensable for achieving a legitimate public safety objective and where less intrusive means are insufficient. Effective judicial oversight and robust institutional supervision constitute essential guarantees for preserving the balance between security interests and the protection of individual freedoms and fundamental rights, ensuring that these measures are applied lawfully and proportionately within a democratic society.

## 10. Conclusion

This paper has comprehensively addressed the measures of metering of telephone calls and interception of telecommunications in Kosovo, analyzing the legal aspects and the impact these measures have on human rights and public safety. The research has identified a range of challenges in balancing the need for security with the respect for privacy and the fundamental freedoms of citizens.

Kosovo’s legislation, including the Criminal Procedure Code and the Law on Electronic Interceptions, provides a legal basis for the implementation of special investigative measures. However, gaps exist in compliance with international human rights standards, particularly with the European Convention on Human Rights and the jurisprudence of the European Court of Human Rights. One of the key challenges identified is the lack of strong judicial oversight and institutional transparency during the implementation of these measures. This creates room for potential abuses and violations of citizens’ rights, especially if these measures are used outside the context of investigative necessity.

The implementation of metering and interception measures should be based on the principle of proportionality, being used only when less intrusive alternatives do not exist. Their use must be justified by a real threat to public safety and not as a routine investigative tool. The interception and metering of calls expose several fundamental rights to risk, including the right to privacy (Arti-

43. *Ibidem*.

44. European Court of Human Rights, *Khan v. the United Kingdom*, No. 35394/97, Judgment, 12 May 2000.

45. United Nations Office of the High Commissioner for Human Rights, *Manual on Human Rights for Law Enforcement Officials*, Professional Training Series No. 5/Rev.1, United Nations, 2025.

cle 8 of the ECHR), and freedom of thought and expression (Articles 9 and 10 of the ECHR). The restriction of these rights must always be justified and supported by law.

While these measures contribute to strengthening public safety and combating organized crime, their uncontrolled use can undermine citizens' trust in state institutions. Balancing security and freedom are essential for maintaining a democratic society.

To avoid abuses and ensure the protection of human rights, it is recommended to strengthen ju-

dicial oversight mechanisms, improve institutional transparency, and further align legislation with international standards. Additionally, it is important to develop training programs for relevant authorities to ensure the fair and proportional implementation of these measures.

In conclusion, building an effective legal framework and respecting fundamental human rights are essential for maintaining the balance between the need for security and the protection of individual freedoms in Kosovo.

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