

ECBA – SEMINAR MADRID 24-26 ARIL 2009

PRE- TRIAL DETENTION
THE NORWEGIAN RULES

THE CRIMINAL PROCEDURE ACT

SECTION 171

- FUNDAMENTAL CONDITIONS
 - Any person who withes just cause (reasonable grounds) is suspectes of one or more acts, punishable til statue with imprisonment for a term exceeding 6 months, may be arrested and later remanded in custody
 - SUPPLEMENTARY REQUIREMENTS
 - In addition to this, one of four supplementary requirements must be fulfilled

SUPPLEMENTARY REQUIREMENTS

- SECTION 171 nr 1 Risk that a person may evade prosecution or execution of sentences by fleeing
- SECTION 171 nr 2 Risk of evidence being destroyed or tampered with
- SECTION 171 nr 3 Risk of reoffending
- SECTION 171 nr 4 Request by the suspect
- Special rule in section 172 in the case of serious crime

THE PRINCIPLE OF PROPORTIONALITY

- This principle applies regardless of the grounds given, section § 170 a
 - Other measures which can be implemented,
 - Handling over the passport to the police
 - Reporting periodically to the police
 - How much damage or strain custody will have, viewed in proportion to the gravity of the crime

PROCEDURAL CONDITIONS

- The decision to make an arrest shall be made by the prosecuting authority
- The suspect is to appear before the judge as soon as possible, and the judge's decision whether to remand the suspect in custody must be made within three days.
- The court shall fix a specific time limit, as short as possible, must not exceed 4 weeks

THE RIGHTS OF AN ARRESTED PERSON

- Rights to make a statement as soon as possible, but also the right to remain silent
- Right to a defence counsel/lawyer
 - He can pick a lawyer of his own choosing, and free of charge
- Right to be transferred to a prison
 - No one is to remain in a arrest cell for more than 48 ours

THE RIGHTS OF AN ARRESTED PERSON

- The right to remand hearing in court
- Right to main court proceeding within a reasonable period of time
- Right to further investigation
- Right to submit own evidence

The Norwegian system has been strongly criticised

- Criticism has been held out both by the UNCAT, CPT and the UN working group on Arbitrary Detention, especially when it comes to the use of isolation;
 - ” The frequency of use of isolation in detention, both in remand and after sentencing, is of general concern for the Working group”

OTHER PROBLEMS IN THE NORWEGIAN SYSTEM

- Severe problems to uphold the rules of an arrested right to a prison cell after 48 ours.
- More than 50 % of arrested persons in Oslo stay for more than 48 ours in police cells
 - There are also great problems concerning the numbers and statistics.
 - The arrested persons will be placed far away from their family