"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

Latvia[1]

1. Introduction

Latvia, with a population of 2.27 million people[2], became an independent country again in 1991 with a *de-facto* renewal of the state as of November 1918, when the first Republic of Latvia was established. Between 1940 and 1990, Latvia was part of the USSR. Major ethnic groups besides the Latvians (58.5%) are: Russians (28.6%), Belarusians (3.8%), Ukrainians (2.6%) and Poles (2.5%).[3] Historically, the Latvian jurisdiction has always been influenced by Russian law; during Soviet times, Latvia´s law was basically a copy of the Soviet legal system.

Latvia is a member of the United Nations since 17 September 1991 and of the Council of Europe since 10 February 1995. It is party to both International Covenants since 14 April 1992. Latvia ratified the European Convention on Human Rights and Protocols No. 1, 4 and 7 on 27 June 1997, and Protocol No. 6 on 7 May 1999. Since May 2004, Latvia is a member of the European Union.

According to Sec. 2 of the Code of Criminal Procedure (= CCP), the criminal procedure is determined by the Constitution of the Republic of Latvia, international legal norms and the CCP. The fundamental law of Latvia – the Latvian Constitution[4] – originally dates from 1922 and was reinstated in 1991. As late as 15 October 1998, it was supplemented with a catalogue of human rights, which now forms the eighth chapter of the text. Judicial power is vested in the courts and judicial independence is guaranteed by Article 83 of the Latvian Constitution. Judicial appointments are approved by the one-chamber parliament, the Saeima, and are irrevocable. As an independent constitutional body, the Constitutional Court decides upon cases regarding the constitutional conformity of laws. Among others, the State Human Rights Bureau (now: the Ombudsman's Office) and the State Audit Office have been given the right to submit applications for constitutional reviews. Since the amendments to the relevant Law on the Constitutional Court of 2000 came into force, citizens also have the right to submit their applications directly to the Constitutional Court. On 1 January 2007, Latvia's Law on the Ombudsman came into force. The Office of the Ombudsman incorporates the duties of the former State Human Rights Bureau. In 2007, the Ombudsman received more than 5,000 complaints, of which 90 concerned the rights of prisoners and almost 3,000 the prohibition of torture. Prison visits were also carried out.[5]

Art. 92-95 of the Constitution of the Republic of Latvia are norms with particular relevance for criminal proceedings. Art. 92 contains provisions with regard to the rule of law and fair trial (including the right to the assistance of counsel) as well as to the presumption of innocence. Additionally, it establishes the right to "commensurate compensation" in cases where "rights are violated without basis". Art. 94[6] states that "everyone has the right to liberty and security of person. No one may be deprived of or have their liberty restricted, otherwise than in accordance with law." Art. 95 prohibits torture or other cruel or degrading treatment of human beings and

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[2] The number of inhabitants has decreased significantly within the last ten years: from 2.445 million people in 1998 to 2.271 million in 2008 (http://epp.eurostat.ec.europa.eu, last retrieved 17 December 2008).

[3] Kamenska 2006, p. 11.

[4] For a more detailed introduction, see Balodis 2005.

[5] Ombudsman of the Republic of Latvia 2007, p. 10.

[6] All translations used here are by the Translation and Terminology Centre ("Tulkošanas un terminoloģijas centers") and available on the Internet at http://www.ttc.lv/?id=2. The Translation and Terminology Centre is a State Agency subject to the control of the Ministry of Education and Science. It was established in order to provide governmental administrative institutions and the public with translations of legislative acts and other documents published by the State and by international organisations, as well as to issue proposals for the development and standardisation of terminology.

rules out inhuman or degrading punishment. More basic rights for detained persons are laid down in the CCP, but these do not have constitutional status (see below).

In addition to the constitutionally guaranteed rights, international human rights treaties were incorporated into domestic Latvian law by ratification. Thus, the European Convention on Human Rights and Fundamental Freedoms (ECHR), with regard to remand detention in particular Art. 3 (Prohibition of Torture) and Art. 5 (Right to liberty and security) as well as Article 6 (fair trial, presumption of innocence), is directly applicable in domestic law since 1997. On 15 April 1999, parliament ratified Protocol 6 of the ECHR, thus abolishing the death penalty in times of peace. On 1 April 1999, a new Criminal Law entered into force. While it provided for new alternatives to custody, such as community service, and broadened the scope of fines, it also lowered the age of criminal responsibility to 14 for all crimes, and increased harsher prison terms for most crimes, notably serious and especially serious crimes. The development of this law took place during a period when crime rates were increasing rapidly: Reported crimes rose from 34,686 in 1990 to 61,871 in 1992, and the number of convictions from 7,159 in 1990 to 11,280 in 1993. Although between 1993 and 1998, crime rates decreased, the changes in the Criminal Law of 1999 turned the trend upward again, as small-scale thefts were criminalised. In subsequent years, reported crimes fluctuated between 50,000 and 60,000.

Pre-trial detention is mainly regulated by the Code of Criminal Procedure (CCP / "Kriminalprocesa likums") of 28 September 2005, amended for the last time on 29 June 2008. Before the new Code came into force, the CCP of April 1961, based on Criminal Procedure Codes of the Soviet Republics and the Soviet Union, was effective in the Latvian territory. Since 4 May 1990, voluminous amendments were introduced. Originally, the possibility to examine the actual circumstances of a case existed only in one instance – the first. An appeals procedure as such was not known; a District Court decision could be challenged only under procedure of cassation in the Criminal Cases Chamber of the Supreme Court, whose judgments were final. The two-tier court system in general did not change until 1 October 1995, when the "Amendments to the Latvian Criminal Procedure Code" of 22 June 1994 introduced a three-tier court system consisting of the Supreme Court, Regional Courts, and District (City) Courts.[7]

With the CCP of 2005, stricter rules for imposing pre-trial detention were introduced, as well as new statutory limits for pre-trial detention, depending on the gravity of the crime. The law also introduced the new institution of an investigating judge, who decides on pre-trial detention and monitors the observance of human rights[8] during the criminal procedure stage. He is situated at the District Courts. In Chapter 13 of the CCP, all compulsory measures are regulated, among which the ten security measures that may be applied only to suspects or accused persons (Sec. 242 (2), 243 (1) CCP), including arrest/detention and house arrest. With regard to detention (Art. 271 pp. CCP), it is laid down that an investigating judge will determine the number of restrictions that are necessary for each individual detained person to secure a proper proceeding. This has to be done within the boundaries specified by law, assessing the proposals of an investigator or public prosecutor, hearing the views of the detained person as well as taking into account the nature of the criminal offence and the reason for detention. Other statutory law with relevance to arrest is the Law on Short-Term Detention ("Aizturēto personu turēšanas kārtības likums"), adopted on 13 October 2005. The execution of detention is regulated in the Law on Holding Detainees ("Apcietinājumā turēšanas kārtības likum"), adopted on 22 June 2006.

2. Empirical background information

The prison population (including remand detainees) in Latvia is still among the highest in Europe and poses a serious problem with regard to human rights. Latvia has over 100 places of detention (prisons, police short-term detention cells, mental hospitals, social-care homes for mentally disabled, detention rooms at border posts, an illegal migrant detention facility, a centre for asylum seekers and refugees, a military disciplinary unit, etc.), where people are held deprived of their liberty. The fifteen prisons are under the authority of the Ministry of Justice, while the State Police's short-term detention cells (for detention up to 48 hours) and the seven local police short-

[7] Gruziņš 2005.
[8] Kamenska 2006, p. 14.

term detention centres are under the authority of the Ministry of the Interior. The precise number of persons being held in various places of detention during the year is unknown, but a rough estimate puts the flow at 50,000-55,000 people in 2005.[9] Among the prisoners are many remand detainees (see Table 1), currently with a share of about 26%, but it was significantly higher before with about 44% in 2001. Experts indicate several reasons for this fact[10]: long investigation periods for those awaiting trial, long trials and appeals procedures (in particular after the introduction of the three-tier court system), extra-legal grounds for detention such as demands from the investigating authorities to have the suspect at their disposition, as well as a certain public pressure not to release alleged criminals after their arrest. The current situation can be seen in Table 1. This table comprises data from different sources (which nevertheless all rely on official data from national authorities).

[9] Kamenska 2006, p. 25 p.
[10] Judins 2009; Kamenska 2006, p. 13.

Table 1: Prison population characteristics (latest data from different sources)

Source	Date	Total prison population	Number of remand detainees	Pre-trial detainees as a percentage of the total prison population	Total prison population rate per 100,000	Pre-trial detention rate per 100,000	People in pre-trial detention (numbers)		Foreigners as a percentage of the total number of pre-trial detainees		Females in pre-trial detention (numbers)	Females as a percentage of the total number of pre-trial detainees	Juveniles in pre-trial detention (numbers)[11]	Juveniles as a percentage of the total number of pre-trial detainees
							Nationals	Foreigners	EU-nationals	Third-country nationals				
(International Centre for Prison Studies)[12]	1 January 2008	6,548	1,742	26.6%	288	76	---	---	---	---	---	---	---	3.0%
SPACE I (Council of Europe)[13]	1 September 2006	6,531	*	*	285	75	*	26	*	*	---	---	---	---
National Statistics[14]	1 January 2008	6,548	1,742	26.6%	288	77	---	---	---	---	93	5.3 %	94	5.4 %

* see Figure 2 below. --- no regular statistical data available

[11] Prisoners under 18.

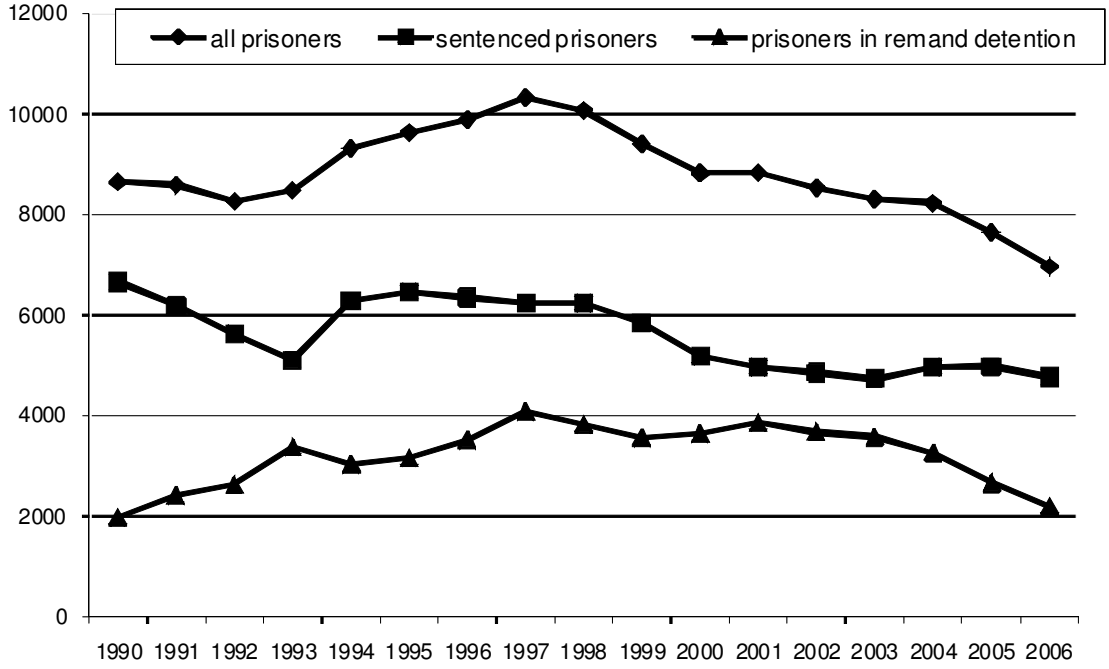
[12] International Centre for Prison Studies, *World Pre-trial/Remand imprisonment list January 2008 (http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_country.php?country=149*.

[13] Aebi/Delgrande (2007): http://www.coe.int/t/e/legal_affairs/legal_co-operation/prisons_and_alternatives/
Earlier surveys can be found on the same website (last retrieved 28 October 2008).

[14]. Prison Statistics, available in the Prison Administration annual report, 2007 (only in Latvian) http://www.ievp.gov.lv/doc_upl/2007.gada_publiskais_parskats_.zip (last retrieved 22.11.2008).

It must be noted, however, that the number of prisoners has decreased significantly in the last years (see Figure 1); compared to the peak number (during the covered period) of 10,318 in January 1997, the prison population decreased by 32% to 6,965 in January 2006. This development is even more striking with respect to the number of remand detainees: the peak was also reached in 1997 with 4,081 remand detainees and the number decreased by 46% to 2,199 in 2006. On 1 January 2008, the prison population amounted to 6,548; 4,806 being sentenced and 1,742 on remand. The prison population might grow again in the future due to legislative changes with regard to early (conditional) release which have been in force only since September 2008. A far-reaching amnesty that was proposed by several politicians to commemorate the 90th anniversary of the Republic was rejected.[15]

Figure 1: The prison population according to legal status (absolute numbers), 1990-2006



Source: Judins 2009

With regard to the composition of the group of prisoners kept in remand prisons that comprises all prisoners without a final sentence, Latvian Prison Statistics distinguish between several sub-groups according to their legal status. This is reflected in the statistics compiled on behalf of the Council of Europe (SPACE I). See Figure 2. It is worth noting that the group of untried prisoners, meaning those during the investigation and trial period (in absolute terms but also as a percentage) in 2006, was much smaller than in 1999. It remains unclear, which part of the remand prison population is meant by "convicted but not yet sentenced prisoners", as this distinction is not known to the Latvian criminal process; this number probably includes many prisoners who were in the stage of appeal against the first instance judgement. It is easy to see that the appeals courts must have had a capacity problem between 2000 and 2003, because the share of those "during appeals procedure or within the time limit to appeal" was particularly large. However, this group has also become smaller again. The group of "other cases" includes, among others, persons who are waiting for their sentence to become final and persons waiting to be transferred to a prison where the final sentence will be executed. In principle, it is not possible that a sentence is enforced before it finally becomes valid, so – unlike for instance in Poland – remand detainees cannot apply for enforcement of their sentence during the appeals procedure.

[15] Personal communication from Andrejs Judins (see footnote 1).

Figure 2: Prisoners according to legal status, 1999-2006 (SPACE I)

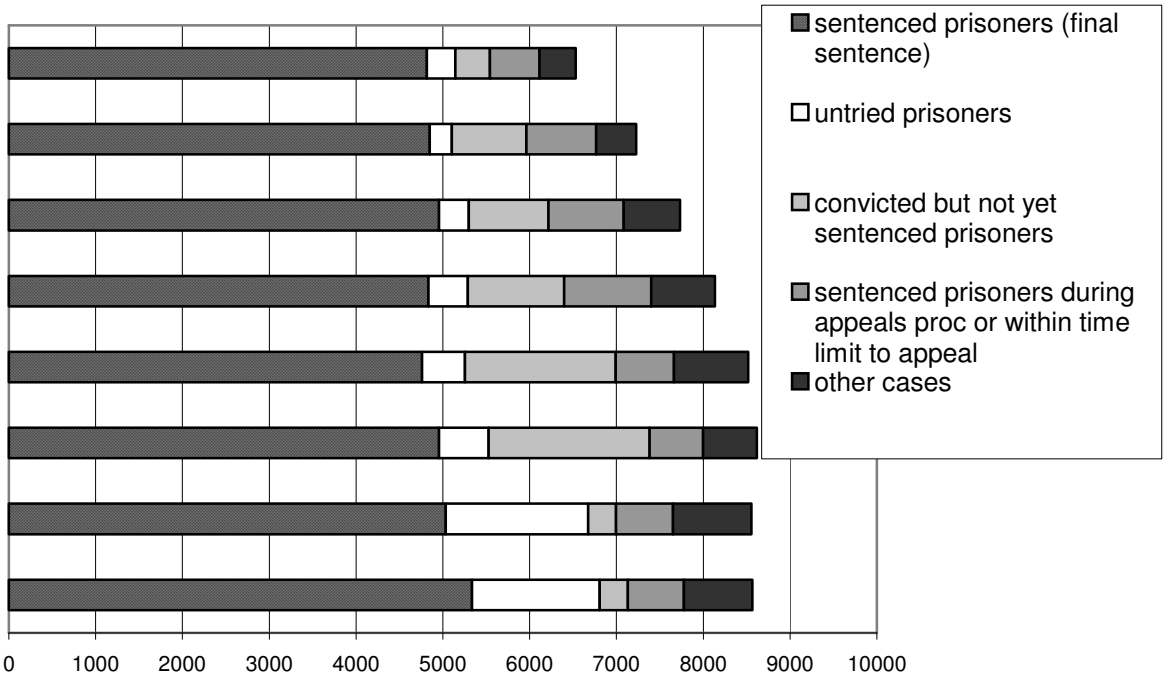


Table 2: Detainees as a percentage of the prison population

	Detainees in remand prisons or special units	Sentenced prisoners	Total prison population
1 January 1985	3,195 (19%)	13,662 (81%)	16,867
1 January 1990	1,975 (23%)	6,656 (77%)	8,644
1 January 1991	2,407 (28%)	6,178 (72%)	8,585
1 January 1992	2,623 (32%)	5,629 (68%)	8,252
1 January 1993	3,371 (40%)	5,102 (60%)	8,473
1 January 1994	3,030 (33%)	6,289 (67%)	9,319
1 January 1995	3,161 (33%)	6,472 (67%)	9,633
1 January 1996	3,530 (36%)	6,348 (64%)	9,878
1 January 1997	4,081 (40%)	6,235 (60%)	10,316
1 January 1998	3,833 (38%)	6,237 (62%)	10,070
1 January 1999	3,561 (38%)	5,848 (62%)	9,409
1 January 2000	3,641 (41%)	5,174 (59%)	8,815
1 January 2001	3,864 (44%)	4,967 (56%)	8,831
1 January 2002	3,676 (43%)	4,855 (57%)	8,531
1 January 2003	3,576 (43%)	4,729 (57%)	8,305
1 January 2004	3,269 (40%)	4,962 (60%)	8,231
1 January 2005	2,662 (35%)	4,984 (65%)	7,646
1 January 2006	2,199 (32%)	4,766 (68%)	6,965

Source: Judins 2009.

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

3.1 Definition of pre-trial detention

According to Sec. 271 (1) CCP, remand detention is "the deprivation of the liberty of a person that may be applied, in the cases provided for by law, to a suspect or an accused with a decision of an investigating judge, or a court adjudication, before the entering into effect of a final adjudication in

concrete criminal proceedings, if there are grounds for detention". That means that detainees keep their status also during appeals procedures and stay in remand prisons or the respective units. In contrast, "pre-detention arrest" is regulated in Sec. 263 CCP, stating that "arrest is the deprivation of liberty of a person, for a term up to 48 hours, without the decision of an investigating judge, if there exist provision for an arrest". Three other forms of deprivation of liberty[16] have to be distinguished: Administrative arrest in the responsibility of the State Police (under the authority of the Ministry of the Interior) can be executed in cells in police units and so-called isolators from one to fifteen days; it constitutes an administrative sentence under the Administrative Offence Code. Like all custodial sanctions, it can only be imposed by a judge. Detention of illegal immigrants and asylum seekers before identification is possible in accordance with the Immigration Law for ten days on the basis of a decision by the State Border Guard and up to twenty months on the basis of a court decision. It is executed in the responsibility of the State Border Guard (under the authority of the Ministry of the Interior) in cells in police units, isolation units and detention centres for illegal immigrants. Thirdly, according to the decision of a court in criminal matters but without fixed term, detention is possible as a compulsory medical measure in closed units of "psycho-neurological" hospitals under the authority of the Ministry of Health Care.

3.2 Primary objective and underlying principles of pre-trial detention

Several general principles laid down in the CCP are of particular importance for the imposition and enforcement of arrest and pre-trail detention: first of all, the criminal procedure in Latvia is of a mandatory nature (principle of legality, Sec. 6). Section 12 CCP contains guarantees for civil rights. Inter alia, it refers to "internationally recognized human rights" – all criminal proceedings thus have to be performed in compliance with internationally recognised civil rights (see above). According to Sec. 12 CCP, no excessive intervention in the life of a person is allowed. The CCP further constitutes that any intervention into individual rights and liberties within criminal proceedings needs a legal basis specified in the CCP (Sec. 12 (2) CCP). Safety measures relating to the deprivation of liberty – i.e. arrest and detention – as well as other far-reaching interventions into personal freedom such as checking the suspect's correspondence shall be permitted only with the consent of the investigating judge (Sec. 12 (3) CCP). Sec. 15 CCP lays down the principle of fair trial; Sec. 14 CCP contains the imperative for a speedy procedure, in particular for cases where detention is executed (Sec. 14 (3) CCP). Sec. 19 CCP contains, inter alia, the presumption of innocence. In Sec. 244 (1) CCP, the principle of proportionality is emphasised, because the competent authority has to "choose a procedural compulsory measure that infringes upon the basic rights of a person as little as possible, and is proportionate".

Generally speaking, the objective of all compulsory procedural measures – in 242 (2) CCP security measures are defined as those procedural coercives that can be applied to suspects and accused persons – is to "ensure criminal proceedings". Sec. 241 (2) CCP states that "security measure shall be applied (...) if there are grounds for believing that the relevant person will continue criminal activities, or avoid an investigation and court". As far as can be seen, in this respect, the aim of security measures involving the deprivation of liberty does not differ from the aim of the other security measures – in Sec. 272 (1) CCP, with regard to detention, it is stated that security measures in general should guarantee "that the person will not commit another new criminal offence, will not hinder an investigation, or will not avoid the investigation, court, or the fulfilment of a judgment". Another question is whether practitioners limit themselves to the aims prescribed by law or whether "extra-legal" purposes such as "quick punishment", a "taste of prison" or putting pressure on the accused to obtain a confession etc. are pursued as well. In a study conducted in 2004, almost two thirds of the questioned judges (a total of 142 persons were questioned, among them judges, prosecutors and police officers) said that very often practitioners initiate the application of detention, because this measure facilitates investigation. However, of the prosecutors and police officers questioned in the survey, only about 35% agreed with that assumption.[17]

[16] Overview taken from Zeibote 2007, p. 517.

[17] Judins A. Par apcietinājumu Latvijas krimināl̄procesā. Jurista Vārds Nr.45 (350) Otrdiena, 2004. gada 23. Novembris.

3.3 Beginning, end and duration of pre-trial detention according to law

At the time of the actual arrest, a person gets the formal status of a detained person (see Table 3 for details). 48 hours is the maximum term a person can be held in police custody without a decision by a judge; within this period it has to be decided whether the arrested person will be regarded as a suspect (or was accused already) and whether a security measure will be applied. No later than 72 hours after the initial arrest, the investigating judge has to decide about the detention order.

The detention period begins with this decision by the judge but all time limits have to be counted from the actual arrest. The preliminary status of remand detention is kept until the final sentence becomes valid – that means also during appeals procedure, any waiting periods or the transfer etc. A possibility to apply for the beginning of the execution of the sentence in a normal prison even during the appeals procedure does not exist in the Latvian procedure (see above chapter 2).

The detention is enforced in investigation prisons or separate units of normal prisons designated for remand detainees. The time a suspect or accused person can spend in remand detention is limited: the time limits are from three months in case of a misdemeanour up to 24 months in case of a particularly grave crime. These maximum periods are divided up into the pre-trial and the trial term (see Table 3). Within the pre-trial period, a suspect will be held in detention until being held criminally liable (until the bill of indictment) for no longer than half of the term allowed for in pre-trial proceedings (Sec. 279 CCP). Under certain circumstances, for serious and particularly serious crimes, these regular periods can be extended by three months; in case of a particularly serious crime another extension by three months is possible (see Table 3).[18] The term of detention also ends and the person has to be released, if the period of detention exceeds the maximum term of imprisonment foreseen by the law for the offence in the relevant case (Sec. 277 (10).

18 According to Sec. 7 of the Latvian Penal Code of 18 May 2000, criminal offences are classified in the following way: A criminal violation (or misdemeanour) is an offence for which the Penal Code provides for deprivation of liberty for a term not exceeding two years, or a lesser punishment. A less serious crime is an intentional offence for which this Law provides for deprivation of liberty for a term of more than two but less than five years, or an offence, which has been committed through negligence and for which this Law provides for deprivation of liberty for a term exceeding two years. A serious crime is an intentional offence carrying a statutory minimum of five years, but less than ten years of imprisonment. An especially serious crime is an intentional offence for which the Penal Code provides for deprivation of liberty for a term exceeding ten years, life imprisonment or the death penalty.

Table 3: Timeline for arrest and remand detention in Latvia

TIME Max.	PROCEDURAL ACTION OR EVENT	LEGAL BASIS	WHO? (competent authority to decide)	WHERE? (detention facility, competent authority for execution)
0.00	Actual arrest (person gets the formal status of a "detained person", Sec. 62 (2) CCP)	Sec. 263, 264 CCP	Employee of the State Police, employee of an investigative institution, public prosecutor (Sec. 265 CCP)[19]	State Police; Ministry of the Interior; cell in police unit; isolation unit
48.00	Decision on the recognition of the arrested person as a suspect or accused person and whether a security measure will be applied	Sec. 268 CCP	A person directing the proceeding (be it the investigating police officer, be it the public prosecutor)	State Police; Ministry of the Interior: If a security measure relating to the deprivation of liberty is deemed necessary (proposal to the investigating judge by the person directing the proceedings), the person may be located in a "temporary place of detention" up to his/her conveyance to the investigating judge (but not longer than the 48 hours beginning with the actual arrest)
72.00 (+ hearing before the court)	Detention order: decision and issuance of the decision to apply detention	Sec. 274 (4), 274 (7) CCP	Investigating judge	
3 months	Of which a maximum of two months can be used for pre-trial proceedings in criminal violation cases	Sec. 277 (4) CCP		Investigation prison or special unit in normal prison (Sec. 272 (2) CCP)
9 months	Of which a maximum of four months can be used for pre-trial proceedings in	Sec. 277 (5) CCP		

[19] A citizen's right to arrest exists; its legal basis can be found in Art. 31 of the Penal Code ("Arrest causing personal harm" as a circumstance excluding criminal liability).

	less serious crimes cases			
12 months	Of which a maximum of six months can be used for pre-trial proceedings in serious crimes cases	Sec. 277 (6) CCP		
24 months	Of which a maximum of fifteen months can be used for pre-trial proceedings in especially serious crimes cases	Sec. 277 (7) CCP		
Extension: 3 more months (makes 15)	Serious crimes cases	Sec. 277 (6) CCP	Investigating judge or high court judge	
Extension: 3 more months (makes 27)	Especially serious crimes cases	Sec. 277 (7) CCP	Investigating judge or high court judge	
Extension: Another 3 additional months (makes 30)	Especially serious crimes cases	Sec. 277 (7) CCP	High court judge	

3.4 Competent authorities for arrest/further detention etc.

An overview of competent authorities during the different stages of detention is given in Table 3. A first arrest can be ordered and enforced by an employee of the State Police, an employee of an investigative institution (including the Corruption Prevention and Combating Bureau, the Financial Police etc.) or a public prosecutor (Sec. 265 CCP). Citizens are also entitled to apprehend a suspected person under certain circumstances. Without delay, but certainly no later than 48 hours after the arrest, a person "directing the proceedings" has to decide whether he will propose further detention; the arrested person will then be conveyed to the investigating judge (Sec. 268 (3) CCP).

In general, the investigating judge (located at the District Court) is competent for all decisions relating to the detention order (Sec. 274 (1) CCP) upon the proposal of a "person directing the proceedings", usually a police officer. He is also competent for all further decisions with regard to the restriction of liberties and rights of the detained person such as: holding the person in an investigation prison or in specially equipped police premises; transporting the person in the interests of the progress of proceedings; restricting the extra-mural and intra-mural contacts of the detained person (except for meetings with a defence counsel); monitoring the correspondence and conversations of the detained person; determining the internal procedures and regime in the holding location; and limiting the scope of items for personal use (Sec. 271 (2) CCP).

In the event of prolongation (Sec. 277 (6) and (7) CCP) of a regular term of detention, the investigating judge is still competent in serious crimes cases during the pre-trial proceedings. Up to now, no data is available with respect to the court practice regarding the extensions prosecutors apply for. During the trial, only a higher court judge may decide to extend the period of detention for three months. This also applies for especially serious crimes cases – here, exceptionally, the higher-level court judge may extend the detention period for another three months under certain circumstances.

3.5 Procedure and procedural rights of the accused at the time of arrest/during detention

The CCP of 2005 for the first time explicitly and comprehensively laid down the rights of detainees such as: access to a defence counsel, the right to receive from the police a list of defence counsels and information about institutions coordinating the provision of legal aid.

Initially, several procedural rights for suspects and accused persons are laid down in Sec. 246 pp CCP. The person concerned is entitled to information about the essence, content and procedures for appeal with regard to the compulsory measure. The defence counsel has the right to "familiarise him or herself with the procedural documents wherein information is recorded regarding the facts that have been used in order to justify the application of a procedural compulsory measure", although it is not clear whether he/she can see the files as a whole. As in many jurisdictions, the right of access to the files is restricted and can be deferred, when "a pre-trial investigation or interests important to a third person or the public" are threatened (Sec. 246 (2) CCP). In cases of pre-trial detention, these regulations are particularly problematic – this practice was criticized by the European Court of Human Rights in a decision, inter alia, against Germany.[20]

In cases of arrest or detention, the law regulates that the detained person has to be informed about the reason for the arrest immediately, and notified that he has the right to remain silent and that everything he says may be used against him (Sec. 265 (1). Furthermore, the law provides for the notification of custody to a third party from the outset of custody (Sec. 247 (1) CCP), provision of written information about rights, the duty to open a file (Sec. 266 (1) CCP) and to hand out a copy of the detention protocol to the detainee (Sec. 266 (2) CCP). However, the right of access to a physician has not been included in the new law.

The procedures for the application of detention in pre-trial proceedings are laid down in Sec. 274 CCP. In that regard, it is important to note that the investigating judge has to hear the detained suspect or accused before he decides upon detention. Participation of all parties involved (including the defence counsel) is ensured, meaning that a hearing has to be organised with the person directing the proceedings, the defendant and the defence counsel attending. This hearing can only be held in the absence of the suspect or accused if he is absconding or hiding (and this can

20 Mooren vs. Germany, application No. 11364/03, of 13 December 2007.

be proven) or if his presence is – with the acknowledgement of a physician – not permissible for health reasons. Whether the investigating judge decides to order detention or not, he has to give reasons based on case materials.

4. Grounds for pre-trial detention

4.1 Grounds for arrest

The justification for an initial arrest has to be distinguished from the justification for detention. According to Sec. 264 CCP, the first requirements for an arrest are "grounds for the allegation" that the person concerned has committed a crime punishable by a custodial penalty.[21] Additionally, the person has to be "caught in the act", an eye-witness has to have identified the person as the alleged offender, or clear traces have to indicate an involvement of the person in the offence. Only one arrest in the same proceedings is permitted.

4.2 Grounds for detention

According to Sec. 272 CCP, remand detention may be applied only if "concrete information, acquired in criminal proceedings, regarding facts causes justified suspicions that a person has committed a criminal offence regarding which the law provides for a penalty of deprivation of liberty" exists and the "application of another security measure... does not ensure (…)" the objectives pursued by the security measures in the CCP (see above).

Three aspects have to be underlined in this context: First, the suspicion has to be "justified" and based on facts. Secondly, the principle of proportionality is supposed to take a twofold effect: detention can only be ordered if the other security measures do not suffice to achieve the goal, and it can only be ordered if the Penal Code provides for a penalty of deprivation of liberty. In practice, this provision is more of a symbolic nature, as even most criminal violations/misdemeanours are punishable by a custodial sanction. Thirdly, there is no mandatory pre-trial detention.

The grounds for detention are given in Sec. 272 (1) CCP, which has to be read in connection with Sec. 241 (2) CCP ("Grounds for the application of a procedural compulsory measure"), providing that a security measure shall be applied "if there are grounds for believing that the relevant person will continue criminal activities or avoid an investigation and court". More concrete, the suspect or defendant can always be detained if he might avoid the investigation or trial, or the enforcement of the sentence (absconding, risk to abscond); if he might "hinder the investigation" (risk of collusion); or if there is a risk that he will commit a new offence unless he is detained. With regard to the risk of re-offending (Sec. 272 (1)), the law does not even specify the gravity of the "new offence". An additional ground can be found in Sec. 272 (2) CCP: Detention may also be applied in cases of especially serious crimes (carrying a prison sentence of ten years or more)[22] if the crime was directed against a minor, a dependent person or a particularly weak person; if the person is a member of an organised criminal group; if his identity is unknown or he has no fixed abode and employment; or if the person does not have a permanent place of residence in Latvia. The latter point of merely taking the gravity of the offence as a sole ground for detention might be problematic with regard to the jurisdiction of the ECHR, but it also has to be read in connection with Art. 241 (2) so that the element of "avoiding the proceedings" has to be implemented as well.

A study conducted in 2002-2004 indicated that police officers and prosecutors often try to receive the judge's authorization for remand detention because it makes the case investigation easier. In the media as well as in the public's view, the prevailing opinion is that criminals should wait for their trial in prison.[23]

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[21] If the alleged offence is not punishable by a custodial sanction, arrest is only possible if the identity of the person concerned can not be ascertained; if the person does not have a specific place of residence and place of employment; or if the person does not have a permanent place of residence in Latvia.

[22] These are grave crimes such as murder under aggravated circumstances, human trafficking, rape, robbery and extortion by an organized group, each with serious consequences.

[23] The research results of the study *Pre-trial Detention in the Latvian Criminal Process* by Andrejs Judins were not published because the new CCP came into force, personal communication to A. Judins (see footnote 1).

5. Grounds for review of pre-trial detention

The control over the application of detention is regulated in Sec. 281, 286 and 287 CCP. A legal remedy with regard to the necessity of detention and its continuation is possible at any time to the investigating judge. If less than four weeks have passed since the last complaint and no new facts are presented, it can be refused without hearing (Sec. 281 (3) CCP). If the detainee has not lodged an application two months after its beginning, an examination has to be carried out *ex officio* (Sec. 281 (4) CCP).

The decision of the investigating judge may be appealed against within a term of seven days at the Regional Court. After a closed court session, a judge of the higher-level court then has to decide within another seven days. According to Sec. 287 (2) and (4) CCP, in examining a complaint, the detainee or defence counsel shall be heard, and, if necessary, case materials shall also be requested. It is not clear from that provision, how far the rights of the person concerned and his defence counsel reach, e.g. whether they can have access to the files in order to prepare the appeal. A further appeal is not possible (Sec. 287 (5) CCP).

6. Length of pre-trial detention

The legal provisions in the current CCP are described above. Nevertheless, in the following part of the report, the former, particularly problematic practice that led to the new legislative provisions shall be briefly examined. Latvia came under some pressure by the reports of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the decisions of the European Court of Human Rights, and the assessment by international and national human rights organisations with regard to the conditions as well as the length of remand detention.

E.g., in 1999 and in 2002, the CPT visited a short-term detention facility in Riga at the State Police Headquarter. The CPT wrote in its report for the 2004 visit: "The CPT also has serious misgivings about the continued practice of holding remand detainees at the ISO for prolonged periods. At the time of the 2004 visit, one inmate had already spent more than two years in the establishment. As already stressed in the reports on the two previous visits, the objective must be to cease using the ISO[24] in Riga (as well as any other police establishment of a similar type) for prolonged periods of detention; they are totally unsuited to this purpose. Remand prisoners should be transferred to a prison establishment as soon as possible."[25]

In 2002, the European Court of Human Rights, in the case Lavents vs. Latvia[26], ruled that Latvia had violated the applicant's right to trial within reasonable time, lawfulness of detention, fair hearing within a reasonable time by an independent and impartial tribunal established by law, presumption of innocence, and right to respect for family and private life. Lavents had spent over six years in pre-trial detention, strict house arrest and prison hospitals before being convicted. The Court also noted that the Regional Court competent for the case had on nine occasions refused applications for the applicant's release, stating the grounds for its decisions in an abstract and succinct manner, and merely referring to the criteria set out in the relevant provision of the Code of Criminal Procedure. In the Court's view, such grounds could not justify the applicant's prolonged detention and did not stand the test of time. The Court accordingly held that there had been a violation of Article 5 § 3 of the European Convention on Human Rights.

Among others, the Latvian Centre for Human Rights[27] as an independent NGO is monitoring places of detention in Latvia. In 2006, a comprehensive report presenting the results of the "Independent Detention Monitoring in Latvia" was published. It was produced within the framework of the Project "Monitoring Human Rights and Prevention of Torture in Closed Institutions: prisons, police cells and mental health institutions in Baltic countries", financed by the European Commission. With regard to the length of remand detention, it summarizes: "Over years, long pre-trial detention periods as well as substandard conditions in pre-trial facilities

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[24] "Isolation Centre", meaning a short term detention facility.
[25] CPT 2008.
[26] Lavents v. Latvia (application No. 58442/00), decision from 28 November 2002.
[27] For more information, see http://www.humanrights.org.lv/html/. The documents mentioned can also be found there (last retrieved 5 November 2008).

remained a key human rights problem. (…) It was not uncommon that pre-trial detainees would go on hunger strike to demand a speedier review of their cases by the courts. Long pre-trial detention periods were also occasionally blamed for prisoner suicides. While introduction of a three-tier court system and a lack of adequate number of judges was frequently cited as a key reason for lengthy pre-trial detention by the Latvian authorities, imposition of pre-trial detention frequently happened without due consideration of international human rights standards. Regular criticism by international organisations, European Court of Human Rights rulings since 2002 against Latvia in 2002, and awareness raising efforts by various domestic actors among the judiciary apparently spearheaded changes in legislation and subsequent practises in the application of pre-trial detention."[28]

7. Other relevant aspects

7.1 Consideration of pre-trial detention in the sentencing stage

According to Sec. 52 (5) of the Latvian Penal Code, pre-trial detention shall be counted as part of the sentence – one day of pre-trial detention corresponds to one day of deprivation of liberty. As mentioned in Sec. 277 (2) CCP, the total term of detention shall be counted from the actual arrest on (see Table 3). In the rare case that house arrest substitutes pre-trial detention, one day of house arrest also counts for one day of the prison sentence (Sec. 52 (6) of the Latvian Penal Code).

7.2 Mechanism for compensation

A principal norm with regard to compensation can be found in Art. 92 of the Latvian Constitution. It establishes the right to "commensurate compensation" in cases where "rights are violated without basis". In 1998, a special law on the compensation of unjustified pre-trial detention was adopted. The law defines the order and amount of compensation for damage caused by investigator, state prosecutor or court. The amounts are not high. For example, if the person was unemployed before the arrest and detention, according to legal provisions, he/she will receive only 50 lats (70 Euros) as a compensation for one month of incarceration.

7.3 Alternatives to pre-trial detention

A distinction has to be made between alternative procedural security measures and the substitution of detention if the grounds indicated in Sec. 272 CCP exist. According to the principles of proportionality laid down in Sec. 244 (1) CCP, the competent authority has to "choose a procedural compulsory measure that infringes upon the basic rights of a person as little as possible, and is proportionate". Such measures are listed in Sec. 243 (1) for adults and, additionally, in Sec. 243 (2) for minors (see below). They include: the obligation to provide an address for receiving consignments; the prohibition to approach specific persons or locations, to exercise certain jobs or to leave the country; the obligation to reside in a specific place; personal bail; a security deposit; placement under police supervision; and house arrest.

If grounds for detention exist, the investigating judge can choose to substitute it by a security deposit if the defendant so requests (Sec. 275 (1) CCP). Nevertheless, detention starts and the concerned person is released only if a document, showing that the deposit has been paid, is submitted to the investigating judge within one month (Sec. 275 (2) CCP). According to Sec. 282 CCP, house arrest can be applied if grounds for detention exist but its execution is "not desirable or not possible due to special circumstances". These reasons given by law are rather vague. Furthermore, it must be noted that, in the Lavents case (see above), the ECtHR considered the house arrest that was applied for part of the pre-trial phase so strict that it was seen as deprivation of liberty. It is doubtful if it really has the character of an "alternative measure".

In practice, these alternatives are not important. In 2006, security measures were applied 10,484 times.[29] House arrest was applied thirteen times, a security deposit only twice. In 2007, security measures were applied 16,791 times, of which two house arrests and thirty security deposits. Since 2003, the Centre for Public Policy Providus[30], has set up two pilot projects – the

28 Kamenska 2006, p. 14.

29 According to the Information Centre of the Ministry of the Interior, personal communication via A. Judins. In these statistics, not the persons but the cases of applications in a given year are considered.

30 http://www.providus.lv/public/index_en.html (last retrieved 5 November 2008).

first experimental pre-trial supervision services in Latvia – with the aim of providing an alternative security measure for juveniles. These will be explained below.

7.4 Execution of pre-trial detention (legal basis, practical living conditions)

Several regulations in the CCP concern the enforcement of arrest and detention. The CCP further refers to other regulations in Sec. 267 (2) CCP, regarding the execution of an arrest (Law on Short-Term Detention), and in Sec. 271 (4) CCP, regarding the execution of detention (Law on Holding Detainees, adopted on 22 June 2006).

According to the CCP, a person can be held, during detention, in an investigation prison or in "specially equipped police premises" (Sec. 271 (2) 1 CCP). This regulation, leaving pre-trial detainees under the authority of the Ministry of the Interior, seems to be problematic with regard to the negative record of Latvia in that matter according to human rights organisations (see above). During detention, the following restrictions are possible: contact restrictions (excluding meetings with a defence counsel); monitoring of correspondence and conversations; adjustment of internal procedures and regime in the prison or police unit; and limitations with respect to items for personal use. These restrictions have to be determined by an investigating judge.

The Law on Short-Term Detention was adopted on 13 October 2005. It regulates the procedure for holding criminal suspects in police short-term detention cells. This law fixes standards for conditions of detention in police cells. The standards are to be fully introduced in all police stations by 31 December 2008. Until the adoption of the law, the holding of criminal suspects was regulated by an internal regulation of the State Police, which is still classified as restricted information and is not publicly available.[31]

The conditions in Latvian prisons and police cells are unanimously described as very problematic, although in recent years the Latvian prison population is decreasing with the institution of new methods of dealing with lawbreakers (especially young offenders), such as suspended sentences, probation, and parole systems. New programs for prisoner employment and support systems for those discharged have been instituted. Large sums have been earmarked in the state budget for the modernisation of prison facilities.[32] When Latvia regained independence in 1991, it inherited a prison system "which had been an integral part of the Soviet prison system, characterised by large capacity penal colonies with cheap prison labour force, dilapidated prison infrastructure often dating back as far as the tsarist times, substandard sanitary conditions, severe overcrowding in pre-trial detention facilities, a heavily militarised system closed to public scrutiny and impacted by punitive penal policies".[33]

International bodies – besides the CPT also the UN Human Rights Committee and the European Union (during the preparations for Latvia's accession to the EU[34]) – as well as national experts and local human rights NGOs[35] have criticized the long terms of pre-trial detention and the inhumane living conditions in pre-trial detention prisons in Latvia. Since the ratification of the European Convention for the Prevention of Torture, Latvia has been visited four times by the CPT. As of 1 November 2008, three of the CPT visit reports (1999, 2002 and 2004) and the responses of the Latvian government have been made public; they are available on the CPT website.[36] The reports of the CPT visits highlight, inter alia, cases of ill-treatment by the Latvian police and the absence of an independent police complaints body. In some cases, conditions of detention in prisons and police cells were considered as amounting to inhuman and degrading treatment. The reports strongly urged Latvia to undertake measures to prevent ill-treatment, including the development and strengthening of independent oversight of places of detention. The third *ad hoc* visit (in 2004) focused on reviewing the measures taken by the Latvian authorities to implement the recommendations made by the Committee after its 2002 visit. Particular attention was paid to the treatment of persons detained by the police, and to the conditions of detention in

31 Kamenska 2006, p.19.
32 Dreifelds 2008, p. 358.
33 Kamenska 2006, p. 12.
34 See: Commission of the European Unions 2002; for 2001, see the *Regular Report from the Commission on Latvia's Progress Towards Accession*, p.21, at
http://www.eiroinfo.lv/files/ESIC/PR_2001.pdf, as well as the *Comprehensive Monitoring Report on Latvia's Preparations on Membership*, p. 47, at
http://www.eiroinfo.lv/files/ESIC/PR_2003.pdf (all documents last retrieved 3 November 2008).
35 LCHR-Team 2006, p. 133 pp.; Judins 2005, p. 132.
36 http://www.cpt.coe.int/en/states/lva.htm. (Last retrieved 4.11.2008).

police establishments and prisons. Various official sources, such as the concept paper on the Development of the Latvian Prison Estate 2006-2014 and the annual report of the Latvian Prison Administration for 2004, indicate[37] that the CPT has warned that it may initiate public statement procedures against Latvia concerning the situation in prisons.[38]

Of the fifteen existing prisons, three are remand prisons; other prisons have remand detention units. In 2000, in line with the recommendations of the Council of Europe, the prison system was transferred from the Ministry of the Interior to the Ministry of Justice, but the short-term detention facilities remain under the supervision of the Ministry of the Interior (see Table 3). In November 2003, prisons ceased to be guarded by army conscripts. However, the prison system remains significantly militarised with Soviet style military management.

Apart from the issue of ill-treatment by the police, overcrowding has to be regarded as a problem. Although the official capacity of all prisons is actually not fully used,[39] one has to bear in mind that the living space per prisoner amounts to only 2.5 – 4 m^2.[40] Another crucial aspect is the fact that pre-trial detainees are still often locked up in their cells for 23 hours a day.

8. Special groups

8.1 Juveniles

In several statements and reports, e.g. by the UN Committee on the Rights of the Child, [41] the situation of juveniles in custody – in particular with regard to long periods spent in detention, the non-segregation of juvenile offenders from adults and the lack of meaningful activities – has been described as particularly lamentable.[42] Several political as well as legislative reforms have tried to deal with these problems. As a result, a defence counsel is now mandatory for juveniles in all criminal cases.

If a minor is held suspect or is accused of committing a misdemeanour or a crime through negligence, pre-trial detention shall not be applied at all (Sec. 273 (2) CCP). If a minor is held suspect or is accused of committing an intentional less-serious crime, pre-trial detention shall be applied only if he/she has violated the provision of another security measure. Only if a minor is suspected or accused of committing a serious or particularly serious crime, pre-trial detention can be applied as for adults. With regard to the length of detention, since 2002, the detention period for juveniles pending investigation has a maximum of six months; another six months can be added during the trial phase. In accordance with the new CCP of 2005 (Sec. 278 CCP), the time limits for remand detention have been set to half of those for adults: six weeks for criminal violations/misdemeanours, eighteen weeks for less-serious crimes, six months for serious crimes, and a maximum of twelve months for particularly serious crimes. In contrast to the law for adults, in the case of serious crimes, an extension is not possible. In the case of particularly serious crimes, a higher-level court may extend the period by three months if deadly violence, firearms or explosives were involved in the crime. Several procedural rules have been adapted to apply to juveniles, such as 247 (2) CCP, in accordance with which the juvenile's parents, another close relative of legal age or the juvenile's guardian have to be informed of the application of compulsory measures.

With respect to alternatives, two more security measures are available for juveniles in accordance with Sec. 243 (2) CCP: placement under the supervision of a parent or guardian, and placement in a social correctional/educational institution. The latter has to be regarded as a deprivation of liberty, as it is executed in a closed institution. Therefore, placement in a social correctional educational institution takes place in accordance with the same procedures, with the same conditions, up until the same time periods, and with the same procedures for appeal and control as in the case of detention. The time period spent in a social correctional educational institution shall be included as time spent in detention, counting one day spent in the institution as one day spent in detention. In practice, this new security measure is not used.[43]

37 Kamenska 2006, p. 31.
38 So far, these have only been used against the Russian Federation (concerning Chechnya) and Turkey.
39 LCHR-Team 2006, p. 135.
40 LCHR-Team 2006, p. 136.
41 See: UN Committee on the Rights of the Child 2001.
42 See above all the report of the LCHR-Team, p. 137 pp.
43 Judins (footnote 1), personal communication.

In Latvia, the principle of segregation of adults and juveniles in prison is not always observed, while the separation of pre-trial detainees and sentenced prisoners does function with regard to juvenile prisoners.[44] However, if the international covenant (Art. 10 (2) ICCPR) interprets the "separate treatment" as more favourable, as the detained person is not proved guilty of a penal offence and may be acquitted, the conditions for detainees in Latvia's prisons are much worse than those for convicted persons. That this provision is not met can be demonstrated by the following example: the living space per juvenile detainee is insufficient. Taking into consideration that detainees spend the whole day in their cells over several months, the space specification of 3 m^2 per prisoner guaranteed under state regulations cannot be regarded as sufficient. Moreover, this standard is not actually observed in all prisons.[45]

Since 2003, the Centre for Public Policy Providus[46] has set up two pilot projects – the first experimental pre-trial supervision services in Latvia, with the aim of providing an alternative security measure for juveniles. The pilot project demonstrated to Latvian policy makers how pre-trial supervision could function within the Latvian criminal justice system. The pilots operated on the basis of particular cooperation agreements, outside of the current legal framework. Pre-trial supervision services were established in several cities in Latvia. Unfortunately, the rather successful pilot project was not converted into nationwide practice but terminated due to lack of financial resources.[47]

8.2 Women

The restrictions concerning juvenile detention, according to Sec. 273 (2) and (3) CCP mentioned above, are also in effect for pregnant women and women in the post-natal period. This means that pregnant women, women in the post-natal period up to one year and women during the entire period of breast-feeding cannot be detained if they are held suspect or are accused of committing a crime through negligence or a criminal violation/misdemeanour. If such a woman is held suspect or is accused of committing an intentional less-serious crime, pre-trial detention shall be applied only if she has violated the provision of another security measure. If she is suspected or accused of committing a serious or particularly serious crime, no restrictions apply. According to the national statistics (see Table 1), on 1 January 2008, 93 women were in remand prison, making 5.3% of the total remand prison population. This is approximately the same percentage that women make up in the total prison population (325 female prisoners form 4.9% of the total population).

8.3 Foreigners

So far, the issue of foreigners in Latvian prisons does not seem to be pressing. Although the number of imprisoned non-Latvian citizens is high, this does not mean that these prisoners are foreigners in the sense of "strangers to society". For the most part, they are permanent residents of Russian origin who did not (yet) become Latvian citizens. Citizens of other countries only form between 0.6% (in 2006) and 0.9% (in 2003) of the total prison population. They mainly come from Russia, the other Baltic States and other former Soviet republics.[48] Although no specific data on remand prisoners is available, the situation has probably not significantly changed since 1 February 2006, when only three non-Russian speaking remand prisoners were held in Latvian prisons. A number of provisions in the CCP, such as Sec. 247 (3) CCP, have been specially designed to protect the interests of foreign detainees. If so requested, the person leading the proceedings must inform the representative office of the country of which the detainee is a citizen about the application of compulsory measures.

8.4 Alleged terrorists

With respect to arrest or remand detention, in Latvian law, no special provisions have been made for alleged terrorists.

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[45] LCHR 2006, p. 130 pp.
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