

## PRE TRIAL DETENTION

### SUMMARY OF COMMENTS FROM OTHER JURISDICTIONS

Country	Issue	Comment
Greece	When enforced	Enforced during investigation if: <ul style="list-style-type: none"> <li>• serious evidence of guilt of the defendant emerges</li> <li>• if the defendant has an unknown residence in the country</li> <li>• has taken preparatory actions to escape</li> <li>• has evaded a court sentence in the past</li> <li>• has absconded in the past</li> <li>• likely to commit additional crimes if released.</li> </ul>
	Danger of perpetration of new felonies in the future	Detention based on the reasoning that if the defendant is released he is bound to commit additional crimes, should belong to the past.
	Presumption of innocence	If a defendant is found guilty, he should be considered guilty for <u>that</u> felony only.
	Compensation for unfair pre-trial detention	Claims are routinely dismissed on the grounds that “having failed to prove their innocence, deliberately made themselves responsible for their detention”.
	Effects of pre-trial detention	<ul style="list-style-type: none"> <li>• individuals punished if later found not guilty</li> <li>• detention encouraged by bad publicity</li> <li>• over inflation of prisons</li> <li>• poor living conditions in prisons.</li> </ul>
Poland	Grounds for review of pre-trial detention	<p>In <i>Konrad v. Poland</i> (no. 33374/05) dated 8 July 2008, the ECHR found that Poland had breached the applicant's right “to trial within a reasonable time or to release pending trial, as guaranteed by Article 5 § 3 of the Convention.” The applicant was extradited to Poland pursuant to a European Arrest Warrant and at the time of the Court's judgment had been detained for almost three years and six months with proceedings pending before the first-instance court.</p> <p>The above is an example of where EU rules on pre-trial detention could have filled a very concerning human rights vacuum that risks endangering the mutual recognition project.</p>
	Mutual recognition programme	The mutual recognition programme in the criminal justice field is supported. Perceived as

		<p>the most effective mechanism by which to facilitate judicial co-operation and create a genuine area of justice. It is accepted that certain minimum common standards in criminal procedure might be necessary to facilitate mutual recognition, but, mutual recognition must not be used as a means by which to introduce the harmonisation of substantive law and procedure "through the back door."</p>
	Foreign pre-trial detention	<p>Differences in taking into account all periods of detention arising from the execution of a EAW from the total period of detention to be served in the issuing Member State, are very concerning and appear contrary to Article 26 of the Framework Decision on the EAW.</p> <p>If such periods are not taken into account in the issuing Member State, the individual would have to balance his right to challenge an EAW, for example on human rights grounds, with having to spend longer in detention if they are later found guilty. Individuals should not be forced to gamble with their rights, including human rights, in such a way.</p>
	Juveniles	<p>Concerns about the age of criminal responsibility.</p> <p>Separating the concepts of "responsibility," which can be established in a formal non-criminal process in a manner which respects the age and the capacity of the child, and "criminalization".</p> <p>Imprisonment should generally be avoided. Any arrest or detention of a child should only be used as a measure of last resort and for the shortest appropriate period of time, and only on the basis that the child poses a continuing and serious threat to public safety. This requires frequent periodic review of the necessity of detention in each case.</p> <p>Conditions of any detention must be humane and focused on rehabilitation. Schooling should be provided as set out in the 2008 European Rules for Juvenile Offenders.</p> <p>Keeping juveniles separate from adult offenders.</p>

	Detention conditions	<p>The standards in EU Member States need to be raised.</p> <p>Consider conditions of detention more generally, not just pre-trial conditions.</p> <p>Explore the extent to which particular treatment in detention should also fall to be covered by minimum rules on detention conditions.</p>
Spain	Arrest	<p>Within 72 hours defendant should appear before a competent judge.</p> <p>If a defendant “declares” in front of the police he will not have access to a lawyer.</p>
	Files/documents	<p>While the general rule is parties to proceedings can access documents in files, pre trial, the judge can restrict access to just the prosecutor. This can be subject to appeal however.</p>
	Access to client	<p>Lawyers access to clients becomes difficult when clients are moved from prison to prison.</p> <p>Prison visits are hindered by the use of the client and lawyer being separated by a glass wall. This makes the consideration of documents harder.</p> <p>Often conversations between lawyer and client are taped by “mistake” during prison visits.</p>
	Alternative	<ul style="list-style-type: none"> <li>• home arrest</li> <li>• monitoring belt.</li> </ul>