



PRE-TRIAL DETENTION IN EUROPE:

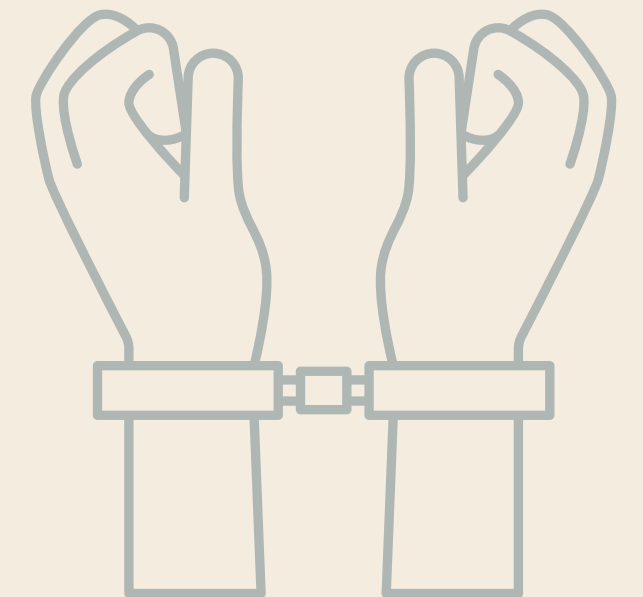
Lack of harmonisation and mutual trust?

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General overview of pre-trial detention

- **1/3** of the world's prisoners are **awaiting** trial or final sentence.
- **Consequences of spending a long time in pre-trial detention:**
 - Loss of employment
 - Accommodation
 - Family ties
 - Community ties
 - Deterioration in physical and/or mental health
- The situation in Europe is worrying: **in some member states pre-trial detention is not considered an exceptional measure.**
- Nowadays **there is still a lack of harmonisation** regarding minimum standards for procedural rights and material detention conditions of accused persons.



Steps taken within the European Union

01

**GREEN
PAPER**

14/6/2011



02

**DIRECTIVE
2016/343**

9/3/2016



03

**PROCEDURAL
SAFEGUARDS
ROAD**

2020



04

**COMMISSION
RECOMMENDATION
C(2022)8987**

8/12/2022

Steps taken within the European Union

01. Strengthening mutual trust in the European judicial area – A Green Paper on the application of EU criminal justice legislation in the field of detention (14/6/2011)

- Introduce the presumption of innocence in the field of detention
- Length of pre-trial detention
- Regular review of the grounds for pre-trial detention/statutory maximum periods

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

- Article. 2. *This Directive applies to natural persons who are suspects or accused persons in criminal proceedings. It applies at all stages of the criminal proceedings*
- Article. 3. *Suspects and accused persons are presumed innocent until proved guilty according to law.*
- Article. 4. *As a suspect or an accused person has not been proved guilty according to law, public statements made by public authorities, and judicial decisions, other than those on guilt, do not refer to that person as being guilty.*

Steps taken within the European Union

03. ECBA Initiative 2017/2018 “Agenda 2020: A new Roadmap on minimum standards of certain procedural safeguards”

- Improve and modernize the mutual recognition instrument, the European Arrest Warrant, that covers pre-trial detention and final judgements.
- The very different standards in prison conditions infringe partly the legal principle of human dignity and have become obstacles.
- There are no EU standards for time limits for pre-trial detention or less intrusive measures or specific remedies and/or regular judicial control by the responsible authorities.

04. Commission recommendation on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions C(2022)8987 (08/12/2022)

- Pre-trial detention as a measure of last resort and alternatives to detention
- Grounds for pre-trial detention
- Requirements for decision-making by judicial authorities
- Periodic review of pre-trial detention + length of pre-trial detention
- The recognition of time spent in pre-trial detention in terms of a deduction from the final sentence.
- Others

Recent Case Law

Case CJUE 310/18 PPU (Emil Milev)

The Court expressly denies a wide application of the principle in some of the most important decision making stages regarding preventive measures.

Case CJUE 8/19 PPU (RH)

The Court focused only on protecting the accused person as not being presented as guilty, but didn't extend the presumption of innocence any further.

Case CJUE 653/19 PPU (DK)

The Court does not consider that the Bulgarian law, which provides that pre-trial detention can only be reviewed if there are new circumstances that justify it, is contrary to Article 6 of the Directive (UE) 343/2016.

Case ECHR Magnitsky and Others vs. Russia

The Court does apply the presumption of innocence to pre-trial detention matters from a much broader perspective.

Harmonising only the minimum of minimums?

A lege ferenda proposal:

Article 4 and Article 6 should be applicable to pre-trial detention since there is no time to waste in the protection of unlawful detained persons.





THANK YOU FOR YOUR ATTENTION

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