"An analysis of minimum standards in pre-trial detention and the grounds for regular review in the Member States of the EU"
JLS/D3/2007/01

France

1. Introduction

The first written criminal procedure law in France was the one of 1808 (*Code d'instruction criminelle*) and was into force until 1958. It was enacted after the French Revolution and set out the principles of criminal proceedings, namely a) the rule of separation between prosecution, pre-trial instruction by an investigating judge and judgment by a court, b) the right of appeal, and c) the *principe de la collégialité*: most non-minor offences (*délits*) are heard by a panel of three career magistrates and major offences (*crimes*) by a panel of three professional judges and a jury of nine or 13 members[1]. The law of 1808 was established to set up a monopoly on force to the state. Its Napoleonic influence gave abundant powers to the public prosecutor's services and weakened the rights of persons under police detention and the investigating magistrate's scope and independence.

In 1958, a new Penal Procedure Code saw the light which tried to remedy some of the previous code's failings. It gave wider and clarified rights to defendants and to plaintiffs, it took into account human and individual sciences and aimed at striking a balance between social and individual interests, and it wanted to prevent undue delays in criminal cases[2].

But as the society changes, the need for changes of the law also comes up. The main concerns that evolved after 1958 were those regarding the investigating judge and his largely discretionary powers in placing a suspect under remand prior to any court sentence. However, it took until 2000 that a new law was enacted. The law of 15 June 2000 aimed to strengthen the *praesumptio innocentiae* and has been incorporated within the Penal Procedure Code, modifying 300 of its articles. The most important aspect of this reform in relation to the subject of this report was that it enhanced guarantees given to people during police remand regarding the right of silence, immediate contact with a lawyer, possible medical examination and family contact. Police investigations are also more closely monitored by the public prosecutor's office. Besides this, the new law removes the power of ordering pre-trial detention from the investigating judge and gives it to a new judge, the *juge des libertés et de la détention*. This new judge decides, after a special hearing devoted to the question of detention, whether or not to place a suspect under detention. The law also states that pre-trial detention must be an exceptional measure and shortens the length of the pre-trial detention[3].

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 following remarks have to be made: the data relate to 1 October 2006 and 1 October 2007, they relate to the whole of the penal population (and therefore not only to persons who are held in penal institutions), and they relate to the European territory of France (known as *Métropole*) as well as to the French overseas departments (Guadeloupe, Martinique, French Guiana and Reunion, known as DOM or *Départements d'Outre-mer*). Besides this, no measures (legislative or other) influencing directly the trends in the number of prisoners have been taken in the course of the last 12 months.

[1] J.-Y. Mc Kee in order of HEUNI, The European Institute for Crime Prevention and Control, affiliated with the United Nations, *Criminal Justice System in Europe and North America: France*, Helsinki 2001, available on http://www.heuni.fi?uploads/fq98onf0fojy.pdf , p. 8.
[2] Ibid.
[3] Ibid, p. 9.

The second set of data has its foundations in the research of the International Centre for Prison Studies (ICPS) which publishes every year the World Pre-trial / Remand Imprisonment List.[4] These numbers concern only the European territory of France and focus especially on pre-trial detention.

France and its prisoners in general

Population 2006, annual estimates	63.195.000 (within brackets information according to SPACE I, Survey 2007: 63.573.000)[5]
Total number of prisoners (including pre-trial detainees)	57,876 (63,500)
Prison population rate per 100,000 inhabitants	91.6 (99.9)
Total capacity of penal institutions / prisons	50,419 (50,714)
Prison density per 100 places	114.8 (125.2)

Special groups of prisoners

Prisoners under 18 years old including pre-trial detainees	646 (1.1 %) (661 (1.0%))
Of which: Percentage of juveniles in pre-trial detention	63,2 % [6]
Prisoners from 18 to less than 21 years old including pre-trial detainees	4,322 (7.5 %) (4,749 (7.5%))
Number of female prisoners (including pre-trial detainees)	2,144 (3.7 %) (2,415 (3.8%)) According to the SPACE I Survey 2007, there are 647 foreign female prisoners including pre-trial detainees; thus 26.8% foreign female prisoners in the total number of female prisoners including pre-trial detainees
Of which: Percentage of female prisoners in pre-trial detention	41 % [7]
Number of foreign prisoners (including pre-trial detainees)	11,436 (19.8 %) (12,341 (19.4%))
Of which: Percentage of foreign pre-trial detainees	Not available (not available via SPACE I (n.a.))
Percentage of EU country residents prisoners (as a part of the foreign prisoners)	29.1 % [8] (n.a.)

Legal status of prison population I

a. Untried prisoners (no court decision yet reached)	18,444 (It is not possible to keep these groups separate in the statistics)	15,617 (the SPACE I Survey 2007 does make a distinction between these categories
b. Convicted prisoners, but not yet sentenced		Concept not found in the French penal system
c. Sentenced prisoners who have		1,929

[4] World Pre-trial / Remand Imprisonment List, *Pre-trial detainees and other remand prisoners in all five continents 2007*, available on http://www.kcl.ac.uk/depsta/law/research/icps/downloads/WPTRIL.pdf .

[5] 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 September 2007. The explanation to this table, in paragraph 2.1, is based on the Survey 2006 of SPACE I. The statistical part of the Introductory Summary to this study was redrafted completely because of these new data.

[6] French Ministry of Justice, *l'Administration pénitentiare en chiffres au 1er janvier 2007*, available on http://www.justice.gouv.fr/art_pix/Chiffresclesau01012007.pdf .

[7] Ibid.

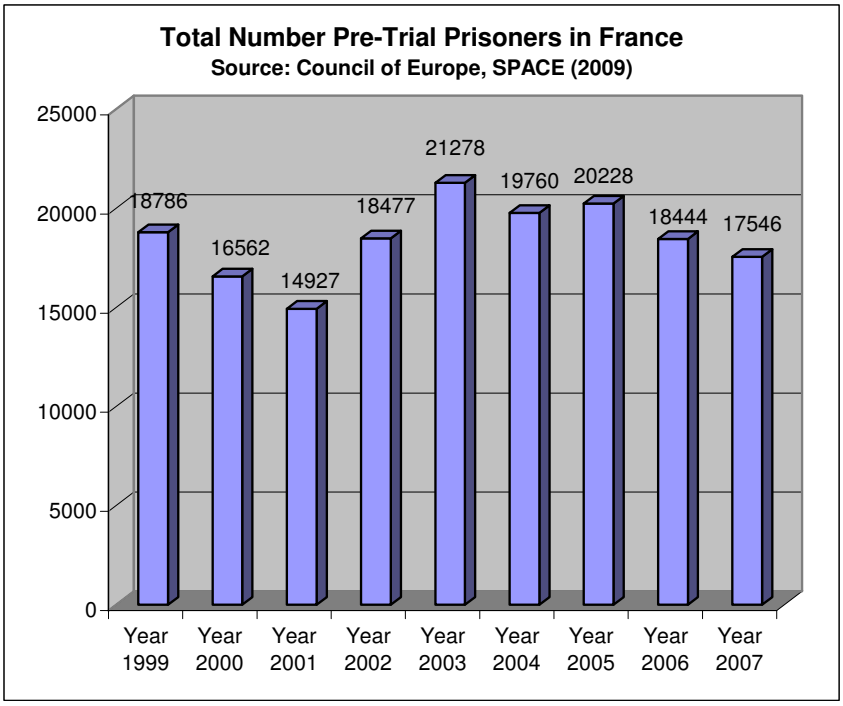
[8] Ibid.

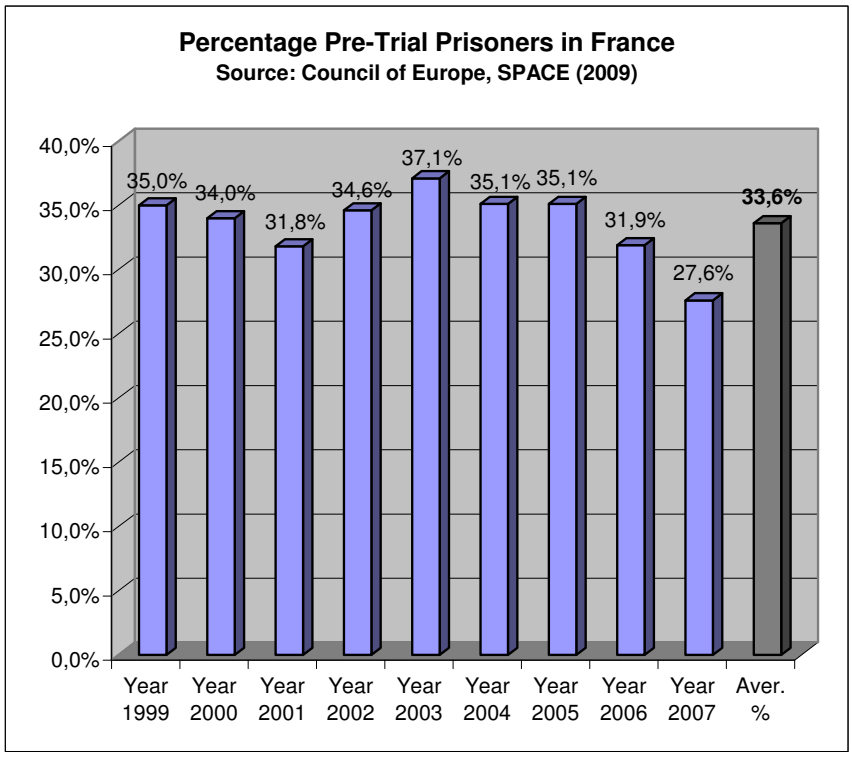
appealed or who are within the statutory time limit for doing so		
d. Sentenced prisoners (final sentence)	39,425	45,952
e. Other cases (cases of enforcement against person; fine defaulters)	7	2 (i.e. legal measures of constraint)
Total	57,876	63.500

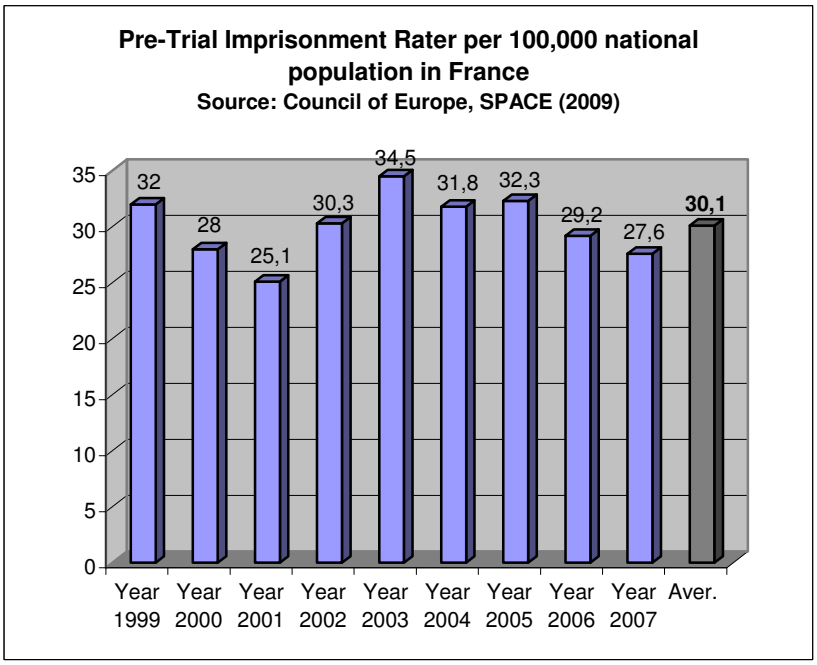
Legal status of prison population II

Percentage of prisoners not serving a final sentence (a+b+c+e)	31.9 % (27.6%)
Rate of prisoners not serving a final sentence per 100,000 inhabitants	29.2 (24.6)
Percentage of untried prisoners (no court decision yet reached)	31.9 % (27.6%)
Rate of untried prisoners (no court decision yet reached) per 100,000 inhabitants	29.2 (24.6)

Table 1, Number and percentage of pre-trial prisoners in France




Percentage Pre-Trial Prisoners in France
Source: Council of Europe, SPACE (2009)
40,0%
35,0%
30,0%
25,0%
20,0%
15,0%
10,0%
5,0%
0,0%
35,0%
34,0%
31,8%
34,6%
37,1%
35,1%
35,1%
31,9%
27,6%
33,6%
Year 1999
Year 2000
Year 2001
Year 2002
Year 2003
Year 2004
Year 2005
Year 2006
Year 2007
Aver. %


Pre-Trial Imprisonment Rater per 100,000 national population in France
Source: Council of Europe, SPACE (2009)
35
30
25
20
15
10
5
0
32
28
25,1
30,3
34,5
31,8
32,3
29,2
27,6
30,1
Year 1999
Year 2000
Year 2001
Year 2002
Year 2003
Year 2004
Year 2005
Year 2006
Year 2007
Aver.

Data according to the Centre for prison Studies (ICPS); World Remand Prison List

Prison population according to legal status:	
Total number in pre-trial / remand imprisonment	16,399[9]
Date	1October 2006
Percentage of total prison population	31.5 %
Estimated national population (at date shown)	61.16 m[10]
Pre-trial / remand population rate (per 100,000 of national population)	27

2.1 Explanation of the statistics

When we look at the general numbers and especially at the total prison population of France, we see that this is 57,876, which means that the prison population per 100,000 inhabitants lies on 91.6 persons. As far as the prison density per 100 places concerns, a density of 114.8 indicates that overcrowding must be a problem in the French prison system. However, this is not a new phenomenon in France. Its prisons have been suffering from chronic overcrowding for many years. This is especially true for the short stay prisons, where there is no upper limit to the prison population as there is in the establishments for sentenced prisoners.[11] Two main causes are put forward, namely 'an increase in the number of convictions and in the length of sentences, and a lack of funding to respond to this trend by building new prisons, not only in order to increase the number of places, but also to improve the quality of prison life'[12]. Provision 717 paragraph 2 of the Penal Procedure Code states that "Prisoners in remand prisons undergo individual imprisonment by day and night, and, in other prisons are subject to night isolation only, after spending an observation period in the cells. Exceptions to this rule may only be made for reasons due to the interior distribution of the detention premises, or their temporary overcrowding, or because of work organisation requirements." So prisoners in pre-trial detention have in first instance a right to an individual prison cell. There are thus exemptions possible to this rule.

Coming back to the data we can see that the percentage of juvenile prisoners lies on 1.1 % of the whole prison population and that this is 3.7 % for female prisoners. The number of foreign prisoners is 11,436, about 1/5 of the whole prison population. EU-nationals account for 29.1 % of the foreign prisoners in France.

After these general numbers and percentages we now come to the legal status of the prison population. As we can see from the figures, the numbers of untried prisoners, the convicted prisoners but not yet sentenced and the sentenced prisoners who have appealed or who are within the statutory time limit for doing so, cannot be separated in the statistics and together they amount to 18,444 prisoners. There are 39,425 prisoners and with other cases, 7 in numbers, the total prison population is 57,876.

When we look at the percentage of prisoners not serving a final sentence, we can see that this is 31.9 % and that the rate of prisoners not serving a final sentence per 100,000 inhabitants lies on 29.2. The percentage of untried prisoners, thus when no court decision is yet reached and the rate per 100,000 inhabitants, has the same numbers.

Finally, the data focussing on pre-trial detention, dated on 1 October 2006 are presented. The total number in pre-trial / remand imprisonment is 16,399 on the European territory of France. This means 31.5 % of the total prison population. Moreover, the pre-trial / remand population rate per 100,000 of the national population is 27.

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

This chapter will deal with the definition of pre-trial detention in France in comparison to other forms of detention. The objective(s) of the French pre-trial detention according to the law will be

[9] Metropolitan France excluding departments and territories in Africa, the Americas and Oceania.
[10] Ibid.
[11] Report by A. Gil-Robles, Council of Europe Commissioner for Human Rights, *On the effective respect for Human Rights in France*, following his visit from 5 to 21 September 2005, CommDH (2006)2, February 15, 2006, available on the website of the Council of Europe.
[12] Ibid., p. 11.

discussed as well as the beginning and the end of the pre-trial detention. The next question that will be answered is who is authorized to order arrest and further detention. At last, the procedural rights of the accused at the time of arrest or during detention will come forward.

3.1 Definition and primary objective of pre-trial detention

Firstly, there has to be noted that the Penal Procedure Code classifies offences into three groups on a criterion that is based on the existence and on the length of the custodial sentences which can be given to a convict. These three classes are a) *contraventions*, which are very petty offences that are punished with fines, like minor road offences, noise offences, minor assaults etc.[13]; b) *délits*, which are offences of greater importance subjected to custodial sentences ranging from six months to ten years, like theft, indecent assault, manslaughter, fraud and deception, drug offences, serious unintentional bodily damages and drunken driving[14]; and c) *crimes*, which are the most serious offences, like murder, rape, robbery, abduction etc. An offender found guilty can be subject to custodial sentences following the crime, ranging from 10 years to a life term.[15] These distinctions come forward every time when consulting the Penal Procedure Code and have an effect on the length of pre-trial detention.

Délits are tried by three judge panels in the *Tribunal Correctionnel*. *Crimes* are tried by a nine-member jury and three judges in the *Cour d'Assise*. Rulings by the *Tribunal Correctionnel* may be appealed to the regional *Cour d'Appel,* and then to the *Cour de Cassation*, the highest judicial body. Rulings by the *Cour d'Assise* may be appealed to another chamber of the *Cour d'Assise*, with a twelve-member jury and three judges, and then to the *Cour de cassation*. The *Cour de cassation* reviews points of law only.

Leading principle in the penal procedures in France is the *praesumptio innocentiae*. Point of departure has to be the rule of respect for individual liberty. The French law puts it in the words of provision 137 of Penal Procedure Code. Provision 137 states: "The person under judicial examination, presumed innocent, remains at liberty. However, if the investigation so requires, or as a precautionary measure, he may be subjected to one or more obligations of judicial supervision. If this does not serve its purpose, he may, in exceptional cases, be remanded in custody." With this passage, we immediately got the primary objective of pre-trial detention, namely "if the investigation so requires". In addition to the main objective in the law there are several other objectives that the pre-trial detention serves according to the French doctrine[16] which will be summed up in short. First, the danger of absconding that forms a threat. Pre-trial detention can ensure that the accused will appear for trial and that he remains at the disposal of the judicial authorities. Secondly, the prevention of destruction of evidence, bringing pressure to bear on witnesses and impeding the establishment of the truth, can be effected by the way of pre-trial detention. Further, the detention can evade recidivism and it can make it possible, if needed, that the accused gets medical treatment. Besides these objectives, pre-trial detention may be protective to the accused himself. Lastly, by placing persons in pre-trial detention, the government shows its activeness regarding crime combat and the prevention of crime. Under these objectives are also legal grounds for the placing in pre-trial detention as mentioned in provision 144. However, the diverse grounds whereon, according to the law, the pre-trial detention must be based will be dealt with in the next part of the report under 'the grounds for detention and other prerequisites'.

As can be read in provision 137, the deprivation of liberty has to be seen as an exceptional intervention. So the order to place someone in detention has to be based on strict legal requirements. Provisions 143-1 until 148-8 are concerned with the pre-trial detention. However, there is no provision with an explicit definition of the pre-trial detention in France. Provision 143-1 gives the cases in which pre-trial detention can be ordered, namely 1. the person under judicial examination risks incurring a sentence for a felony, and 2. the person under judicial examination risks incurring a sentence for a misdemeanour of at least three years' imprisonment.

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[13] J.-Y. Mc Kee in order of HEUNI, The European Institute for Crime Prevention and Control, affiliated with the United Nations, *Criminal Justice System in Europe and North America: France*, Helsinki 2001, available on http://www.heuni.fi?uploads/fq98onf0fojy.pdf , p. 20.

[14] Ibid.

[15] Ibid.

[16] Y. Strickler, professor of Robert Schuman University Strasbourg, *Epreuves de Procedure Penale*, college literature concerning the penal procedure in France 2006-2007, p. 151.

An excursion to the French literature provides on this subject a general definition of the pre-trial detention in France: "[*La détention provisoire est l'incarcération d'une personne mise en examen dans une maison d'arrêt pendant tout ou partie de la période qui va du début de l'instruction préparatoire jusqu'au jugement définitif sur le fond de l'affaire]*."[17]

Preceding the pre-trial detention, the police and gendarmerie officers can arrest a person as a suspect for 24 hours during a preliminary investigation, if this is necessary[18]. After arresting a suspect, the police must immediately inform the public prosecutor according to provision 63 of the Penal Procedure Code, in order to submit the proceedings to the judiciary control.[19] When this is not done immediately after the arrest, the proceeding is invalid. At the request of the police, police custody can be extended for another 24 hours by the public prosecutor as provision 77 of the Penal Procedure Code states. For crimes concerning drugs, terrorism and human trafficking, police custody is possible for six days.[20]

Investigating judges can order a detainee's release under judicial supervision or unconditionally at any time, whether in response to an appeal for provisional liberty or his or her own initiative. The legal definition and related provisions of judicial supervision can be found in the provisions 138 until 143 of the Penal Procedure Code. Provision 138 states that "Judicial supervision may be ordered by the investigating judge or the liberty and custody judge if the person under judicial examination is liable to incur a misdemeanour imprisonment penalty, or one that is more severe. This supervision compels the person to submit himself to one or more of the obligations …"

Judicial measures can include house arrest, limiting movement to a particular geographic area, a prohibition on meeting certain people or going to certain places, the wearing of an electronic tracking bracelet, lodging a sum of money with the court as a guarantee, and the surrender of identification papers, including passport[21].

By this, all forms of procedure besides to pre-trial detention are discussed. In the next part the beginning and end of the pre-trial detention according to the law will be dealt with.

3.2 The competent authority and the length of pre-trial detention

The competent authority is obligatory a juridical authority. The competence lies on the *'juge des libertés et de la détention*' (the liberty and custody judge) according to provision 145 in relation to 137-1 of the Penal Procedure Code. The judge who is charged with the investigation only has in principle the responsibility regarding the investigation[22]. The liberty and custody judge may not, under pain of nullity, participate in the trial of criminal cases of which he has taken cognizance. The liberty and custody judge is seized by means of reasoned judgment from the investigating judge, which transfers the case/file and the District prosecutor's initial submission in favour of remanding a person in custody to him/her[23]. The '*juge des libertés et de la détention'* can refuse to order the pre-trial detention by a motivated writing without delay and transmit it immediately to the office of the public prosecutor which can go in appeal against this decision according to provision 185 of the Penal Procedure Code[24]. But the investigating judge can, in some circumstances[25], directly bring the case to the '*juge des libertés et de la détention'*. So the latter decides whether or not to place a suspect under detention, after a special hearing devoted to the question of detention. Approximately nine of the ten accused who appear before the '*juge des libertés et de la détention*' are placed in pre-trial detention[26].

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[17] Ibid, p. 150.

[18] See provision 63 of the Penal Procedure Code.

[19] J.-Y. Mc Kee in order of HEUNI, The European Institute for Crime Prevention and Control, affiliated with the United Nations, *Criminal Justice System in Europe and North America: France*, Helsinki 2001, available on < http://www.heuni.fi?uploads/fq98onf0fojy.pdf >, p. 28.

[20] Ibid.

[21] Provision 138 of the Penal Procedure Code.

[22] See provision 83 paragraph 3 of the Penal Procedure Code.

[23] Provision 137-1 last paragraph of the Penal Procedure Code.

[24] Y. Strickler, professor of Robert Schuman University Strasbourg, *Epreuves de Procedure Penale*, college literature concerning the penal procedure in France 2006-2007, p. 152.

[25] See provision 137-1 jo. 137-4 of the Penal Procedure Code.

[26] Ministry of Justice of France, *Commission de suivi de la détention provisoire; Rapport 2007*, 2008, available on < http://www.justice.gouv.fr/art_pix/1_Rapport_dp_2007.pdf >, p. 37.

Regarding the length of the pre-trial detention according to the law, the classification of offences is of great importance. The departing point is to be found in provision 144-1 which declares that pre-trial detention may not exceed a reasonable length of time regarding the seriousness of the charges brought against the person under judicial examination and the complexity of the investigations necessary for the discovery of the truth. The investigating judge or '*juge des libertés et de la détention'* must order the immediate release of the person placed in pre-trial detention "as soon as the conditions provided under article 144 and under the present article are no longer fulfilled"[27]. Provision 145-1 of the Penal Procedure Code states that "in cases involving lesser criminal offences (*matière correctionnelle*), pre-trial detention may not exceed four months. However, at the end of this period, the investigating judge may extend by an order giving reasons as indicated in the first paragraph of article 145. No extension may be ordered for a period exceeding four months."

This differs from the cases involving serious crimes (*matière criminelle),* because in these cases an accused cannot be held in detention for more than one year according to provision 145-2. "However, the investigating judge may, at the end of that period, decide to prolong detention for a period not exceeding one year"[28] as long as the other requirements[29] are met.

Concerning the end of the pre-trial detention, there are more possibilities to affect it. Firstly, the pre-trial detention ends when the preparatory investigation has been closed by the investigating judge in cases involving lesser criminal offences[30]. Regarding the cases involving serious crimes, provision 181 states that "If the accused is placed in pre-trial detention, the committal order issued against him continues in force and the person concerned remains in detention until he is tried by the assize court …" Secondly, the investigating judge of his own motion may release the accused (provision 147). And according to the last mentioned provision, the public prosecutor may also apply at any time for the accused to be released. Further, the accused or his lawyer may at any time lodge, with the investigating judge, an application for release according to provision 148. At last, provision 148-4 makes it possible that "At the expiry of a four-month time limit since his last appearance before the investigating judge or the judge which he has delegated, and as long as the closing order has not been made, the person detained or his advocate may directly refer an application for release to the investigating chamber …"

In short, the pre-trial detention in narrow sense ends when it appears that the dossier is complete and that there is sufficient evidence to bring the case before the court. If not, proceedings are dropped either by the public prosecutor or by the instructing judge.[31] And the accused or his lawyer can always apply for release. But is it also possible to file an appeal against an order placing in pre-trial detention? And which procedural rights does the accused have during his detention? These questions will be answered in the following paragraph.

3.3 Procedural rights

Rights concerning appeal, being informed of the reason for the arrest, requesting a medical examination, informing someone of the arrest, the support and presence of a defence counsel, and the contact with family members have to be respected according to universal principles[32] when residing in detention. The mentioned rights are all incorporated in the Penal Procedure Code in France. Some of the rights will be highlighted. The right to appeal against the pre-trial detention order is laid down in provision 187 of the Penal Procedure Code: "In the event of an appeal filed against an order placing in pre-trial detention, the person under judicial examination or the district prosecutor may, if the appeal is filed at the latest on the day following that of the decision order, apply to the president of the investigating chamber …"

When this appeal is rejected, it is even possible to bring an appeal to the Court of Cassation[33]. Further, provision 145 plays a central role in relation to the right to the assistance of an advocate

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[27] Art. 144-1 second paragraph of the Penal Procedure Code.
[28] See provision 145-2 second sentence of the Penal Procedure Code.
[29] Like the reasonable suspicion, the specific circumstances and the ground(s).
[30] Provision 179 second paragraph of the Penal Procedure Code.
[31] J.-Y. Mc Kee in order of HEUNI, The European Institute for Crime Prevention and Control, affiliated with the United Nations, *Criminal Justice System in Europe and North America: France*, Helsinki 2001, available on < http://www.heuni.fi?uploads/fq98onf0fojy.pdf >, p. 26.
[32] See ICCPR and ECRM.
[33] See provisions 567, 567-2, 591, 592 and 593 of the Penal Procedure Code.

in preparing his defence. The '*juge des libertés et de la détention'* advises the accused, if this person does not yet have the assistance of an advocate, that he has the right to be aided by an advocate of his choice or one that is appointed by the court. The chosen or appointed advocate will be immediately notified by any possible means[34].

When making an excursion to the rights of the accused during police custody the detainees "…, regardless of the reasons for their arrest, are questioned without the presence of a lawyer, they are not informed of the right to remain silent, and anything they say may be used against them at trial. While the final police report must list the length of all interrogations, there are no rules establishing time limits on these interrogations or the amount of rest a detainee must have between interrogations."[35] The notification of the right to remain silent for those in police custody was incorporated into the French Penal Procedure Code in 2000. However, it was removed again in 2003. The Commissioner of Human Rights of the Council of Europe criticized France for this decision in his report of 2006[36].

4. Grounds for detention

Placing a person in pre-trial detention requires one or more legal motives which can be found in an exhaustive account in provision 144 of the Penal Procedure Code. This provision states that "Pre-trial detention may only be ordered or extended if it is the only way 1) to preserve material evidence or clues or to prevent ether witnesses or victims or their families being pressurised or fraudulent conspiracy between persons under judicial examination and their accomplices, 2) to protect the person under judicial examination, to guarantee that he remains at the disposal of the law, to put an end to the offence or to prevent its renewal, 3) to put an end to an exceptional and persistent disruption of public order caused by the seriousness of the offence, the circumstances in which it was committed, or the gravity of the harm that it has caused." Pre-trial detention has to be seen as an ultimate remedy and may only be ordered if one of these grounds can be argued. The '*juge des libertés et de la détention'* is therefore obligated to motivate his decision[37] whether or not he orders detention.

According to the case law of the European Court of Human Rights concerning the pre-trial detention in France, the adduced grounds by France justifying the pre-trial detention before the Court are the protection of public order from serious disturbance regarding the seriousness of the offence, remaining of the accused at the disposal of the judicial authorities, the danger of absconding and the risk of pressure being brought to bear on the witnesses[38]. The Court has ruled in the Letellier case that danger of absconding "cannot be gauged solely on the basis of the severity of the sentence risked. The ground of preservation of public order can be regarded as relevant and sufficient only provided that it is based on facts capable of showing that release of the accused would actually disturb public order. In addition, detention will continue to be legitimate only if public order remains actually threatened; its continuation cannot be used to anticipate a custodial sentence.[39]"

5. The grounds for review of pre-trial detention

If the investigating judge wishes to extend the pre-trial detention of the accused he must request a decision from the '*juge des libertés et de la détention'*.[40] Then, a hearing will be held in which the

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[34] Provision 145 paragraph 3 of the Penal Procedure Code.

[35] Human Rights Watch, *Preempting Justice, Counterterrorism Laws and procedures in France*, July 2008, available on < http://hrw.org/reports/2008/france0708/ >, p. 57/58.

[36] Report by A. Gil-Robles, Council of Europe Commissioner for Human Rights, *On the effective respect for Human Rights in France*, following his visit from 5 to 21 September 2005, CommDH (2006)2, February 15, 2006, p. 6, available on the website of the Council of Europe.

[37] Provision 137-3 first paragraph of the Penal Procedure Code.

[38] See ECHR Letellier v. France, Appl.no. 12369/86, 26 June 1991.

[39] Ibid, §51.

[40] J.-Y. Mc Kee in order of HEUNI, The European Institute for Crime Prevention and Control, affiliated with the United Nations, *Criminal Justice System in Europe and North America: France*, Helsinki 2001, available on http://www.heuni.fi?uploads/fq98onf0fojy.pdf , p. 28.

existence of the legal ground(s) and the other requisites are examined. As soon as the conditions provided under provision 144 and 144-1 are no longer fulfilled, the investigating judge, or where seized the '*juge des libertés et de la détention'*, must order the immediate release of the accused placed under pre-trial detention according to the second paragraph of provision 144-1. The question for extend of the detention is put in most cases when the legal period of the detention is expired[41]. At the end of the investigating phase, at the request of the public prosecutor's office, the investigating judge refers the penal dossier to the '*tribunal correctionnel for délits'* or to the '*cour d'assises for crimes'*, if substantial evidence has been gathered. If he concludes that there is no case, the dossier will be closed.

During the detention, the accused has the right to ask for his release and re-examine the decision concerning the placing in pre-trial detention.

Besides this, provision 187-1 of the Penal Procedure Code gives the possibility of '*référé-liberté'* which permits the person under investigation or the public prosecutor[42] to appeal the order of placement in pre-trial detention on the day of this decision or the following day to ask the president of the investigation chamber or his substitute to examine directly his appeal without a hearing before the investigation chamber. If the president of the investigation chamber estimates that the requisites of provision 144 are not fulfilled, he will inform the *'juge des libertés et de la détention'*. As a consequence, the accused will be set in freedom.

The accused has also the right to exercise a hierarchical supervision[43] on the conditions for placing him in pre-trial detention or on the refusal to release him. This right has to be exercised by way of an appeal as provision 186 states. And as already mentioned in the foregoing, the accused in pre-trial detention and his lawyer can, whenever they wish, ask the investigating judge to set the accused free (provision 148). If he does not, the request is then brought before the *'juge des libertés et de la détention'*, who can decide to lift the detention warrant or to refuse the request.

6. Length of pre-trial detention

In the year 1996[44], the notion of reasonable length of time appeared in the French Penal Procedure Code under the influence of the ECHR (art. 5 paragraph 3). Provision 144-1 creates for this occasion that "Pre-trial detention may not exceed a reasonable length of time in respect of the seriousness of the charges brought against the person under judicial examination and of the complexity of the investigation necessary for the discovery of the truth". If these conditions are not fulfilled, the investigating judge or *the juge des libertés et de la détention* has to set the person into freedom. In the following, the legal provisions, the practise and the ECHR case law concerning the pre-trial detention in France will be considered.

6.1 Legal provisions

In case of a '*crime*', the pre-trial detention is limited by a maximum of time[45]. However, this period can be extended. An extension of six months can be affected and has to meet the requiry of reasonable length of time. This extension of six months has to be preceded by a hearing before the investigating chamber. This can be done every six months, but there are also limits.

Two situations can be distinguished: a) if the applicable sentence is less than twenty years imprisonment, the pre-trial detention may not exceed two years[46], and b) in other cases the pre-trial detention may not exceed three years. These time limits are extended to three and four years where one of the elements of the offence has been committed outside the national territory. The time limit is also four years where the person is being prosecuted for one or more *'crimes'*

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41 Provision 145-1 paragraph 2 and provision 145-2 paragraph 1 of the Penal Procedure Code.

42 Provision 147 of the Penal Procedure Code. He may request release at any time. "Unless he orders the person's release, the investigating judge must, within five days of the prosecutor's requisitions, send the case file, accompanied by this own reason opinion, to the liberty and custody judge, who rules with three within three working days."

43 Provision 145 paragraph 2 and 4 of the Penal Procedure Code.

44 Law number 96-1235 of 30 December.

45 Provision 145-2 of the Penal Procedure Code puts the maximum of a year.

46 Provision 145-2 of the Penal Procedure Code.

mentioned in Books II and IV of the Criminal Code, or for drug trafficking, terrorism, living off immoral earnings, extortion of money or for a crime committed by an organised organisation.

In the case of '*délits*'[47], pre-trial detention may not exceed four months if the person under judicial examination has not previously sentenced, in respect of a '*crime*' or a *'délit'*, to an unsuspended prison sentence of at least a year, and when he is at risk of a sentence of five years or less[48]. The *juge des libertés et de la détention* may decide to extend the pre-trial detention for a period not in excess of four months in a reasoned decision and after a hearing. The total duration of the detention may not exceed a year. This time limit is extended to two years where one of the elements of the offence has been committed outside the national territory, or where the person is being prosecuted for drug trafficking, terrorism, criminal conspiracy, living off immoral earnings, extortion of money or for a *crime* committed by an organised organisation and which carries a sentence of ten years imprisonment.

In 2005, the average length of pre-trial detention was 8.7 months; while this was 5.3 months in 1990.[49]

6.2 Case law of the ECHR

Several cases against France are raised before the ECHR. The requisite that the length of pre-trial be limited is closely linked to the *preasumptio innocentiae*. There is the danger that the pre-trial detention will be misused; "its continuation cannot be used to anticipate a custodial sentence" as the Court stated in paragraph 91 of the Tomasi v. France case. Regarding the 'reasonable time' the Court holds "… that it is not feasible to translate this concept into fixed number of days, weeks, months or years, or into various periods depending on the seriousness of the offence"[50]. The Court has to evaluate the length of the pre-trial detention and does this on the basis of its criteria. "The persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the validity of the continued detention, but after a certain lapse of time, it no longer suffices; the Court must then establish whether the other grounds cited by the judicial authorities continue to justify the deprivation of liberty. Where such grounds are "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings."[51] The Court examines the grounds[52] whether they suffice to justify the pre-trial detention. Many criteria are elaborated in cases against France. In the greater part of the cases the Court concluded a violation of art. 5 paragraph 3 of the ECHR. The following figure[53] provides an overview of cases.

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[47] Provision 145-1 of the Penal Procedure Code.

[48] Provision 145-1 paragraph 1 of the Penal Procedure Code.

[49] Ministry of Justice of France, Commission de suivi de la détention provisiore; Rapport 2007, 2008, available on http://www.justice.gouv.fr/art_pix/1_Rapport_dp_2007.pdf p. 49.

[50] This is the case when the pre-trial detention has lasted a long time. Strong reasons are demanded in these cases; PB v. France, § 30, 36 and Richet v. France, § 69.

[51] See Letellier v. France, § 35; Tomasi v. France, § 84; and Kemmache v. France, § 45.

[52] "Whether a danger of absconding persisted; whether there was a risk of pressure being brought to bear on witnesses or of evidence being tampered with in other ways; whether there was a risk of repetition of the offence; and whether the continued detention could be justified for the preservation of public order on relevant and sufficient reasons", in Trechsel S., *Human Rights and Criminal Proceedings; The special rights of persons detained on remand*, Oxford 2005, p. 522.

[53] S. Trechsel, *Human Rights and Criminal Proceedings; The special rights of persons detained on remand*, Oxford 2005, p. 530-531.

Case	*Date*	*Length*	*Judgment*
Letellier v. France	26 June 1991	2 years and 9 months	Violation
Kemmache v. France	27 November 1991	2 years, 10 months and 10 days	Violation
Tomasi v. France	27 August 1992	5 years and 7 months	Violation
Quinn v. France	22 March 1995	1 year	No violation
Muller v. France	17 March 1997	Almost 4 years	Violation
IA v. France	23 September 1998	6 years and 9 months	Violation
Debboub alias Hussaini Ali v. France	9 November 1999	4 years, 2 months and 10 days	Violation
PB v. France	1 August 2000	4 years, 8 months and 3 days	Violation
Richet v. France	13 February 2001	4 years, 8 months and 14 days	Violation
Bouchet v. France	20 March 2001	1 year, 5 months and 17 days	No violation
Zannouti v. France	31 July 2001	5 years, 5 months and 23 days	Violation

The former Commissioner for Human Rights, Mr. Alvaro Gil-Robles, raised the slowness of the French courts in which they operate because of its excessive caseload[54], as a cause of the lengthy pre-trial detention in France. Human Rights Watch also mentions this problem and gives recommendations to solve this or to improve the situation. It emphasizes the need for a clear determination of the functions of the *juge des libertés et de la détention* to ameliorate the efficiency of the procedural system.

7 Other relevant aspects

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

In the year 2005 there were 535 acquittals and discharges of prosecution. Besides that, there were 78 discontinuances of cases[55]. The account of condemnations that were preceded by a pre-trial detention in 2005 was 35,309 of the total of 623,005 condemnations[56]. This means that 5.7 % of all condemnations were preceded by pre-trial detention. There were 3,236 condemnations for '*crimes*' whereof in 2512 cases pre-trial detention had been imposed[57]. That is a percentage of 77.6. For *'délits'* there were 550,841 condemnations and in 32,784 cases the condemnation was preceded by pre-trial detention, a percentage of 6.0[58].

The rights of the accused after the pre-trial detention can be distinguished into two groups, namely justified and unjustified detention. Regarding the first group, where the accused has undergone a justified pre-trial detention, the first paragraph of provision 716-4 of the Penal Procedure Code states that "Where pre-trial detention has been served at any stage of the proceedings, this detention is deduced entirely from the duration of the sentence imposed or, if necessary, from the total length of the sentence to be served after concurrence of penalties." So the pre-trial detention always has to be taken into account in the following of the criminal proceedings.

But when the accused had been in unjustified pre-trial detention in cases of acquittal or discharge decisions and discontinuances, there is a possibility to claim damages according to provision 149 of the Penal Procedure Code. The claim is lodged before the first president (*Premier*

[54] Report by A. Gil-Robles, Council of Europe Commissioner for Human Rights, *On the effective respect for Human Rights in France*, following his visit from 5 to 21 September 2005, CommDH (2006)2, February 15, 2006, p. 6, available on the website of the Council of Europe.
[55] French Ministry of Justice, *l'Administration pénitentiare en chiffres au 1er janvier 2007*, available on http://www.justice.gouv.fr/art_pix/Chiffresclesau01012007.pdf, p. 46.
[56] Ibid, p. 35.
[57] Ibid.
[58] Ibid.

président) of the appellate court[59] whose decision can be challenged before a section of the '*Cour de cassation*[60]', the National Commission for the Compensation of Detention.

7.2 Alternatives to pre-trial detention

Alternatives to pre-trial detention can be imposed in the framework of judicial supervision (*garde à vu*) as codified in the provisions 138 until 143 of the Penal Procedure Code. This measure can be ordered by the investigating judge or the *juge des libertés et de la détention* if the person under judicial examination is liable to incur a *délit* imprisonment penalty, or one that is more severe. "This supervision compels the person to submit himself to one or more of the obligations" according to provision 138. Obligations like not leaving the territorial boundaries, not leaving his domicile or residence, not going to certain places, appearing periodically before the services etc. are enumerated in provision 138. The investigating judge may at any time impose upon the person under judicial examination one or more new obligations, cancel all or part of the obligations, amend one or more of these obligations or grant an occasional or temporary exemption from complying with specific obligations[61]. "If the person under judicial examination intentionally evades the obligations of the judicial supervision, the investigating judge may issue an arrest warrant or a summons against him", according to provision 141-2.

7.3 Execution of pre-trial detention

7.3.1 Place of execution of pre-trial detention

Provision 714 of the Penal Procedure Code states that "persons under judicial examination and defendants subjected to pre-trial detention serve it in a remand prison". There are special remand centres, '*maisons d'arrêt*'. They are also in charge of minor offenders with short sentences (under 12 months). With regard to provision 716 it can be said that persons under judicial examination, defendants and accused subjected to pre-trial detention are placed under individual imprisonment. Exceptions on the individual imprisonment rule can be made in cases 1) if those concerned so request, 2) if by reason of their character they should not, in their own interests, be left on their own, 3) if they are authorised to work, or to receive education or professional training and it is necessary in order for this to be arranged, and 4) for a period of five years from the date of coming into force of law no. 2003-495 of 12 June 2003 against violence on road, if the internal arrangements of remand prisons and the number of persons in detention make it impossible to detain persons individually.

7.3.2 Judgment of the former Commissioner of Human Rights

In his report of February 2006[62], Mr. Gil-Robles, former Commissioner of Human Rights, expressed himself very critically regarding the conditions of persons in pre-trial detention and the respect for human rights in France. His report counts 90 pages and only the main aspects will be highlighted.

In his general comments he points out the discrepancy between law and practise[63] when speaking about the protection of human rights in France. In relation to the working conditions in courts he puts forward the slowness of the courts, the excessive caseload and the under-funding of the courts. These efficiency problems lead directly to longer durations of pre-trial detention[64]. Regarding the rights of the accused[65] and the role of the counsel he mentions the right of the accused to be informed of his/her rights, to be told the nature of the crime which is being investigated, to be examined by a doctor and to inform family about the detention. These rules met the European human rights standards and France respects them fully. In many cases, however, lawyers cannot fully exercise their profession because of limited visits to their client and

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[59] Provision 149-1 of the Penal Procedure Code.
[60] Provision 149-3 of the Penal Procedure Code.
[61] Provision 139 second paragraph of the Penal Procedure Code.
[62] Report by A. Gil-Robles, Council of Europe Commissioner for Human Rights, *On the effective respect for Human Rights in France*, following his visit from 5 to 21 September 2005, CommDH (2006)2, February 15, 2006, available on the website of the Council of Europe.
[63] Ibid, point 5.
[64] Ibid, points 17-21.
[65] Provision 63-1 until 63-4 and 77 of the Penal Procedure Code.

having no access to the file and have only such information on the case as detainees can give them[66]. Mr Gil-Robles emphasizes that the presence of a lawyer is of utmost importance, and in his view, reform in the matter of access to a lawyer for persons in pre-trial detention is urgently needed[67]. Further, Mr Gil-Robles points out the overcrowding and the bad facilities and deplorable conditions in the places of detention with under-funding as main cause. He remarks that "human dignity must be respected everywhere and for everyone … the sight of a person sleeping on a concrete floor in unacceptable"[68]. Besides this, he has also his reservations to the provisions concerning persons held in pre-trial detention on suspicion of participating in terrorism, especially the situation of the absence of all legal assistance for 72 hours[69]. At last, he was confronted with a particular case in which he spoke with a detainee: "He was a foreign national who had been arrested 16 months earlier and had already been finally sentenced over four months previously to more than one year's imprisonment. Yet he was still at the short-stay prison and had no news about a possible transfer. According to this prisoner, he had had no contact for 16 months with his wife and children, who lived abroad and were unable to come and see him. What is more, because he was being held at a short-stay prison, he was not allowed to use the telephone, which cut him off completely from his family, although, legally, he was no longer formally prohibited from calling them."[70]

In May 2008, Commissioner Thomas Hammarberg travelled to France and his main finding with regard to respect for prisoners' human rights were *inter alia* that untried prisoners should have a single cell, length of time spent in a disciplinary block should be reduced, living conditions for prisoners should be improved, etc.[71]

7.3.3 French report in the occasion of the visit of the CPT

The French report of 2007[72], as a reaction of the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment that was drown up after the CPT visit in the autumn of 2006, reflects and evaluates the conditions in places of detention in France. Some of findings of the CPT concerning the conditions in places where the pre-trial detention is executed will be discussed. Firstly, the sanitary provisions were not sufficient and in a deplorable state. The CPT recommends that persons who are held in detention longer than 24 hours have to dispose of an individual hygiene pack[73]. The Commission also found that the dignity of persons in pre-trial detention was not always respected[74]. Further, the CPT calls the French authorities to recognise the privacy and liberty of the persons in pre-trial detention by the officials responsible for order and the access to a lawyer[75]. Besides this, the CPT also remarks the problem of overcrowding[76]. In general, the French authorities have to ameliorate the level of activities and work facilities in places of detention to provide distraction for the detainees[77]. Subsequently, the access to medical care has to be improved[78]. And lastly, the CPT would like to

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66 Report by A. Gil-Robles, Council of Europe Commissioner for Human Rights, *On the effective respect for Human Rights in France*, following his visit from 5 to 21 September 2005, CommDH (2006)2, February 15, 2006, points 45 until 51.

67 Ibid., point 60.

68 Report by A. Gil-Robles, Council of Europe Commissioner for Human Rights, *On the effective respect for Human Rights in France*, following his visit from 5 to 21 September 2005, CommDH (2006)2, February 15, 2006, point 84.

69 Ibid, point 55.

70 Ibid, point 90.

71 Memorandum by Thomas Hammarberg, Council of Europe Commissioner for Human Rights, following his visit to France from 21 to 23 May 2008, commDH(2008)34 Strasbourg, 20 November 2008, available at https://wcd.coe.int/ViewDoc.jsp?id=1410711&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679#P153_21080

72 Rapport au Gouvernement de la République française relatif à la visite effectuée en France par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT), du 27 septembre au 9 octobre 2006, CPT/Inf (2007)44, 10 décembre 2007, available on http://www.cpt.coe.int/documents/fra/2007-44-inf-fra.pdf .

73 Ibid, paragraph 35.

74 Ibid, paragraph 34.

75 Ibid, paragraph 40.

76 Ibid, paragraph 146 and 176.

77 Ibid, paragraph 180.

78 Ibid, paragraph 185.

examine the prohibition to telephone for persons in pre-trial detention[79]. These are the main problems which persons in pre-trial detention encounter according to the CPT after its visit to France.

8 Groups of special interest

8.1 Juveniles

The judicial system for minors regarding juvenile delinquents and children in danger is governed by the '*Ordonnance de 2 fevrier 1945'*. When speaking about juveniles and pre-trial detention there has to be made a distinction between '*délits*' and '*crimes'*.

Firstly, in cases of *délits*, minors under the age of 16 years cannot be subject to a pre-trial detention. When they are above 16 they can be placed under pre-trial detention. The maximum sentence after condemnation has to be three years or above. The length of the pre-trial detention in these cases may not exceed one month. An extension is possible after a hearing when the whole sentence is seven years or lower[80]. In all other cases, the minor of 16 is subjected to the provisions 145 paragraph 6 and 145-1 of the Penal Procedure Code for the extension[81].

Secondly, in cases of crimes, minors above 13 years but not yet 16 cannot be in pre-trial detention for more than six months, but an exceptional extension of six months is conceivable. From 16 years the pre-trial detention is limited to a length of two years[82].

If we look at the statistics of 2007 there can be seen that 727 minors were detained, of which 464 in pre-trial detention. So the proportion of pre-trial detainees is 63.8 %.

When minors are placed in police custody they are being examined by a medical doctor and a lawyer is appointed who can contact them. They have the right to call their family and are entitled to the right to silence. Interviews of juveniles by a police officer must be videotaped and these tapes have to be sent to the court. Prior to the bringing of any charges, all juveniles are interviewed by a social worker whose task is to formulate a report on the background and prospect of the juvenile. Besides this juvenile offenders have to appear to special judges and courts.

The law is recommending that juvenile judges should essentially focus on social and educational rehabilitation measures. Penal sentences can be passed on juvenile offenders by the juvenile court. In all cases, juvenile offenders face a punishment which is half of the legal punishment that can be imposed to a person over 18. Minors are in general not imprisoned with adults and get special treatments and facilities mainly focussed on educational goals, but girls do not receive the treatment normally reserved for minors[83]. Girls are imprisoned with adults in the women's unit "on the grounds that there are too few of them to set up a juvenile unit"[84]. The former Commissioner of Human Rights visited such a women's unit and his reaction was "Placing girls among adults also has other adverse consequences in that they do not have equal access to the activities and facilities offered to boys. They are therefore much more isolated and partially deprived of the educational provision offered to boys."[85]

So there are special regulations concerning juvenile offenders, but improvement on this ground would be welcome especially regarding the pre-trial living conditions.

8.2 Women

As mentioned above, there are 2,144 female detainees[86] of which 41 % are in pre-trial detention. They are detained separately from men. However, much information cannot be found on this specific subject, but there is a dated research of Mary France-Line[87] in which she discusses women

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[79] Ibid, paragraph 222.
[80] Ordonnance 1945, art. 11 alinea 2.
[81] Y. Strickler Y., professor of Robert Schuman University Strasbourg, *Epreuves de Procedure Penale*, college literature concerning the penal procedure in France 2006-2007, p. 153.
[82] Ibid.
[83] Report by A. Gil-Robles, Council of Europe Commissioner for Human Rights, *On the effective respect for Human Rights in France*, following his visit from 5 to 21 September 2005, CommDH (2006)2, February 15, 2006, point 283.
[84] Ibid.
[85] Ibid.
[86] That is a percentage of 3.7 of the whole prison population.
[87] M. France-Line, Femmes, délinquances et contrôle pénal, analyse socio-démographique des statistiques administratives, Guyancourt, CESDIP, Etudes et Données Pénales, no. 75, 1996.

in (pre-trial) detention and their treatment. It is a surprisingly research and that is why it is mentioned here. Mary France-Line concludes in her article that women are effectively treated more favourably at this stage in the criminal justice process in that they are more rarely subjected to correctional confinement of any sort. "What distinguishes men and women … is definitely the benefit of the right to freedom, to women's advantage. This situation is in no way affected by the sex distribution within the different categories for the main incrimination, although women are slightly less often prosecuted for serious offences than men. In all cases, the pre-trial detention rates are highest for men." She also points out in her research that the average duration of the pre-trial detention is shorter for women than for men.

8.3 Foreigners

The percentage of foreign prisoners lies on 19.8 % of the whole prison population and that means 11,436 persons. The number or percentage of foreign pre-trial detainees is not available. However, it can be said that the percentage of EU country residents in French prisons lies on 29.1 %. The rest of the foreigners are Asians (10.2 %), Africans (50.3 %), continental Americans (9.7 %) and diverse nationalities (0.7 %)[88]. No special issues can be raised regarding foreigners in pre-trial detention.

8.4 Alleged terrorists

According to a Europol study, 130 suspected Islamists were arrested in France in the first ten months of 2005. Of these, 30 were remanded into pre-trial custody[89]. In the year 2006, 139 Islamic suspects were arrested, while that number decreased to 91 in 2007[90]. However, these reports do not contain any numbers concerning terrorists in pre-trial detention.

According to Human Rights Watch[91], the counterterrorism laws and procedures undermine the right of those facing charges of terrorism to a fair trial. However, there are not (yet) cases known in which the ECHR has given its opinion concerning this subject.

The basis of the counterterrorism laws was adopted in 1986. This particular law, Law 86-1020 of 9 September 1986, instituted a specialized corps of investigating judges and prosecutors to handle all terrorism cases. It was established in Paris. This law also created trials by panels of professional judges for serious terrorism-related felonies in the '*Cour d'Assise*' in Paris. The law extended maximum police custody to 96 hours or 4 days in the concerned cases.

The most important charge in the French law is the criminal association in relation to a terrorist undertaking *(association de malfaiteurs en relation avec une entreprise terroriste)*. This charge, that was introduced by Law 96-647 of 22 July 1996, makes it possible to take pre-emptive action before the commission of a crime. Provision 421-2-1 of the Criminal Code defines the offence as "the participation in any group formed or association established with a view to the preparation, marked by one or more material actions, of any of the acts of terrorism provided under the previous articles". Sentences between 10 and 30 years are the punishments stated by the law. Law 2006-64 of 23 January 2006 increased the maximum period of police custody in terrorism cases to six days when certain conditions are met.

The critical remarks with regard to the investigating judge concern the undermining of the right of each defendant to an effective defence, which is the basis of the right to a fair trial[92]. The ECHR contains the minimum guarantees that are necessary to ensure the right to a fair trial to all persons accused of a criminal offense. These include timely and confidential access to a counsel, and adequate time and facilities to prepare the defence. Besides this, it is important that the prosecution and the defendant have an equal opportunity to prepare and present their cases, including the obligation on the prosecution to disclose all material information[93].

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[88] French Ministry of Justice, *l'Administration pénitentiare en chiffres au 1er janvier 2007*, available on http://www.justice.gouv.fr/art_pix/Chiffresclesau01012007.pdf , p. 5.

[89] EUROPOL, *Terrorist Activity in the European Union, Situation and Trends Report, October 2004-October 2005*, May 2, 2006, p. 23.

[90] EUROPOL, *EU Terrorism Situation and Trend Report, March 2007*, p. 11

[91] Human Rights Watch, *Pre-empting Justice, Counterterrorism Laws and Procedures in France*, July 2008, available on http://hrw.org/reports/2008/france0708/ .

[92] Human Rights Watch, *Pre-empting Justice, Counterterrorism Laws and Procedures in France*, July 2008, available on http://hrw.org/reports/2008/france0708/, p. 15.

[93] Human Rights Watch, *Preempting Justice, Counterterrorism Laws and Procedures in France*, July 2008, available on http://hrw.org/reports/2008/france0708/, p. 15.

The length and complexity of the judicial investigations in terrorism cases considerably hamper the ability of defence lawyers to mount an effective defence: some defence lawyers mention inter alia that in most cases the file is extremely extensive with, as a consequence, that it is almost impossible to defend the accused.

Once arrested, terrorism suspects are allowed to be held in police custody for four days, and in certain situations up to six days, before being brought before a judge to be placed under judicial investigation or released without charge[94]. Suspects may see a lawyer for the first time only after three days in custody and in some cases four days, and then only for 30 minutes[95]. The lawyer does not have access to the case file, or information about the exact charges against his or her client, leaving little scope for providing legal advice. Suspects may be subjected to oppressive questioning, at any time of the day or night, without a lawyer present[96]. Police do not have the obligation to inform suspects of their right to remain silent. Testimonies from people held in police custody on suspicion of involvement in terrorism suggest that sleep deprivation, disorientation, constant, repetitive questioning, and psychological pressure during police custody are common. There are credible allegations of physical abuse of terrorism suspects in French police custody[97]. Limited access to a lawyer during police custody makes suspects vulnerable to ill-treatment in detention[98].

9 Summary

The penal procedure in France has already a long history with its roots in the French Revolution. It developed from a state centred on repressive penal procedural to a procedure that was more focussed on the rights of the defendants and that took individual and social aspects into account. Of course, there raised legal problems in an ever changing society. Responses like the introduction of a '*juge des libertés et de la détention*' and a reform in 2000 were unavoidable in the frame of the pre-trial detention.

When we look at the French penal procedure system, as it is written in the laws, we can conclude that it is well ruled. The pre-trial detention finds its legal basis in the provisions 143-1 until 148-8, where the scope, notions, grounds and length are ruled in accordance with international standards. The practise, however, confronts us with the fact that there is a discrepancy between the law and the execution of it. Problems as *inter alia* overcrowding, access to a lawyer, lengthy procedures, living conditions in places of detention and the counterterrorism approach are present in the French penal system.

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[94] Ibid, p. 2.
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