"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

Romania[1]

1. Introduction

The Romanian criminal procedure system has its foundations in the principles of due process, as the French system has. This system includes principles such as the presumption of innocence, the right to defence and the guarantee to freedom.[2] Besides the trial and the post-trial phase in criminal proceedings, one can distinguish the pre-trial phase. The criminal procedural mechanism of the Communist period influenced the criminal procedure system in Romania. It is an inquisitorial procedure system with some influences of the adversarial systems. However, at the Colloquium organised by the US Embassy in collaboration with ABA/CEELI on 7-8 June 2007, a commissioner member of the Romanian Commission in charge of drafting the new Romanian Criminal Procedure Code (hereafter: CPC) presented the general leading directions that the new CPC will be taking. One of these directions is "an overall orientation towards an adversarial system of criminal law".[3] Moreover, another direction mentioned at the Colloquium was the introduction of a *juge des libertés et de la détention*, like in France. Such a judge will be responsible for deciding on the rights and liberties of defendants. However, at the round-table meeting in Constanta, most of the participants – among them were judges, prosecutors and defence counsels – were against this proposed direction, for reasons of, *inter alia*, the lack of human resources in courts and the risk of compromising impartiality.

During Communism, the criminal procedure and the substantive criminal law were only formal in reality. Moreover, the strongest actor in these fields of law was the prosecutor. As a result, reforms were difficult.[4] Since the reforms have started, a shift in power from the prosecutor to the judge can be distinguished.[5] It is said that the system "has been reformed randomly, without a clear pursuit of specific parameters to be integrated into a practically functioning system".[6] Therefore, according to the same source, "it would be the correct conclusion to say that there are judges or panels of judges who share a certain decision rather than say that a decision belongs to the court of law".[7]

There was a big reform in 2003, which led, *inter alia*, to a reduction in the prison population (including the remand prison population), to the introduction of alternative measures, and to a change in the mentality of judges.[8] Over the following years, the CPC was constantly improved. Act No. 356 (2006) is the latest important amendment to the CPC; it changed about 250 articles and came into force in September 2006.[9] In 2003, the Constitution of Romania was revised by, *inter alia*, improving Art. 23, which is of great importance for criminal proceedings. Due to the

[1] The author wishes to thank Mr. Ioan Durnescu of the University of Bucharest, Mrs. Alina Barbu and Mrs. Alina Ion of the Drafting Legislation Department of the Ministry of Justice of Romania for providing the necessary legal material and for commenting on and correcting earlier drafts of this report. Also, the author wishes to thank the Mrs. Gabriela Soreanu of the Cooperation and Programmes Department of the National Administration of Penitentiaries of Romania for providing the necessary statistical material.

[2] By I. Durnescu in: A.M. van Kalmthout & I. Durnescu (eds.), *Probation in Europe*, Nijmegen: Wolf Legal Publishers 2008, p. 885.

[3] "Practical aspects of the Arrest and Search Warrant Procedures as regulated by the Romanian Code of Criminal Procedure", Colloquium, Constanta, June 7-8, 2007, available at http://www.abanet.org/rol/europe_and_eurasia/romania.html (accessed 7 January 2009).

[4] S.R. Roos (ed.), *Safeguarding human rights in Europe: The rights of suspects/accused and their defence in criminal proceedings in south east Europe*, Bucharest: Rule of Law Program South East Europe, Konrad-Adenauer-Stiftung e. V. December 2007, p 257.

[5] Due to Act No. 356 of 21 July 2006 amending Art. 136 of the CPC, which came into force in September 2006, the detention decision can be taken only by a judge. Before the amendment of Art. 136 of the CPC, it was still possible for the prosecutor to decide to place a person in detention on remand (see Rapport au Gouvernement de la Roumanie relatif à la visite effectuée en Roumanie par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 8 au 19 juin 2006, Strasbourg, 11 décembre 2008, CPT/Inf (2008) 41, § 11).

[6] S.R. Roos (ed.), *Safeguarding human rights in Europe: The rights of suspects/accused and their defence in criminal proceedings in south east Europe*, Bucharest: Rule of Law Program South East Europe, Konrad-Adenauer-Stiftung e. V. December 2007, p. 257.

[7] Ibid.

[8] Law 281/2003 contained about 250 articles, mainly on the enforcement of criminal procedure from the perspective of guaranteeing the fundamental human rights.

[9] An English translation of the CPC with its latest amendments is not (yet) available (7 January 2009).

amendments to the CPC, the prison population – especially the number of pre-trial detainees – has declined enormously.

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. The second set of data has its foundations in the research of the International Centre for Prison Studies (hereafter: ICPS), which publishes its World Pre-trial / Remand Imprisonment List[10] every year.

Romania and its prisoners in general

Population 2006, annual estimate	21.531.700
Total number of prisoners (including pre-trial detainees)	35.910
Prison population rate per 100,000 inhabitants	166.8
Total capacity of penal institutions/prisons	37.947
Prison density per 100 places	94.6

Special groups of prisoners

Number of prisoners under 18 years old (including pre-trial detainees)	845
Number of prisoners under 18 years old in pre-trial detention	-
Number of prisoners from 18 to less than 21 years old	2801
Number of female prisoners (including pre-trial detainees)	1637
Number of female prisoners in pre-trial detention	-
Number of foreign prisoners (including pre-trial detainees)	260, of which 31in pre-trial detention
Percentage of foreign pre-trial detainees	11.9%
Percentage of European prisoners among the foreign prisoners	-

Legal status of prison population I

Untried prisoners (no court decision yet reached)	2931
Convicted prisoners, but not yet sentenced	1786
Sentenced prisoners who have appealed or who are within the statutory time limit for doing so	No figures available, but the concept exists in the penal system of the country concerned.
Sentenced prisoners (final sentence)	31193
Other cases	-
Total	35910

Legal status of prison population II

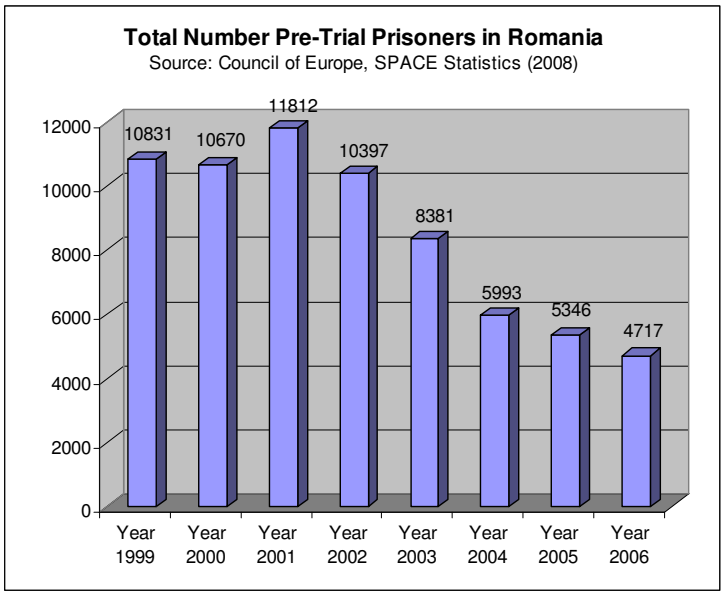
Percentage of prisoners not serving a final sentence	13.1% (2921+1786 persons)
Rate of prisoners not serving a final sentence per 100,000 inhabitants	21.9
Percentage of untried prisoners (no court decision yet reached)	8.2% (2931 persons)
Rate of untried prisoners (no court decision yet	13.6

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

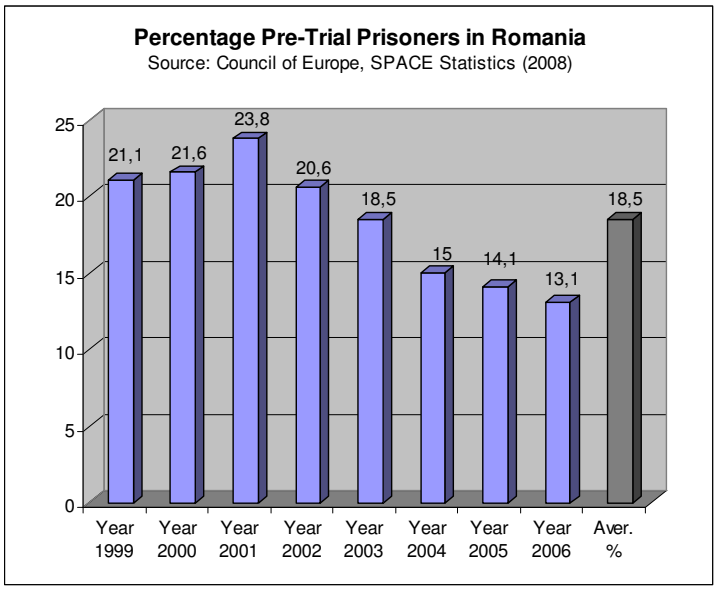
reached) per 100,000 inhabitants	

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

Year[11]	**Number**[12]	**Percentage**[13]
1999	10831	21,1
2000	10670	21,6
2001	11812	23,8
2002	10397	20,6
2003	8381	18,5
2004	5993	15
2005	5346	14,1
2006	4717	13,1
Average percentage		**18,5**
Source: Council of Europe, SPACE Statistics		



[11] Per 1 September of mentioned year.
[12] This number includes: untried prisoners (no court decision yet reached) and convicted prisoners but not yet sentenced.
[13] Percentage of the total prison population.



Data according to the International Centre for Prison Studies (ICPS); World Pre-trial/Remand Imprisonment List

Prison population according to legal status:	
Total number in pre-trial/remand imprisonment	5216
Date	17.1.2006
Percentage of the total prison population	14,2%
Estimated national population (at date shown)	21.60m at date shown
Pre-trial/remand population rate (per 100,000 of the national population)	24

Finally, different sources providing statistical information have been brought together in one table. It shows us that there is not a lot of data available with regard to pre-trial detention and, above all, that it is very difficult to compare the available data as *inter alia* the data is from different data.

Source	Date	Total prison population (including pre-trial detainees/remand prisoners)	Number of pre-trial detainees	Pre-trial detainees as a percentage of the total prison population	Prison population rate per 100,000 of national population	Pre-trial detention rate per 100,000
International Centre for Prison Studies[14]	Different data	26,350 on 20.1.2009	2,655 (31.12.2007: 1,434 untried (no court decision yet reached) and 1,248 convicted in first instance)[15]	10% (31.12.2007: 5.4% untried and 4.7% convicted in first instance)	123 based on an estimated national population of 21.49 million at January 2009 (from Eurostat	-

[14] R. Walmsley, International Centre for Prison Studies, World Prison Brief, Prison Brief for Romania available at http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_country.php?country=161 (entails more recent information than the World Pre-trial/Remand Imprisonment List; last retrieved 24 February 2009)

[15] On 31.12.2007 the total prison population was 26,550 of which 10% were pre-trial detainees.

					figures)	
SPACE I (Council of Europe)[16]	1.9.2006	35,910	4,717 (2,931 untried (no court decision yet reached) and 1,786 convicted, but not yet sentenced)	13% (8% untried (no court decision yet reached) and 5% convicted but not yet sentenced)	166.8	13.6
European Sourcebook[17]	2003	44,254	6,638	15%	203	30
Eurostat	2006	34,038	-	-	-	-
National Statistics[18]	31 2008	26,212	3,112 untried and 1,835 convicted in first instance	11.87% - 7%	122	14.5

Source	Pre-Trial detention (numbers) between		Pre-trial detention (percentage) between		Origin of foreigners in pre-trial detention (percentage)	
	Nationals	Foreigners	Nationals	Foreigners	EU nationals	Third-country nationals
International Centre for Prison Studies	-	-	-	-	-	-
SPACE I (Council of Europe)	-	31	-	11.9%	-	-
European Sourcebook	-	-	-	-	-	-
Eurostat	-	-	-	-	-	-
National Statistics	3,069	43	98.62%	1.38%	0.61%	0.77%

Source	Females in pre-trial detention (numbers)	Females as a percentage of the total number of pre-trial detainees	Juveniles in pre-trial detention (numbers)	Juveniles as a percentage of the total number of pre-trial detainees
International Centre for Prison Studies	-	-	-	-
SPACE I (Council of Europe)	-	-	-	-
European Sourcebook	-	-	-	-

[16] M.F. Aebi, N. Delgrande, University of Lausanne, Switzerland, Council of Europe Annual Penal Statistics – SPACE I – Survey 2006, pc-cp\space\documents\pc-cp (2007) 09 rev3.
[17] European Sourcebook of Crime and Criminal Justice Statistics – 2006 Third edition STOCK data.
[18] Information obtained from the National Administration of Penitentiaries.

Eurostat	-	-	-	-
National Statistics	199	6.39%	130	4.18%

The tables show that there is not a lot of information available with regard to pre-trial detention and especially with regard to females and juveniles in pre-trial detention. Only the National Administration of Penitentiaries (NAP) provides this information. The tables also show that the data can hardly be compared with each other, due to the fact that the different sources measure the numbers at different times. In addition, it is difficult to say whether they use the same definition for pre-trial detention/remand in custody. For instance, is the number of remand prisoners in police premises included in the total number of pre-trial detainees?

What we can see is that there has been a major decline in the total prison population as well as in the pre-trial population. According the International Centre for Prison Studies (hereafter: ICPS), 10% of the total prison population consists of pre-trial detainees (2,655 on 25 November 2008, of which 1,786 were convicted but not (yet) sentenced). According to the Romanian government, there has been a significant decrease in the number of remand prisoners. This is partly due to amendments to the provisions in the CPC on remanding someone in custody. In addition, the government illustrates this reduction by mentioning that on 31 December 1999, 49,790 persons were detained, of whom 47,883 men and 1,907 women; 5,434 persons were on remand, 5,425 had been convicted by a court in first instance, and 38,818 had received a final sentence. At the end of 2004, 39,031 persons were deprived of their liberty (37,224 men and 1,807 women); 2,991 were on remand, 3,033 had been convicted by a court in first instance, and 33,077 had received a final sentence.[19] At the end of 2008, 26,551 persons were detained, of whom 2,655 were on remand. This is a reduction of more than 51%. According to data from the NAP, the total prison population is 26,212, of which 3,112 persons are untried and 1,835 convicted in the first instance. However, it should be noted that it is difficult to compare the various statistical data on persons on remand (in the sense that the comparison may not be precise), because we do not know exactly if all the numbers use the same definition of "persons on remand" (e.g. are persons on remand in police cells included in these numbers?).

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

3.1 Introduction

Within the criminal proceedings, three phases can be distinguished: the pre-trial phase, the trial phase, and the enforcement of the judgement. The pre-trial phase consists of the preliminary phase and the pre-trial investigation phase. During the preliminary phase, no procedural measures can be taken.

The police have the right to retain/hold a person for up to 24 hours for investigative purposes. This is a general administrative measure that can be taken by the police on the basis of Law 218/2003 (on the organisation and functioning of the Romanian police) only if the person cannot be identified in another way; it is not taken with the aim of investigating a criminal offence. The CPC also provides for the possibility of retaining a person in custody for identification purposes. This measure too has a maximum of 24 hours and is a general instrument, not necessarily linked to a criminal procedure.

The hold measure provided by the CPC can be taken only during the criminal proceedings, meaning: when the criminal investigation phase has begun. Its maximum period is 24 hours. After the lapse of this period, the prosecutor may request from the court an order to remand a person (preventive arrest (136(1d) CPC).

The investigation phase starts when the criminal investigation body has concluded the preliminary phase and decides that there is a case. The prosecutor, being the main actor in the pre-trial phase, presents the file to the court. The prosecution may request the court to take preventive measures (the obligation not to leave town, the obligation not to leave the country, or preventive arrest). During the pre-trial phase, the obligation not to leave town and the obligation not to leave the country can be taken either by the judge or by the prosecutor. During the trial

[19] Office of the UN High Commissioner for Human Rights, Special Rapporteur on Torture, Country Visits, Romania, available at http://www2.ohchr.org/english/issues/torture/rapporteur/visits.htm (last retrieved 24 February 2009).

phase, these measures can be decided upon only by the judge. The prosecutor may also impose the preventive hold measure for up to 24 hours. Preventive arrest may last for ten days for a suspect and thirty days for a defendant. After the lapse of this period, the court may prolong the thirty days of preventive arrest if the prosecution can prove that there is a case and if certain specific requirements are met.[20] The investigation phase ends with the decision of the prosecutor to: 1) terminate the criminal investigation; 2) exempt the case from criminal investigation; or 3) submit the case to the court.

Phase	Competent authority	Do what?
Pre-trial: preliminary phase	Police	✓ Detention/police custody for 24 hours for investigation purposes ✓ Request from the court a remand order with the approval of the prosecutor
Pre-trial: investigation phase	Prosecutor	✓ Request the court for preventive measures (preventive arrest 146(1))*; this may not exceed 180 days during the investigation phase)
Trial phase	Court	✓ The court may impose remand in custody (147); in the case that the defendant is not yet detained, the court issues an arrest warrant**
Post-trial phase		

* If he considers it to be in the interest of the criminal investigation that the suspect is remanded in custody, the prosecutor – *ex officio* or upon request of the investigative body – may send the file and the motivated request for remand detention to the president of the court or to the judge nominated to be president. Before sending the file, the prosecutor must hear the suspect in the presence of his lawyer. After receiving the file, the president of the court settles the date and time on which the decision on remand is taken. The president should decide upon the remand detention within 24 hours if the person is subjected to a hold measure. The date and the time of the decision are communicated to the suspect's lawyer and to the prosecutor. If the suspect is subjected to a hold measure or remand detention, the prosecutor has the obligation to ensure the suspect's presence in the court. If the conditions stipulated in Sec. 146 (1) are met, the judge may impose the remand decision. He must justify in concrete terms why this measure is taken and announce its duration, which may not be longer than thirty days. The remand decision may be appealed within 24 hours from the decision.[21]

** This is the arrest decision when the suspect reaches the trial phase. Remand detention may be imposed on the defendant even if he was already on remand during the criminal investigation or during the trial phase, provided that new information shows that deprivation of liberty is still needed (160a(4)). During trial, the court periodically (no less than once every sixty days counting from the beginning of the proceedings) verifies the legality of and the justification for the remand detention. If the reasons for remand detention cease to exist or if there are no new elements to justify remand detention, the court will revoke the remand and order for the defendant to be released. If the court ascertains that there are reasons to prolong the remand detention, it may

[20] By I. Durnescu in: A.M. van Kalmthout & I. Durnescu (eds.), *Probation in Europe*, Nijmegen: Wolf Legal Publishers 2008, p. 885-886.
[21] Personal information from I. Durnescu.

extend the preventive measure. This decision may be attacked with recourse.[22] If a period equal to half the duration of the sentence for the offence is reached, the accused is freed.

3.2 The Constitution

According to Art. 23 of the Constitution of Romania, "individual freedom and security are inviolable".[23] Search, detainment or arrest of a person can only be permitted in the cases and under the procedure provided by law (23(2)). Detention of the accused or the defendant is laid down in 143-144 CPC, and preventive remand in custody of the accused or defendant in 146-160(h) CPC.[24]

The Constitution of Romania uses the terms "detention" and "preventive custody", while other sources use different definitions for the same matter. For instance, the book "Safeguarding human rights in Europe: The rights of suspects/accused and their defence in criminal proceedings in south east Europe" uses the terms "detention" (the same as in the Constitution) and "preventive remand in custody". Moreover, in the latest report on Romania of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereafter: CPT), the terms "police custody" and "detention on remand" are used; "police custody" means that a person suspected of having committed a criminal offence may be held by the police for up to 24 hours.[25] In conclusion, it can be said that police custody and detention (the latter is used by the legislator in the Constitution and by the authors of the book "Safeguarding human rights in Europe: The rights of suspects/accused and their defence in criminal proceedings in south east Europe") are the same. The CPT describes "detention on remand" as follows: "The decision to place a person in detention can be taken only by the judge." The CPT continues by mentioning: "The initial period of such detention (detention on remand, by the author) could not exceed 29 days, to be extended by the judge for successive terms of 30 days."[26] In a footnote, the CPT refers to Art. 23(5) of the Romanian Constitution, which deals with preventive custody; this has the same definition as the term used by the CPT (detention on remand).

The prosecutor may impose the hold measure for up to 24 hours (Art. 23(3) of the Constitution). A judge may order preventive custody; he or she will do so only in the course of criminal proceedings (23(4)). This preventive custody may be ordered for a maximum of thirty days. It can be extended for further thirty-day periods, but the total length may not exceed a reasonable term. The maximum period is 180 days (23(5)). During the trial, the duration of the measure is limited to half the maximum punishment laid down by the law for the offence; the court will check the lawfulness of and the grounds for the preventive custody on a regular basis (at least once every sixty days counting from the beginning of the proceedings). If the grounds for preventive custody are not present anymore, the person deprived of his or her[27] liberty is released. Moreover, the court releases a person deprived of his liberty if it is of the opinion that there are no new grounds justifying the continuation of preventive custody (23(6)).

A person deprived of his liberty by means of detention or arrest will be promptly informed of the grounds for his detention or arrest. As he needs to understand the reasons for the preventive custody, these have to be communicated to him in a language he understands. The arrested or detained person must be informed of the charges against him as soon as possible, in the presence of a legal representative chosen by the defendant himself or appointed to him *ex officio* (23(8)). Decisions made by the court on preventive custody may be subject to legal proceedings laid down by law (23(7)). According to Art. 23(9), the detained or arrested person shall be released on a mandatory basis if the law says so and if the reasons for detainment or arrest have ceased to exist.

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[22] Ibid.

[23] The initial Constitution of Romania was adopted in the sitting of the Constituent Assembly of 21 November 1991 and published in the Official Gazette of Romania, Part I, No. 233 of 21 November 1991. It came into force after its approval by the national referendum of 8 December 1991. The Constitution was amended and completed by Law No. 429/2003 on the revision of the Constitution of Romania, published in the Official Gazette of Romania, Part I, No. 758 of 29 October 2003 and republished later by the Legislative Council. See: http://diasan.vsat.ro/legislatie/eng/vol65eng.pdf (accessed 28 December 2008).

[24] In: S.R. Roos (ed.), *Safeguarding human rights in Europe: The rights of suspects/accused and their defence in criminal proceedings in south east Europe*, Bucharest: Rule of Law Program South East Europe, Konrad-Adenauer-Stiftung e. V. December 2007, p. 262. The term "preventive remand in custody" is being used; in the Constitution, the wording is "preventive custody".

[25] Rapport au Gouvernement de la Roumanie relatif à la visite effectuée en Roumanie par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 8 au 19 juin 2006, Strasbourg, 11 décembre 2008, CPT/Inf (2008) 41, §11.

[26] Ibid.

[27] "He" or "him" may also mean "she" or "her".

A person subject to preventive arrest can apply for provisional release on bail or under judicial control (23(10)).

The presumption of innocence, captured in Art. 23(11)) of the Constitution of Romania, holds that "any person shall be presumed innocent until found guilty by a final decision of the court". Art. 5(2) of the CPC[28] rules that "any individual charged with a criminal offence shall be presumed innocent until proved guilty by definitive penal decision". This principle is one of the foundations of the Romanian Criminal Procedure.[29] Art. 53 of the Constitution provides that the exercise of certain rights or freedoms may only be restricted by law and only if necessary. Art. 53(2) of the Constitution rules that "such restriction shall only be ordered if necessary in a democratic society". The measure shall be proportional and applied without discrimination. Moreover, it shall be applied without infringing on the existence of such right or freedom.

Judges shall be independent persons, appointed by the President of Romania and irremovable. Their independency shall be ensured by the Superior Council of Magistracy (124(3) jo 125(1) jo 133(1) of the Constitution). Legal proceedings shall be conducted in the Romanian language (128(1)). However, Romanian citizens belonging to the national minorities have the right to express themselves in their mother tongue during court proceedings (128(2)). In order to effectuate these proceedings, interpreters and translators shall be used (128(3)). Foreign citizens and stateless people who do not speak the Romanian language, are also ensured the right (free of charge) to have access to the papers of the file, to speak in court, and to draw conclusions via an interpreter. The law provides ways of appealing court decisions for parties concerned and for the Public Ministry (129). Art. 132(1) provides that public prosecutors shall carry out their activity in line with the principle of impartiality, legality and hierarchical control.

3.3 Police Act and Criminal Procedure Code

Art. 31.1.b. of Act No. 218 of 23 April 2002 on the organisation and functioning of the police (hereafter: the Police Act) provides that a person may be held by the police for a maximum of 24 hours as an "administrative" measure in order to be identified or for other preliminary investigations.[30] The police may also hold a person suspected of having committed a criminal offence for 24 hours (Art. 136 jo 143-144 CPC). Due to Act No. 281 of 24 June 2003, these two 24-hour periods may no longer be cumulative.[31] Moreover, due to Law 281/2003 amending Art. 136 CPC, only a judge may take the decision on preventive detention. Before the amendment of Art. 136 CPC, it was still possible for the prosecutor to decide to place a person in remand detention.[32]

Preventive measures are the hold measure, the obligation not to leave town, the obligation not to leave the country, and preventive arrest (136(1a-d). The investigating body or the prosecutor may order a hold measure. The obligation not to leave town and the obligation not to leave the country may be ordered by the prosecutor (during the investigation phase) and the court (during the trial phase). The judge is the only authority competent to order preventive arrest. The investigating authority, the prosecutor and the court may take the above-mentioned preventive measures "in cases of offences, punishable with life imprisonment or imprisonment, in order to ensure a successful unfolding of the criminal trial or to prevent elusion of the defendant from criminal investigation, trial or punishment execution" (136(1)). According to Sec. 136(2), "the aim of the preventive measure may be achieved also through provisional freedom under court supervision or on licence. Moreover, in ordering preventive measures one has to look at the aim of the measure, the level of seriousness of the offence of which the person is suspected and the health, age, criminal history or other personal circumstances of the defendant" (136(8)). One preventive measure may be replaced with another if the reasons for imposing the first measure have changed (139(1)). When there are no more reasons for imposing a preventive measure, it has to be revoked *ex officio* or upon request (139(2)). The court shall revoke the preventive arrest if the remand

[28] Added to the CPC in 2003.

[29] S.R. Roos (ed.), *Safeguarding human rights in Europe: The rights of suspects/accused and their defence in criminal proceedings in south east Europe*, Bucharest: Rule of Law Program South East Europe, Konrad-Adenauer-Stiftung e. V. December 2007, p 260.

[30] Act No. 218 of 2002 was amended by Act No. 281 of 2003 for modification and completion of the Criminal Procedure Code and other special laws, but the content of hold or preventive arrest was not changed.

[31] Rapport au Gouvernement de la Roumanie relatif à la visite effectuée en Roumanie par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 8 au 19 juin 2006, Strasbourg, 11 décembre 2008, CPT/Inf (2008) 41, §11.

[32] Ibid.

prisoner is (mentally) ill and cannot be treated within the medical network of the General Administration of the Prisons. With regard to preventive arrest, this measure may also be replaced with the obligation not to leave town or the obligation not to leave the country (139(3)). Preventive measures lawfully terminate when deadlines, stipulated by law or settled by the judicial bodies, expire. Moreover, preventive measures lawfully end in the case of exemption from the investigation, cessation of the criminal investigation and closing of the criminal trial, and acquittal. The measure of preventive arrest lawfully ceases when – before passing a conviction in the first instance – the duration of the arrest has reached half of the maximum punishment laid down by law for the offence, as well as in other cases stipulated by law.[33] The court, *ex officio* or upon the request of the prosecutor, or the prosecutor (in the case of a hold measure), must immediately release the person held or arrested and send the administration of the place of detention a copy of the ordinance or disposition, or an abstract, including the data necessary to identify the defendant, the number of the arrest warrant, the number and date of the ordinance or the decision by which the release was ordered as well as the legal justification for release (140(3)).[34]

The prosecutor and the suspect/defendant are competent to appeal preventive arrest ordered by the court as well as the revocation, replacement, stopping or prolongation of preventive measures, and the decision of the court not to impose remand detention on a defendant or suspect (140(1)).[35] In the case of appeal, the pre-trial detainee will be brought before the court and heard in the presence of his lawyer. If the detainee cannot be present (e.g. because he is ill or for other reasons), his lawyer will attend the hearing. In such appeal cases, the presence of the prosecutor is mandatory. The file that is central to the appeal procedure will be sent to the appeal court within 24 hours. The judges of the appeal court have to make a decision within 48 hours of the appeal in cases concerning a suspect, and within three days of the appeal in cases concerning a defendant (140(3-5)).[36]

Time	**Procedural action or event**	**Legal basis**	**Who?**	**Where?**
0				
24 hours *	"Administrative" measure	Art. 31.1.b. of the Police Act	Police	Police premises
24 hours *	Detention/police custody/hold measure	23(3) Constitution jo 136(1a) jo 143-144 CPC	The police/criminal investigating body/prosecutor may order this measure "if there are pieces of evidence or strong signs that he has committed a deed stipulated by the criminal law"[37]	Police premises
30 days (extension possible for 30 days with a maximum of 180 days)	During the criminal proceedings/investigative stage: preventive custody/preventive arrest/remand	23(5) Constitution/159 CPC	Court	Prison
No time limit	Preventive arrest during	160a, 160b CPC	Court	Prison

[33] Personal communication from Ioan Durnescu.
[34] Ibid.
[35] Ibid.
[36] Ibid.
[37] Personal communication from Ioan Durnescu.

	the trial phase			

* Due to Act No. 281 of 24 June 2003, these two 24-hour periods may no longer be cumulative.

3.4 Procedural rights

Art. 24 jo 23(8) of the Constitution rules that "the right to defence is guaranteed". During criminal proceedings, parties have the right to be assisted by an attorney, chosen or appointed to them *ex officio*. The charges shall only be communicated to the suspect in the presence of a legal adviser. The right to legal advice from a qualified lawyer is also laid down in the CPC: Art. 6(4) rules that any party has the right to be assisted by a legal counsel throughout the criminal trial, and Art. 6(5) lays down that judiciary authorities are under the obligation to inform the accused or defendant of his or her right to a lawyer. Moreover, Art. 171(1) CPC rules that, during criminal proceedings, the defendant or accused has the right to be assisted by a defence counsel. Judiciary authorities must inform him or her of this right.[38] Art. 172 CPC contains rules with regard to the rights to defence. During the criminal investigation, the suspect or his legal counsel have the right to be present in the completion of any criminal investigation act (172(1)). The right to legal advice shall be confidential between the suspect and his lawyer (172(4)).[39] Access to a lawyer is possible from the moment a person is taken into custody. Prior to 2003, before the big reform which led to a reduction in the prison population, the legal system posed a limit on the exercise of the suspect's right to legal advice. The prosecutor could order that the arrested defendant be prohibited from having access to a lawyer for a maximum of five days. Nowadays, there is no instance in which the presence of a legal adviser is prohibited during police interrogation.[40]

The suspect has the right to be informed of his rights (6(5) jo 202(3) CPC): The suspect shall – before the first deposition is taken – be informed of his right to be assisted by a lawyer. Criminal investigation authorities are obliged to explain to the suspect and to other parties what their rights are. Suspects also have the right to an interpreter if they do not speak or understand the Romanian language (Art. 7(2) jo 8 CPC).[41]

In the case that preventive arrest is ordered, the judge shall communicate this within 24 hours to a member of the defendant's family or to any other person designated by the accused or defendant. "Any other person" can also be a staff member of the consular authority.[42]

4. Grounds for pre-trial detention

There are a series of conditions for pre-trial detention provided by the Romanian legislation (art. 148 of the CPC). Pre-trial detention can be applied only in cases of crimes for which the law stipulates imprisonment for at least 4 years. The measure of preventive detention can be taken under the following conditions:

a) The defendant has fled or hidden himself with the purpose of escaping the investigation or the trial (or has made preparations to do so), or there are signs during the trial that the defendant will try to escape his/her punishment;
b) The defendant has willingly broken the obligation not to leave town or not to leave the country;
c) There is sufficient information showing that the defendant has tried to impede the revealing of the truth, either by influencing a witness or an expert, or by destroying or altering the material means of evidence;
d) There is sufficient information showing that the defendant is preparing the committal of a new crime;

[38] Ibid, p. 275.
[39] Ibid, p. 282-283.
[40] Ibid, p. 276.
[41] Ibid, p. 2278-279.
[42] S.R. Roos (ed.), *Safeguarding human rights in Europe: The rights of suspects/accused and their defence in criminal proceedings in south east Europe*, Bucharest: Rule of Law Program South East Europe, Konrad-Adenauer-Stiftung e. V. December 2007, p. 280-281. However, according to the report of the CPT to the Romanian government on the CPT's visit to Romania from 8 to 9 June 2006, persons taken into police custody were able to ask that a family member or third party be informed of their detention (conform Law No. 281 of 24 June 2004 amending Art. 137.1 CCP); Rapport au Gouvernement de la Roumanie relatif à la visite effectuée en Roumanie par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 8 au 19 juin 2006, Strasbourg, 11 décembre 2008, CPT/Inf (2008) 41, §24).

e) The defendant has committed a new intentional crime;
f) There is proof or there are indications that the defendant will put pressure on the victim or will attempt to make an unlawful deal with the victim;
g) The defendant committed a crime punishable with life imprisonment or with imprisonment longer than four years and there is proof indicating that the defendant would be a danger to the public were he to be free.

These are the conditions for taking the preventive measure of detention according to the present form of Art. 148 of the Criminal Procedure Code (after it was modified by Law 356/2006 and the Emergency Ordinance 60/2006).

5. Grounds for review of pre-trial detention

A person remanded in custody has the possibility to apply in a court for release or transformation of the remand (Art. 139 of the CPC). During the investigative stage, the suspect or the defendant could declare appeal to a higher court within 24 hours against the preventive arrest measure taken by the court or against the revocation, replacement, stopping or prolongation of the preventive measure (Art. 140 CPC). According to the same Article, the prosecutor may declare appeal to a higher court within 24 hours.

The remand during the investigation can be extended. The rules governing the extension procedure are laid down in Art. 159 of the CPC. The duration of the defendant's arrest during the investigation phase may not exceed thirty days. The decision on remand may be appealed within 24 hours from the decision. In the case of an extension of the remand during the investigation, the prosecutor will make the case file available at least five days before the deadline; the defence lawyer will be able to consult it upon request. Only in exceptional cases, the defendant is not present in the council room. Regardless of the offence, a single judge decides upon the request for extension. An extension cannot be longer than thirty days. In such "request for extension" cases, both the defendant and the prosecutor may attack the decision of the judge. The administration is informed of the decision. The duration of the investigation phase has to be reasonable but may not exceed 180 days.

During the next phase of the criminal proceedings, the trial phase, the duration of this preventive measure is no longer limited to 180 days, but to half the maximum punishment laid down by law for the offence. The court will check the lawfulness of and the grounds for the preventive custody on a regular basis – at least once every sixty days counting from the beginning of the proceedings (Art. 160a-160b CPC). If the grounds for preventive custody are not present anymore, the person deprived of his liberty is released.

Moreover, the court releases a person deprived of his liberty if it is of the opinion that there are no new grounds justifying the continuation of preventive custody (23(6)). The court decision to extend the preventive measure may be attacked with recourse within 24 hours from the decision. The file is sent to the higher court within 24 hours and the case is concluded within five days. The recourse does not suspend the execution (Art. 160b(4) jo. 160a(2) CPC).

However many reviews there are, if half of the maximum duration of the sentence for the offence is reached before a definitive judgment is delivered in the case, the preventive measure of detention lawfully ends and the accused must be released.

According to the Association for the Defence of Human Rights in Romania, the Helsinki Committee (APADOR-CH), before 1998, detainees would stay in police custody until the prosecutor finalised the indictment. The time spent in police custody could be months or even years. From 1998 on, after a decision of the Constitutional Court, the courts steadily began reviewing the grounds for detention on a monthly basis. However, it was not until 2003 that this practice acquired a foundation in the law. In this respect, the APADOR-CH mentions that "even with this kind of guarantee, persons deprived of freedom may spend up to six months in police custody under a warrant which is extended every month. Apart from the detention regime, which is far more restrictive in custody facilities (that are within the jurisdiction of the General Police Inspectorate which, in its turn, reports to the Ministry of Administration and Interior) than in penitentiaries (the Penitentiary Authority is subordinated to the Ministry of Justice), the major issue, though never admitted by the Ministry of Administration and Interior, is physical and/or

psychological abuse that police officers commit against the arrested in order to make them admit the offences they are suspected of, or to admit to crimes committed by unidentified offenders."[43]

The APADOR-CH uses the term "police custody". The CPT uses the words "police custody" only for the 24-hour period during which a person suspected of having committed a criminal offence may be held by the police. This shows that the terminology is not used consistently in the various sources dealing with this subject.

6. Length of pre-trial detention

The hold measure shall not exceed 24 hours (Art. 23(3) of the Constitution). A judge orders preventive custody; he or she will do so only in the course of criminal proceedings (Art. 23(4)). Preventive custody may be ordered for a maximum of thirty days. It can be extended for further thirty-day periods, but the total length may not exceed a reasonable term. During the criminal investigation phase, the maximum period is 180 days (23(5)). The court takes a decision with regard to the preventive arrest extension before the warrant expires, and returns the record/file to the prosecutor within 24 hours from announcing the decision. The remand of the defendant during the trial phase is not bound to a number of e.g. years, but as soon as half the duration of the sentence for the offence is reached, the accused is freed. Remand during trial is verified periodically by the court. No later than after sixty days, its legality and justification are reviewed. If the reasons for remand detention have ceased to exist or if there are no new elements to justify remand detention, the court will revoke the remand and order for the defendant to be released.

In the case of Pantea vs. Romania,[44] the European Court of Human Rights ruled that the detention in question was unlawful. Moreover, the Court pointed out that since prosecutors in Romania act as members of the Department of the Prosecutor-General, they do not satisfy the requirement of independence from the executive. In this case, the Court repeated what it had said before in this respect in the case of Vasilescu vs. Romania. The total length of detention before the suspects were brought before a judge or another officer in the sense of Art. 5(3) of the European Convention on Human Rights (hereafter: ECHR) was more than four months. The Court was of the opinion that this is too long: "A period of detention in police custody amounting to four days and six hours without judicial review fell outside the strict constraints permitted by article 5 §3, even though it was designed to protect the community as a whole from terrorism" (see the case of Brogan and Others vs. UK). In the case of Samoila and Cionca vs. Romania,[45] the applicants had not appeared before a judge for a review of the lawfulness of their detention until nine days after their arrest. In line with previous case-law of the ECtHR, this constituted a violation of Art. 5(3) of the Convention. Moreover, the Court ruled that there had also been a violation of Art. 5(4), because the applicants did not have the opportunity to participate in proceedings of which the outcome determined whether their detention was to continue or to be terminated. The Court awarded all applicants compensation for damages as well as for costs and expenses.

Following the Pantea conviction, the major reform of the CPC was carried out.

7. Other relevant aspects

7.1 Compensation

Art. 504 CPC provides rules for the reparation of material and/or moral damages. There are two hypothesis in the CPC where a special procedure applies for reparation of the material or of the moral damage. The first one is the hypothesis that the individual who has been definitely convicted, if, after the re-hearing of his or her case, a definitive acquittal decision has been passed. The second hypothesis holds that the individual how during the criminal proceedings was deprived

[43] Association for the Defence of Human Rights in Romania – the Helsinki Committee, The Penitentiary System in Romania 1995-2004, available at: http://www.apador.org/en/index.htm (accessed 3 January 2009).
[44] Pantea vs. Romania, Application No. 33343/96, Strasbourg: 3 June 2003.
[45] Samoila and Cionca vs. Romania, Application No. 33065/03, Strasbourg: 4 March 2008 (a summary in English is available at http://sim.law.uu.nl/SIM/CaseLaw/hof.nsf/d0cd2c2c444d8d94c12567c2002de990/c6c5af3f3c16b9c8c125740100325768?OpenDocument (accessed 7 January 2009).

of his or her freedom or whose freedom was illegally restricted.[46] When establishing the scope of the reparation, the length of the deprivation of liberty or of the restriction of liberty is taken into account. The consequences, which it had on inter alia family, is taken into account also. The reparation consist in the payment of an amount or a life annuity or in the obligation that the person concerned may be entrusted – on the expenses of the State – to an institution of social welfare or medical care. According to Romanian law, persons who have been entitled to receive reparations and had been employed before the custodial penalty was imposed upon them, also add the duration of the deprivation of liberty to their total length of employment. It is entirely up to the judge to decide on the volume of the reparation. There is no clear standard on this issue.[47]

There is no compensation/reparation system for unnecessary pre-trial detention, e.g. if the defendant is found innocent. According to Bogdan in *Safeguarding human rights in Europe: The rights of suspects/accused and their defence in criminal proceedings in south east Europe*, the Romanian judicial system is not prepared to be governed by the principle that "the one who makes a mistake shall pay" as "it is only possible to have judicial expenditures in connection with the case reimbursed by the victim, but only if they have been established by the victim. If the expenditures have been caused by the judicial authorities, the person under investigation cannot demand the reimbursement, except as in a stand alone legal action but no decisions are known from that point of view".[48]

7.2 Deduction of (foreign) pre-trial detention from the final sentence

All the pre-trial detention period, including the one served abroad is deductible according to the Romanian criminal law.[49]

Deduction is quite clear when the court imposes a custodial sentence, but when the court imposes in the end a fine there are no guidelines which suggest how the preventive detention should be deducted from the imposed non-custodial sentence. Romania has not yet the day fine system, maybe in the future Penal Code.[50]

7.3 Alternatives to pre-trial detention

The Romanian legal system regulates the following alternatives for the pre-trial detention:

a) Obligation not to leave town (art. 136 CPC).
b) Obligation not to leave the country (art. 136 CPC).
c) Temporary release, under judicial control (art. 1602 CPC).
d) Temporary release under judicial bail (art. 1604 CPC).

During the temporary release under judicial control or under bail the accused shall have to comply with some obligations, such as the obligation not to leave specific places, to be present at the police organ periodically, not to change his or her residence without announcing the instance, not to have or use weapons and he or she can be obliged to comply with some measures, such as wearing electronic supervision device, not taking part in certain cultural, sportive events, not approaching the victim or his or her family, not to drive vehicles.[51]

7.4 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

During the CPT's latest visit (from 8 to 19 June 2006), the delegation was told that a protocol between the Ministry of Administration and Interior and the Ministry of Justice had entered into force at the beginning of 2006, enabling the police to take remand prisoners directly to a prison after they have been brought before a judge.[52] As a result, less persons will be deprived of their liberty in police establishments. However, the CPT noticed that still a large number of remand

[46] S.R. Roos (ed.), *Safeguarding human rights in Europe: The rights of suspects/accused and their defence in criminal proceedings in south east Europe*, Bucharest: Rule of Law Program South East Europe, Konrad-Adenauer-Stiftung e. V. December 2007, p. 265.
[47] Personal communication from Ioan Durnescu.
[48] S.R. Roos (ed.), *Safeguarding human rights in Europe: The rights of suspects/accused and their defence in criminal proceedings in south east Europe*, Bucharest: Rule of Law Program South East Europe, Konrad-Adenauer-Stiftung e. V. December 2007, pp. 265-266.
[49] Information from Alina Barbu and Alina Ion.
[50] Personal communication from Ioan Durnescu.
[51] Information from Alina Barbu and Alina Ion.
[52] Rapport au Gouvernement de la Roumanie relatif à la visite effectuée en Roumanie par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 8 au 19 juin 2006, Strasbourg, 11 décembre 2008, CPT/Inf (2008) 41, §12.

prisoners (and even some sentenced persons subject to criminal investigations) were in police establishments for prolonged periods. Some had been there for six months or even – in exceptional cases – for one and a half year. In general, the CPT strongly advises not to hold persons subjected to criminal investigations in police cells. Thus, they reject this practice in Romania and recommend to its governmental authorities to stop housing remand prisoners in police detention facilities for prolonged periods. Romania should comply with the protocol between the Ministry of Administration and Interior and the Ministry of Justice and make sure that all new remand prisoners and sentenced persons subjected to criminal investigations are, in principle, placed in prison facilities. The CPT also recommends that juveniles be separated from adult prisoners in police detention facilities. Decree No. 988 of the Ministry of Administration and Interior of 21 October 2005 rules that juveniles should be kept separate from adults, and that the Romanian authorities responsible for this regulation should comply with the rules captured by the regulation.[53] The Romanian authorities have taken steps to establish special facilities for juveniles detained on remand (§14).

The CPT also noted that a considerable number of detained persons – men, women and juveniles – said that they had been ill treated[54] during their apprehension and/or questioning. The CPT is of the opinion that practical professional training for law enforcement officers, health care staff, prosecutors, judges etc. is one of the main instruments in combating ill-treatment (§17). In this respect, medical health care at police detention facilities is of great importance. According to the CPT and Romanian regulations, medical examinations in police detention facilities should be confidential. However, in practice, this is not always the case. Therefore, the CPT recommends that medical examinations be confidential and take place without the presence of a police officer (§18-19).

Persons deprived of their liberty, including persons deprived of their liberty under Art. 31, §1.b of the Police Act, should be granted the right to notify a close relative or third party of their choice of their situation. However, in Romania, at the time of the CPT's last visit, no measures had been taken to ensure that persons detained under Art. 31, §1.b of the Police Act have the opportunity to have a family member or third part notified of their detention (§23-24). The CPT welcomes the fact that it is no longer possible for the prosecutor to delay access to a lawyer. In this respect, Art. 23(8) of the Constitution and Art. 137(1) jo 172 CCP have been changed. Nevertheless, in practice, there are shortcomings to these formal legal rules. Persons in police custody who cannot afford a lawyer are often left without one. In cases where persons in police custody are assigned a lawyer, complaints are heard that lawyers are not always trustworthy; sometimes they are ex-police officers (§26). Persons taken into police custody do not always have a clearly defined right to consult a doctor. In some cases, the CPT regrettably noted that persons were only informed of their rights when the questioning started; just a small number of suspects actually understood what their rights were (§28).

With regard to the treatment of juveniles in police detention facilities, the CPT noted that some of the juveniles questioned by the CPT delegation were heard by the police in the absence of a lawyer. In some instances, no relatives were informed of their detention (§30). Especially in the case of juveniles, this practice is intolerable. With regard to the detention conditions in police detention facilities, the CPT concluded that each prisoner should have 4 m^2 of living space in his/her cell. Moreover, prisoners should have their own bed and access to a toilet at all times. In addition, supervision of the distribution and quality of food served in detention facilities should be improved and basic items for personal hygiene should be provided (§34-38).

The detention regimes in the places visited by the CPT delegation were very poor. Some prisoners were only allowed to leave their cells for half an hour or an hour a day. During weekdays, out-of-cell activities were only offered for ten to thirty minutes a day; during weekends, no activities took place whatsoever. This is not in line with the CPT's recommendation that detainees in police detention facilities have at least one hour of outdoor exercise every day.

[53] Ibid, §13.
[54] In the sense that excessive force was used against them by law enforcement officers.

8. Special groups

8.1 Juveniles

Criminal responsibility of the juvenile is engaged related to the child's power of discernment and not to the type of crime committed. Children aged under 14 are not subject to criminal responsibility and children between the age of 14 and 16 are criminally responsible only if proven that they have committed the act with discernment and children over 16 are subject to criminal responsibility.[55]

In 2003, the Committee on the Rights of the Child (CRC) noted that there are many children in pre-trial detention in Romania, and that there are no prosecutors and judges specially trained in dealing with cases concerning juveniles. The CRC mentioned that reforms within this field are in process. According to Act No. 304/2004 regarding the judicial organisation, there are special county courts for juveniles called "Tribunals for juveniles and family affaires". These have a double competence: civil and criminal. In areas where the number of juveniles involved with the judicial system is low, instead of these Tribunals, there are judge panels specialised in juvenile cases. National statistics from the National Administration of Penitentiaries show that on 31 December 2008 juveniles form 4.18% of the pre-trial population; the absolute number is 130.

Besides the rules for adults subjected to a hold measure or preventive arrest, the CPC captures a number of rules specifically designed to protect juveniles (Art. 160e-160h et seq.). Juveniles enjoy more rights and a special regime according to their age, so that the coercive measures taken against them to prevent them from escaping investigation, trial or execution of punishment will not harm their physical, psychological and moral development. They benefit from mandatory legal assistance. In the case of preventive arrest, the juvenile's parents, tutors, persons who care for or supervise him/her, or any other person designated by the juvenile are informed of the arrest within 24 hours. The probation service is also informed of the hold measure or preventive arrest. Juveniles are detained separate from adults during the hold measure or preventive arrest, and a judge appointed for this reason by the president of the court supervises juveniles' rights and special regime. The places where juveniles subjected to coercive measures are detained may be visited by the prosecutor or other bodies empowered by the law to have access to people on remand.

The prosecutor or an investigative body may impose the hold measure on a juvenile who is legally responsible[56] and between 14 and 16 years of age, but for no longer than ten hours and only if there is proof that the juvenile committed a crime punishable with life imprisonment or imprisonment longer than ten years. Upon a solid motivation, the period of hold may be extended by another ten hours. Preventive arrest may be imposed on a juvenile who is between 14 and 16 years of age, but only if he committed a crime punishable with life imprisonment or imprisonment longer than ten years, and other preventive measures are not adequate. During the investigation phase, preventive arrest may not last longer than fifteen days. The legality of the measure is reviewed periodically, but always within thirty days. The decision to prolong this preventive measure during the investigation or trial may be taken only in exceptional cases. During the investigation, in juvenile cases, preventive arrest may last only for a reasonable period of time, but no longer than sixty days. Separate prolongations each have a 15-day maximum. In exceptional cases, when the potential punishment is life imprisonment or imprisonment for longer than twenty years, preventive arrest may last up to 180 days for juvenile defendants between 14 and 16 years of age.

If the juvenile is older than 16 years, preventive arrest during the investigation may last for twenty days. It may be prolonged by subsequent 20-day periods, but the total length may not exceed a reasonable term. The maximum length is ninety days. In exceptional cases, when the potential punishment is life imprisonment or imprisonment for longer than ten years, preventive arrest may last up to 180 days. During the trial, the arguments for and the legality of preventive arrest imposed on a juvenile older than 16 years of age are reviewed periodically, but always within forty days.

The duration of preventive arrest imposed on a juvenile suspect is up to three days.

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[55] Information from Alina Barbu and Alina Ion.

[56] Juveniles under 14 are not legally responsible. Juveniles between 14 and 16 years of age are legally responsible if it can be proved that they were aware of the consequences of their acts. Persons over 16 years of age are always responsible.

8.2 Women

There are no special provisions concerning women in pre-trial detention, except that they should be detained separate from men. On 31 December 2008, there were 199 women in pre-trial detention, which is 6.39% of the total pre-trial population.[57]

8.3 Foreigners

According to national statistics of the National Administration of Penitentiaries, there were 43 foreigners in pre-trial detention on 31 December 2008. This is 1.38% of the total pre-trial population (0.61% for EU nationals and 0.77% for third-country citizens).

In 2006, the legal framework governing the detention of foreign nationals had changed considerably since the CPT's 2002 visit. Amendments to the 2001 Aliens Law introduced, *inter alia*, judicial control over the detention of foreign nationals, the suspensive effect of an appeal against a deportation order, and time limits for the detention of foreign nationals. Foreign nationals subject to administrative expulsion may be detained for up to six months. Foreigners convicted to judicial expulsion after serving a prison sentence may be kept in detention for up to two years, pending their removal. If the foreign national cannot be deported during the above-mentioned periods, he/she shall be released and temporarily granted the status of tolerated person.

However, the new legislation also provides for the indefinite detention of foreign nationals (including asylum-seekers and recognised refugees) declared undesirable on account of the threat they pose to national security.[58]

8.4 Alleged terrorists

Besides the 2003 reforms, there was much debate in Romania concerning pre-trial detention in 2006, when the – at that time – only terrorist of the country, businessman Omar Hayssam, absconded while under investigation. The then top prosecutor resigned because of it.

No further special provisions for alleged terrorist exist in Romanian law.

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[57] According to NAP.

[58] Rapport au Gouvernement de la Roumanie relatif à la visite effectuée en Roumanie par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 8 au 19 juin 2006, Strasbourg, 11 décembre 2008, CPT/Inf (2008) 41.

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