

Finland¹

1. Introduction

In Finland, a new Constitution entered into force on 1 March 2000.² The Constitution contains important fundamentals for the criminal procedure, such as the principle that “everyone has the right to have his or her case dealt with appropriately and without undue delay by a legally competent court of law or other authority, as well as to have a decision pertaining to his or her rights or obligations reviewed by a court of law or other independent organ for the administration of justice”.³ The Constitution rules that the law will lay down provisions for, *inter alia*, the right to be heard, receive another reasoned decision, appeal, publicity of decision, fair trial and good governance. Sec. 22 of the Constitution is also important within the framework of criminal proceedings. It entails the guarantee that public authorities observe the basic rights and liberties, and human rights. Chapter 9 of the Constitution concerns the administration of justice. The justice’s administration consists of independent courts of law, prosecution service, enforcement authorities, prison service and probation service, Bar Association and other ways to obtain legal aid.⁴

From the 1970s on, the criminal justice system has its foundations in the ideas of “universalism and equity, according to which each member of society is to be guaranteed equal treatment and equal opportunities”⁵. The notion of general prevention should be applied according to the *ultima ratio*-principle, i.e. that “criminal justice should remain the last resort in preventing crime”⁶.

Within criminal proceedings, one can distinguish different stages: the pre-trial stage, the trial and enforcement stage, and the post-release stage.⁷ The investigation of an offence is governed by the Criminal Investigation Act (hereafter: CIA)⁸ and the Coercive Measure Act (hereafter: CMA).⁹ The Act on Remand Imprisonment¹⁰ and the Act on the Treatment of Persons in Police Custody entail provisions on the enforcement of the remand in custody. The most important coercive measures in criminal proceedings are apprehension, arrest and remand in custody.

In the 1970s, Finland had a relatively large prison population, compared to contemporary international and European standards.¹¹ However, this has been reduced very successfully. On 16 February 2009, (only) 15.6% of Finland’s prison population consisted of pre-trial detainees; not included are remand prisoners being accommodated in police cells at that moment. This makes

¹ The author wishes to thank Mrs. Ulla Mohell for commenting on and correcting an earlier draft of this report and for providing necessary legal and statistical information. Mrs. Ulla Mohell is a Counsellor of Legislation, LL.Lic., at the Ministry of Justice of Finland, Department of Criminal Policy. The author also wishes to thank Mrs. Janina Tallqvist for attending the meeting on 9 February 2009 in Brussels on pre-trial detention procedures and for commenting on an earlier draft of the Introductory Summary of the study “An analysis of minimum standards in pre-trial detention and the grounds for regular review in the Member States of the EU”.

² The Constitution of Finland, 11 June 1999 (731/1999), available at <http://www.om.fi/en/Etusivu/Perussaannoksia/Perustuslaki>.

³ Sec. 21 of the Finish Constitution.

⁴ Information of the Judicial system in Finland, available at <http://www.oikeus.fi/8108.htm>

⁵ Kinnunen, A., Iivari, J., Honkatukia, P., Flinck, A., & Seppälä, J., A Comparative Study of National Legislation Finland (one of the documents personally obtained via the national expert).

⁶ *Ibid.*

⁷ Henrik Linderborg in: A.M. van Kalmthout & I. Durnescu (eds.), *Probation in Europe*, Nijmegen: Wolf Legal Publishers 2008.

⁸ 449/1987, amendments up to 692/1997 included.

⁹ 450/1987, amendments up to 693/1997 included.

¹⁰ 768/2005; Virva Ojanperä-Kataja, in: Peter J.P. Tak & Manon Jendly (eds.), *Prison policy and prisoners’ rights*, Nijmegen: Wolf Legal Publishers 2008, p. 317, gives detailed information on the rights and the legal position of sentenced prisoners, but in the beginning of the paper also refers to the Act on Remand Imprisonment.

¹¹ M. Cavadino & J. Dignan, *Penal systems, a comparative approach*, London: Sage 2006, p. 160.

Finland – in Europe but also in the rest of the world – one of the countries with the lowest percentages of pre-trial detainees among the prison population.

At the moment, legislation concerning pre-trial detention and other coercive measures is under the process of a total reform. A Committee has been the task to draft this total reform, including *inter alia* the Police Act, the Criminal Investigation Act and the Coercive Measure Act and should finish its work by the end of March 2009 (just after finalising this report).¹²

2. Empirical background information

The first set of data is based on the resources of Statistics SPACE I, the annual penal statistics on the prison population, provided by the Council of Europe. These numbers are put together in clear figures that are shown after this explanation of resources. The second set of data has its foundations in the research of the International Centre for Prison Studies (hereafter: ICPS), which publishes its World Pre-trial / Remand Imprisonment List¹³ every year.

I. SPACE I

Finland and its prisoners in general

Population 2006, annual estimate	5.261.200 (within brackets the latest data on 1.5.2007 according to SPACE I ¹⁴ 5.238.500)
Total number of prisoners (including pre-trial detainees)	3.714 (1.5.2007: 3.624)
Prison population rate per 100,000 inhabitants	70.6 (1.5.2007: 69.2)
Total capacity of penal institutions/prisons	3.519 (1.5.2007: 3.587)
Prison density per 100 places	105.5 (1.5.2007: 101.0)

Special groups of prisoners

Number of prisoners under 18 years old, including pre-trial detainees	4 (Survey 2007 ¹⁵ : 10)
Number of prisoners under 18 years old in pre-trial detention	Not available via SPACE I
Number of prisoners from 18 to less than 21 years old, including pre-trial detainees	90 (Survey 2007: 83)
Number of female prisoners, including pre-trial detainees	245 (1.5.2007: 246) According to SPACE I, Survey 2007, there are 16 foreign female prisoners, which is 6.5% in the total number of female prisoners.
Number of female prisoners in pre-trial detention	Not available via SPACE I
Number of foreign prisoners, including pre-trial detainees	300 (of which 98 are pre-trial detainees) (1.5.2007: 301 of which 68 are pre-trial detainees)
Percentage of foreign prisoners who are pre-trial detainees	32.7% (1.5.2007: 28.6%)

¹² Information from personal contact with Mrs. Ulla Mohell.

¹³ R. Walmsley, World Pre-trial / Remand Imprisonment List, Pre-trial detainees and other remand prisoners in all five continents 2007, available at <http://www.kcl.ac.uk/depsta/law/research/icps/downloads/WPTRIL.pdf>.

¹⁴ These data became available just after finalising the report. Nevertheless, adding the most recent data into the table gives an impression of the trend from 1 September 2006 up until 1 May 2007 (the data for Finland are on the 1st May 2007 instead of 1st September 2007). The statistical part of the Introductory Summary to this study was redrafted completely because of these new data. The table which contains data from different sources (e.g. ICPS, Eurostat) below contains the most recent data from SPACE I (by Aebi/Delgrande, Survey 2007, 26 January 2009).

¹⁵ Where it is not mentioned specifically by SPACE I that data are on 1st May 2007, the table mentions "Survey 2007".

Percentage of European prisoners among the foreign prisoners	Not available via SPACE I
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Legal status of prison population I

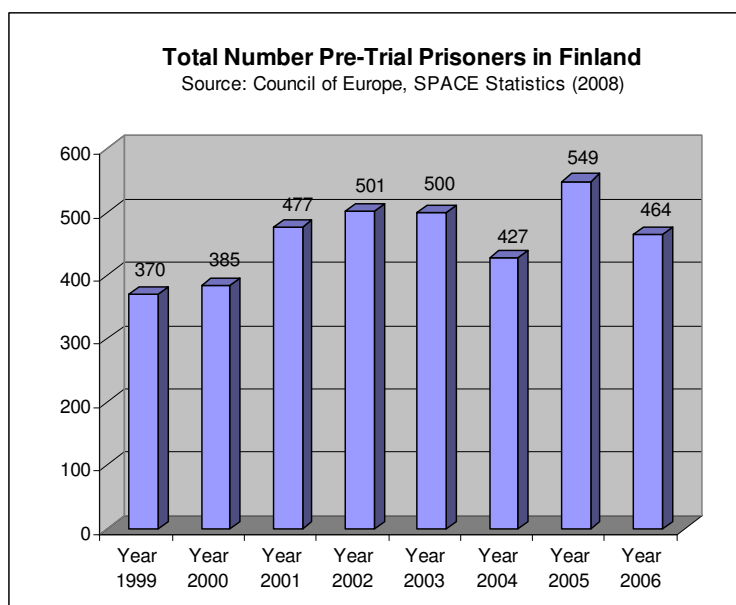
Untried prisoners (no court decision yet reached)	464 (It is not possible to separate these groups in the statistics.) (Survey 2007: 500)
Convicted prisoners, but not yet sentenced	
Sentenced prisoners who have appealed or who are within the statutory time limit for doing so	
Sentenced prisoners (final sentence)	3.031 (Survey 2007: 2.979)
Other cases (in Finland, these are fine defaulters)	219 (Survey 2007: 145)
Total	3.714 (Survey 2007: 3.624)

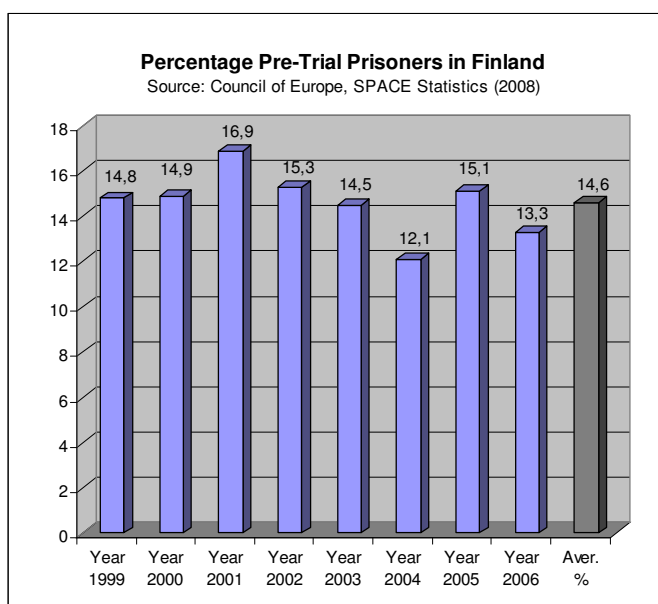
Legal status of prison population II

Percentage of prisoners not serving a final sentence	18.4% (Survey 2007: 17.8%)
Rate of prisoners not serving a final sentence per 100,000 inhabitants	13.0 (Survey 2007: 12.3)
Percentage of untried prisoners (no court decision yet reached)	12.5% (Survey 2007: 13.8%)
Rate of untried prisoners (no court decision yet reached) per 100,000 inhabitants	8.8 (Survey 2007: 9.5)

Number and percentage of pre-trial prisoners in Finland (including two graphs)

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II. International Centre for Prison Studies

Prison population according to legal status:	
Total number in pre-trial/remand imprisonment	505
Date	16 May 2007
Percentage of the total prison population	14%
Estimated national population (at date shown)	5.28m
Pre-trial/remand population rate (per 100,000 of the national population)	10

A remark has to be made regarding the figure on “Percentage of Pre-trial Detainees in Finland”, i.e. the average recently turns out to be lower than 14.6% as the percentage of pre-trial detainees in 2006 is 12.5% and in 2007, 13.8%, which makes the percentage at more recent times, 14.4%. By adding the most recent data of the Penal Statistics of the Council of Europe (SPACE I, Survey 2007), we can see that the differences with the statistical data provided for by the International Centre for Prison Studies become less as most of the data of SPACE I, Survey 2007 are on 1st May 2007 and of ICPS on 16 May 2007.

Different sources providing statistical information have been brought together in one table (III). It shows us that there is not a lot of data available with regard to pre-trial detention and, above all, that it is very difficult to compare the available data. Table IV, including one graph (obtained from personal contact with the expert), shows us the numbers of pre-trial detainees held in police premises and the ones in held in prisons. The national expert provided the most recent data (in the year). Finally, table V (also obtained from personal contact with the expert) provides information on the average number of remand prisoners and the number of remand prisoners that arrived in prison. Also, it shows the average length of remand imprisonment (in a prison) in 1995-2008.

III. Different national and European sources

	Date	Total prison population (including pre-trial)	Number of pre-trial detainees	Pre-trial detainees as a percentage	Prison population rate per 100,000 of	Pre-trial detention rate per 100,000
International Centre for Prison Studies ¹⁶	Different dates	3.370 (at 1 January 2008 source: NPA)	472	14% ¹⁷	64 (based on estimated)	-

					national population of 5.3m at beginning 2008 (source: Eurostat)	
SPACE I (Council of Europe)	Survey 2007	3,624	500	13.8%	5,238,500	9.5
European Sourcebook ¹⁸	2003	-	-	15%	66	-
Eurostat ¹⁹	2006	3,477	-	-	-	-
COM(2004)562final ²⁰	2002	-	-	-	66	9.7
National Statistics I ²¹	2006	3,778	463 ²²	12%	59 ²³	-
National Statistics II ²⁴	16.2.2009	3,680	573	15.6%	69 (all prisoners)	10.8

Source	Pre-Trial detention (numbers) between		Pre-trial detention (percentage) between		Origin of foreigners in pre-trial detention (percentage)	
	Nationals	Foreigners	Nationals	Foreigners	EU nationals	Third-country nationals
International Centre for Prison Studies	-	-	-	-	-	-
SPACE I (Council of Europe)	414	86	82.8%	17.2%	-	-
European Sourcebook	-	-	-	-	-	-
Eurostat	-	-	-	-	-	-
COM(2004)562final			78.7%	21.3%	7.1	92.9
National Statistics III ²⁵	-	110	-	-	-	-
National Statistics II	437	136	76.2%	23.7%	-	-

Source	Females in pre-trial detention (numbers)	Females as a percentage of the total number of pre-trial detainees	Juveniles in pre-trial detention (numbers)	Juveniles as a percentage of the total number of pre-trial detainees
International Centre for Prison Studies	-	-	-	-
SPACE I (Council of Europe)	-	-	-	-
European Sourcebook	-	-	-	-
Eurostat	-	-	-	-
COM(2004)562final	-	-	-	-
National Statistics II	40	7.0%	36 ²⁶	6.3%

IV. Average numbers and their percentages in different years (1995-2007)²⁷

Year	Remand prisoners in police establishments	Percentage	Remand prisoners in prisons	Percentage	Total
1995	57	16.5	289	83.5	346
1996	63	17.4	300	82.6	363
1997	75	20.3	295	79.7	370
1998	87	23.0	292	77.0	379
1999	108	23.4	354	76.6	462
2000	99	20.8	376	79.2	475
2001	114	20.0	457	80.0	571
2002	173	26.6	478	73.4	651
2003	187	27.5	492	72.5	679
2004	97	17.0	473	83.0	570
2005	110	17.5	519	82.5	629
2006	110	19.2	463	80.8	573
2007	92	15.4	506	84.6	598
2008	101	15.3	559	84.7	660

Remand prisoners in average in police establishments and in prisons 1995-2008

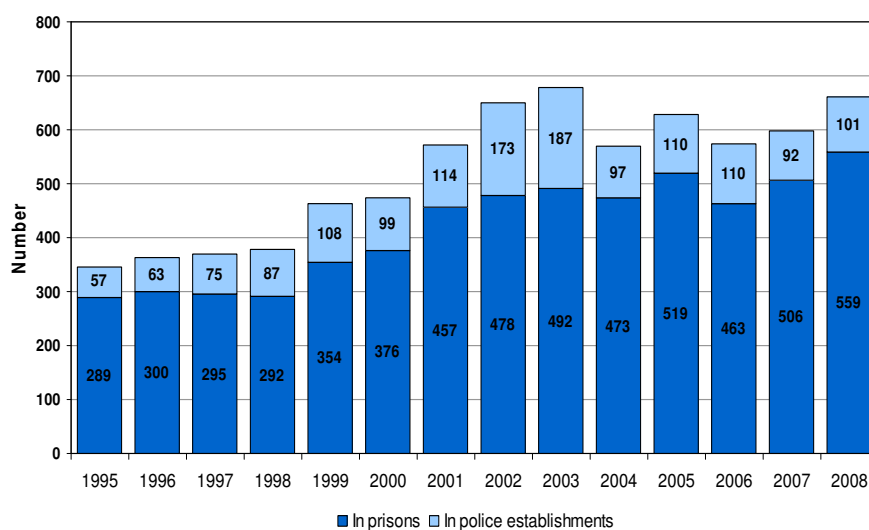
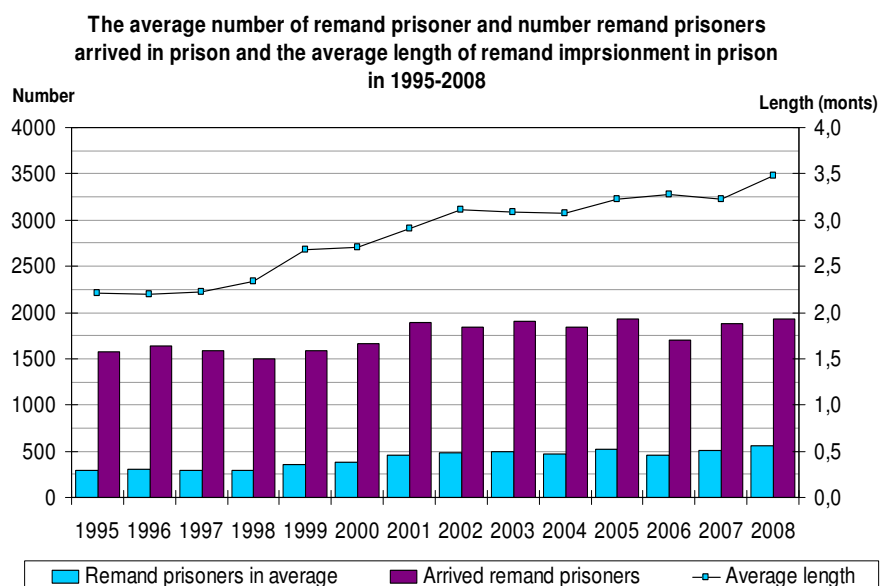


Table V



3. Legal basis: scope and notion of pre-trial detention

3.1 General

Within criminal proceedings, one can distinguish different stages: the pre-trial stage, the trial and enforcement stage, and the post-release stage.²⁸ In the first (and within the framework of this paper, most important) stage, the pre-trial phase, the police and the prosecutor play a vital role. The police conduct the investigation. During this pre-trial investigation stage, the police gather information on, *inter alia*, the offender, the time and place of the offence, and other issues that might be of relevance to the prosecutor. The prosecutor judges upon the charges. At this moment in the pre-trial proceedings, parties involved in the process may be subject to mediation. If, based on the pre-trial investigation, the prosecutor decides to bring charges against a person, the suspect becomes a defendant, or – in other words – an accused person.²⁹ He or she will be presumed innocent until proven guilty by a court of law. The general principles of pre-trial investigation are laid down in Sec. 5 through 12 of the Criminal Investigations Act. Sec. 7(2) of this Act captures the principle of *praesumptio innocentia*: “In a criminal investigation, the suspect shall be presumed not guilty.” Other important principles in the criminal investigative stage are *inter alia* that a criminal investigation should be carried out without undue delay (6), no-one’s rights shall be infringed any more than necessary for the achievement of the purpose of the criminal investigation (8(1)), the person concerned shall be informed of his or her³⁰ status and the changes therein (9), a person shall have the right to a(n) (appointed) legal counsel (10(1)(2)) and keep in contact with the counsel by ways of visit, letter, or telephone (10(3)).

The investigation of an offence is governed by the Criminal Investigations Act (hereafter: CIA)³¹ and the Coercive Measures Act (hereafter: CMA).³² The Act on Remand Imprisonment³³ entails provisions on the enforcement of the remand in custody. The most important coercive measures in criminal proceedings are apprehension, arrest and remand in custody, but there are many other measures such as wire-tapping.³⁴ Anyone has the right to apprehend a person caught in the act of committing a criminal offence on certain specific conditions provided by law (Sec. 1 CMA). The offender must be brought to the police as soon as possible (1(3)). The police are eligible to apprehend a person for whom an arrest or remand in custody warrant has been ordered by the court (2(1)). Moreover, the police may also apprehend a person if the conditions for arresting someone have been fulfilled and the measure is necessary without any delay (2(2)). The police shall immediately inform the authority with the powers of arrest (2(2)).³⁵ The person who has the authority to arrest a person shall, within 24 hours, decide to either release the person or arrest him

or her (2(2)).³⁶ In short, a person can be apprehended for a period up to 24 hours. After the lapse of this period, the person should either be released or arrested. If e.g. the grounds for the person's arrest have ceased to exist, the person must be released immediately (4(1)). In any case, the arrested person must be released no later than at noon on the third day following the day of apprehension,³⁷ unless there is an order to remand him or her in custody (13).³⁸

The official with the power of arrest may arrest a person on certain grounds. The prerequisites for arresting a person are laid down in Sec. 3, paragraph 1 of the Coercive Measures Act. The official may arrest a person who is suspected with probable cause of an offence for which a less severe penalty than imprisonment for two years has not been provided for (thus, two years or more). In addition, it must be probable that the suspect will try to: 1) escape from criminal proceedings; 2) interfere with the evidence or influence witnesses; or 3) continue his criminal activities. Furthermore, a suspect may be arrested if it is probable that he or she has committed an offence for which a less severe penalty than imprisonment for two years has been provided for in the law, but the most severe penalty exceeds one year of imprisonment or more (thus, between one and two years). In addition, one of the grounds (1-3) must be fulfilled. Other prerequisites for arrest are: 1) the identity of the suspect is unknown and the suspect refuses to reveal his name or address; and 2) the suspect does not have a permanent residence in Finland and it is probable that he or she will avoid criminal proceedings by e.g. fleeing the country (3(1)(3) CMA.

The official shall present the request for the remand in custody of the person to the court as soon as possible, but in any event by noon on the third day from the moment of his apprehension (13). On its turn, the court shall pick up this request for a hearing immediately. The court shall deal with the matter in a hearing no later than 96 hours/four days from the moment of the apprehension (14(1)). Thus, the court decides upon the remand in custody.³⁹ An arrested person shall, together with his counsel, be brought before the court. If the court decides it is appropriate, the hearing may be managed by using video conference or other technical measures by which the parties in the case can have visual and auditory contact with each other. If the court considers it necessary, the person who is requested to be remanded in custody shall be brought in court.⁴⁰ The prosecutor will be present as well (15(1)). The arrested person shall be given the opportunity to have a counsel present at the hearing (15(2)). A person can be remanded in custody on the same prerequisites as applied to the arrest of a person (8(1)). Here, it is also the case that a person may be remanded in custody if it is not probable that he has committed the offence, but the other prerequisites under Sec. 3, paragraph 1 of the Coercive Measures Act are fulfilled. In this case, the remand in custody should be of utmost importance for the clarifying of the case.

3.2 Procedural rights

The Criminal Investigations Act contains general principles in Sec. 5 through 12. According to Sec. 5, "a criminal investigation involves the clearing up of the following matters: 1) the offence, the circumstances of its commission, the parties involved and the other matters necessary for a decision on the bringing of charges, 2) the loss incurred by the offence and the benefit gained from it, so as to secure an eventual seizure, 3) the private-law claim of the injured party, if he has requested that the prosecutor pursue the claim in accordance with chapter 3, Sec. 9 of the Criminal Procedure Act", 4) possibilities to handle the case in written procedure in court according to Chapter 5a of the Criminal Procedure Act, unless the injured party and the person suspected of having committed an offence accept this procedure.⁴¹

Sec. 6 rules that the "criminal investigation stage shall be carried out without undue delay". Sec. 8 mentions the general principle of proportionality, as it states that the rights of a person suspected on probable cause of an offence "shall not be infringed more than what is necessary for the achievement of the purpose of the criminal investigation". In the second paragraph of this section, it is also stated that "a criminal investigation shall be carried out so that no one is placed under suspicion without due cause and no one is unnecessarily subjected to harm or inconvenience". A person who is subject to criminal proceedings shall be informed about the proceedings as soon as possible and especially about his status within these proceedings. When changes occur within his status, he will be informed about these changes as well (9). The suspect has the right to a legal counsel and if he cannot afford one, one will be appointed to him (10(1)(2)). He should be enabled to have contact with his legal advisor via telephone, visits and letters (10(3)).

4. Grounds for pre-trial detention

Firstly, in Finland there are no provisions on mandatory remand in custody. The prerequisites for arresting a person are laid down in Sec. 3, paragraph 1 of the Coercive Measures Act. Arrest is possible when a person is suspected with probable cause of an offence for which a less severe penalty than imprisonment for two years has not been provided for (thus, two years or more). In addition, it must be probable that the suspect will try to: 1) escape from criminal proceedings; 2) interfere with the evidence or influence witnesses; or 3) continue his criminal activities. Furthermore, a suspect may be arrested if it is probable that he has committed an offence for which a less severe penalty than imprisonment for two years has been provided for in the law, but the most severe penalty exceeds one year of imprisonment or more (thus, between one and two years). In addition, one of the grounds (1-3) must be fulfilled. Other prerequisites for arrest are: 1) the identity of the suspect is unknown and the suspect refuses to reveal his name or address; and 2) the suspect does not have a permanent residence in Finland and it is probable that he or she will avoid criminal proceedings by e.g. fleeing the country (3(1)(3) CMA).

In cases in which it is not (yet) probable that the person committed the offence, the person may be arrested, provided that: 1) there is reason to suspect him or her; 2) the other requirements in Sec. 3, paragraph 1 have been fulfilled; and 3) it is very important to arrest him or her in view of anticipated additional evidence (3(2) CMA). When performing an arrest, the authorities have to bear in mind the age and personal circumstance of the person concerned (26a). Moreover, a person shall not be arrested if this would be unreasonable with regard to the particulars of the case (3(3)).

A person can be remanded in custody on the same prerequisites as apply to the arrest of a person (8(1)). Here, it is also the case that a person may be remanded in custody if it is not probable that he has committed the offence, but the other prerequisites under Sec. 3, paragraph 1 of the Coercive Measures Act have been fulfilled. In this case, the remand in custody should be of utmost importance for the clarifying of the case (8(2)). If the detention (in remand) decision is based on Sec. 8, paragraph 2 of the Coercive Measures Act, the party that has submitted to the court the request for the remand in custody, shall immediately inform the court reviewing the detention that additional evidence has been obtained (if obtained) (18a(1)). The court may transfer the review of the detention issue to the court having jurisdiction in the final criminal case, upon the request of the party that submitted the detention request (18(2)). If the detention request is heard by a court not having jurisdiction in the eventual criminal trial, the party that submitted the request for detention will inform the court hearing this request, which court has jurisdiction in the final case. Consequently, the court hearing the detention request will report the court having jurisdiction in the final case of its decision to either release the person or remand him in custody (20).

Ex officio or on the request of the prosecutor, the court can release the person remanded in custody if e.g. the grounds for remand in custody have ceased to exist (24). The person in remand will also be released if eventually no charges are brought against him or if no extension for the bringing of charges has been issued before the expiry of the deadline mentioned in Sec. 21 of the Coercive Measures Act (see the next paragraph for more information with regard to these deadlines).

5. Grounds for review of pre-trial detention

In short, in Finland a judge is responsible for reviewing detention at two-week intervals if the remand prisoner requests so. The request should be handled in court without delay and at the latest in four days, but not earlier than two weeks from the previous hearing.⁴² The judge reviews on an automatic basis. The law places no time limits on the length of detention, but the judge will set a deadline for the bringing of the charges. This time limit can be prolonged.

If no charges have been brought, the court with jurisdiction over the bringing of charges and deciding upon the detention request, will immediately set a deadline for the bringing of charges. If different courts are dealing with either the detention request or the final criminal case, the court receiving the outcome of the detention request will set the deadline for the bringing of charges (21(1)). The court may prolong the deadline for the bringing of charges. The court can do so upon the request of the prosecutor, provided this request has been submitted to the court before the first

set deadline (21(2)). The detainee and his counsel may be heard on the request; if he so wishes, the detainee may be brought before the judge. If the deadline is set two weeks after the court's decision on the detention request, the court is obliged to rehear the detention issue every two weeks until the moment the charges are brought (21(3)). In addition, here, the detainee and his counsel have the right to be heard; if he so wishes, the detainee may be brought to the court.

It is possible that the detention request appears for the first time in an appellate procedure in court. If this is the case and the request is not immediately rejected, the person concerned will be given the chance to respond, but only when he or she is present in the country (25(1)). Consequently, if a person to whom Sec. 25, paragraph 1 of the Coercive Measures Act applies is arrested, the request for his or her detention will be submitted to the appellate court. The latter will perform the hearing under the provisions that apply to detention requests in non-appellate proceedings (see in this respect 14(1)): within 96 hours from the moment of detention of the arrested person).

The decision on remand in custody, the deadline set for the bringing of charges, and the granting of an extension are not eligible for a separate appeal (27(1)(3)). However, the person concerned may at any time file a complaint against the decision (27(2)).

Time	Procedural action or event	Legal basis	Who?	Where?
	Apprehension	1 CMA	Anyone on the prerequisites provided by law; Apprehended person should immediately be brought/handed over to police	
-	Apprehension/arrest	2 CMA	Police officer: without delay inform an official with the power of arrest	Police cell
Within 24 hours	Decision on arrest or release	2(2) CMA	Official with the power of arrest	Police cell
Before noon on the third day from the moment of apprehension	Remand in custody request to the court	13 CMA	Official with the power of arrest	Police cell
96 hours	Court hearing on the detention request and, in some events, setting of a deadline for the bringing of charges ("not set later than what is necessary for the completion of the criminal investigation and the preparation of the charges" (21(1)))	14(1), 21(1) CMA	Court	Police cell / after the decision to remand a person in custody, the person shall be taken to a prison closest to the court handling the charges or an other prison operating as the remand prison. ⁴³
	When there is no probable cause, but reason to suspect someone (8(2)), the party submitting the request for detention will without delay inform the court of	8(2), 18a(1)(2)		

	any additional evidence; the court shall review the matter of detention without delay (in any case, within one week from the decision on detention)			
	Prolongation of the deadline for the bringing of charges (21(2)); the deadline is set two weeks after the court's decision on detention; the court shall rehear the detention matter every two weeks <i>if</i> the remand prisoner requests so; the request should be handled in court without delay and at the latest in four days <i>but</i> not earlier than two weeks from the previous hearing.	21(2)(3) CMA	Court	

6. Length of pre-trial detention

The law does not provide for a certain maximum length for pre-trial detention. The length will be checked via the review procedure (Sec. 21 of the Coercive Measures Act).

According to Sec. 26 of the Coercive Measures Act, the court may order that a person who has been punished with an unconditional sentence of imprisonment is to be detained or kept in detention: if the sentence is imprisonment for at least two years (26(1(1))); if the sentence is imprisonment for less than two years but at least one year and, in addition, there is a probable risk that the convicted person will avoid criminal proceedings or the convicted person is a recidivist (26(1(1)(2))); if the sentence is imprisonment for less than one year and, in addition, the convicted person does not have a permanent residence in Finland and, therefore, might avoid criminal proceedings or the convicted person is a recidivist (26(3(a)(b))).

On the day on which the judgement of a District Court becomes final, or the judgement of the Court of Appeal is passed or pronounced and the prison has informed the remand prisoner thereof, the remand in custody shall be terminated (paragraph 2 of the Act on Remand Imprisonment).

In 2008, the average length of remand in custody (executed in a prison) was 3.5 months.

7. Other relevant aspects

7.1 Relation between pre-trial detention and the outcome of the trial

Sec. 13, paragraph 1 of the Penal Code⁴⁴ states: "If a sentence of imprisonment for a fixed period is imposed for an act for which the offender has been deprived of his/her liberty for a continuous period of at least one day, the court shall deduct from the punishment a period corresponding to this loss of liberty, or deem this loss of liberty to be full service of the punishment." Furthermore (13(3)): "If the punishment imposed is a fine, the loss of liberty shall be taken into account to a reasonable amount, but nonetheless at least to an amount corresponding to the loss of liberty, or

shall be deemed to be full service of the punishment.” If the punishment is a juvenile penalty, the loss of liberty shall also be taken into account. This is done to a reasonable amount by deduction from the hours of juvenile service otherwise to be imposed on the convicted offender (13(4)).

According to a Supreme Court decision (1991:43), loss of liberty abroad shall also be taken into account when applying the provision of chapter 6, section 13 of the Finish Penal Code.⁴⁵

7.2 Compensation for unlawful and/or unjustified pre-trial detention

According to the Act on Compensation from State funds for the Arrest or Detention of an Innocent Person (31 May 1974/422) a person who has been arrested or detained under suspicion of an offence shall have the right to receive compensation from the State for deprivation of liberty, if the pre-trial investigation is terminated and no charges are brought, the charges are dismissed or rejected, the person is found to have committed an offence, but it is evident that the offence could not have been a basis for arrest or detention or the statutory prerequisites for arrest or detention have not been fulfilled. Compensation can be provided in accordance with this Act for “direct costs, loss of income and suffering”⁴⁶. The law was enacted for domestic purposes only, but the Supreme Court has in a decision from 1991 stated that the same law is applicable to extradition cases as well.⁴⁷

The average compensation for personal suffering has been 100 euros per day and it is paid by the State Treasury. A lawsuit against the State can also be filed if the compensation provided by the State Treasury is not accepted as sufficient. Compensation must be applied within six months from the time when the decision not to take action was passed or the matter was dropped or the judgement passed in the proceedings has been given legal force was annulled or removed.

7.3 Restrictions during pre-trial detention

Pending pre-trial detention,⁴⁸ a remand prisoner’s contact with others or other remand prisoners via telephone, visits or letters may be restricted upon the decision of the court. There must be a justified reason to believe that such contacts could endanger the purpose of remand imprisonment. Contact with the remand prisoner’s legal counsel may not be restricted; restrictions for contact with other persons may never be applied more extensively or longer than necessary (Sec. 18b CMA). This provision also applies to apprehended and arrested persons.

7.4 Alternatives to pre-trial detention and mediation

Instead of arrest or detention, a person suspected of an offence may be subjected to a travel ban, but only if the most severe penalty provided for the offence is imprisonment for at least one year and, in view of the personal circumstances or otherwise, it is probable that the suspect will: 1) abscond or otherwise avoid criminal investigations, trial or enforcement of punishment; or 2) continue his criminal activity (Chapter 2, Sec. 1(1)(2) Coercive Measures Act). A person subjected to a travel ban shall not leave a certain area. He may also be prohibited from being in or visiting a given area. A travel ban can be decided upon by an officer with the power of arrest (3(1) CMA). Before the officer makes his decision on the travel ban, he will inform the prosecutor. The latter can also decide on the travel ban himself. In a situation in which the case has been sent to the prosecutor after the conclusion of the criminal investigation, the prosecutor decides on a travel ban if he deems this necessary. After the bringing of charges, the court shall decide on the travel ban.

The decision will entail the locality or area which the person may not leave or visit. Moreover, it will also entail a granted (temporary) permission to leave the given locality or area in order to go e.g. to work (2(1) CMA). Besides these permissions, “the person subjected to a travel ban may also be obliged to: remain available at his residence or place of work at certain times, present himself to the police at certain times, or remain in an institution or hospital in which he already is or into which he will be admitted” (Sec. 2(2) CMA).

If the requirements that have to be fulfilled in order to enforce a travel ban are no longer applicable, the travel ban shall be cancelled. The court can withdraw in whole or in part the travel ban or the order referred to in Sec. 2(2) even before charges have been brought. Moreover, a travel ban will no longer be valid if no charges have been brought within sixty days of its imposition (6(3) CMA). However, the court may prolong this period on the request of an official with the power of arrest. This request has to be submitted to court before the expiry of the sixty days.

In principle, the ban will be in force until the main hearing. However, this is not the case if it has been decided that the ban will end earlier or if it is separately cancelled earlier (7(1)). When a court discontinues or suspends a main hearing in a case where the defendant is subjected to a travel ban, it shall order whether the travel ban shall remain in force (7(2)). Furthermore, this section rules that the court deciding on the charges may subject the defendant to a travel ban, or order that the ban imposed upon him remain in force, only if the defendant is unconditionally sentenced to imprisonment. A person being at liberty can only be subjected to a travel ban if the prosecutor requests for this. Moreover, the court can subject a detained person or a person whose detention has been requested to a travel ban instead of detention. In the latter case, the ban shall remain in force until the enforcement of the sentence begins or an appellate court decides otherwise (7(3)).

Bail is not used in Finland.

On 1 January 2006, the Act on Mediation in Criminal and Certain Civil Cases (1015/2005) entered into force and its purpose is “to extend mediation in criminal cases to cover the whole of Finland”⁴⁹. As a result, from 1 June 2006 on, mediation services have been present throughout the country. This means that “in terms of equity and of legal protection all Finnish citizens have equal opportunities to resort to mediation and to obtain good quality mediation services regardless of their place of residence”⁵⁰. Both the Council of Europe and the United Nations have been interested in this tool and in the broader concept of restorative justice, the latter as a means “to improve the functioning of criminal justice systems in different countries”⁵¹. These organisations have therefore come with a Recommendation (99(19)) and a Resolution (2002/12) respectively in the field of restorative justice.

In Finland, mediation stands outside the criminal justice system and is a procedure, which can be either parallel or complementary to court proceedings.⁵² Although mediation stands outside the criminal justice systems, it can have an impact on criminal proceeding as it has to be taken into account but can never overrule decision in criminal proceedings.⁵³ Mediation may e.g. lead to a prosecutor who dismisses the case because of the outcome in mediation. The issue of guilt is – in the case of e.g. the public prosecutor – always decided upon during the consideration of charges or in court proceedings.⁵⁴ The aim of mediation is “to provide the parties in a criminal case an opportunity to meet each other confidentially and to discuss in the presence of an independent mediator the mental and material harm caused to the victim of the crime” and, *inter alia*, come to an agreement “on how the particular issues in a criminal case can otherwise be resolved”.⁵⁵

7.5 Execution of pre-trial detention

According to chapter 2, Sec. 1 of the Act on Remand Imprisonment, “a person remanded (in custody) due to an offence shall, without delay, be taken to a prison functioning as a remand prison closest to the court handling the charges or to another prison handling the charges or to another prison operating as the remand prison of the regional prison”. In practice, it often occurs that remand prisoners stay accommodated in police cells even after their first appearance in court. This matter was of interest to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereafter: CPT). A remand prisoner will not be placed in an open institution. The court issues a commitment order, which entails the reception of a remand prisoner in a prison. A remand prisoner shall be given an opportunity to notify a close relative or another person closely related to him/her about the reception in prison. The Act on Remand Imprisonment entails the rights of remand detainees and rules that these rights shall not be restricted more than necessarily required by the purpose and the security of remand imprisonment and the maintenance of the prison order. Prisoners shall be treated according to international and European standards. The Act on Remand Imprisonment has been designed in line with Human Rights Conventions, the European Prison Rules, and other Recommendations of the Council of Europe and captures rules on, *inter alia*, the commencement of detention, clothes, outdoor exercise (at least one hour a day), accommodation and allocation in the prison, activities, own work,⁵⁶ property and income, social rehabilitation, childbirth, religious practice, library, correspondence and visits.

According to the CPT, the conditions of detention in police establishments are generally accepted for the period of police custody. The conditions are very similar to those observed during earlier visits of the CPT to Finland. However, in some police institutions, people are remanded in

custody for longer periods up to several months. This practice has not diminished since the 2003 visit. In general, the CPT is of the opinion that remand prisoners should not be held in police facilities. Remand prisoners do not get enough outdoor exercise; one hour a day is insufficient. Moreover, the circumstance under which they are allowed outside are considered unsatisfactory (a car park used as a playground for prisoners is inappropriate). The practice of housing remand prisoners in police cells should be stopped as soon as possible. Persons deprived of their liberty by the police are not always informed of their rights (notification of their custody, access to a defence counsel, access to a doctor) systematically, in a written form and from the very outset of deprivation of liberty. The CPT delegation did not observe any allegations of ill-treatment of persons detained by the police and did not gather any other information or evidence that instigated ill-treatment. In February 2009, the Ministry of Justice appointed a working group with the task to find out ways to reduce the number of remand prisoners in police premises.⁵⁷

8. Special groups

8.1 Juveniles

There are no specific laws on pre-trial detention for juveniles, but according to the Finnish Act on Coercive Measures “no one shall be detained where it would be unreasonable having regard to the particularities of the case or the *age* or other personal circumstances of the suspect” (Sec. 26a).

Juveniles in remand detention will be treated with special attention to the needs arising from their age and stage of development.

8.2 Women

According to the Act on Remand Imprisonment, women shall be detained separately from men. The Act does not contain any other provisions especially designed for women.

8.3 Foreigners

Foreign prisoners shall be informed of their right to contact the diplomatic representation of their home country. They shall also be offered the assistance of an interpreter to the extent possible.

According to the Constitution, everyone is equal before the law (Sec. 6). Consequently, no-one shall be treated differently from other persons on the ground of, *inter alia*, sex, age, origin, language, religion or disability. In 2004, the Equality Act was introduced.⁵⁸ The acts relevant to criminal proceedings also apply to foreigners.

In prison, foreigners are mixed with Finnish detainees. Most of the foreign prisoners are concentrated in the Helsinki region. On 16 February 2009, there were 337 foreign prisoners, of which 137 were remand prisoners. The foreign prison population has increased enormously, reaching a peak in the years 2001-2003. This could be explained by the fact that during the 1990s the foreign population as a whole increased from 26,000 to 114,000.⁵⁹

8.4 Alleged terrorists

With regard to arrest or remand detention, no special provisions are foreseen in Finnish law for alleged terrorists.

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