A draft introductory summary of the study:

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

I. Introduction

"In its Resolutions on the situation concerning basic rights in the European Union, the European Parliament has urged the Commission to take action regarding various issues in the area of pre-trial detention and alternatives to such detention 9 COM (2006) 468 final 4 SEC (2006) 1080).

In its Resolution for 2001[1], the European Parliament called on Member States to step up their efforts in this area by restricting detention as far as possible and completely avoiding taking children into custody save in absolutely exceptional cases It called on the Council to adopt a framework decision on common standards for procedural law, for instance on rules covering pre-trial orders, so as to guarantee a common level of fundamental rights protection throughout the EU. In Resolution for 2002[2], the European Parliament noted that the situation of prisoners in the EU had deteriorated in some Member States in 2002, mainly as a result of overcrowding in prisons. The European Parliament considered it essential, especially as the EU prepared for enlargement, that the Member States, *i.a.* take far more determined measures with a view to allow prisoners to have access to a lawyer from the outset, ensuring at least minimum standards for the health and living conditions of prisoners and, in particular, examine detention procedures in order to ensure that human rights are not violated, that detention periods are not unnecessarily long and that grounds for detention are reviewed regularly. The European Parliament once again, called on the Council to adopt a framework decision on common standards governing procedural law, for example on the rules concerning pre-trial orders, with a view to guaranteeing a uniform level of protection of fundamental rights throughout the EU"[3].

Also on the level of the Council of Europe the issue of pre-trial detention was given high priority. First, as part of the revision of the European Prison Rules in 2006 (Rec (2006) 2) and secondly, by preparing an additional Recommendation dealing with the legal grounds and safeguards for pre-trial detention. This resulted in the adoption on 27 September 2006 of "Recommendation Rec (2006) 13 to Member States on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse".

Also the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) underlined in its "CPT standards" and various reports, the problems they encountered during their visits with respect to, for example, prison overcrowding, the living circumstances in detention facilities, access to basic rights etc. These problems in particular are observed in places where pre-trial detention is executed: police stations, remand centres, separate wings in prisons.

It is against this background that the European Commission decided to initiate a study on the minimum standards in pre-trial detention and the grounds for regular review in the Member States of the European Union.

In the tender that was sent out in 2007 the following general objectives were highlighted:

- to collect concrete factual and statistical information on the notion of pre-trial detention, the grounds on which pre-trial detention may be imposed, the grounds for review thereof, the length of pre-trial detention in the EU Member States and the issue of juvenile detention;
- to give an account of potential obstacles to the collection of reliable data in this area (and propose, based on research experience, possible remedies);
- to prepare a reference catalogue or bibliography that can be of general use to the field of study;
- to analyse the information collected.

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[1] Adopted on 15 January 2003: P5_TA(2003)0012, rapporteur Joke Swiebel (A5-0451/2002).
[2] Adopted on 4 September 2003: P5_TA(2003)0376, rapporteur Fodé Sylla (A5-0281/2003).
[3] Annex 1, Terms of Reference, Tender N° JLS/D3/2007/01, "Study: An analysis of minimum standards in pre-trial detention and the grounds for regular review in the Member States of the EU", pp.2-3.

Under the heading 'Specific Objectives' the following five areas were mentioned:

1. The notion of "pre-trial detention"

2. The grounds for pre-trial detention

3. The grounds for review of pre-trial detention

4. The length of "pre-trial detention"

5. Juveniles in detention

The tender also specifies the questions to be answered in the research, and the methodology to be used.

The final report will consist of 27 country reports that are structured according to a fixed format. Each report contains 9 paragraphs, starting with a short introduction about the criminal justice system and criminal procedure in that respective country. In paragraph 2 the focus is directed at Empirical background information. Statistics for the numbers within the prison population, pre-trial detention / remand imprisonment, proportion of foreigners, women, children, are collected from various international sources: the Council of Europe's SPACE 1, International Centre for Prison Studies of King's College London, Prison Brief. Also information from national sources, mostly from the Ministry of Justice or the Prison Department was used and compared with the other sources.

In paragraph 3 the different and sometimes complex aspects of the legal basis of pre-trial detention are described and analysed, with a special attention to the scope and notion of pre-trial detention. In paragraph 4, emphasis was put on the grounds for pre-trial detention. The grounds for review are treated in paragraph 5 and the question of how long a pre-trial can last according to the law and jurisprudence is dealt with in paragraph 6. Paragraphs 7 and 8 are reserved for what is called "other relevant aspects" (par. 7) and "vulnerable groups" (par. 8). The relevant aspects that was focussed on concern: the deductibility of pre-trial detention from the final sentence, the right to compensation for unlawful or unjustified detention, alternatives to pre-trial detention, the execution of pre-trial detention, with also a view on basic rights of pre-trial detainees. In paragraph 8, dealing with the subject of vulnerable prisoners, is not only looked at the specific situation of children in pre-trial detention, but attention was also paid to other groups that seem to have a weaker position in prison than the ordinary prisoners: women, foreigners, suspects of terrorist crimes. Finally, each country report ends with a short summary.

In this Draft introductory summary of the complete report we follow the same structure as mentioned above. Because it is still a draft and some - recent - information still has to be checked and some information is still lacking, the researchers would be very grateful for all remarks, suggestions and information that could contribute to the quality of the final report.

Tilburg/Greifswald, Research Group Pre-trial detention. January 2009.

II. Empirical Background Information

Content:

1. General remarks about sources

Collecting and presenting data from 27 EU countries is a challenging task, especially when it is about penal statistics. There are a number of reasons for this observation. First, countries may use different methods of data-collection. There might be a difference in the way for example data are collected by prison services or by national offices for statistics. Secondly, countries may employ different definitions and indicators due to national, cultural and linguistic differences. In some countries, for example, are people who are detained for administrative reasons, juveniles and irregular immigrants in detention centres counted as part of the prison population and in other countries they are not. Finally, most countries do not use a similar time of recording, for example, 1 January of each year. As a result of this it can be difficult to obtain, to validate and to compare data. Comparative data should therefore be read and interpreted carefully.

Although it is difficult to obtain valid and comparable information and data from EU countries, it is very important to have this information in order to receive a good view of the penal situation in the EU. Efforts by the Council of Europe, the International Centre for Prison Studies and the European Sourcebook of Crime and Criminal Justice Statistics to assemble data via surveys and questionnaires are therefore very worthwhile. These efforts should encourage and stimulate individual EU countries to develop and create a more uniform way of data collection, to make use of similar ways/methods of measurement and by using similar definitions. Also the Council of Europe, the International Centre for Prison Studies and the European Sourcebook of Crime and Criminal Justice Statistics are invited to publish their underlying questionnaires and/or surveys and to explain the exact meaning of the definitions they use.

In this research into the Pre-Trial situation in the European Union, data and statistics are used that have been compiled on a national level by national agencies and on a European level. The three European sources that have been used in this research are: the Annual Penal Statistics of the Council of Europe (SPACE), the 'World Prison Brief' by the International Centre for Prison Studies and the European Sourcebook of Crime and Criminal Justice. Data from the different sources might differ. This can have various reasons like using not similar definitions, using a different date (time) and different measure methods. In this chapter, the Annual Penal Statistics of the Council of Europe (SPACE) are mainly used because they provide the most detailed information regarding pre-trial prisoners and are the most reliable source for making comparisons.

SPACE provides information for all 27 EU countries from a similar point in time (first of September) over an extensive period (1999-2006).

1.1 SPACE (Council of Europe)

The Annual Penal Statistics of the Council of Europe are named SPACE[4]. The SPACE data have been obtained since 1997 on an annual basis by means of a questionnaire that is sent to all member states of the Council of Europe[5]. The data relate to the situation of the prison populations on the 1st of September, so called 'stock statistics', and provides information on prison capacity, prison entry flows, prison population rate per 100,000 inhabitants, occupancy, lengths of imprisonments, characteristics of the prison population, incidents etc. The information per country, if available, is set out in tables.
Information regarding data of pre-trial prisoners is collected under section 'legal structure' and broken down into five different categories. These five categories are selected to serve as a basis for comparing the situations of the various prison populations. The five categories are:

a) Untried prisoners (no court decision yet reached)
b) Convicted prisoner, but not yet sentenced
c) Sentenced prisoners who have appealed or who are
d) within the statutory time limit to do so
e) Sentenced prisoners (final sentence)
f) Other cases

According to the different categories itemised by SPACE, the group 'pre-trial' prisoners consists of prisoners that have not received their final sentence. In other words, category a), b), c) and e). Category a) is about those prisoners who have not received a court decision yet. Category b) is about prisoners who are convicted but who have not received a sentence yet. Category c) is about that group of prisoners that received a sentence but who have appealed or who are within the statutory time limit, to do so. Category e) is about 'other cases' and the kind of people in this category varies per country but in general they are labelled as prisoners who are detained depending their expulsion, prisoners who are failing to pay their administrative fine, prisoners who are waiting to be transferred to a psychiatric treatment centre, detention on the basis of social protection law etc. Generally speaking their detention is not based on a criminal suspicion or sentence but on another ground outside the scope of criminal law. So in fact, this group of 'other cases' are no pre-trial prisoners. For this reason, category e) has not been counted under 'pre-trial' prisoners in this study. For category d) it is clear that they are no pre-trial because they are sentenced prisoners who received their final sentence. Strictly speaking the 'real' pre-trial prisoners are category a), untried prisoner where no court decision yet was reached.

1.2 World Prison Brief (ICPS)

The World Prison Brief Online provides up-to-date information about prison systems around the world via internet[6]. The data are compiled by the International Centre for Prison Studies in London and is updated on a monthly basis by using data from reputable sources. The World Prison Brief was launched in 2000. Information is provided on prison populations and prison population rates per 100,000 of the national population, on the use of imprisonment for women and juveniles, on the extent of pre-trial imprisonment and on prison overcrowding, as well as a record of the national ministries responsible for prisons and contact details for prison administrations. Data from the World Prison Brief is always the latest available and there is in general no information available from earlier years.

[4] The official name is SPACE I. SPACE II is about 'Community Sanctions and Measures' and was published in 1999 and 2001.
[5] Data for SPACE I were collected from 1997-2001 by Pierre Tournier, Director of Research at the CNRS (France) and by Marcelo Aebi and colleagues from University of Lausanne (Switzerland) from 2002 onwards.
[6] www.kcl.ac.uk/depsta/law/research/icps/worldbrief

1.3 European Sourcebook of Crime and Criminal Justice Statistics

The European Sourcebook project started in 1996 when the Council of Europe established a committee to prepare a compendium of crime and criminal justice data for its member states. Information was collected from 36 European countries covering the period 1990 to 1996.It included both statistical data and information on the statistical rules and the definitions behind these figures. The second European Sourcebook, which was sponsored by Switzerland, United Kingdom and the Netherlands, was published in 2003. The publication reports on criminal justice data for 40 European countries are covering the period 1995 - 2000. In June 2006 the third edition was published and the fourth edition, covering the years 2003 - 2007, will be published in 2009. Information compiled by the European Sourcebook on pre-trial detention is about the period 2000 to 2003, so rather old. But it is the only source that provides flow numbers ('how many people have been submitted during the course of the year?') next to the stock numbers ('how many persons are there on a given day?') that are also provided by the other sources.

1.4 Definitions and methods of measurement

In line with the conventions in this study the term pre-trial prisoners is used for all prisoners who have not yet received their final sentence. However, strictly speaking, only untried prisoners should be regarded as pre-trial prisoners. For this study the SPACE data, collected by the Council of Europe, is mainly used to receive a comparative view on the pre-trial situation in the EU. In this study category e) 'other cases', is left out in the definition and in measurements. Category e) 'other cases' does not comprise of persons who are waiting to hear their (final) sentence and are therefore not taken into consideration as described above in paragraph 1.2. In the next paragraphs data are presented from all 27 EU-countries. Sometimes the same data are presented both in a table and in figures/graphics. This is because tables can contain more information while figures make differences between countries more clear.

2. General view of the prison populations in the EU

2.1 General characteristics

In table 1 some general characteristics of the prison populations in the 27 EU countries are summarized. The three highest values per indicator are underlined and the three lowest values are written in Italic.

Countries with the highest total number of prisoners are Poland, United Kingdom and Germany. The smallest prison populations can be found in Malta, Cyprus and Luxembourg. When related to the number of inhabitants per country (imprisonment rate) the view is completely different. The total prison population of all 27 European Union countries together is 607,725.
The highest imprisonment rates are found in the Baltic States and Eastern Europe. Estonia, Latvia, Lithuania and Poland have by far the highest imprisonment rates, more than 230 prisoners per 100,000 inhabitants, followed by the Czech Republic, Romania and Luxembourg. Cyprus, Italy and Slovenia have the lowest imprisonment rates, less than 65 prisoners per 100,000 inhabitants. The average imprisonment rate in the EU is 129.
The prison density or prison occupancy rate, number of prisoners in relation to the number of places available in penal institutions, is highest in Greece, Spain and Hungary. In these countries, prisons are severely overcrowded and on every 100 places available, Greece accommodates 168 prisoners, Spain 140 prisoners and Hungary 137 prisoners. The prison density rate in Belgium, Bulgaria, France, Poland, and Slovenia is above 110. The lowest prison density rates can be found in Latvia, Malta and Slovakia (71, 77 and 83).
The highest and lowest numbers of female, foreign and juvenile prisoners logically partly overlap with the highest and lowest numbers of total prisoners. But there are differences. Germany and Spain are in the top-3 of both the number of female, foreign and juvenile prisoners (although Spain is not in het top-3 of largest total prison population). Next to these two countries Italy is in

the top-3 of most foreign prisoners, the UK in the top 3 of female prisoners and Romania in the top 3 of juvenile prisoners
The lowest numbers of female prisoners are found in Malta, Luxembourg and Cyprus, the lowest numbers of foreign prisoners in Latvia, Lithuania and Malta, and the lowest numbers of juvenile prisoners in Denmark, Sweden and Malta.

Table 1, General characteristic of the total Prison Population in the EU in 2006

1 September 2006	**Total Prison Population**	**Imprison-ment Rate**	**Prison Density**	**Female Prisoners**	**Foreign Prisoners**	**Juveniles**
Austria	8780	100	103	444	3768	120
Belgium	9971	90	118	440	4148	***
Bulgaria	12218	158	116	434	233	67
Cyprus	*599*	*52*	109	*21*	290	***
Czech Republic	18912	168	100	868	1378	128
Denmark	3759	69	92	170	710	*13**
Estonia	4310	314	96	209	1740	103
Finland	3714	71	106	245	300	?
France	57876	90	115	2144	11436	646*
Germany	79146	87	99	4061	21263	7677
Greece	10113	84	168	579	5902	434
Hungary	15591	150	137	1050	583	487
Ireland	3135	72	92	108	395	56
Italy	38309	*63*	89	1787	12360	343*
Latvia	6531	280	*71*	346	*59*	134
Lithuania	8078	232	84	309	*78*	183
Luxembourg	*755*	166	97	*38*	568	***
Malta	*343*	72	*77*	*14*	*136*	*25*
Netherlands	20463	100	93	1051	5339	2452
Poland	88647	232	117	2668	659	***
Portugal	12636	110	104	885	2552	267
Romania	35910	153	95	1637	260	2801
Slovakia	8657	154	*83*	432	185	345
Slovenia	1301	*64*	117	53	151	30
Spain	64120	134	140	5030	20018	2547
Sweden	7175	77	106	293	1533	*14**
United Kingdom	86676	143	103	4926	11070	***

Source: Council of Europe, SPACE (2008)
* The number of juveniles in Denmark, France, Italy and Sweden are coming from national statistics from different dates.
*** Concept not found in the penal system of the country concerned, according to SPACE (2008)

On the next pages the six indicators of table 1 (Total Prison Population, Imprisonment Rate, Prison Density, Female Prisoners, Foreign Prisoners and Juveniles) are visualized in separate figures. In addition to table 1 the figures with female, foreign and juvenile prisoners contain also percentages. Figure 1d 'Female Prisoners' shows that the percentage of female prisoners ranges from 3% in Poland to nearly 8% in Spain. The percentage of foreign prisoners (figure 1e) differs hugely, from less than 1% (Poland, Romania, Latvia and Lithuania) to 75% in Luxembourg. Also in Greece (58%) and Cyprus the percentage of foreign prisoners on the total prison population is high. The highest percentage of juvenile prisoners can be found in the Netherlands (12%). Only three other countries have rates of more than 5%: Germany, Malta and Romania.

Figure 1a

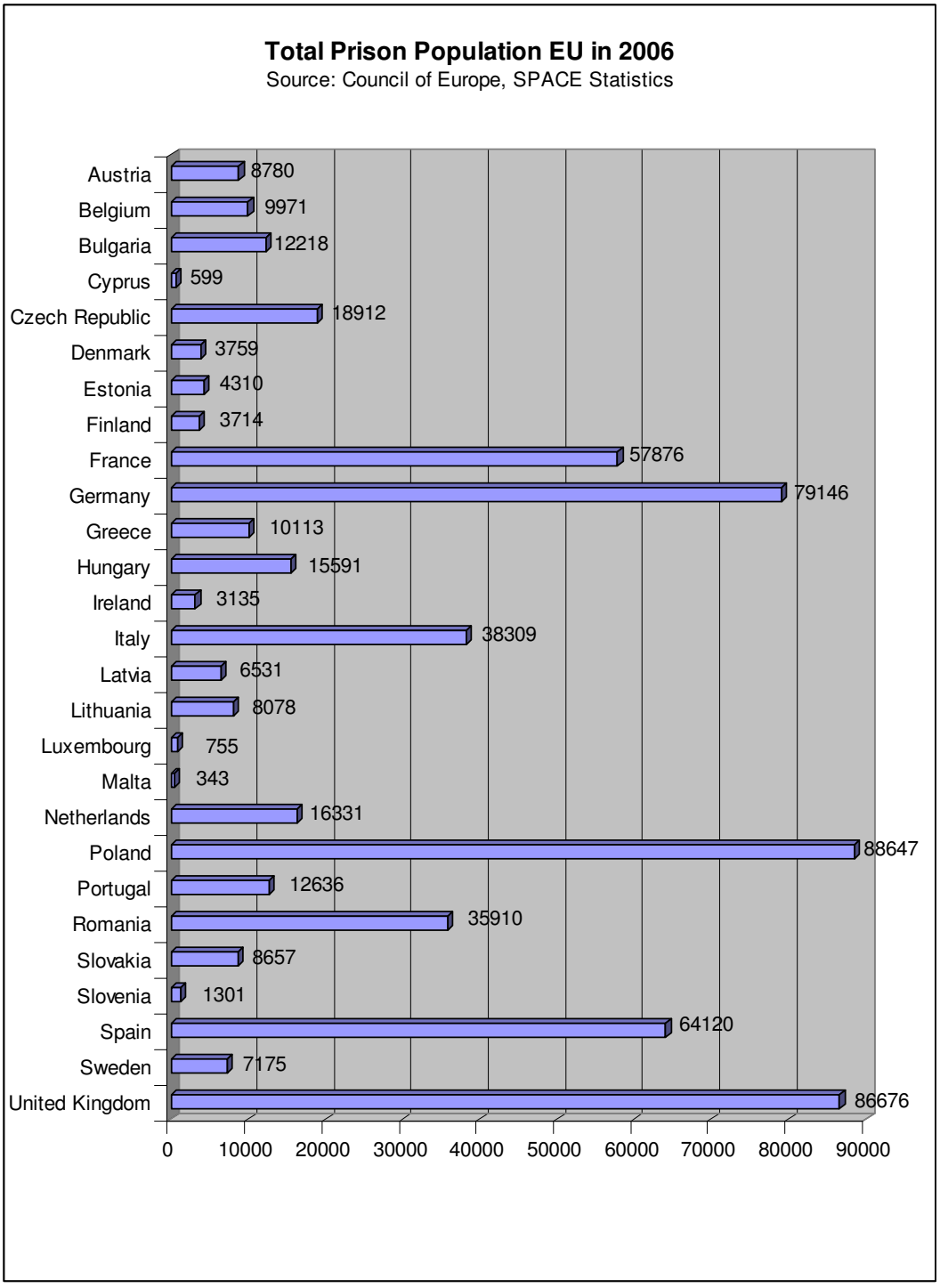

Total Prison Population EU in 2006
Source: Council of Europe, SPACE Statistics
Austria 8780
Belgium 9971
Bulgaria 12218
Cyprus 599
Czech Republic 18912
Denmark 3759
Estonia 4310
Finland 3714
France 57876
Germany 79146
Greece 10113
Hungary 15591
Ireland 3135
Italy 38309
Latvia 6531
Lithuania 8078
Luxembourg 755
Malta 343
Netherlands 16331
Poland 88647
Portugal 12636
Romania 35910
Slovakia 8657
Slovenia 1301
Spain 64120
Sweden 7175
United Kingdom 86676
0 10000 20000 30000 40000 50000 60000 70000 80000 90000

Figure 1b

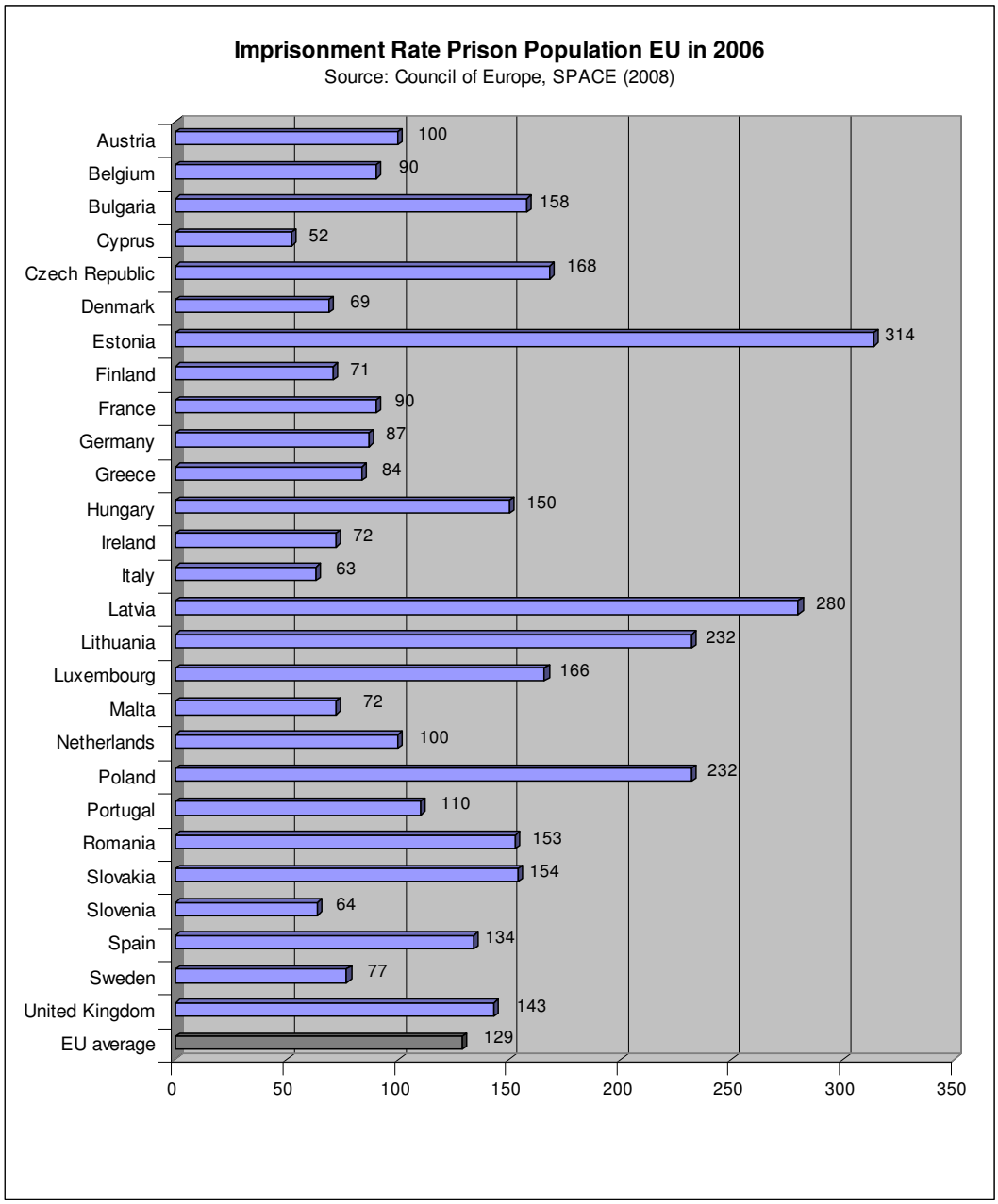

Imprisonment Rate Prison Population EU in 2006
Source: Council of Europe, SPACE (2008)
Austria 100
Belgium 90
Bulgaria 158
Cyprus 52
Czech Republic 168
Denmark 69
Estonia 314
Finland 71
France 90
Germany 87
Greece 84
Hungary 150
Ireland 72
Italy 63
Latvia 280
Lithuania 232
Luxembourg 166
Malta 72
Netherlands 100
Poland 232
Portugal 110
Romania 153
Slovakia 154
Slovenia 64
Spain 134
Sweden 77
United Kingdom 143
EU average 129
0 50 100 150 200 250 300 350

Figure 1c

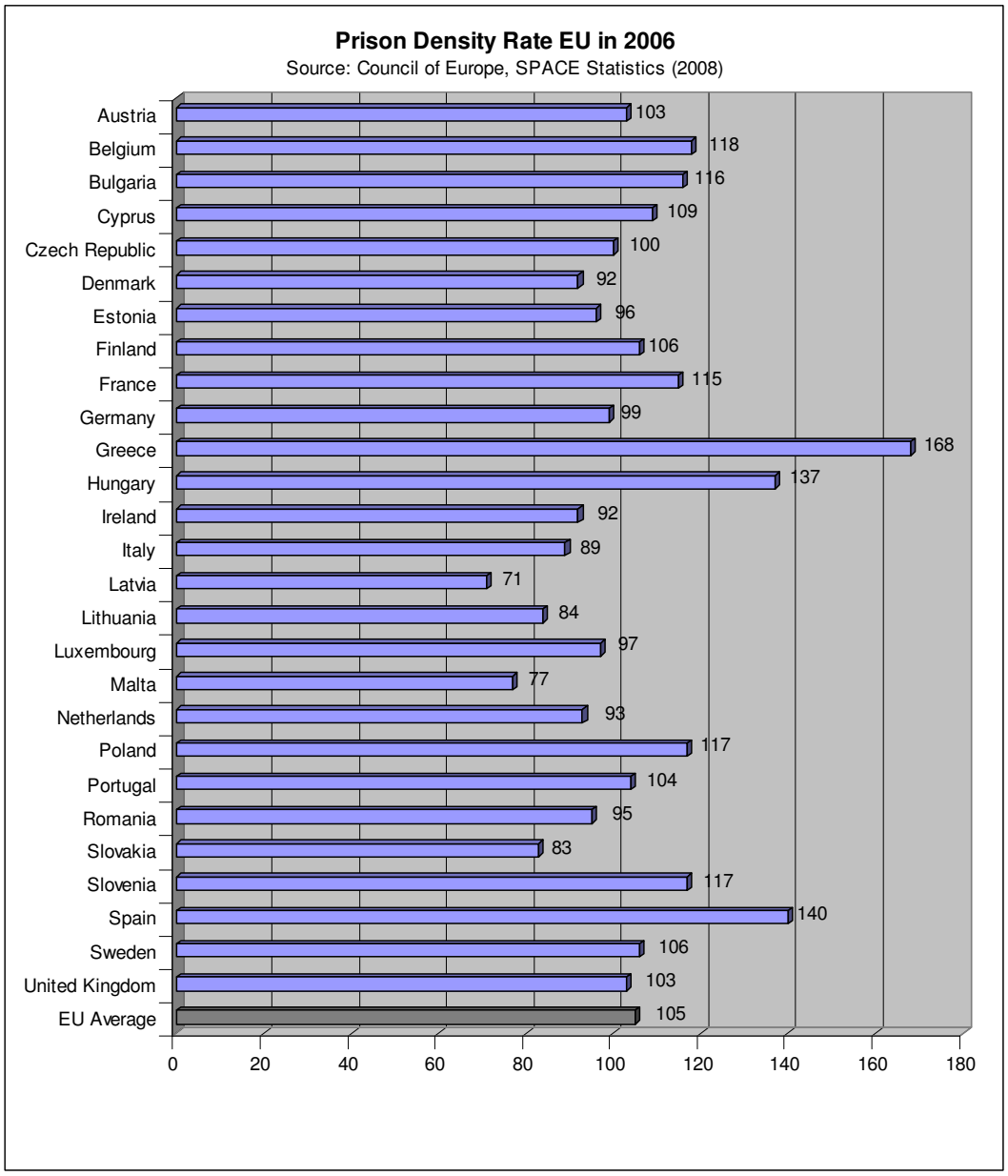

Prison Density Rate EU in 2006
Source: Council of Europe, SPACE Statistics (2008)
Austria 103
Belgium 118
Bulgaria 116
Cyprus 109
Czech Republic 100
Denmark 92
Estonia 96
Finland 106
France 115
Germany 99
Greece 168
Hungary 137
Ireland 92
Italy 89
Latvia 71
Lithuania 84
Luxembourg 97
Malta 77
Netherlands 93
Poland 117
Portugal 104
Romania 95
Slovakia 83
Slovenia 117
Spain 140
Sweden 106
United Kingdom 103
EU Average 105
0 20 40 60 80 100 120 140 160 180

Figure 1d

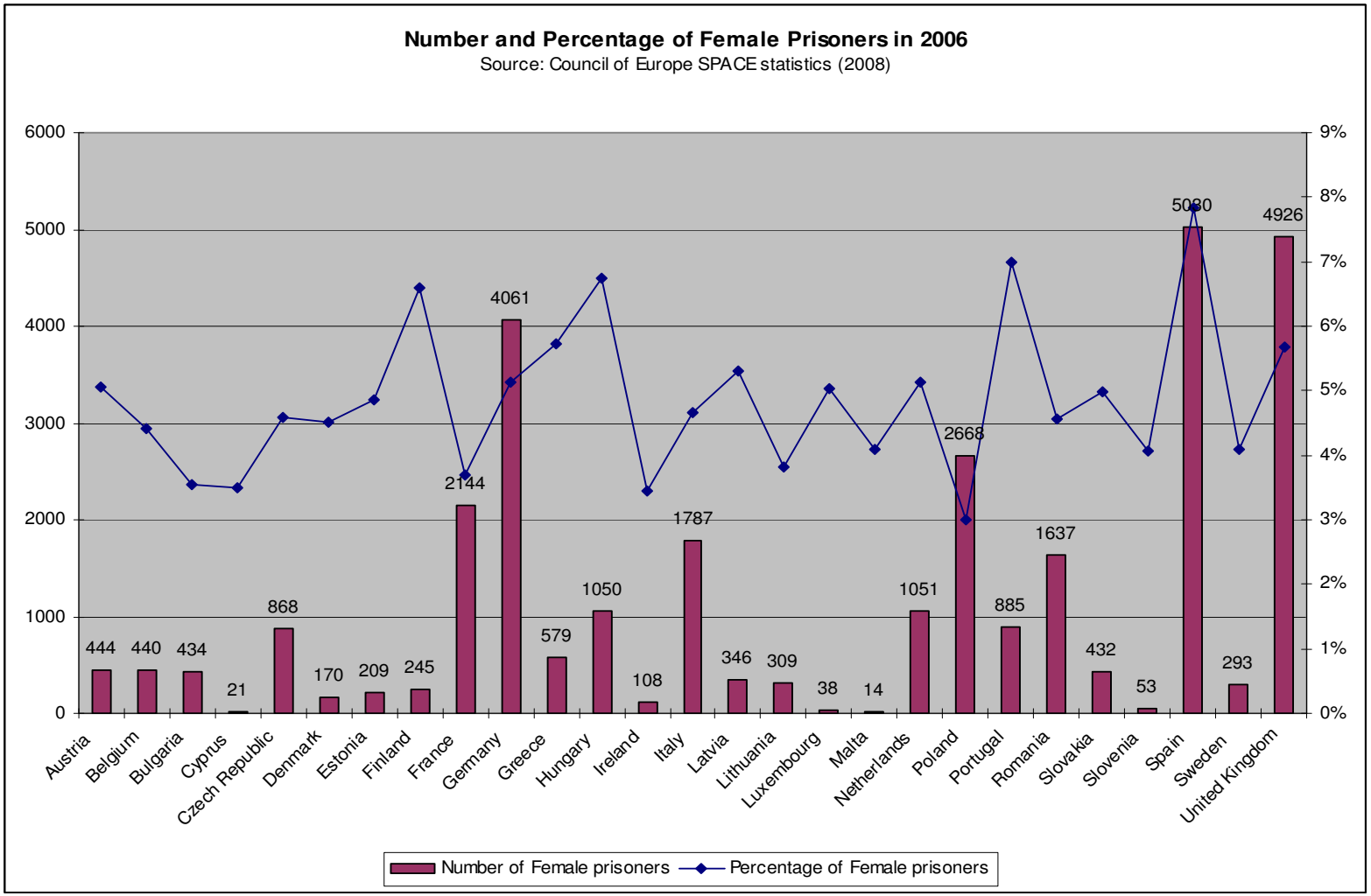

Number and Percentage of Female Prisoners in 2006
Source: Council of Europe SPACE statistics (2008)
6000
5000
4000
3000
2000
1000
0
9%
8%
7%
6%
5%
4%
3%
2%
1%
0%
444
440
434
21
868
170
209
245
2144
4061
579
1050
108
1787
346
309
38
14
1051
2668
885
1637
432
53
5080
293
4926
Austria
Belgium
Bulgaria
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Ireland
Italy
Latvia
Lithuania
Luxembourg
Malta
Netherlands
Poland
Portugal
Romania
Slovakia
Slovenia
Spain
Sweden
United Kingdom
Number of Female prisoners
Percentage of Female prisoners

Figure 1e

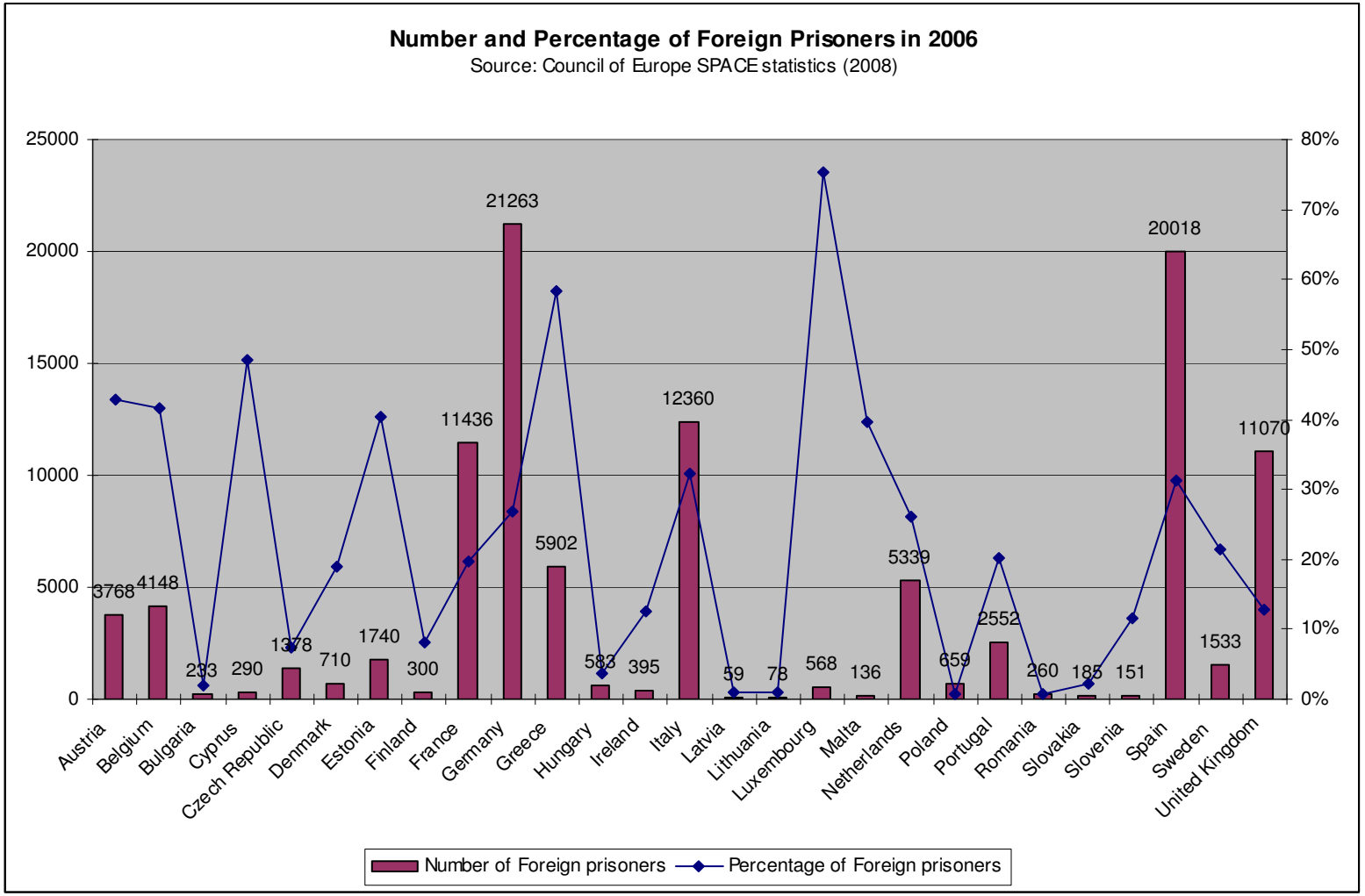
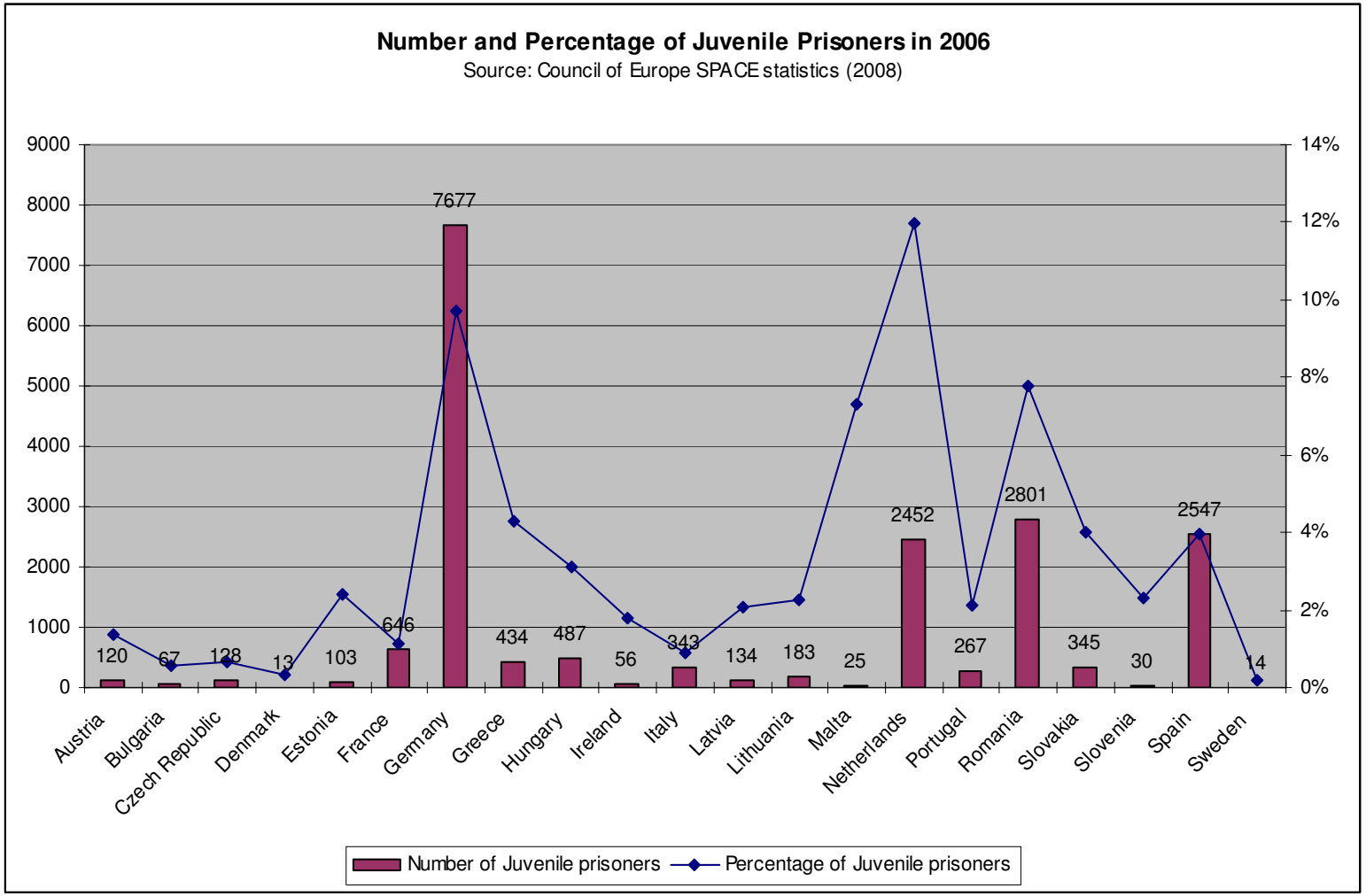

Number and Percentage of Foreign Prisoners in 2006
Source: Council of Europe SPACE statistics (2008)
25000
20000
15000
10000
5000
0
80%
70%
60%
50%
40%
30%
20%
10%
0%
3768
4148
233
290
1378
710
1740
300
11436
21263
5902
583
395
12360
59
78
568
136
5339
659
2552
260
185
151
20018
1533
11070
Austria
Belgium
Bulgaria
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Ireland
Italy
Latvia
Lithuania
Luxembourg
Malta
Netherlands
Poland
Portugal
Romania
Slovakia
Slovenia
Spain
Sweden
United Kingdom
Number of Foreign prisoners
Percentage of Foreign prisoners

Figure 1f


Number and Percentage of Juvenile Prisoners in 2006
Source: Council of Europe SPACE statistics (2008)
9000
8000
7000
6000
5000
4000
3000
2000
1000
0
14%
12%
10%
8%
6%
4%
2%
0%
120
67
128
13
103
646
7677
434
487
56
343
134
183
25
2452
267
2801
345
30
2547
14
Austria
Bulgaria
Czech Republic
Denmark
Estonia
France
Germany
Greece
Hungary
Ireland
Italy
Latvia
Lithuania
Malta
Netherlands
Portugal
Romania
Slovakia
Slovenia
Spain
Sweden
Number of Juvenile prisoners
Percentage of Juvenile prisoners

2.2 Pre-trial prisoners

2.2.1 Actual data

Data regarding the total number and percentage of pre-trial prisoners in EU countries differ per source[7]. As stated earlier, in this chapter the Annual Penal Statistics of the Council of Europe (SPACE) are mainly used because they provide the most detailed information and because it is the most reliable source for making comparisons. Besides providing information on similar point in time and over an extensive period, SPACE statistics provide a differentiation in the legal status of prisoners. Besides a category for untried prisoners (category a) there is also a category for prisoners who are convicted but not yet sentenced (category b) and sentenced prisoners who have appealed or who are within the statutory time limit to do so (category c). Only SPACE makes a clear distinction and calculation in the categories of pre-trial prisoners. The World Prison Brief (ICPS) and the European Sourcebook do not make this distinction nor do they clarify their definition of pre-trial prisoners.

What the source has in common is that data do not contain the number of persons in police cells and in remand centres. All data given in the course of these chapters thus underestimate the number of pre-trial prisoners.

The following remarks should be made by the information by SPACE on the different categories of pre-trial prisoners. The countries Denmark, Finland, France, Germany and Sweden do not make a distinction between the different categories of pre-trial prisoners and could therefore not provide information per category. Regarding category a) 'untried prisoners', the Czech Republic had no figures available. Regarding category b) 'convicted prisoners, but not yet sentenced'; nine countries[8] stated that this concept does not exist in their penal system. In Cyprus, Poland and Slovakia the concept was known but they did not had figures available.

Regarding category c) 'sentenced prisoners who have appealed or who are in the statutory time limit to do so' only nine countries[9] could provide information. In Hungary and Malta the concept was not known and the other countries had no figures available. In SPACE the following remark is made[10] for the countries[11] that had no figures available under category c), 'without any further information being provided, it is assumed that prisoners in that situation are included among those under category d) 'sentenced prisoners, final sentence'. This means an underestimation of the number of pre-trial prisoners. For Cyprus, Poland and Slovakia only the numbers of untried prisoners are available. As explained above, category e) 'other cases' are in fact no pre-trial prisoners. For this reason, category e) has not been counted under 'pre-trial' prisoners in this study. The 'real' pre-trial prisoners are category a), 'untried prisoner where no court decision yet was reached'.

How is the percentage of pre-trial prisoners in the EU calculated? Since category e) 'other cases' are in fact no pre-trial prisoners, they should in principle not be calculated. In order to take into consideration this fact, table 2 shows the three different ways to calculate the percentage of pre-trial prisoners by varying in the use of category e) 'other cases'. As expected, different calculations can lead to different results. In this study the 'real' pre-trial prisoners are measured against those prisoners that were convicted but not sentenced and those who were sentence but who have appealed or who are within the statutory limit to do so.

In the first column, the definition is used of pre-trial prisoners which are used in this chapter. The number of pre-trial prisoners is calculated as the sum of all prisoners who have not received their final sentence. This number is divided by the total prison population minus the 'other cases'. In the second column the SPACE definition is used. The number of pre-trial prisoners is calculated as the sum of all prisoners who have not received their final sentence + 'other cases'. This number is divided by the total prison population (incl. 'other cases'). In the last column the number of pre-trial prisoners is calculated as the sum of all prisoners who have not received their final sentence (like in the first column). This number is divided by the total prison population including 'other cases' (just like in the second column).

[7] SPACE (Council of Europe), World Prison Brief (ICPS) and the European Sourcebook.
[8] Austria, Belgium, Estonia, Greece, Italy, Luxembourg, Netherlands, Portugal and Spain.
[9] Belgium, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Portugal and Slovenia.
[10] Council of Europe, SPACE (2008), p 6.
[11] Austria, Bulgaria, Cyprus, Czech Republic, Estonia, Greece, Poland, Romania, Slovakia, Spain and the United Kingdom.

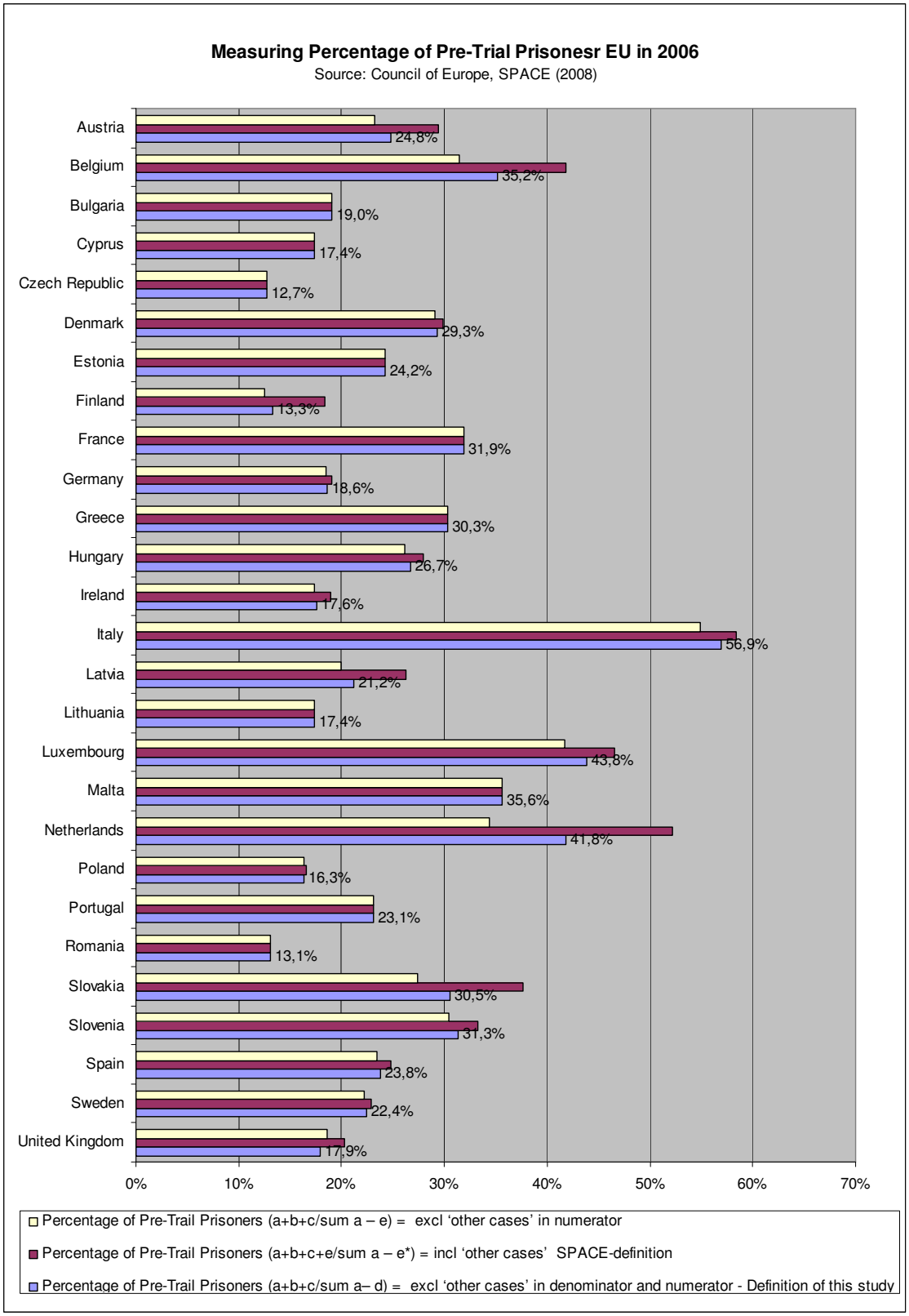
Excluding the 'other cases' from the pre-trial prisoners and including them in the total prison population provides the lowest percentages of pre-trial imprisonment in the EU. Using 'other cases', as done by SPACE, results in the highest numbers. In countries without 'other cases' (or in Romania, the only country where this number is unknown) the three percentages are equal. For countries with relatively large numbers of 'other cases' the differences are huge. For example in the Netherlands the percentage varies from 34,4% to 52, 2%, in Belgium from 31,5% to 41, 8%, Slovakia 27,4% to 37, 6%, Finland 12,5% to 18, 4% and Latvia 19,9% to 26,3%. This shows that differences can exist in percentages between different sources, even when the reference day is the same. Since the World Prison Brief and the European Sourcebook do not clarify their definition of pre-trial prisoners, one should be always careful in assessing and comparing data. Figure 2 provides a view of the different percentages according to the measurement of the three categories.

Table 2. Percentage of Pre-Trial Prisoners by three categories

	% of pre-trial prisoners (a+b+c/sum a– d) = excl 'other cases' in denominator and numerator Definition this study	**% of pre-trial prisoners** (a+b+c+e/sum a – e*) = incl 'other cases' SPACE-definition	**% of pre-trial prisoners** (a+b+c/sum a – e) = excl 'other cases' in numerator
Austria*	24,8%	29,4%	23,2%
Belgium	35,2%	41,8%	31,5%
Bulgaria*	19,0%	19,0%	19,0%
Cyprus**	17,4%	17,4%	17,4%
Czech Republic*	12,7%	12,7%	12,7%
Denmark	29,3%	29,9%	29,1%
Estonia*	24,2%	24,2%	24,2%
Finland	13,3%	18,4%	12,5%
France	31,9%	31,9%	31,9%
Germany	18,6%	19,0%	18,5%
Greece*	30,3%	30,3%	30,3%
Hungary	26,7%	28,0%	26,2%
Ireland	17,6%	18,9%	17,4%
Italy	56,9%	58,4%	54,9%
Latvia	21,2%	26,3%	19,9%
Lithuania	17,4%	17,4%	17,4%
Luxembourg	43,8%	46,5%	41,7%
Malta	35,6%	35,6%	35,6%
Netherlands	41,8%	52,2%	34,4%
Poland**	16,3%	16,6%	16,3%
Portugal	23,1%	23,1%	23,1%
Romania*	13,1%	13,1%	13,1%
Slovakia**	30,5%	37,6%	27,4%
Slovenia	31,3%	33,2%	30,4%
Spain*	23,8%	24,8%	23,4%
Sweden	22,4%	22,9%	22,2%
United Kingdom*	17,9%	20,3%	18,6%

Source: Council of Europe, SPACE (2008)
Category a) Untried prisoners
Category b) Convicted but not yet sentenced
Category c) Sentenced prisoners who have appealed or who are within the statutory time limit to do so
Category e) Other cases
* probably underestimation because category c might be included in the sentenced prisoners
** only untried prisoners

Figure 2



* probably underestimation of SPACE percentages of Austria, Bulgaria, Cyprus, Czech Republic, Estonia, Greece, Poland, Romania, Slovakia, Spain and the United Kingdom because category c (see below table 2) might be included in the sentenced prisoners

** Cyprus, Poland and Slovakia: only untried prisoners.

Column 1 of table 3 contains the most recent numbers on pre-trial prisoners by the World Prison Brief (ICPS)[12]. Column 2 contains information by SPACE from 1 September 2006. The differences between the percentages of ICPS and SPACE can be explained by the different reference dates (most recent date versus 1 September 2006) and perhaps by the usage of different definitions and calculation methods. Assuming that ICPS uses the same definition as used in this study, their seems to be a substantial decline in the percentage of pre-trial prisoners in Bulgaria[13], Austria, France, Lithuania, the Netherlands, Poland, Slovakia and Slovenia. A substantial increase can be seen in Denmark and Latvia. In figure 3 these data are visualised.

Table 3, Percentage Pre-Trial Prisoners EU by ICPS and SPACE

	ICPS	Date ICPS	SPACE***: 1-9-2006
Austria	20	1-8-2008	24,8*
Belgium	36,1	17-6-2008	35,2
Bulgaria	9,3	1-1-2008	19,0*
Cyprus	15,4	31-8-2008	17,4**
Czech Republic	11,9	31-12-2007	12,7*
Denmark	34,4	4-9-2008	29,3
Estonia	26,4	1-1-2008	24,2*
Finland	14	16-5-2007	13,3
France	27,7	1-9-2007	31,9
Germany	16	31-8-2008	18,6
Greece	28,6	2-9-2008	30,3*
Hungary	28,9	2-9-2008	26,7
Ireland	20	26-10-2007	17,6
Italy	52,1	30-6-2008	56,9
Latvia	26,6	1-1-2008	21,2
Lithuania	12,1	1-1-2008	17,4
Luxembourg	42	1-9-2007	43,8
Malta	31,3	10-12-2006	35,6
Netherlands	34,7	31-8-2008	41,8
Poland	11,2	30-11-2008	16,3**
Portugal	19,5	15-12-2008	23,1
Romania	10	31-12-2007	13,1*
Slovakia	23,2	31-12-2007	30,5**
Slovenia	22,2	1-9-2008	31,3
Spain	23,9	26-12-2008	23,8*
Sweden	22,2	1-10-2008	22,4
United Kingdom	16,7	31-10-2008	17,9*

* probably underestimation because category c (see below table 2) might be included in the sentenced prisoners

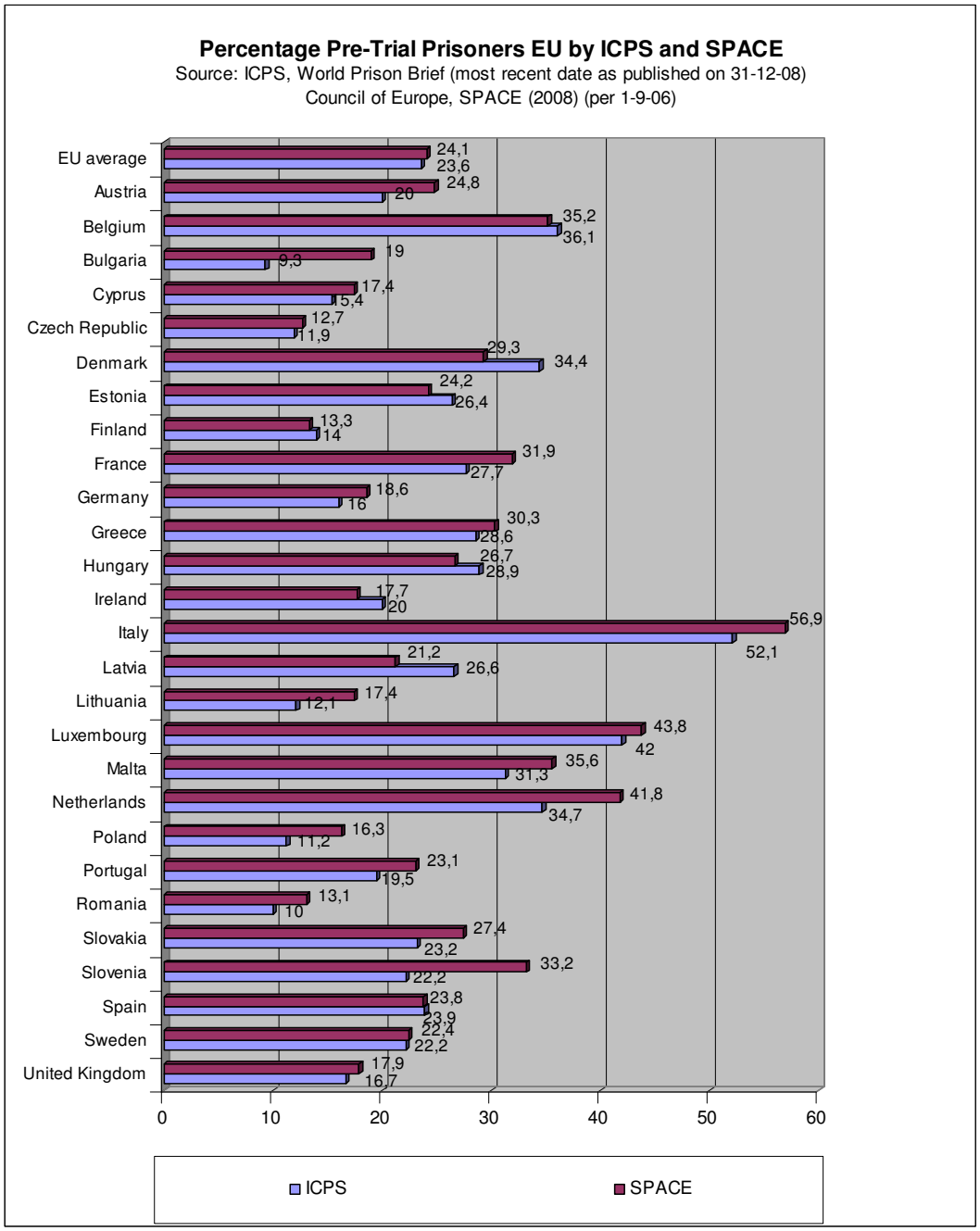
** only untried prisoners

*** Definition see table 2, first column

[12] 31 December 2008

[13] The decrease in Bulgaria is 50% (19,0% tot 9,3%). In this country there are no 'other cases' so all three definition showed in table 2 give the outcome. This makes it more plausible that the decline does not have to do with a difference in the definitions.

Figure 3

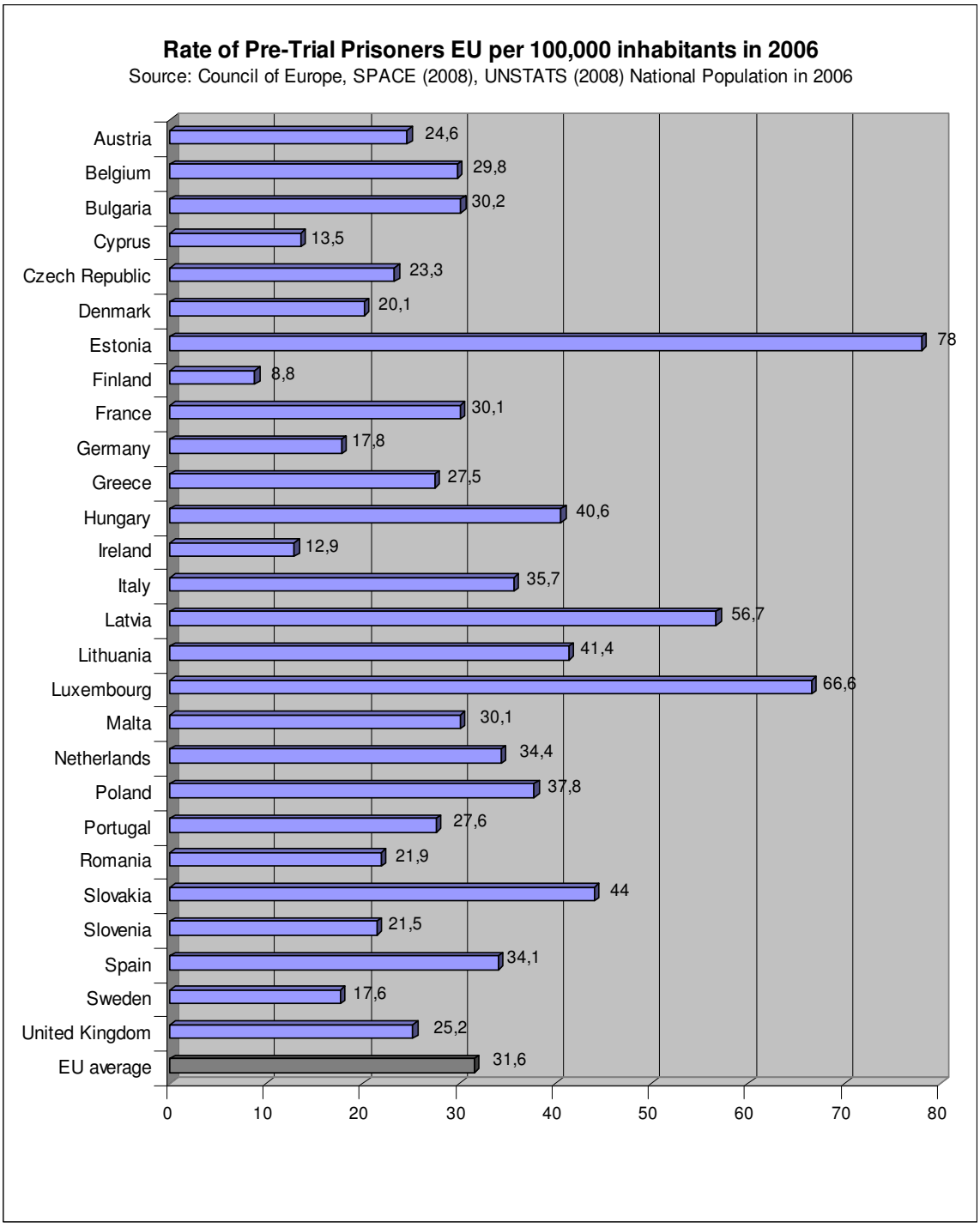


* probably underestimation of SPACE percentages of Austria, Bulgaria, Cyprus, Czech Republic, Estonia, Greece, Poland, Romania, Slovakia, Spain and the United Kingdom because category c (see below table 2) might be included in the sentenced prisoners

** Cyprus, Poland and Slovakia: only untried prisoners.

Figure 4 provides insight in the rate of pre-trial prisoners per 100.000 inhabitants in 2006. The group pre-trial prisoners consists of the extended definition of pre-trial prisoners, namely besides untried prisoners also prisoners who are convicted but not sentenced and those who are sentenced but who have appealed or who are within the statutory time limit to do so. The pre-trial imprisonment rate is very high in the Baltic States, Luxembourg and in a few Eastern European countries. The countries with the highest rates are Estonia (78), Luxembourg (67) and Latvia (57). The lowest rates can be found in Finland (9), Ireland (13) and Cyprus (14) (although for Cyprus this number comprises only untried prisoners. The average percentage in the European Union is 31,6%.

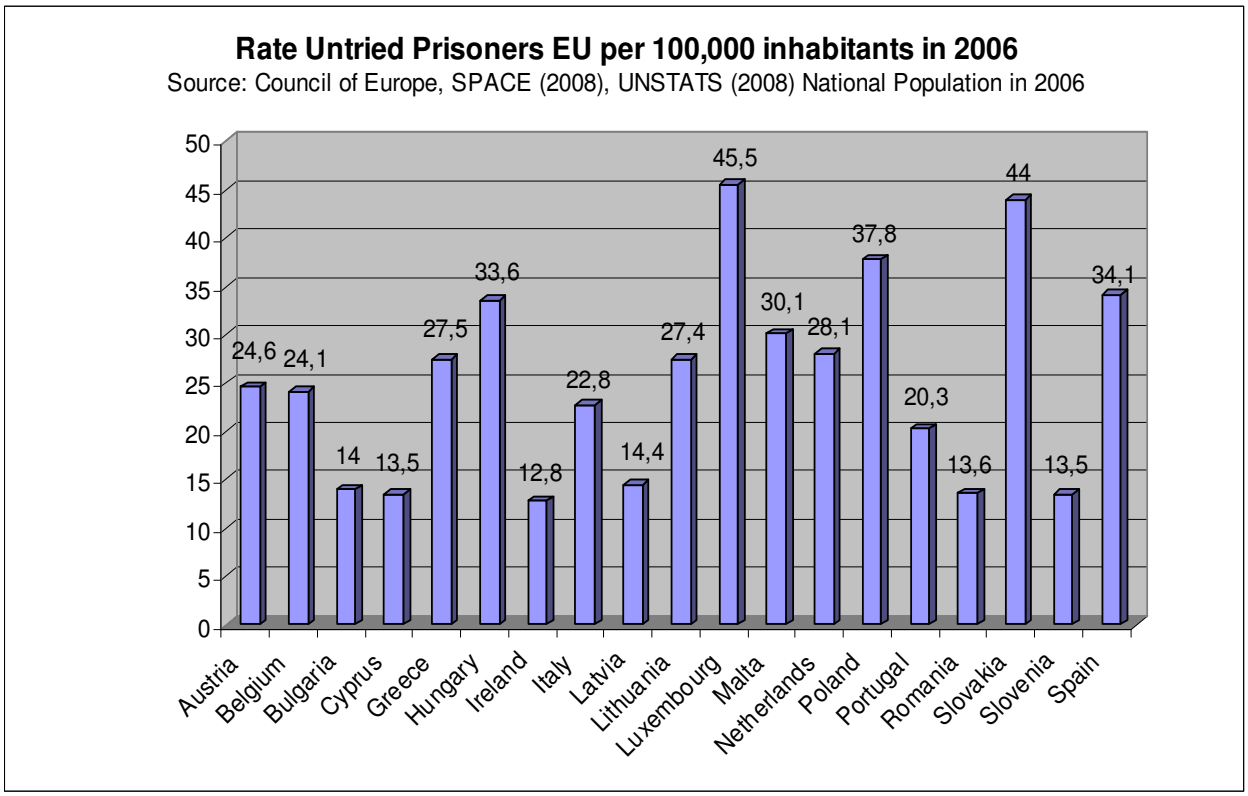
Figure 4



* probably underestimation for Austria, Bulgaria, Cyprus, Czech Republic, Estonia, Greece, Poland, Romania, Slovakia, Spain and the United Kingdom because category c (see below table 2) might be included in the sentenced prisoners
** Cyprus, Poland and Slovakia: only untried prisoners.

Figure 5 contains the rate of 'real' pre-trial prisoners, those who are untried (no court decision yet reached) per 100.000 inhabitants. The highest rate of untried prisoners can be found in Luxembourg, Slovakia, Poland, Spain and Hungary. The lowest rate of untried prisoners can be found in Ireland, Cyprus, Slovenia, Romania, Bulgaria and Latvia. Compared to figure 3, the image of figure 4 looks quite different for Bulgaria, Italy, Latvia, Lithuania, the Netherlands, Romania and Slovenia.

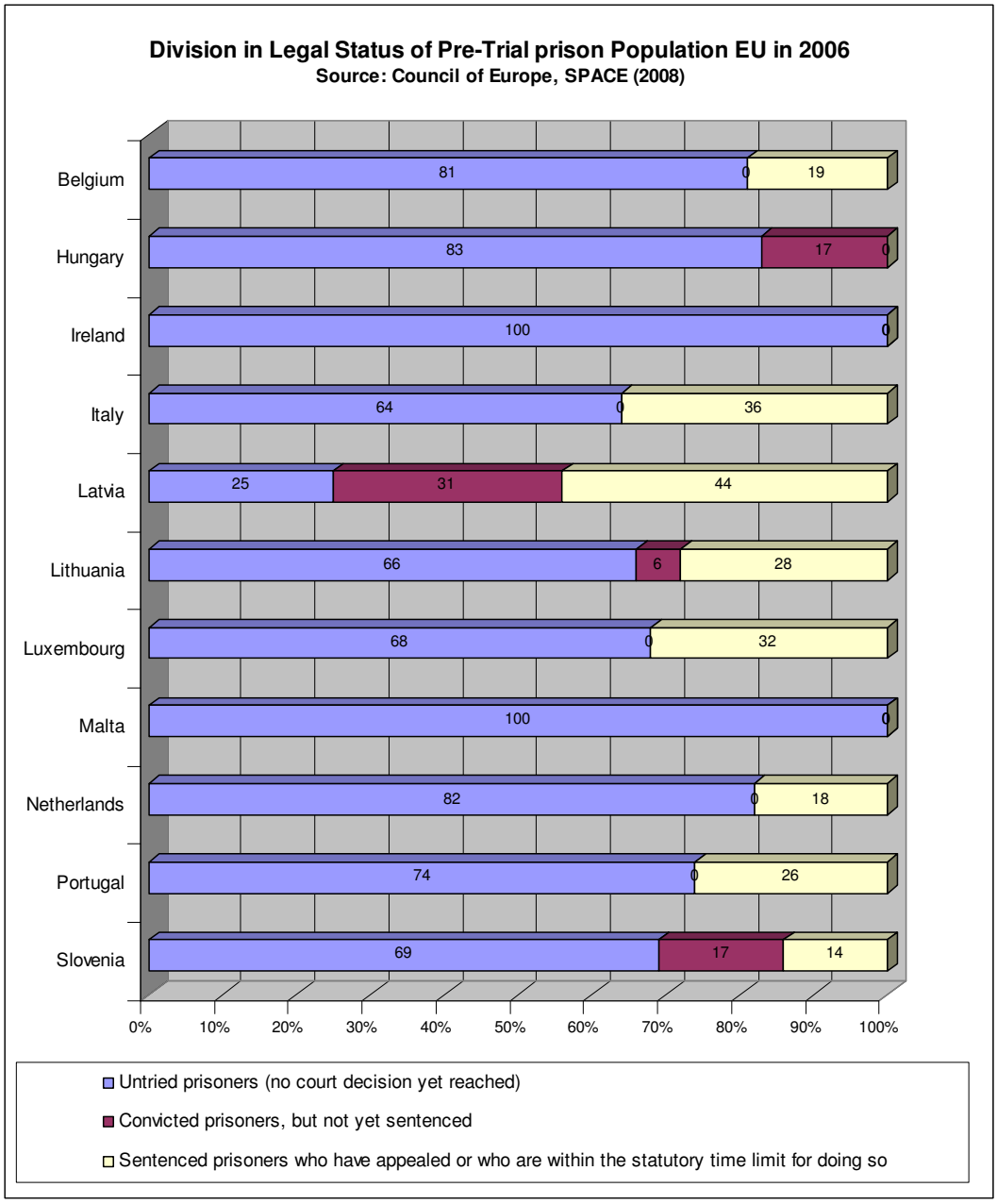
Figure 5



* probably underestimation for Austria, Bulgaria, Cyprus, Czech Republic, Estonia, Greece, Poland, Romania, Slovakia, Spain and the United Kingdom because category c (see below table 2) might be included in the sentenced prisoners
** Cyprus, Poland and Slovakia: only untried prisoners.

Only eleven EU countries provide data on the three different kinds of categories of pre-trial prisoners (figure 6). In Ireland and Malta all pre-trial prisoners are untried. Besides Latvia, where only 25% of the prisoners are untried, the group of pre-trial prisoners consists in all countries of a big majority of prisoners that have been untried. Next to Latvia two other countries have all three categories: Lithuania and Slovenia. In Slovenia the category 'convicted but not yet sentenced' is relatively large compared to the 'appeal'-group. In countries with only untried and 'appealing' prisoners the appeal-groups form 20 -34% of all pre-trial prisoners.

Figure 6



2.2.2 Development 1999 - 2006

Table 4 provides information on the number of pre-trial prisoners in the period 1999 to 2006. The last column contains an indicator for the degree of increase/decrease (explained below table 4). In nine countries there is a decrease in the number of pre-trial prisoners and in eighteen countries there is an increase. In Cyprus this increase is largest due to the small numbers. Also in Greece, Luxembourg and Ireland the increase is considerable (although Greece and Ireland have missing data in 2004 and 2005, which make results less reliable). The largest relative decrease is seen in Czech Republic and Romania having a decrease of more than 50% between 1999/2000 and 2005/2006. Also in Latvia, Lithuania and Estonia there is a substantial decrease.

Table 4, Total Number Pre-Trial Prisoners EU 2001 – 2006 (excl. 'other cases')

	1999	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**	**2006**	**in/de-crease ***
Austria*	1570	1669	1723	1947	2193		1970	2040	24%
Belgium	2084	2434	2509	3319	3186		3069	3145	38%
Bulgaria*	2222	1528	1563	1906	1862	1928	2802**	2323	37%
Cyprus**			50	32		96	97	104	145%
Czech Republic*	6820	6035	5590	3355	3174		2827	2398	-59%
Denmark	904	882	815	1008	1055	1090	1024	1092	18%
Estonia*	1304	1374	1426		1544	1096	1024	1045	-23%
Finland	370	385	477	501	500	427	549	464	34%
France	18786	16562	14927	18477	21278	19760	20228	18444	9%
Germany			17805	18063	16793	15999	15459	14634	-16%
Greece*		2229	2282	2008	2439			3068	87%
Hungary	4322	4207	4402	5267	4018	3023	4053	4091	-5%
Ireland	300	379	457	480	432			545	61%
Italy	27444	23859	25319	22017	21184	19885	21370	21023	-17%
Latvia	2444	2616	3041	2902	2567	2128	1916	1298	-36%
Lithuania	2533	1948	2264	1532	1570	1583	1525	1405	-35%
Luxembourg	158	179	151	168	217	278	280	315	77%
Malta			79	84	92		96	122	34%
Netherlands	4165	4372	5134	5743	5703	6410	6232	5614	39%
Poland**	13217	18829	25241	21632	20366	15874	14394	14415	-10%
Portugal			4060	4115	4100		3044	2921	-27%
Romania*	10831	10670	11812	10397	8381	5993	5346	4717	-53%
Slovakia**	1852	1904	1943	2184	2923	3070	2966	2371	42%
Slovenia	299	369	385	349	338	389	367	432	20%
Spain*	10781	9084	10201	11543	12267	12688	13988	15017	46%
Sweden	1332	1376	1299	1393	1401	1561	1477	1595	13%
United Kingdom*	13967	12744		14569	14752	14291	14521	15245	11%

Source: Council of Europe, SPACE (2008)

* probably underestimation because category c (see below table 2) might be included in the sentenced prisoners

** only untried prisoners

** calculated as: the difference in mean number of the last 2 years minus the mean number of the first 2 (valid) years as a percentage of the mean number of the first 2 years[14].

Table 5 contains the percentages of pre-trial prisoners from 1999 to 2006. The data are visualised by figure 7-10. From figure 7 it appears that while the Netherlands had the highest percentage of pre-trial prisoners in 2003 and 2004, Italy's proportion grew to number 1 by far in 2006. Belgium and Luxembourg are also in the top 5 most of the year. On the other side, Czech Republic has the lowest percentage of pre-trial prisoners in 2006, while in 2003 and 2004 this was Finland and in 2005 Romania.

Figure 9 shows the top 5 of countries with the biggest increase and the biggest crease (just calculated as a difference in percent points (10%-3%=7%)). In Belgium the increase in pre-trial prisoners is highest (9,1 percents points), followed by Cyprus[15] and Ireland. Czech Republic has the largest decline (-14,5 percents points), followed by Poland and Latvia, Romania and Portugal. Next the increase/decrease in percents point is related to the mean percentage in 1999/2000 (as a decrease from 60% tot 50% is relatively less than a decrease from 5% to 2%). Figure 10 contains the top 5 of countries with the strongest 'relative increase/decrease'. Both top's 5 comprises the same countries as in figure 9, only countries changed places. Cyprus has the highest relative increase, where Belgium now is at third place. Concerning relative decreases, the Czech Republic remains number 1 and Poland number 2. Romania has a larger relative decrease than Latvia (while Latvia has higher decrease in percent points).

Table 5, Percentage Pre-Trial Prisoners EU

	1999	2000	2001	2002	2003	2004	2005	2006
Austria*	24,9	26,3	27,2	28	30,5		25,1	24,7
Belgium	28,2	25,4	32,8	40,6	40,2		36,6	35,2
Bulgaria*	20,6	16,2	16,8	19,8	18,5	17,6	22,9	19
Cyprus**			13,6	9,3		17,6	18,3	17,4
Czech Republic*	29,7	27	26,6	20,1	18,8		15	12,7
Denmark	25,7	27	26,2	29,5	29,7	29,2	25	29,3
Estonia*	30,1	29,1	29,8		32,2	24	23,2	24,2
Finland	14,8	14,9	16,9	15,3	14,5	12,1	15,1	13,3
France	35	34	31,8	34,6	37,1	35,1	35,1	31,9
Germany			23,8	23	21,4	20,2	19,7	18,6
Greece*		27,7	27,4	24,2	28,5			30,3
Hungary	28,8	27,1	26,2	28,3	24	19,7	25,5	26,7
Ireland	10,9	13,1	17,8	15,9	14,5			17,7
Italy	50,4	44,6	45,9	40	37,8	36,2	36,5	56,9
Latvia	31	34,2	38	37,9	34,7	30,1	28,3	21,2
Lithuania	17,8	22,5	21,1	12,8	15,8	20,2	19,1	17,4
Luxembourg	42	47,5	43,5	47	46,8	55	43,6	43,8
Malta			30,7	42,2	33,1		32,2	35,6
Netherlands	46,3	46,6	49,3	51,3	49,5	44,9	41,7	41,8
Poland**	24,3	29,1	31,5	26,8	33,8	20,1	17,5	16,3
Portugal			30,5	30	29,3		23,6	23,1
Romania*	21,1	21,6	23,8	20,6	18,5	15	14,1	13,1
Slovakia**	26,8	36,5	25,9	27,8	33,1	32,3	31,9	27,4
Slovenia	34,2	35,1	34,4	33,1	32	34,5	33	33,2
Spain*	24	20,2	21,8	21,5	22,6	21,8	23,2	23,8
Sweden	24,5	24,4	21,4	21,9	20,9	21,4	21,1	22,4
United Kingdom*	19,6	17,8		18,7	18,5	17,5	17,5	17,9

Source: Council of Europe, SPACE (2008)

[14] Example Austria ((1970+2040)/2) minus ((1570+1669)/2) = 385,5. 100%*385,5/((1570+ 1669)/2)= 24%. For Greece and Ireland only 2006 is taken instead of the last 2 years.

[15] only untried prisoners

* probably underestimation because category c (see below table 2) might be included in the sentenced prisoners
** only untried prisoners

Figure 7

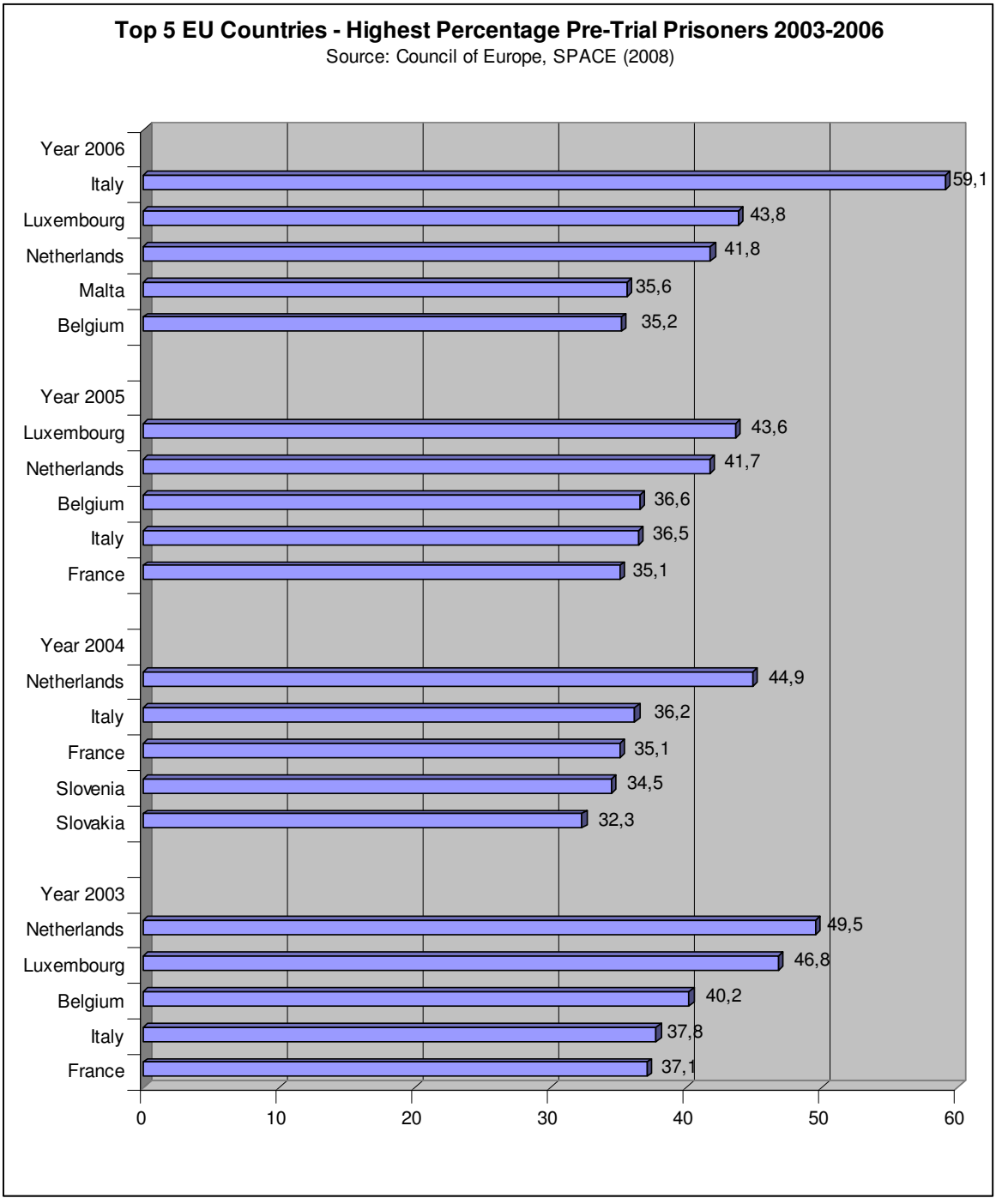
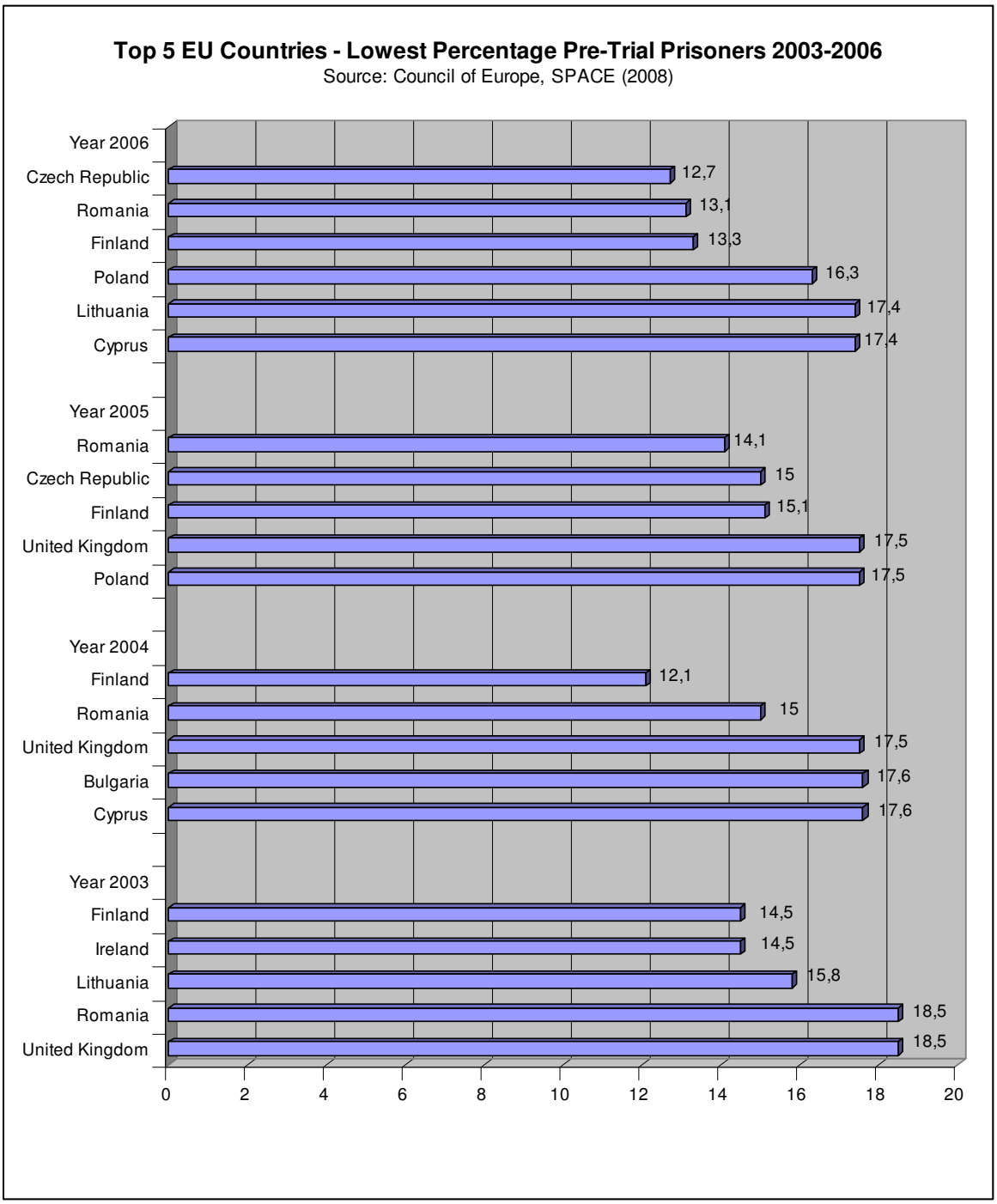
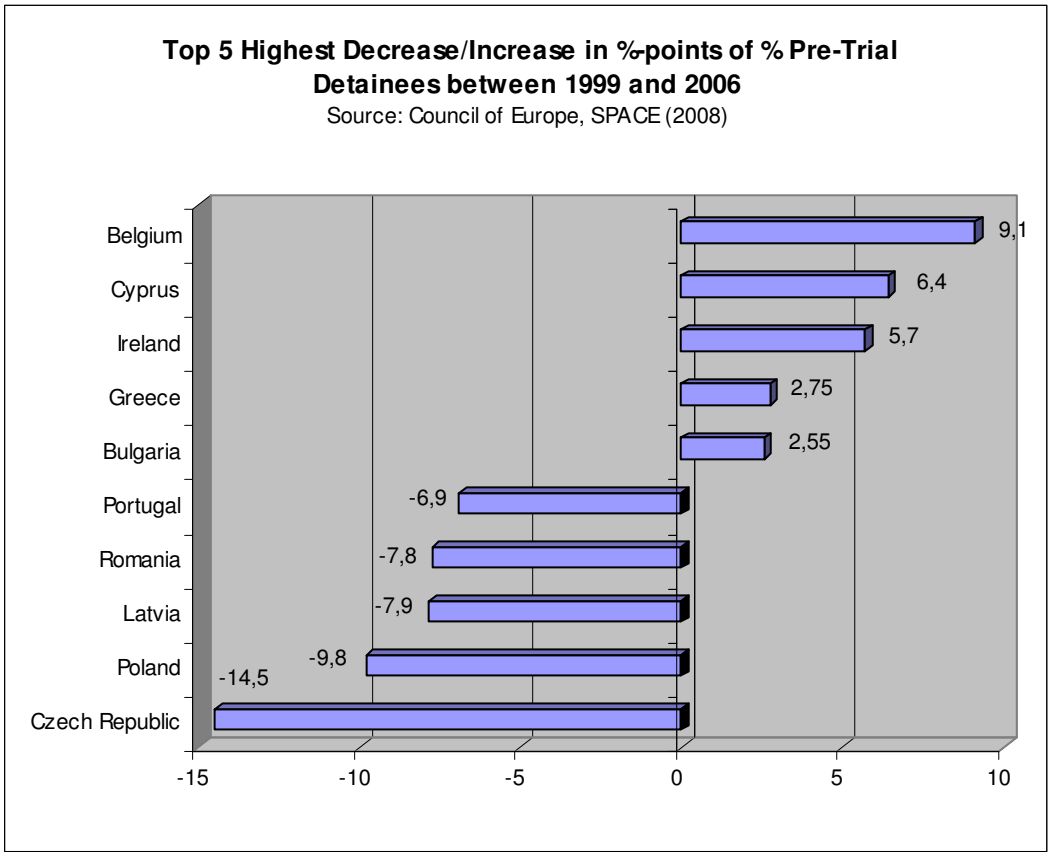


Figure 8



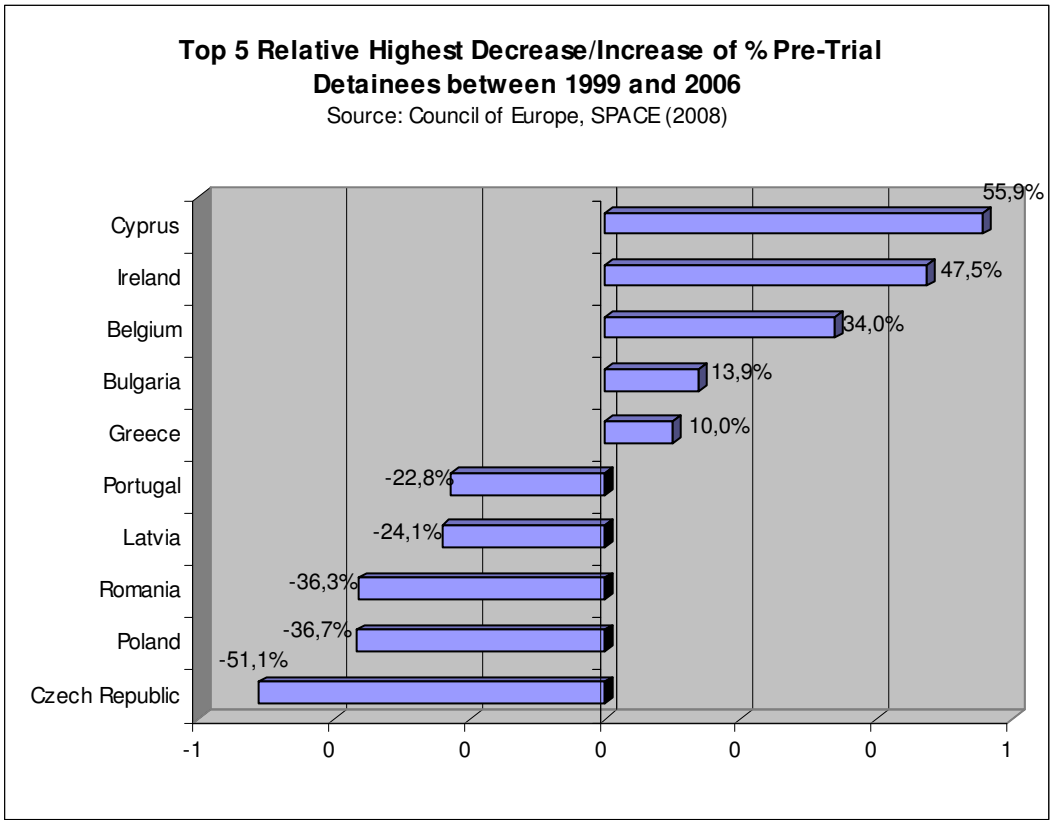
** Cyprus, Poland and Slovakia: only untried prisoners

Figure 9



Increase/decrease is calculated as: the difference in mean number of the last 2 years minus the mean number of the first 2 (valid) years as a percentage of the mean number of the first 2 years

Figure 10



Increase/decrease is calculated as: the difference in mean number of the last 2 years minus the mean number of the first 2 (valid) years as a percentage of the mean number of the first 2 years

2.2.3 Stock and flow numbers

The European Sourcebook is the only source that provides flow information about pre-trial prisoners ('how many people have been submitted during the course of the year?'). Although this information is only available until 2003 it will be presented here. Stock percentages from the European Sourcebook (which differ from the percentages presented in the previous paragraph)[16] are used to calculate the ratio of flow divided by stock. The ratio shows in which way the detention period of pre-trial prisoners is shorter or longer compared to other prisoners. If the ratio is exactly 1 it means that the rate of circulation of pre-trial prisoners and other prisoners is the same. If the ratio is higher than 1, the rate of circulation of pre-trial prisoners is higher and therefore the detention period shorter. If the ratio is between 0 and 1 the rate of circulation of pre-trial prisoners is larger and thus the detention period longer.

Table 6 shows that there is one country with a ratio smaller than 1: Slovenia. Here, pre-trial prisoners spend on average more time in prison than other prisoners. An explanation of this can be that there are many prisoners with short sentences. In 2003 the majority of prisoners in Slovenia served a sentence of less than 12 months[17]. The highest ratios are found in the United Kingdom (England & Wales) and Lithuania. In Cyprus there is a considerable fluctuation over the years. Relatively low ratios (below 2) are found in Finland, Poland and Slovakia. It is not possible to draw conclusions about the length of pre-trial detention period. A high ratio can mean that the period of detention of pre-trial prisoners is short, but it can also be the result of high numbers of prisoners with a long sentence in a country. In Italy about 90% of the flow consists of pre-trial

[16] According to the European Sourcebook, data describing the prison populations is overall in accordance with the data published by SPACE. The great majority of the deviations for the year 2003 lie in an acceptable margin of +/- 10% (European Sourcebook of Crime and Criminal Justice Statistics (2006), p 125). However, when stock percentages of pre-trial prisoners are compared substantial differences can be seen. For instance Belgium: European Sourcebook give 41-41-36-35 (2000-2003) while Space gives 40-41-48-43 (or 25-33-41-40 when "other case are left out). For this reas

[17] Kalmthout, A.M., F. Hofstee-van der Meulen, F. Dünkel, Foreigners in European Prisons, Wolf Legal Publishers (The Netherlands, 2007) p 379.

prisoners, which is the highest value of all countries, while Slovenia has the lowest values, about 20%.

Table 6, Percentage of Pre-Trial Prisoners in the Total Flow

	Flow				Stock				Ratio of flow/stock			
	2000	2001	2002	2003	2000	2001	2002	2003	2000	2001	2002	2003
Austria	65	68	69	73	24	25	26	26	2,7	2,7	2,7	2,8
Belgium	67	67	68	68	41	41	36	35	1,6	1,6	1,9	1,9
Bulgaria	35	51	54	47	16	17	20	19	2,2	3,0	2,7	2,5
Cyprus	30	34	31	33	8	20	9	13	3,8	1,7	3,4	2,5
Czech Republic	48	47	44	42	28	24	21	20	1,7	2,0	2,1	2,1
Denmark	30	32	36	35	26	26	29	29	1,2	1,2	1,2	1,2
Finland	25	28	25	25	14	16	14	15	1,8	1,8	1,8	1,7
France	78	75	76		34	33	36	38	2,3	2,3	2,1	
Italy	90	86	88		44	43	40	37	2,0	2,0	2,2	
Lithuania	59	56	55	56	20	16	15	17	3,0	3,5	3,7	3,3
Malta	77	72	72	72	39	31	30	33	2,0	2,3	2,4	2,2
Poland	54	54	51	50	29	31	27	25	1,9	1,7	1,9	2,0
Slovakia	38	41	42	45	27	26	30	33	1,4	1,6	1,4	1,4
Slovenia	18	19	22	24	27	28	25	24	0,7	0,7	0,9	1,0
Spain	65	66	69		20	22	23	22	3,3	3,0	3,0	
UK England & Wales	59	59	63	62	18	17	18	18	3,3	3,5	3,5	3,4

Source: European Sourcebook of Crime and Criminal Justice Statistics, 2006

3. Special groups

3.1 Foreign prisoners

Figure 11 provides information on the percentage of foreign prisoners on the total prison population and on the percentage of foreigners on the pre-trial prison population[18].

In general, the proportion of foreigners in both the pre-trial and the total prison population is low in Eastern European countries. Percentages in Bulgaria, Hungary, Poland, Romania, Latvia and Lithuania are below 5%. Estonia is an exception where 40% of the pre-trial prisoners and 46% of the total prison population consist of foreigners. An explanation of this phenomena is that this group of 'foreigners' consists of Russian speaking Estonians that have not been granted citizenship but who live in Estonia[19].

The highest percentages of foreign prisoners on the total prison populations can be found in small West European countries like Luxembourg and Cyprus. The prison population in Luxembourg consist of 75% foreigners and the percentage of foreigners on the pre-trial population is 83%. The percentage in Cyprus, Greece and Malta are around 50%. Austria and Belgium have also a large proportion of foreigners under both pre-trial prisoners and the total prison population (> 40%). In Cyprus, Germany, Malta, Portugal and Spain foreigners are clearly more presented under the pre-trial population than in the total prison population. For Greece and the Netherlands the opposite is true.

Figure 12 shows the division of the total foreign prison population per country into pre-trial and sentenced prisoners. In general the proportion of sentenced foreigners is larger than the proportion of pre-trial detained foreigners. This is most extreme in Romania were 88% of the foreign

[18] The percentages are calculated on numbers including 'other cases' because only these numbers are known. This concerns both the numerator and the denominator of the fraction, so there should be not be necessarily an under- or overestimation of percentages.

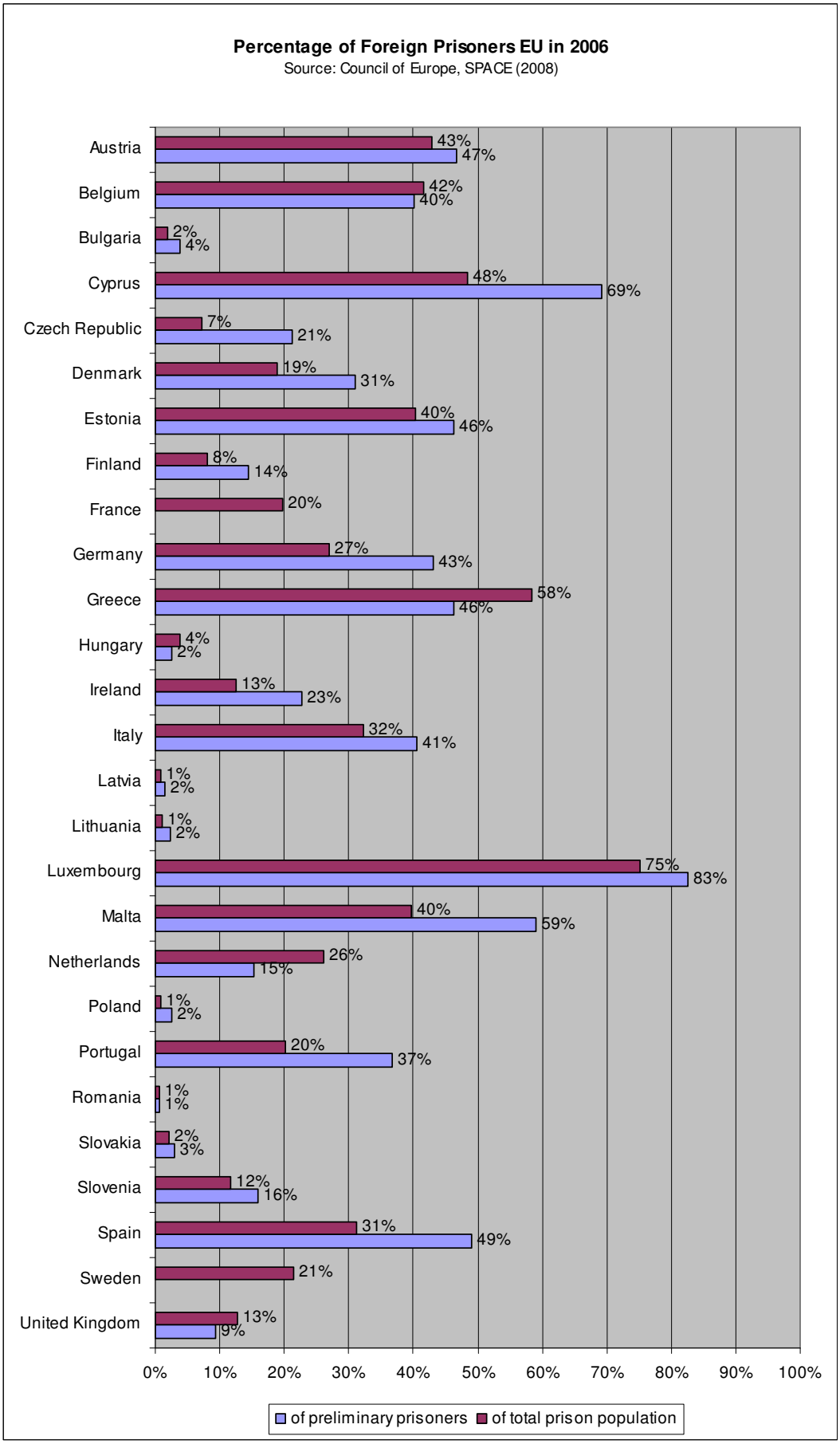
[19] Foreigners in European Prisons, p 264.

prisoners are sentenced prisoners. Also in Hungary the proportion sentenced foreigners is high (83%). Only in Italy the group foreign prisoners consists of substantially more pre-trial prisoners (75%) than sentenced ones. In Poland is the proportion of pre-trial detained foreigners slightly larger than the proportions sentenced (55%-45%) and in Denmark, Luxembourg, Malta and Slovakia the division is about 50-50.

Only four[20] countries provide information about the countries of origin of the foreign prisons: Austria, Germany, the Netherlands and Poland. In Austria in 2005 14,1% (= ± 170) of the pre-trial foreign prisoners comes from other EU-countries; in Germany in 2008 15,8% (= 1411) of the pre-trial foreign prisoners comes from other EU-countries; in the Netherlands this percentage is 41,3% (= 799) in 2006. In Poland 33,8% (= 183) from *all* foreign prisoners came for other EU-countries.

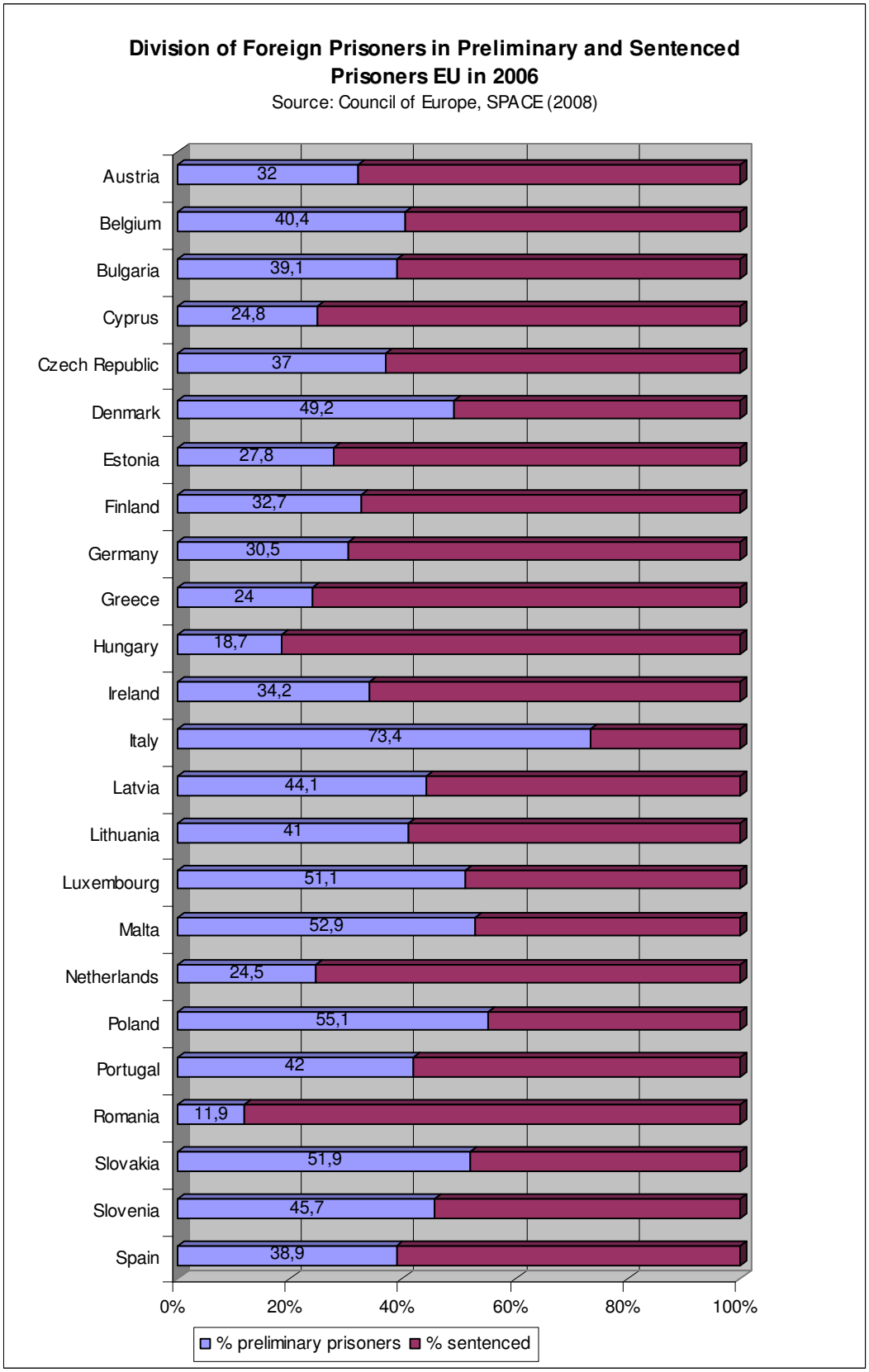
[20] England & Wales provides information about the ethnic group.

Figure 11


Percentage of Foreign Prisoners EU in 2006
Source: Council of Europe, SPACE (2008)
Austria 43% 47%
Belgium 42% 40%
Bulgaria 2% 4%
Cyprus 48% 69%
Czech Republic 7% 21%
Denmark 19% 31%
Estonia 40% 46%
Finland 8% 14%
France 20%
Germany 27% 43%
Greece 58% 46%
Hungary 4% 2%
Ireland 13% 23%
Italy 32% 41%
Latvia 1% 2%
Lithuania 1% 2%
Luxembourg 75% 83%
Malta 40% 59%
Netherlands 26% 15%
Poland 1% 2%
Portugal 20% 37%
Romania 1% 1%
Slovakia 2% 3%
Slovenia 12% 16%
Spain 31% 49%
Sweden 21%
United Kingdom 13% 9%
0% 10% 20% 30% 40% 50% 60% 70% 80% 90% 100%
of preliminary prisoners
of total prison population

* For France and Sweden percentages of pre-trial prisoners are unknown

Figure 12

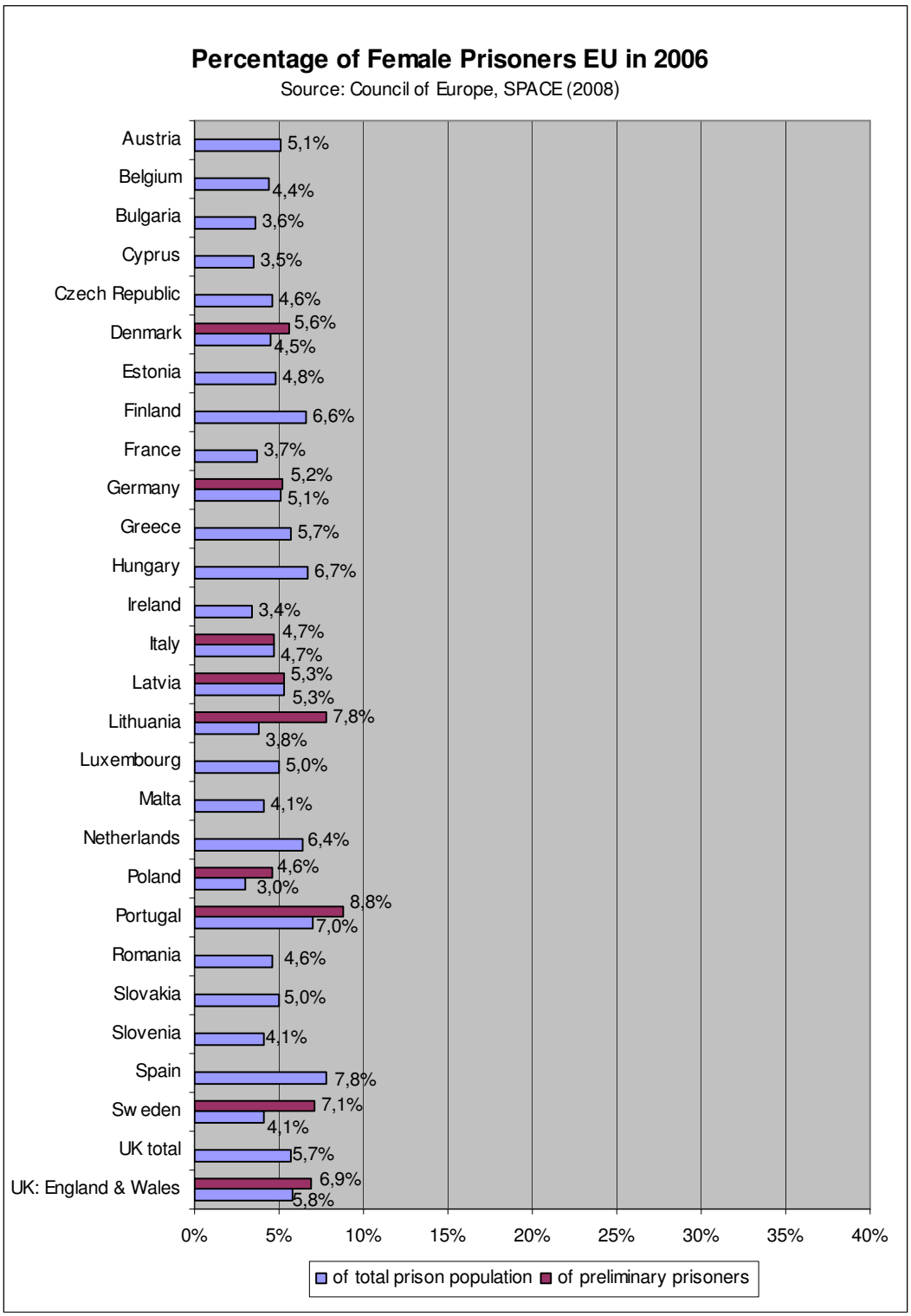


* For France, Sweden and the UK, the data are unknown.

3.2 Female prisoners

Figure 13 shows the proportion of female prisoners on the total prison population and, available for only nine countries, the proportion of females in the group pre-trial prisoners. The proportion of female prisoners varies from 3,0% in Poland to 7,8% in Spain. The proportion of females in the group of pre-trial prisoners varies from 4,6% in Poland to 8,8 in Portugal. The proportion of female prisoners under the pre-trial prisoners is in none of the nine countries where the information is available lower than the proportion of females in the total prison population; in 6 countries it is (slightly) higher.

Figure 13



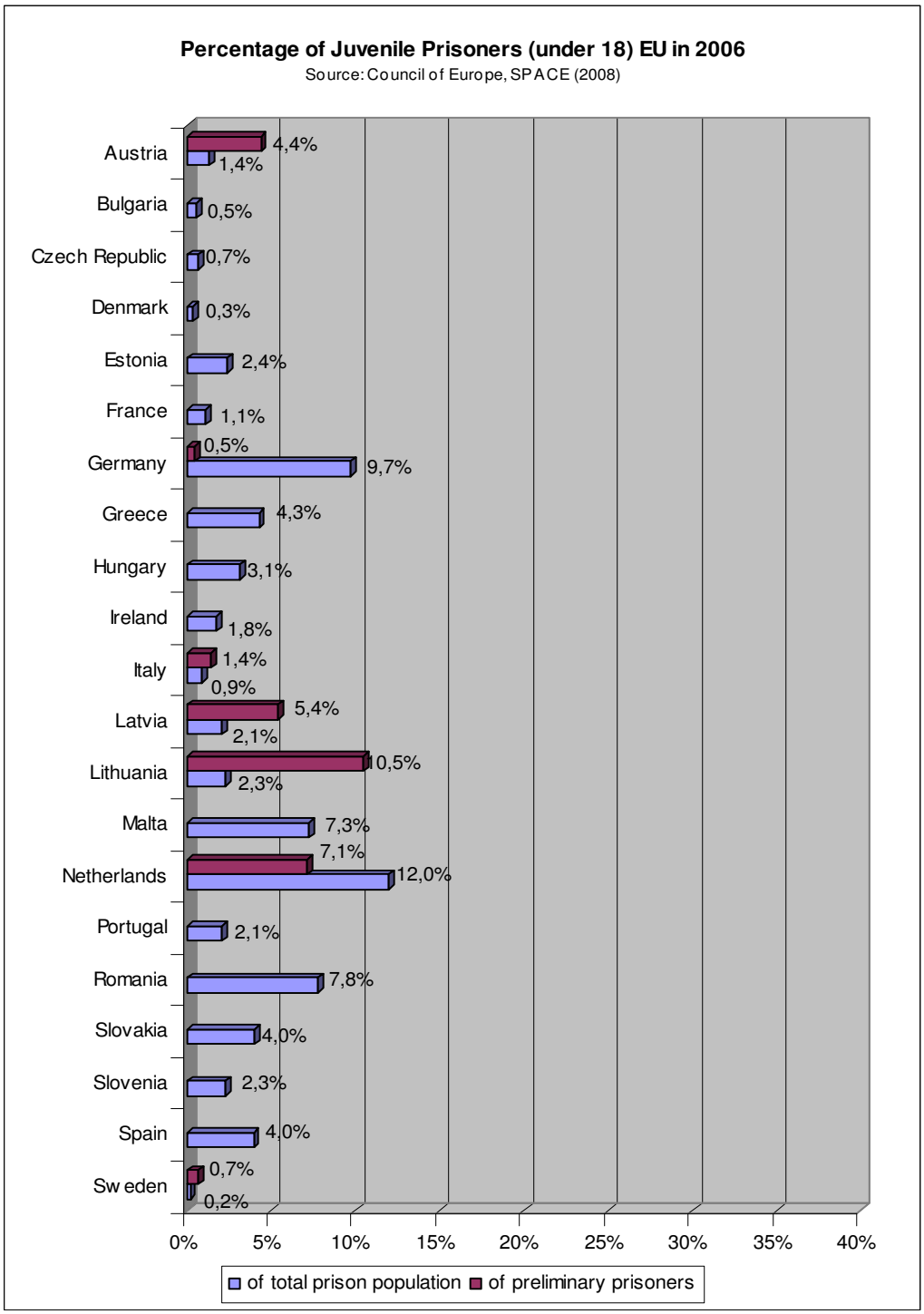
* Reference dates vary from 1-7-2006 to 1-3-2008.
** Data come from different national sources.

3.3 Juvenile prisoners

Figure 14 shows the proportion of juvenile prisoners in the total prison population and, available for only seven countries, the proportion of juveniles in the group pre-trial prisoners. This is partly due to the fact that in part of the countries the juveniles are not detained under the authority of prison service. Therefore they are not included in de prison numbers or numbers are low. The proportion of juvenile prisoners varies from 0,2% in Sweden to 12,o% in the Netherlands.

In 13 of the 21 countries the proportion of juveniles in the total prison population is less than 3%. In two of the seven countries with data available the proportion of juveniles in the pre-trial population is substantially lower than in the total prison population. These countries are Germany (0,5% versus 9,7%) and the Netherlands (7,1% versus 12,0%). For the other five countries the opposite is true. Especially in Lithuania (10,5% vs. 2,3%) and Latvia (5,4% vs. 2,1%) the proportion of juveniles in the pre-trial population is larger than in total prison population.

Figure 14



* Reference dates vary from 1-1-2007 to 1-1-2008.
** Data come from different national sources.
*** For Belgium, Cyprus, Finland, Luxembourg, Poland and the UK there is no data available.

4. Conclusion

Collecting, analysing and interpreting data on penal statistics in all 27 EU countries is not an easy task. Luckily, the Council of Europe presents since a few years the Annual Penal Statistics (SPACE) and ICPS's World Prison Brief provides on internet up-to-date data on various prison issues. These efforts to present comparable data should stimulate EU countries to develop and create a more uniform way of data collection, to present data on one particular reference day (for example first of January) and to use similar definitions.

Data from SPACE is mainly used in this comparative overview because it provides the most detailed information about the different categories of pre-trial prisoners from all 27 EU countries over an extensive period (1999-2006) and from a similar point in time (1 September). SPACE uses a broad definition of pre-trial prisoners, namely all those prisoners who have not received their final sentence. This group is divided into four categories; those who are untried, those who are convicted but not yet sentenced, those who are sentenced but who have appealed or who are within the statutory time limit to do so and other cases. Strictly speaking only untried prisoners (no court decision yet reached) are pre-trial prisoners. The group 'other cases' are in this study not calculated since this group is detained on criminal grounds.

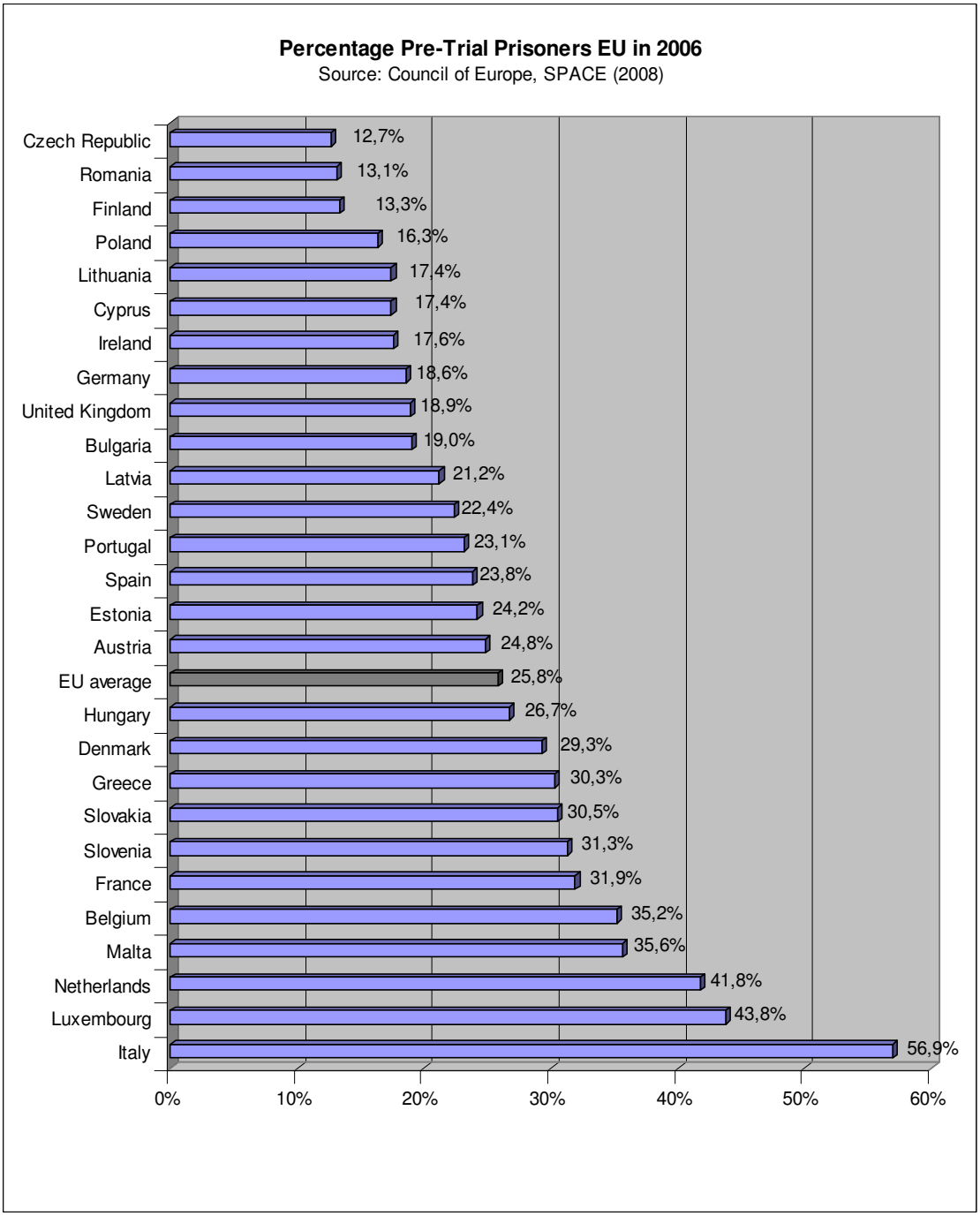
The total prison population in the EU countries is just over 600,000. Countries with the largest prison populations are Poland, United Kingdom and Germany and the smallest populations can be found in Malta, Cyprus and Luxembourg. When the prison population is related to the number of inhabitants per country (imprisonment rate) the view is completely different. The highest imprisonment rates are found in Estonia, Latvia and Lithuania and Poland with more than 230 prisoners per 100,000 inhabitants. Slovenia, Italy and Denmark have the lowest imprisonment rates with less than 70 prisoners per 100,000 inhabitants. The average imprisonment rate in the EU is 129. Overcrowded prisons can be found in Greece, Spain and Hungary and low prison density rates can be found in Latvia, Malta and Slovakia. The highest percentages of female prisoners can be found in Spain, Portugal and Hungary, the highest percentages of foreign prisoners in Luxembourg, Greece and Cyprus and the highest percentages of juveniles in the Netherlands, Germany and Romania.

Looking at data of pre-trial prisoners in EU countries the figures differ per source[21]. What the sources have in common is that data do not contain the number of persons in police cells and in remand centres. The data thus are underestimations of the total number of pre-trial prisoners. Figure 15 contains data by SPACE on the percentage of pre-trial prisoners in EU countries on the total prison population[22].

It should be noted that the percentage in Austria, Bulgaria, Cyprus, Czech Republic, Estonia, Greece, Poland, Romania, Slovakia, Spain and the United Kingdom probably are underestimations, because from the group sentenced prisoners who have appealed or who are within the statutory time limit to do so it can be assumed that they are included in the group sentenced prisoners

[21] SPACE (Council of Europe), World Prison Brief (ICPS) and the European Sourcebook.
[22] The group 'other cases' is taken out of the calculation as explained above.

Figure 15, Percentage Pre-Trial Prisoners EU in 2006



* probably underestimation of SPACE percentages of Austria, Bulgaria, Cyprus, Czech Republic, Estonia, Greece, Poland, Romania, Slovakia, Spain and the United Kingdom because category c (see below table 2) might be included in the sentenced prisoners

The highest percentages of pre-trial prisoners on the total prison population can be found in Italy (56,9%), followed by Luxembourg (43,8%) and the Netherlands (41,8%). The lowest percentages of pre-trial prisoners can be found in the Czech Republic (12,7%), Romania (13,1) and Finland (13,3%). When looking at absolute numbers of pre-trial prisoners the highest amounts can be found in 2006 in Italy (21023), France (18444) and Spain (15017). The lowest numbers are in Cyprus (104) and Malta (122). The average percentage of pre-trial prisoners in the EU is 25,8%.

The rate of pre-trial prisoners in the EU in 2006 per 100,000 inhabitants per country provides a different view. The highest pre-trial imprisonment rates can be found Estonia (78), Luxembourg (67) and Latvia (57). The lowest rates can be found in Finland (9), Cyprus (14) and Ireland (13). The average rate of pre-trial prisoners in the EU in 2006 is 31,6%. The highest rate of 'real' pre-trial prisoners, those who are untried (no court decision yet reached) per 100.000 inhabitants, can be found in Luxembourg, Slovakia, Poland, Spain and Hungary. The lowest rate of untried prisoners can be found in Ireland, Cyprus, Slovenia, Romania, Bulgaria and Latvia. Less than half of the EU countries provide data on the three different kinds of categories of pre-trial prisoners. Besides Ireland and Malta where all pre-trial prisoners are untried and Latvia where only 25% of the prisoners are untried, the group of pre-trial prisoners consists in all countries of a big majority of prisoners that have been untried. In countries with only untried and 'appealing' prisoners the appeal-groups form 20 -34% of all pre-trial prisoners.

What are the trends in the number or pre-trial prisoners in the period 1999 to 2006?
In nine countries there has been a decrease in the number of pre-trial prisoners and in eighteen countries there has been an increase. In Cyprus this increase is largest due to the small numbers. The largest relative decrease is seen in Czech Republic and Romania having a decrease of more than 50% between 1999/2000 and 2005/2006. Also in Latvia, Lithuania and Estonia there is a substantial decrease. Regarding trends in the percentages of pre-trial prisoners on the total prison population the following can be noted. While the Netherlands had the highest percentage of pre-trial prisoners in 2003 and 2004, Italy's proportion grew to number 1 by far in 2006. Belgium and Luxembourg are also in the top 5 most of the year. On the other side, Czech Republic has the lowest percentage of pre-trial prisoners in 2006, while in 2003 and 2004 this was Finland and in 2005 Romania. In Belgium the increase in pre-trial prisoners has been the highest (9,1 percents points), followed by Cyprus and Ireland. The Czech Republic showed the largest decline (-14,5 percents points), followed by Poland and Latvia, Romania and Portugal.
The European Sourcebook of Crime and Criminal Justice Statistics (2006) provides information on 'flow' of pre-trial prisoners ('how many people have been submitted during the course of the year?') in the period 2000-2003. From this data can be concluded that in Slovenia pre-trial prisoners spend on average more time in prison than other prisoners. The highest ratios are found in the United Kingdom (England & Wales) and Lithuania. A high ratio can mean that the period of detention of pre-trial prisoners is short, but it can also be the result of high numbers of prisoners with a long sentence in a country.

The percentage of foreigners on pre-trial prison populations is in general low in Eastern European countries and Baltic States (except for Estonia). The highest percentages of foreign prisoners are in Luxembourg and Cyprus. The prison population in Luxembourg consists of 75% foreigners and the percentage of foreigners on the pre-trial population is 83%. The percentage in Cyprus, Greece and Malta are around 50%. Austria and Belgium have also a large proportion of foreigners under both pre-trial prisoners and the total prison population (> 40%). In Cyprus, Germany, Malta, Portugal and Spain foreigners are more presented under the pre-trial population than in the total prison population. For Greece and the Netherlands the opposite is true. The proportion of sentenced foreigners is larger than the proportion of pre-trial detained foreigners. This is most extreme in Romania were 88% of the foreign prisoners are sentenced prisoners. Also in Hungary the proportion sentenced foreigners is high (83%). Information on the nationality of foreign prisoners is often not registered by prison services or in national penal statistics. Anticipating on forthcoming new EU legislation, where EU nationals can be returned automatically to their EU country of origin, this information would be very helpful and welcome. In only four countries information about the countries of origin of the foreign prisons is available.
The proportion of female prisoners varies from 3,0% in Poland to 7,8% in Spain. The proportion of females in the group of pre-trial prisoners varies from 4,6% in Poland to 8,8 in Portugal. The

proportion of female prisoners under the pre-trial prisoners is in none of the nine countries where the information is available lower than the proportion of females in the total prison population; in 6 countries it is (slightly) higher.

The percentage of juvenile prisoners on prison populations in the EU varies from 0,2% in Sweden to 12,o% in the Netherlands. These differences are partly due to the fact that in some countries the juveniles are not detained under the authority of prison service. Therefore they are not included in de prison numbers or numbers are low. In 13 of the 21 countries the proportion of juveniles in the total prison population is less than 3%. In two of the seven countries with data available the proportion of juveniles in the pre-trial population is substantially lower than in the total prison population. These countries are Germany (0,5% versus 9,7%) and the Netherlands (7,1% versus 12,0%). For the other five countries the opposite is true.

In conclusion, it would be beneficial if EU countries would use a more uniform way of data collection, using a similar reference day and use as much as possible similar definitions and concepts. Efforts to provide valid, up-to-date and comparable data could be coordinated by the Council of Europe (SPACE) or by the European Union. This should be of special interest to the European Union in order to get a better understanding of the penal situation in the EU and to oversee and measure the effects of implementing penal policies and legislation like the forthcoming Framework Decision on the Transfer of EU nationals and European Supervision Order in Pre-Trial Procedures. The Framework Decision on the Transfer of EU nationals provides a transfer of prisoners between member states of the European Union and the Supervision Order is about the application of the principle of mutual recognition to decisions on supervision measures as an alternative to pre-trial detention.

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

Definition of pre-trial detention

In order to analyse and compare the development of the pre-trial prison population in the different Member States of the European Union, one should first clarify the scope and the notion of the research subject, namely "pre-trial detention". In addition, it should be noted that the term "pre-trial detention" is not commonly used among Member States. Instead, many national sources of law (e.g. Constitution, Code of Criminal Procedure and other relevant criminal legislation) often use the term "remand in custody" or "preventive detention" as an equivalent of pre-trial detention. "Remand in custody" is also commonly used in the legal tools of the Council of Europe dealing with this topic, for instance: Recommendation Rec(2006)13 of the Committee of Ministers to Member States on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse and Recommendation Rec(2006)2 of the Committee of Ministers to Member States on the on the European Prison Rules.

The term pre-trial detention can nonetheless be found in several legal documents issued by organs of the European Union in the area of freedom, security and justice, such as the Green Paper on mutual recognition of non-custodial pre-trial supervision measures (COM(2004) 562 final) and the Proposal for a Council Framework Decision on the European Supervision Order (COM (2006) 468 final). International statistical sources such as SPACE (Annual Penal Statistics of the Council of Europe), the European Sourcebook of Crime and Criminal Justice, and the International Centre for Prison Studies (ICPS) also use the term "pre-trial detention" for describing the group of prisoners retained without a final sentence.

The use of several terminologies, with possibly different meaning, can be a major obstacle when trying to clarify the notion and scope of pre-trial detention. Therefore, the main question to be answered in this regard is first of all what is and should be understood by Member States with the term "pre-trial detention" (notion of pre-trial detention) and secondly, which category of prisoners are and should be considered by Member States as "pre-trial detainees" (scope of pre-trial detention)?

Regarding the notion of pre-trial detention, it should be noted that pre-trial detention (remand custody or preventive detention) is as such not defined in the national legislation of many Member States. Those who give a definition of pre-trial detention mostly define this term by its purpose which is: preventing the accused party from absconding, from committing a crime or from frustrating the execution of a sentence that has entered into force. However, all Union Member States recognise pre-trial detention as being a remand/precautionary measure which entails deprivation of liberty of the accused party. This 'common ground' gives rise to the following question: when does a person who has been deprived of his/her liberty get or keep the status of "pre-trial detainee"? In other words: which categories of prisoners are seen as pre-trial detainees by Member States? To answer this question, a distinction should be drawn between four categories of prisoners, namely:

- prisoners held in detention following initial police arrest. In such cases, an order for detention has yet not been issued by a judicial authority;
- prisoners held in detention following a judicial order, but still awaiting trial or a sentence in first instance;
- prisoners held in detention after being convicted in first instance, but still awaiting a decision on appeal or cassation;
- prisoners held in detention following a final sentence.

In almost all Member States, the first and the fourth category of prisoners mentioned above are not considered as pre-trial detainees (remand prisoners). Pre-trial detainees are thus untried prisoners and prisoners without a final sentence who are deprived of their liberty following an (written) order of a judicial authority which is usually a court or judge. Consequently, the question which may be posed is whether the scope of pre-trial detention, by excluding the first and fourth group of prisoners, has not been narrowed down to much by Member States. To be able to answer this question, one should first consider some authoritative legal document dealing with this subject, for instance, the Recommendations Rec(2006)13 and Rec(2006)2, and of course, the European Convention on the Human Rights and the case-law of the European Court of Human Rights.

First of all, section 94.1 of Recommendation Rec(2006)2 on the European Prison Rules explicitly states that "for the purpose of these rules, untried prisoners are prisoners who have been

remanded in custody by a judicial authority prior to trial, conviction or sentence". However, "a state may elect to regard who have been convicted and sentenced as untried prisoners if their appeals have not been disposed of finally" (section 94.2 Rec(2006)2). The above-mentioned recommendation seems to leave the decision about who should be regarded and kept as a remand prisoner to the national jurisdiction. More clarity about the scope of pre-trial detention could perhaps be found in Recommendation Rec(2006)13. According to Article 1(1) of this Recommendation, "remand in custody is any period of detention of a suspected offender ordered by a judicial authority and prior to conviction. It also includes any period of detention pursuant to rules relating to international judicial co-operation and extradition, subject to their specific requirements. It does not include the initial deprivation of liberty by a police or a law enforcement officer (or by anyone else so authorised to act) for the purpose of questioning". Furthermore, "remand in custody also includes any period after conviction whenever persons awaiting either a sentence or the confirmation of conviction or sentence continue to be treated as unconvicted persons" (Article 1(2) Rec(2006)13). Finally, the third paragraph of the same Article states that remand prisoners are also "persons who have been remanded in custody and who are not already serving a prison sentence or are detained under any other instrument".

The explanatory memorandum[23] on Recommendation Rec(2006)13 explains further that "remand in custody is defined in a way that excludes any period of in the custody of the police or other law enforcement officers following an initial short deprivation of liberty by them or by anyone else entitled to effect such a measure (e.g. under power of citizen's arrest) for the purpose of questioning before charge as well as any prolongation of that detention approved by a judicial authority". Moreover, it explains that "remand in custody will be thus ordered by a judicial authority at a later stage in the criminal justice process and it may also be ordered in respect of someone who has not actually been deprived of his liberty by the police or other law enforcement officers or anyone else so entitled to act. The need for the imposition of this loss of liberty to be ordered by a judicial authority reflects the combined requirements of Articles 5(1) and (3) of the European Convention on the Human Rights".

The wording of Article 1 of Recommendation Rec(2006)13, as well as the explanatory memorandum this Recommendation both make clear that first category of prisoners, i.e. prisoners held in detention following initial police arrest (including those whose detention has been prolonged with the approval of a judicial authority), should not be considered as pre-trial detainees. However, both the Recommendation Rec(2006)2 and Rec(2006)13-although in different wordings- leave room for states to choose whether they do regard convicted and sentenced who have not been disposed of finally as pre-trial detainees. While section 94.2 of Rec(2006)2 explicitly states that a state may choose to regard convicted and sentenced prisoners whose appeals have not been disposed of finally as untried/remand prisoners, Article 1(2) of Rec(2006)13 makes clears that those who are remanded or kept in custody after conviction, but who are still awaiting a sentence or the confirmation of conviction should be seen as remand prisoners, whenever they are continue to be treated as unconvicted persons by a state.

As mentioned above, almost all Member States of the European Union have chosen to regard this category of prisoners as pre-trial detainee. However, when analysing the existing case-law of the European Court of Human Rights, the impression is given that prisoners who have already been convicted, even though they are awaiting a sentence or the confirmation of conviction, should not be seen as remand prisoners under Article 5(3) of the Convention. For instance, in its judgement of 27 June 1968 (case of Wemhoff v. Germany), the Court explicitly states that "it remains to ascertain whether the end of a period of detention with which Article 5(3) is concerned is the day on which a conviction becomes final or simply that on which the charge is determined, even if only by a court of first instance. The Court finds for the latter interpretation".[24] Moreover, it continuous "a person who has cause to complain of the continuation of his detention after

[23] See European Committee on Crime Problems (CDPC) - c. Draft Recommendation Rec(2006)… of the Committee of Ministers to member states on the use of remand in custody and its explanatory memorandum [974 meeting] (CM(2006)122addE / 30 August 2006).

[24] ECHR 27 June 1968 no. 2122/64 (case of Wemhoff v. Germany), para. 9. See also ECHR 6 April 2000, no. 26772/95 (case of Labita v. Italy), paras 145 and 147; and ECHR 30 November 2004, no. 46082/99 (case of Klyakhin v. Russia), para. 57.

conviction because of delay in determining his appeal cannot avail himself of Article 5(3) but could possibly allege a disregard of the "reasonable time" provided for by Article 6(1).[25]

From these wordings of the Court, it can be deduced that "a person detained on remand is to be considered, from the moment of his conviction by a court of first instance as a detainee 'after conviction', so that from that moment and during appeal proceedings the lawfulness of that detention must be reviewed by reference to the provision under 5(a) and no longer by reference to that under (c)".[26] Put differently, detention on remand ends when a person is convicted by a court in first instance, even if the person concerned files an appeal and remains, according to domestic law, detained on remand as the judgement is not final.[27] In addition, is should be noted that Court's view of remand custody is opposed by several scholars.[28]

Because of the different terminologies used by the Parties concerned, as well as the contradictory interpretations given to these terminologies, it is very difficult to provide for one common definition of pre-trial detention in Europe. To be able to harmonise the legal rules applicable to pre-trial detainees, it is first recommended to harmonise the notion and the scope of this term. One step in this direction may be by filling up the room left the Member States for deciding whether convicted prisoners who are still awaiting a decision on an appeal procedure are regarded as remand/pre-trial prisoners. The question whether this room should be filled in line with the case law of the Court goes, however, beyond the nature and scope of this comparative study, and could therefore better be left to the decision and policy makers at the European level.

Primary objective of and underlying principles of pre-trial detention

It is interesting to note that all Member States recognise that pre-trial detention should always serve a purpose and consequently, should be based on justifiable grounds. The grounds which are commonly seen as justifiable under domestic laws shall be discussed beneath. The fact that pre-trial detention can be based on a justifiable ground is however not enough to justify this measure. In addition, all Member States acknowledge that pre-trial detention may not be imposed when the measure is disproportional to the seriousness of the committed offence and/or the sentence to be likely imposed. While some countries have explicitly codified the principle of proportionality in their Constitution or Code of Criminal Procedure, others have incorporated this principle in their domestic law through specific provisions restricting the use of pre-trial detention for less severe offences and by highlighting the use of pre-trial detention as measure of last resort. That pre-trial detention should remain an 'ultimum remedium' is thus also commonly acknowledged by Member States. This principle is however, such as is the principle of proportionality, not always codified in the domestic laws. By contrast, all Member States have explicitly incorporated the principle of presumption of innocence in their domestic laws, which usually prescribe that an accused party shall be presumed innocent until final judgement.

Procedurals rights of the accused person

According to the Recommendation Rec(2006)13, a person who has been remanded in custody is entitled to several procedural rights. These rights can be listed as following:

- the right to be informed of the grounds of arrest/detention in a language the person concerned understands;
- the right to be assisted by a counsel/lawyer and to (privately) consult with the counsel/lawyer in order to prepare the defence;
- the right to be informed about the right to be assisted by a lawyer and to consult with him in private;
- the right to legal assistance at the public expense where the person concerned cannot afford such legal representation (right to legal aid);
- the right to have access to documentation which is relevant for the decision on remand in custody of the person concerned;

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[25] ECHR 27 June 1968 no. 2122/64 (case of Wemhoff v. Germany), para. 9.

[26] See Pieter van Dijk et al (eds.), *Theory and practice of the European Convention on Human rights*, Antwerp: Intersentia 2006, pp.467.

[27] See Pieter van Dijk et al (eds.), *Theory and practice of the European Convention on Human rights*, Antwerp: Intersentia 2006, pp.473 and S. Trechsel, *Human rights in criminal proceedings*, Oxford: University Press 2005, pp. 519.

[28] See e.g. S. Trechsel, *Human rights in criminal proceedings*, Oxford: University Press 2005, pp. 519.

- the right to adequate interpretation services before the judicial authority;
- the right to remain silent;
- the right to inform family members or other (close) relatives of arrest.

Almost all Member States acknowledge that persons remanded in custody are entitled to these procedural rights. Some countries have explicitly codified these rights in their Code of Criminal Procedure or, in some cases, in specific regulations on remand in custody. Moreover, the material and procedural rights of remand prisoners can also be found in domestic regulations on prison rules. However, a main observation that can be made is that although these rights are to a large extent guaranteed by domestic law, they are not always safeguarded in practice.

In short, it can be stated that in almost all Member States, some remarks can be made about the way procedural rights of remand prisoners are guaranteed in practice. For instance, the CPT reports on visits to these countries show that in many countries, pre-trial detainees are not duly informed of their rights. Moreover, these reports often point out in many countries, the right to access to a lawyer is not guaranteed from the very outset of deprivation of liberty, i.e. from the moment when the person is obliged to remain with a law enforcement agency. Furthermore, many countries have been criticised by the European Court of Human Rights for impeding the right of an accused to contest the reasons for arrest or detention by denying access to files. Fore further information about procedural rights of remand prisoners and the way these rights are guaranteed in practice in each Member State reference should be made to the report of the country concerned.

Beginning and end of pre-trial detention according to law

As regards the start of pre-trial detention, it should be noted that pre-trial detention in all Member States starts with an order issued by a court of judge. Therefore, a person who has been apprehended should be brought before the court/judge within the period stipulated by domestic law. Subsequently, the court/judge before whom the person concerned has been brought should decide whether this person shall be released or remanded to custody. The following scheme shows the time limits in each country for appearance before a court/judge and for this court/judge to take a decision.

	Actual apprehension	Appearance before court/judge	Court/judge decision to remand in custody/pre-trial detention (starting from the moment of appearance)
AT	0.00	48h	48h
BE	0.00	24h	n.a.
BG	0.00	24h	n.a.
CYP	0.00	24h	72h
CZ	0.00	24h	24h
DK	0.00	24h	-
EE	0.00	48h	n.a.
FI	0.00	24h	noon on 3rd day of apprehension
FR	0.00	24h	n.a.
DE	0.00	(Asap, latest of the day after his arrest).	48h
GR	0.00	24h	72h
HU	0.00	72h	-
IE	0.00	24h-7days	n.a.
IT	0.00	24h	48h
LV	0.00	48h	72h from the moment of apprehension
LT	0.00	48h	n.a.
LU	0.00	24h	n.a.
MT	0.00	48h	n.a.

	Actual apprehension	Appearance before court/judge	Court/judge decision to remand in custody/pre-trial detention (starting from the moment of appearance)
NL	0.00	3days and 15 min.	
PL	0.00	72h	n.a.
PT	0.00	24h-48h	n.a.
RO	0.00	24h	-
SK	0.00	48h	48h
SL	0.00	48h	n.a.
ES	0.00	72h	72h
SE	0.00	Noon on the 3rd day of apprehension	Not later than 4 days after apprehension
UK	0.00	24h	n.a.

AT (Austria); BE (Belgium); BG (Bulgaria); CYP (Cyprus); CZ (the Czech Republic; DK (Denmark); EE (Estonia); FI (Finland); FR (France); DE (Germany); GR (Greece); HU (Hungary); IE (Ireland); IT (Italy); LV (Latvia); LT (Lithuania); LU (Luxembourg); MT (Malta); NL (the Netherlands); PL (Poland); PT (Portugal); RO (Romania); SK (Slovakia); SL (Slovenia); ES (Spain); SE (Sweden); UK (United Kingdom).

IV. Grounds for detention

4.1. Introduction

One of the relevant questions which is dealt with in the country reports is 'on what grounds' a person may be subjected to pre-trial detention and connected to this subject, whether there are certain prerequisites for it, such as a (degree) of suspicion and a threshold. An overview of the regulations/practices of the EU member states on these issues will be discussed, but before doing so, it is useful to give a brief outline of the legal framework concerning the grounds for pre-trial detention. It is beyond the scope of this chapter to discuss in detail all relevant legislations, that is why we will restrict ourselves to two important instruments, which are the European Convention on Human Rights (hereinafter ECHR) and Recommendation Rec(2006) 13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse from the Committee of Ministers of the Council of Europe[29] (hereinafter Recommendation).
Article 5 ECHR concerns the right to liberty and security of a person.[30] The underlying aim of this relevant article is to 'ensure that no one shall be dispossessed of his liberty in an arbitrary fashion'[31], that every arrest or detention is lawful, both procedurally and substantially, and that it has been carried out for one of the six specified reasons in subparagraphs 5.1 (a)-(f). With regard to the topic of pre-trial detention, subparagraph c is of importance, which states the following:

> 1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law
>
> (c)The lawful arrest or detention of a person effected for the purpose of bringing before the competent authority on **reasonable suspicion** of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so.

What is meant with 'reasonable suspicion' is clarified by the European Court of Human Rights (hereinafter the Court):

"presupposing the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence although what may be regarded as 'reasonable' will, however, depend on all the circumstances"[32].

As a 'reasonable suspicion' is the essential precondition for the initial loss of liberty of a suspect, this point as well as the other initial grounds for arrest or detention which are mentioned in subparagraph c. are not sufficient for the prolongation of detention after a lapse of time. The detention must be subjected to judicial scrutiny, which should not only consider whether the arrest/detention was justified in the first place, but also whether deprivation of liberty is still appropriate.[33] Although the reasonable suspicion that the suspect has committed the offence in question is a sine qua non for continued detention, one or more relevant and sufficient special grounds for continued detention must also be established. Concerning these special grounds for detention, the Court has recognized four reasons: the risk of flight (absconding), the risk of an interference with the course of justice, prevention of further offences, the need to preserve public order.[34]

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[29] *Adopted on 27 September 2006 at the 947th meeting of the Ministers' Deputies.*
[30] *For a detailed explanation of article 5 ECHR see,* inter alia*, 'The right to liberty and security of the person, A guide to the implementation of Article 5 of the European Convention on Human Rights', M. Macovei, Human rights handbooks, No. 5, Council of Europe 2002.*
[31] *See European Court of Human Rights:* Engel v Netherlands*, 8 June 1967,* Winterwerp v Netherlands, *20 October 1979,* Guzzardi v Italy*, 2 October 1980.*
[32] *European Court of Human Rights,* Fox, Campbell and Hartley v. The UK*, 13 August 1990.*
[33] *See within this respect article 5.3 ECHR which provides additional protection for persons detained under 5.1 (c).*
[34] *For more on the these grounds see 'Chapter 19, The Special Rights of Persons Detained on Remand', in* Human Rights in Criminal Proceedings, *S. Treschel, Oxford University Press 2006, p. 524 et seq.*

Based on the case law of the Court, the Recommendation gives in principle 7, cumulative conditions under which a person may be remanded in custody:
a. there is reasonable suspicion that he or she committed an offence; and
b. there are substantial reasons for believing that, if released, he or she would either (i) abscond, or (ii) commit a serious offence, or (iii) interfere with the course of justice, or (iv) pose a serious threat to public order; and
c. there is no possibility of using alternative measures to address the concerns referred to in b.; and
d. this is a step taken as part of the criminal justice process.

The four concerns prescribed in b. are similar to the ones established by the Court. There is no requirement that all of them should actually be invoked in a particular state. In c. it is made clear that remand in custody is only to be used when strictly necessary and as a measure of last resort. In principle 6 of the Recommendation, the Committee prescribes that remand in custody shall generally be available only in respect of persons suspected of committing offences that are imprisonable. The ECHR does not contain any rules about a common threshold for pre-trial detention linked to the penalty for the offence in question. How the EU member states deal with this issue is shown in table 4.1. Besides the question of the threshold, this table gives also an overview of the degree of suspicion which is applied in the EU member states to order a person in pre-trial detention.

4.2. Preconditions for pre-trial detention

Table 4.1 Preconditions for PRE-TRIAL DETENTION

	(Degree of) suspicion	**Explicit threshold**
Austria	Exigent suspicion (Dringender Tatverdacht)	Offence must carry a penalty of more than 6 months of imprisonment (there are exceptions)
Belgium	'serious indications of guilt'	-offence must carry a penalty of at least 1 year -preventive detention is absolutely necessary for public safety. When the prison sentence >15 years it is absolutely necessary, 15<, additional ground needed
Bulgaria	Reasonable assumption	Offence punishable by deprivation of liberty or another severer punishment
Cyprus	Reasonable suspicion	Offence does not need to carry a penalty of imprisonment
Czech Republic	Obvious grounds	No pre-trial detention in the case of: intentional criminal offence for which term of imprisonment with upper limit is not exceeding 2 years/negligence offence for which the term of imprisonment with upper limit is not exceeding 3 years (art.68.3 CPC states exceptions)
Denmark	-Reasonable suspicion -Particularly strong suspicion	-offence can result in imprisonment for 18 months or more -offence can result in imprisonment for 6 years or more and needs of law enforcement are deemed to require the detention / unconditional prison sentence of at least 60 days is expected needs of law enforcement are deemed to require it
Estonia	Not explicitly mentioned. Suspect is	Not mentioned

	(Degree of) suspicion	Explicit threshold
	defined as a person who is detained on suspicion of a criminal offence	
Finland	-It is 'probable'	-offence for which a less severe penalty than imprisonment for 2 years has not been provided for -offence for which a less severe penalty than imprisonment for 2 years has been provided for, but the most severe penalty exceeds imprisonment for 1 year and…(see grounds in other schedule) -Pre-trial may also be applied when it is not probable that the accused has committed the offence, but the other prerequisites for detention provided in section 3 (1) Coercive Measures Act are fulfilled and the detention is of utmost importance in view of anticipated additional evidence
France	Serious indications ('indices graves')	-In the case of the most serious crimes (crimes), an offence which carries a custodial sentence between the 15-30 years or life imprisonment - In the case of delits an offence for which an imprisonment of at least 3 years can be imposed
Germany	Exigent suspicion ('Dringender Tatverdacht')	-when ground of detention is the risk of collusion/obscurance of evidence: penalty of less than 6 months -when ground of detention risk of absconding only, when accused was hiding before or has no fixed abode in Germany cannot prove his identity
Greece	Serious indications of guilt	In the case of felonies / also applicable for misdemeanor cases of reckless manslaughter of 2 persons or more
Hungary	Well-founded suspicion	offence punishable with imprisonment
Ireland	Reasonable cause	-offence punishable by 5 years or more
Italy	Serious evidence of guilt	Offence punishable with life imprisonment or with a prison sentence higher than a statutory maximum of 4 years (exception in art.280 (1) and (3) CPC).
Latvia	Justified suspicion	Only when the offence is punishable by a custodial sentence -If identity is unclear or person has no job/permanent place to live in Latvia, no threshold applies
Lithuania	Reasonable ground (but 'probable cause' with regard to the risk of absconding)	Offence must carry a penalty of 1 year of imprisonment
Luxembourg	Serious indications	Offence must carry a penalty of at least 2 years of imprisonment, with the exception of 5 years in the case there is a risk the suspect will abscond
Malta	Reasonable suspicion	
Netherlands	Reasonable suspicion	-Offence must carry a penalty of 4 years or more of imprisonment (there are exceptions)

	(**Degree of**) **suspicion**	**Explicit threshold**
Poland	'high probability' that the suspect has committed the offence	-offence must carry a penalty of 1 year of imprisonment -no pre-trial detention when the probable sentence will not be custodial or very short custodial Both restrictions are irrelevant when the accused has remained in hiding, failed to appear when summoned, identity unclear
Portugal	Strong indication	-offence must be punishable by a prison sentence higher than the statutory maximum of 5 years -committed offence is an act of terrorism, violent crime or organized crime which may be punished by a prison sentence higher than the statutory maximum of 3 years -if person has unlawfully entered/stayed in Portugal, or is subject of ongoing expulsion/extradition proceedings
Romania	Reasonable indications	-in cases of offences punishable with (life) imprisonment
Slovakia	Reasonable grounds	-risk of a serious punishment of 8 years of more is to be expected
Slovenia	Well-grounded suspicion	Prosecuted ex officio
Spain	reasonable suspicion that a serious offence is committed	-Offence which may be punished with a prison sentence of 2 years or higher (there are exceptions) - If the maximum length of the custodial sentence is less than two year, pre-trial detention may only be decreed when the suspected person has a criminal record which has yet not been cancelled nor is susceptible of being cancelled, and the record is obtained for the commission of an offence involving 'mens rea'
Sweden	-Probable cause -Reasonably suspected	offence punishable by imprisonment for a term of 1 year or more
United Kingdom	Substantial grounds	

Main preliminary observations with respect to the degree of suspicion and threshold:

- It is shown in § 4.1 that a 'reasonable suspicion' the accused has committed the offence is an essential precondition for ordering pre-trial detention. Except for Estonia, all other EU member states prescribe a particular level of suspicion as a prerequisite for pre-trial detention. Though the Estonian Criminal Code of Criminal Procedure does not explicitly mention a degree of suspicion as a prerequisite, a hint can be found in the article which gives a definition of a suspect: someone who is detained 'on suspicion of a criminal offence';

- The degrees of suspicion differ in the EU member states. A number of countries use the term 'reasonable suspicion' (such as: Cyprus, Malta, Netherlands, Spain), but also 'serious indications of guilt' (Belgium, France, Portugal, Luxembourg, Greece), obvious grounds (Czech Republic), Exigent suspicion ('Dringender Tatverdacht' in Austria and Germany), probable (Finland), 'high probability' (Poland), substantial grounds (UK), 'serious evidence of guilt' (Italy) are being used;

- In Denmark the Criminal Code of Procedure defines two degrees of suspicion depending on the severity of the possible penalty, which are 'reasonable suspicion' and 'particularly strong suspicion';

- Principle 6 of the Recommendation prescribes that remand in custody shall generally be available only in respect of persons suspected of committing offences which are requiring imprisonment. Most, but not all (Cyprus, Malta and UK) link the possibility of pre-trial detention to the penalty of imprisonment. The threshold varies in the countries as there are, inter alia, countries with a general, low or particular high threshold;

- Countries which have a general threshold state pre-trial detention for 'offences punishable with imprisonment', such as Bulgaria, Hungary, Romania and Latvia. If the identity of the person is unclear or the person has no job/permanent place to live in Latvia, the country does not apply a threshold. Compared to the other EU member states, Austria is a country with a low threshold as it is prescribed as an offence which carries a penalty of more than 6 months of imprisonment.

- Countries with a threshold of at least 1 year are, inter alia, Lithuania, Sweden, Belgium and Poland. With regard to Belgium and Poland special remarks have to be made. Besides the threshold of 1 year, Belgium law also requires pre-trial detention to be absolutely necessary for public safety, which is automatically the case when it concerns a prison sentence of more than 15 years; otherwise an additional ground is needed. Similar to Latvia, also Poland does not apply a threshold when the accused has remained in hiding, failed to appear when summoned or his identity is unclear. Germany also knows a threshold of 1 year when it concerns the risk of re-offending.

- Luxembourg, Finland and Spain have a threshold of 2 years of imprisonment, with its exceptions. In the Netherlands and Italy, the offence must carry a penalty of 4 years or more (or also life imprisonment in the case of Italy). Ireland and Portugal hold a threshold of 5 years or more. In Slovakia, a serious punishment of 8 years or more should be expected. France has two thresholds, when it concerns the most serious crimes, the threshold is between the 15-30 years or life imprisonment and in the case of délits the threshold is at least 3 years. In Greece, the offence should be a felony with the exception of the misdemeanor: a case of reckless manslaughter of 2 persons or more, which also counts. To conclude it can be stated that Estonia does not mention anything about a threshold in the law and that in Slovenia the offence has to be prosecuted ex officio.

4.3. Grounds for pre-trial detention

As the preconditions for pre-trial detention are discussed in § 2., it is time to pay attention on the grounds for pre-trial detention. We have shown that the Court as well as the Committee of Ministers recognize four grounds: the risk of flight (absconding), the risk of an interference with the course of justice, prevention of further offences and the need to preserve public order. In addition to the reasonable suspicion that the person detained has committed the offence, one of these grounds has to be applicable to make the continued detention valid. Table 4.2 below gives an overview of the grounds which are being used in the EU member states.

Table 4.2

Grounds for DETENTION

	AT	BE	BG	CYP	CZ	DK	EE	FI	FR	DE	GR	HU	IE	IT	LV	LT	LU	MT	NL	PL	PT	RO	SK	SL	ES	SE	UK
Absconding/Risk to abscond	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X
Risk of interference with the course of justice				X		X		X				X		X							X		X	X	X	X	
Risk of reoffending (crime of certain gravity)	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X
Risk of posing a serious threat to public order									X										X		X	X					
Risk of collusion/obscurance of evidence	X	X		X	X	X		X	X	X				X	X	X	X		X	X	X	X	X	X	X	X	X
Gravity of the offence										X					X	(X)											
Severity of the possible penalty	X	X	X		X	X		X	X		X	X	X	X	X	X			X	X	X	X	X		X	X	
Others								X	X		X				X										X		

AT (Austria); BE (Belgium); BG (Bulgaria); CYP (Cyprus); CZ (the Czech Republic); DK (Denmark); EE (Estonia); FI (Finland); FR (France); DE (Germany); GR (Greece); HU (Hungary); IE (Ireland); IT (Italy); LV (Latvia); LT (Lithuania); LU (Luxembourg); MT (Malta); NL (the Netherlands); PL (Poland); PT (Portugal); RO (Romania); SK (Slovakia); SL (Slovenia); ES (Spain); SE (Sweden); UK (United Kingdom).

Main preliminary observations with regard to the grounds of pre-trial detention:

- According to the Court as well as prescribed in the Recommendation, pre-trial detention shall be used when it is strictly necessary and as a measure of last resort. All of the EU member states know alternatives for pre-trial detention, but only a number of them have explicitly prescribed in law that the starting point is that pre-trial comes into the picture when the purpose of it cannot be achieved by other less severe measures. Cyprus, Czech Republic, Greece, Latvia, Ireland are among these countries.

- From the four grounds identified by the Court, the most dominant ones are the risk of absconding and the risk of reoffending, almost all countries make use of these grounds. Concerning the ground of reoffending there are member states which take into account the severity of the crime of which there is a risk it will be committed. For example Italy, Germany and France have an explicit and exhaustive list in the relevant criminal legislation of certain serious crimes. The ground of 'interference with the course of justice' is applied by a number of member states, such as Cyprus, Denmark, Finland, Hungary, Italy, Portugal, Spain and Sweden. Interference with the course of justice includes inter alia, tipping off others who might also be under investigation, colluding with anyone involved in the case as to how they will respond to the proceedings and even destroying documents and other material forms of evidence. As this ground includes the last two mentioned aspects, it closely corresponds to the ground of 'risk of collusion/obscurance of evidence which is used in table 4.2. Member states tend to differ in the use of terms, some have 'interference with the course of justice' in their laws, while others use the risk of collusion/obscurance of evidence.

- The risk of posing a serious threat to public order is one of the grounds set by the Court, but not often prescribed by the member states. The countries which make us of it are: France, Netherlands, Portugal and Romania.

- There are just 3 countries in which the gravity of the offence may be a sufficient ground for pre-trial detention, namely Latvia, Lithuania and Germany. The Criminal Code of Procedure in Latvia states that detention may also be applied in cases of especially serious crimes (carrying 10 years of prison or more) if the crime was directed against a minor or dependant or particularly weak person, if the person is a member of an organized 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. In Lithuania, the gravity of the offence and the seriousness of the possible sanction may be a sufficient ground, but it is not practice that detention is being ordered automatically after a serious offence. Other relevant factors such as prior convictions, source of living, relations with the family or relations abroad are taken into account as well. In Germany, certain enumerated crimes are listed in the law, "Schwere der Tat".

- Of all EU member states which have a threshold as prerequisite for pre-trial detention, the ground of 'severity of possible penalty' in table 4.2 is marked. The ground of 'others' concerns countries which have additional grounds to the ones prescribed in the table. These are for example that the accused has no known residence in the country, has been a fugitive in the past, was found guilty of helping a prisoner to escape or has violated restrictions concerning the place of residence (Greece), whose identity is not known (Czech Republic), previous conviction (UK), prevent accused from taking actions against victim (Spain) and the protection of accused (France).

V. The grounds for review of pre-trial detention[35]

In all country reports attention is paid to the grounds for review of pre-trial detention. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful (article 5(4) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter: ECHR)). Article 5(4) of the ECHR confers the right to periodic review of loss of liberty on the basis that the initial grounds for detention may no longer exist.[36] In *Bezicheri v. Italy*, the European Court of Human Rights (hereafter: the Court) ruled that there was a violation where five and a half months were taken to consider a second application for bail. The Court mentioned that since new issues might arise after the first consideration of bail, an opportunity to take proceedings to review the lawfulness of pre-trial detention must be provided at reasonable intervals. Given the nature of pre-trial detention such intervals should be short. In the wording of the Court: "the nature of detention on remand calls for short intervals; there is an assumption in the Convention that detention on remand is to be of strictly limited duration (…), because its raison d'etre is essentially related to the requirements of an investigation which is to be conducted with expedition".[37]

Besides the relevance of the ECHR within this field, the Council of Europe adopted a recommendation with regard to remand in custody on 27 September 2006.[38] This Council of Europe's instrument leaves the decision as to who should be regarded and kept as a remand prisoner to the national jurisdictions.[39]

The European Union (hereafter: EU) itself conducted important work within the field of pre-trial detention/remand in custody and distributed a questionnaire to its Member States on pre-trial detention. In the "Background Paper to the questionnaire on pre-trial detention and alternatives to such detention"[40], it is said that the ECHR is of special interest for the EU. The Background Paper sums up other important protective measures adopted under the Council of Europe system and the United Nations system, ensuring that individuals are not arbitrarily deprived of their liberty and which establish safeguards against abuse by state authorities.

The question whether we need another set of European (Minimum) Standards is an important one and discussions between experts coming from different EU Member States show that opinions are opposing within this regard.[41]

According to the Council of Europe's "Explanatory memorandum to the recommendation on the use of remand in custody (...)", the responsibility of initiating a periodic review is placed on the prosecutor or the investigating judicial authority, since they have to proof whether there is still sufficient justification for either remand in custody or alternative measures. In principle, a monthly interval between such reviews ought to be observed. The Council recognises, however, that the objective of reviews can be fulfilled by the existence of a possibility for a person remanded in

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[35] "(..) the term „pre-trial detention" in effect is too narrow with regard to the broader understanding of most of the European countries, „remand detention" is usually more to the point." See: C. Morgenstern, 'Pre-trial detention in Europe: Facts and Figures and the need for common minimum standards', to be published in Trier: *Europäische Rechtsakademie* (ERA)/Forum 4/2008, available at www.era.int, p. 4-5

36 Murdoch, J., *The treatment of prisoners, European Standards*, Strasbourg: Council of Europe publishing 2006, p. 177

37 *Bezicheri v. Italy*, judgment of 25 October 1989, series A No. 164, paragraph 21, in: Murdoch, J., *The treatment of prisoners, European Standards*, Strasbourg: Council of Europe publishing 2006, p. 197

[38] Recommendation R (2006) 13 of the Committee of Ministers to the Member States on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse. See also the explanatory memorandum to this recommendation. A compendium of conventions, recommendations and resolutions relating to penitentiary questions is available at http://www.coe.int/t/e/legal_affairs/legal_co-operation/prisons_and_alternatives/ID5603-Compendium%20of%20texts%20relating%20to%20penitentiary%20questions.pdf

[39] C. Morgenstern, 'Pre-trial detention in Europe: Facts and Figures and the need for common minimum standards', to be published in Trier: *Europäische Rechtsakademie* (ERA)/Forum 4/2008, available at www.era.int, p. 6

40 JAI/B/TL D(2002) 4345, Brussels 18 July 2002

[41] Meeting of experts on minimum standards in pre-trial detention procedures, Brussels Friday 9 June 2006, Charlemagne 1, available at http://ec.europa.eu/justice_home/news/events/expert_pre_trial/meeting_report_en.pdf

custody to apply to a court for release at any time during the remand in custody.[42] It is also recognized "that the authorities may provide for restrictions on the ability to apply for release on account of the shortness of the time elapsing from a previous application or failure to adduce any new basis for ordering his or her release".[43]

The Council puts emphasis on the fact that there should be provisions enabling persons to appeal to a higher judicial authority against decisions concerning remand in custody or alternative measures and stresses that "the responsibility of the prosecuting authority or the investigating judicial authority for ensuring there is a periodic review of the imposition of remand in custody ought not to be confused with the independent right that any person deprived of liberty has under article 5(4) to challenge the lawfulness of such action".[44] This challenge should be heard and determined upon by a court, and can entail more than the existence of grounds justifying remand, because article 5(4) of the ECHR requires that the judicial review includes all the conditions essential for the lawfulness of the particular deprivation of liberty. Within this regard, the Council recognises "that in certain cases the periodic review may be of sufficient scope to preclude the need for a separate lawfulness challenge at a particular time".[45] To conclude, the Council stresses that decisions to remand a person in custody should be reasoned and these reasons should be provided for in a timely manner. This working method is crucial for the effective exercise of the rights of appeal against the imposition of remand in custody or alternative measures.[46]

Table 1 considers periodic review as to whether the imposition of remand in custody continues to be justified and the responsibility for initiating such a review.

[42] Explanatory memorandum to Recommendation R (2006)13 of the Committee of Ministers to the Member States on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse, paragraph 17

[43] Ibidem.

[44] Explanatory memorandum to Recommendation R (2006)13 of the Committee of Ministers to the Member States on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse, paragraph 18-19

[45] Ibidem.

[46] Explanatory memorandum to Recommendation R (2006)13 of the Committee of Ministers to the Member States on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse, paragraph 21

Table 1

	Periodic review based on the same intervals	**Periodic review based on different intervals**	**Automatic review**
Austria	-	X	X
Belgium	-	X	X
Bulgaria	-	-	-
Cyprus	X	-	X
Czech Republic	X	-	-
Denmark	X	-	X
Estonia	X	-	X
Finland	X	-	X
France	-	X	-
Germany	-	X	X
Greece	X	-	X
Hungary	-	X	X
Ireland	-	X	X
Italy	-	-	-
Latvia	-	-	-
Lithuania	X	-	X
Luxembourg	X	-	X
Malta	-	-	-
Netherlands	-	-	-
Poland	X	-	X
Portugal	X	-	X
Romania	X	-	X
Slovakia	-	-	-
Slovenia	X	-	X
Spain	-	-	-
Sweden	X	-	X
United Kingdom			
England & Wales	X	-	X
Scotland	X	-	X
Northern Ireland	X	-	X

Table 2 considers the possibility for a person remanded in custody, to apply to a court for release during the remand in custody and the restrictions on the ability to apply for release *inter alia* on account of the shortness of the time elapsing from a previous application or failure to adduce any new basis for ordering his or her release. Finally, it considers appeal to a higher judicial authority against decisions concerning remand in custody.

Table 2

	Person remanded in custody applies to a court for release or transformation of remand	**Restriction on ability to apply for release or transformation**	**Appeal to a higher judicial authority**
Austria	X	NA	X
Belgium	X	X	X
Bulgaria	X	X	X
Cyprus	-	-	X
Czech Republic	X	X	X
Denmark	X	X	X
Estonia	X	X	X
Finland	X	NA	-
France	X	NA	X
Germany	X	NA	X
Greece	-	-	X
Hungary	X	X	X
Ireland	X	NA	X
Italy	X	-	X
Latvia	X	X	X
Lithuania	-	-	X
Luxembourg	X	NA	-
Malta	X	NA	-
Netherlands	X	X	X
Poland	-	-	X
Portugal	X	X	X
Romania	NA	NA	NA
Slovakia	X	X	X
Slovenia	X	NA	X
Spain	-	-	X
Sweden	X	NA	X
United Kingdom			
England & Wales	X	NA	NA
Scotland	X	NA	X
Northern Ireland	NA	NA	NA

* NA: information Not (yet) Available

Main preliminary observations

- There is a terminological problem when analyzing all information. Some apply pre-trial detention in a narrow sense while others do not, and often the term "remand in custody" is used which then applies to the stage of both pre-trial and trial.
- Most countries provide for an opportunity for the suspected offender to apply to a court/judge for release or transformation of the remand in custody. Some Member States impose restrictions within this respect as to *inter alia* the time in which a person may put forward a second (or third, fourth etc.) application.
- In most countries, there is a possibility to appeal against the decision of remand in custody.

- Seven countries do not have periodicity review within their legal systems for the remand in custody. Nevertheless, these countries provide for other ways, which make review possible: either the suspected offender can apply to the court for release or transformation of remand in custody with or without restrictions, appeal against the remand decision, or undertake both these actions.
- In most countries, there is an automatic periodic review based on the same intervals. In a few, the review is initiated by the prosecutor and in some countries the suspected offender should ask for review of his detention.
- The rules regarding periodicity of review seem to vary a lot as to when, who and how (see the country reports for more detailed information).
- The systems in Denmark, Finland and Sweden are relatively similar. These criminal procedure systems encompass automatic single review periods and do not contain time limitations with respect to the overall length remand in custody (see the chapter on the length).
- In Austria, after the bill of indictment has been delivered to the court, the detained person has to apply for the hearing in which reasons for detention will be checked upon.
- Some countries have *ex officio* periodic reviews, but only after a lapse of time or with a threshold (e.g. Austria, Germany, Estonia and Poland). For instance, if there has been no request for review by the detainee for a certain period (Germany) or only up until the moment of the bill of indictment (Austria).
- Some countries have a special pre-trial detention judge.
- In some countries (e.g. in the Netherlands and Greece) there is no further right for the suspected offender to appeal or cassation against the first court's decision on the appeal.
- In Lithuania, the judge must adopt an order not to extend the term of detention if he discovers that during the last two months, when detention was applied, no pre-trial investigation actions were performed and the prosecutor fails to give any objective reasons why pre-trial investigation actions were not performed.
- Luxembourg knows a request for conditional release, which can be done at each stage of the criminal procedure and must be addressed to the chamber of the competent court.
- In Poland, the court that issued the decision on the preventive measure is also competent to decide about the interlocutory appeal.

VI The length of pre-trial detention

In all country reports attention is paid to the length of pre-trial detention. Article 5(3) ensures that "anyone remanded in custody is tried within a reasonable time and this requires that the proceedings in such cases be handled in an especially expeditious manner".[47] The discussion on the grounds for review of pre-trial detention is closely related to the issue of the length of pre-trial detention.

The length of pre-trial detention in the European countries should be considered in the context of the domestic criminal procedural framework. According to the ECHR, everyone is entitled to a fair and public hearing within a "reasonable time". The ECHR does not provide for any specific maximum time limit for pre-trial detention, but "the European Court of Human Rights" has continuously stated that the concept "reasonable time" cannot be translated into a fixed number of days, weeks, months or years or into various periods depending on the gravity of the offence".[48] At the national level, some countries have set maximum time limits for pre-trial detention. The Terms of Reference indicate, "The existence of such time limits might be said to act as both an impetus to the prosecution to proceed swiftly to trial and as a protection to the accused in the sense that unnecessary delays will be minimized".[49] It is also said that the setting of maximum time limits could enhance "a degree of certainty and security to the accused in that he is aware of the very outset of how long his deprivation of liberty will last".[50] While others mention that maximum time limits could rush proceedings and the Council of Europe explains in its Memorandum to the Recommendation on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse that "although the fulfilment of the requirements regarding the duration of remand in custody may be facilitated by the specification in legislation of a maximum period of remand in custody, the need to consider the particular circumstances of a given case means that such a period should not be automatically applied to all cases where remand in custody is justified".[51]

Table 3 considers which Member States have maximum time limits enshrined in their legislation irrespective if the time limits are related to the moment up until the beginning of the trial stage or the period up until the conclusion of the trial.

Table 3

	Maximum time limits in domestic law	**Average time spent in remand in custody**
Austria	X	2008: 68 days
Belgium	-	from 1996 to May 2001: app. 80 days
Bulgaria	X	NA
Cyprus	X	NA
Czech Republic	X	2006: 130 days
Denmark	-	NA
Estonia	X	2002: 10 months
Finland	-	NA
France	X	2005: 8.7 months
Germany	X	2006: 5,984 pre-trial detainees more than 6 months (total pre-trial detainees in 2006, 24,352)
Greece	X	2003: 1 year

[47] Explanatory memorandum to Recommendation R (2006)13 of the Committee of Ministers to the Member States on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse, paragraph 22

[48] Terms of Reference, Tender No JLS/D3/2007/01, "Study: An analysis of minimum standards in pre-trial detention and the grounds for regular review in the Member States of the EU", available at http://ec.europa.eu/justice_home/funding/tenders/2007_S093_113581/annex_1_en.pdf

[49] Ibidem.

[50] Ibidem.

[51] Explanatory memorandum to Recommendation R (2006)13 of the Committee of Ministers to the Member States on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse, paragraph 23

	Maximum time limits in domestic law	Average time spent in remand in custody
Hungary	X	NA
Ireland	-	NA
Italy	X	NA
Latvia	X	NA
Lithuania	X	2002: 9 months
Luxembourg	-	NA
Malta	-	NA
Netherlands	X	NA
Poland	X	NA
Portugal	X	NA
Romania	X	NA
Slovakia	X	NA
Slovenia	X	NA
Spain	X	NA
Sweden	-	NA
United Kingdom		
England & Wales	X	2002: 86 days
Scotland	X	NA
Northern Ireland	-	NA

* NA: information Not (yet) Available; our outdated

Main preliminary observations

- The problem of terminology seems to deal with itself with respect to the issue of the length of pre-trial detention. In analysing the length it is clear that some Member States set time limits as for the pre-trial stage (up until the moment when the trial starts), for the pre-trial and the trial stage (up until the moment of the conclusion in the trial stage), or no time limits at all. During both the pre-trial and the trial stage, most countries use the definitions of "remand in custody".
- There is a gap between the law and practice (see the case law of the European Court of Human Rights on the issue of length).
- The domestic law of Belgium, Denmark, Finland, Ireland, Luxembourg, Malta, Northern Ireland and Sweden does not place any specific overall time limits on the length of time permitted for remand in custody.
- In Denmark and Sweden, the proportionality principle is leading with respect to the time of remand in custody and in e.g. Luxembourg remand will be terminated as soon as it equals the imposed punishment.
- Austria, Romania, Scotland, the Netherlands, England & Wales, Greece, Bulgaria, Estonia, Lithuania and Cyprus have time limits for the moment up until the commencement of trial (or in other words, these countries have set maximum time limits for the pre-trial stage and only for the pre-trial stage).
- While Spain, Italy, France, Germany, Latvia, Portugal, Poland, Slovakia, Slovenia, Hungary, and Czech Republic have time limits with regard to the moment up until the conclusion of the trial. These time limits are not absolute in some countries (e.g. in Latvia, Hungary, Poland, Spain and Portugal). In Poland, during an appeals procedure, the possibility of further extensions is not limited.
- In some countries the total period of remand in custody depends on the gravity of the crime (e.g. in Czech Republic, France, Spain), while e.g. in Lithuania not the gravity of the crime but the complexity of the case is crucial for possible extensions. On the other hand, it may also depend on the grounds on which detention has been decreed (Spain).
- In most of the countries where time limitations exist, these also include time limits with regard to the investigation.

- In some countries, like in Slovakia, the total length is divided in a time for the pre-trial stage and the trial stage. The prosecutor is liable to the judge for an extension of the custody during the pre-trial stage if he needs more time for his investigation.
- It is very difficult to indicate, if not impossible to compare the average time spent in remand in custody. The numbers available in some Member States are mostly from different years and one should ask him- or herself what is counted: untried prisoners (meaning: during investigation and trial phase), prisoners convicted but not yet sentenced, convicted and sentenced but in appeals procedure or in the time limit to do so?

VII. Other relevant aspects

Several elements in relation to pre-trial detention have already been dealt with in the previous paragraphs. In this paragraph some remaining issues will be discussed, such as whether the time spent in pre-trial detention will be deducted from the final sentence, if there is a mechanism for compensation if the accused is not sentenced and which alternatives to pre-trial detention have been introduced in the various countries. At the end also some headlines of the practice regarding the execution of pre-trial detention will be described.

7.1 Deduction of pre-trial detention.

Article 26 of the Framework Decision on the European arrest warrant and the surrender procedures between Member States with respect to the deduction of the period of detention served in the executing Member State prescribes:

1. the issuing member state shall deduct all periods of detention arising from the execution of a European arrest warrant from the total period of detention to be served in the issuing Member State as a result of a custodial sentence or detention order being passed;
2. to that end, all information concerning the duration of the detention of the requested person on the basis of the European arrest warrant shall be transmitted by the executing judicial authority or the central authority designated under Article 7 to the issuing judicial authority at the time of the surrender.

In this context it is also important to refer to Recommendation Rec(2006)13 of the Committee of Ministers to Member States on the use of remand in custody that recommends, with respect to the deduction of pre-conviction custody from sentence, in article 33:

1. the period of remand in custody prior to conviction, wherever spent, shall be deducted from the length of any sentence of imprisonment subsequently imposed;
2. any period of remand in custody could be taken into account in establishing the penalty imposed where it is not one of imprisonment;
3. the nature and duration of alternative measures previously imposed could equally be taken into account in determining the sentence.

The following table gives an overview on how far these provisions have already been implemented in the various jurisdictions.

Table 7.1 Deduction of pre-trial detention

	Pre-trial deductible	**Pre-trial abroad deductible**	**Pre-trial deductible from non-custodial sentences**
Austria	X	X	-
Belgium	X	na	-
Bulgaria	X	X	Only corrective labour
Cyprus	n.a.	n.a.	n.a.
Czech Republic	X	n.a.	-
Denmark	X	n.a.	X
Estonia	X	X	X
Finland	X	n.a.	X
France	X	n.a.	-
Germany	X	X	X
Greece	X	n.a.	-
Hungary	X	n.a.	n.a.
Ireland	n.a.	n.a.	n.a.
Italy	X	n.a.	X
Latvia	X	n.a.	-

	Pre-trial deductible	Pre-trial abroad deductible	Pre-trial deductible from non-custodial sentences
Lithuania	X	X	X
Luxembourg	X	X	-
Malta	X	n.a.	-
Netherlands	X	X	X
Poland	X	-	-
Portugal	X	n.a.	X
Romania	n.a.	n.a.	n.a.
Slovakia	X	n.a.	X
Slovenia	X	X	X
Spain	X	n.a.	n.a.
Sweden	X	n.a.	X
United Kingdom	X (not obligatory)	n.a.	-

n.a. = information not available yet

Main observations

- As this table shows, the time spent in pre-trial detention is in principle deductible from the final sentence, at least when this final sentence is a temporary custodial sentence. The usual deduction rate is that one day of pre-trial detention is equal to one day imprisonment. In some countries the deduction is not restricted to the period spent in pre-trial detention but includes also the time spent in arrest or police custody. This is, for example, the case in Germany, Greece, Latvia, the Netherlands, and Poland. In some legislation, the deduction is not restricted to the time spent in pre-trial detention. In Denmark, for example, a particular provision in the CCP states that, in addition to the deduction of pre-trial detention in the case of isolation, "a number of days are furthermore deducted corresponding to one day for every commenced period of 72 hours during which the convicted person has been isolated". In Latvia and Portugal also, the period that a person was placed under house-arrest, imposed as alternative to pre-trial detention, will be deducted from the term of imprisonment. In Germany and the UK the deduction is not always obligatory. This follows from § 51 (1) German PC, that states that the deduction may remain undone if this "is not justified because of the behaviour of the convict during trial". However, German jurisdiction restricted this possibility to very serious incidents, e.g. escape or the attempt to escape during the trial that indeed leads to a deferral of the trial. In the UK the court has the discretion to decide that the time spent in a remand centre shall not be deducted from the sentence, if it is in the interest of justice not to do so.

- Only from a small number of countries, information could be collected concerning the deductibility of the time that a suspect spent in (pre-trial) detention abroad. This does not mean that in the other countries a specific provision on this topic is missing, but it is very difficult to get reliable information on this subject. But as far as we could find this information, we have to conclude that sometimes these provisions, to a certain extent, contain certain restrictions as far as it concerns the deduction of the time that a suspect spent in detention in another country. The Dutch Penal Code, for example, restricts the obligatory deduction to detentions undergone in another country to detentions that have been imposed because of a Dutch request for extradition. Noteworthy is also the provision in the German Penal Code, that generally stipulates that foreign detention has to be taken into account in the same way as German detention but that the ratio could be different: according to the law, another (but usually more favourable) ratio can be chosen at the courts discretion. This must be based on some facts, e.g. reported bad living conditions in the foreign prisons that meant a stronger burden on the detainee as German detention would have done.

- In many countries, the possibilities to reduce the final sentence by deduction of the time spent in pre-trial detention are restricted to final sentences that involve a temporary imprisonment. In some countries, deduction is also possible in case of (some) non-custodial sentences, such as fines (Czech Republic, Estonia, Finland, Italy, Lithuania, the Netherlands, Portugal, Slovakia) or community sanctions (Lithuania, the Netherlands). No provisions could be found allowing deducting the time spent in pre-trial detention from many other penalties and penal measures, except the deduction from corrective labour penalty in Bulgaria and from suspended sentences. Suspended sentences are particular important in this respect, especially when the law does not provide for the deduction of pre-trial detention from non-custodial. This problem is often circumvented in suspended sentences by splitting this suspended sentence into a suspended part, and a non-suspended part, with the non-suspended part covering the time spent in pre-trial detention. However, as was mentioned in various country reports, even in countries where the possibilities for deduction are very restricted and the time spent in custody cannot be deducted, the court always has the freedom to take this fact into consideration when determining the type of sentence or its duration.

7.2 Compensation for unlawful pre-trial detention

Article 5, subsection 5 of the European Convention of Human Rights states that everyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation. This fundamental principle is also laid down in article 34 of Recommendation Rec(2006)13 of the Committee of Ministers to member states on the use of remand in custody. According to this article: "Consideration shall be given to the provision of compensation to persons remanded in custody who are not subsequently convicted of the offence in respect of which they were so remanded; this compensation might cover loss of income, loss of opportunities and moral damage" (34,1). It further states that: "Compensation shall not be required where it is established that either the person remanded had, by his or her behaviour, actively contributed to the reasonableness of the suspicion that he or she had committed an offence or he or she had deliberately obstructed the investigation of the alleged offence".

As table 7.3 shows, almost all countries, except England and Wales, have provided legal arrangements for compensating a person who was unlawfully remanded in custody.

Table7.2 Compensation for unlawful pre-trial detention

	Legal provisions for compensation of unlawful pre-trial detention	**Legal provisions for unjustified detention**
Austria	X	X
Belgium	X	X
Bulgaria	X	-
Cyprus	X	-
Czech Republic	X	-
Denmark	X	-
Estonia	X	-
Finland	n.a.	n.a
France	X	-
Germany	X	X
Greece	X	X
Hungary	X	X
Ireland	n.a	n.a
Italy	X	X
Latvia	X	X
Lithuania	X	-
Luxembourg	X	n.a

	Legal provisions for compensation of unlawful pre-trial detention	Legal provisions for unjustified detention
Malta	X	-
Netherlands	X	X
Poland	X	X
Portugal	X	X
Romania	X	-
Slovakia	X	-
Slovenia	X	-
Spain	X	X
Sweden	X	X
United Kingdom	-	-

n.a. = information is not (yet) available

With respect to the information, presented in the various country reports on the topic of compensations, the following observations can be made:

- Generally speaking, the current provisions on compensation refer in essence to the situation that a former suspect is found not-guilty or when the deed does not constitute a criminal offence, or is not classified as a criminal offence by law. In some countries, like, for example, Austria, Belgium, the Netherlands and Spain, the legislator has extended the right to compensation for unlawful arrest or detention (ex ante) to the right to compensation for unjustified detention (ex post) in those cases where the applicant was later acquitted or the proceedings were discontinued. The Belgium law can serve as an example, because in this country a clear distinction is made between compensation for unlawful detention and for unnecessary detention. Unlawful detention occurs when the deprivation of liberty is in violation of Article 5 of the ECHR. The claim for compensation that arises from this is a claim under civil law that must be submitted to the civil courts. Unnecessary detention occurs when a person is held in pre-trial detention for more than eight days without this being attributable to his personal behaviour. This may, for instance, concern an accused person whose case has been dismissed and who can prove his innocence, or who has been released, or whose case turns out to be statute-barred. This does not actually involve a real compensation, but compensation allocated in all fairness. The claim is not submitted to the civil court, but is directed in an application to the Minister of Justice. If the Minister refuses to grant the application or he does not decide on it within six months, the application is handled by an administrative commission consisting of two high magistrates and the (vice) dean of the Bar Association.

- As far as we could deduct from the available it seems that the tariffs according to which the amount of compensation is determined, vary strongly. In Austria no fixed tariffs can be found in the law but amounts of around 100 euros per day seem not to be unusual. In Germany the amount of compensation amounts to no more than 11 euros per day. In addition, financial losses can be compensated if they were caused by the detention. As the costs for accommodation and food during the detention might be deducted, the actual sum that is being paid might be even smaller. Also in Latvia and Poland the amounts of compensation are rather low. In Latvia, for example, a person who was unemployed before the arrest and detention can receive only 50 lats (70 euros) as a compensation for one month of incarceration. In Poland the amount is limited to 10 000 PLN (Polish Złoty) (223 euros), while on the other hand the compensation in Italy may amount to 516,456 euros. In the Netherlands, apart from financial loss (loss of income as a result of detention), the former suspect may also be compensated for immaterial damage. The norm for compensation for immaterial damages is about 90 euros per day of deprivation of liberty. In 2007, more than 6,500 claims were accepted and an amount of almost 23 million euros was paid, almost twice

as much as in 2000. It has to be noted here that the compensation does not always have to consist of an amount of money. The Dutch Code of Criminal Procedure allows that compensation can consist of reducing the duration of an unconditional prison sentence imposed for another criminal offense, or it can be balanced with fines and other financial sanctions to be paid.

- The time limits for lodging a claim are in some countries very short. In Italy, for example, compensation should, on pain of inadmissibility, be submitted within 18 days of the conclusive judgement. In the Netherlands, a request for compensation must be submitted by the former accused person or his beneficiaries before the court within three months of the termination of the case In Portugal, the request for compensation should be submitted within one year of the conclusive judgement or release of the person concerned.

- Whether the claim for compensation will be honoured and to which extent, belongs in many countries to the discretionary power of the deciding authority. The claims normally will be judged on grounds of equity and fairness. Important reasons to reject a claim or to reduce the compensation are, for example, that the pre-trial detention is due to negligence or own fault of the person concerned. In Greece, for example, compensation can be denied if the suspect or accused himself gave reason to the investigations by contradictory behaviour (false confessions etc). Until 2001, the Greek CCP explicitly stated that "the State should be obliged to compensate a former pre-trial detainee if, whether intentionally or by gross negligence, he was responsible for his own detention". Courts were also allowed to decide proprio motu the question of compensation for unlawful detention without a hearing and with inadequate reasoning. Following the European Court's judgments in cases versus Greece (Tsirlis and Kouloumpas v. Greece*;* Georgiadis v. Greece*;* Sinneal v. Greece*;* Goutsos v. Greece and Karakasis v. Greece), these articles are amended by Law 2915/2001. The new provisions no longer exclude the possibility of compensation in cases of detention due to the detainee's "gross negligence" and oblige criminal courts to give reasons for their decisions after having heard the persons concerned and the Public Prosecutor.

- The instances to which the claim can be lodged vary from civil courts (e.g. Belgium, Lithuania), criminal courts (e.g. France), a special Commission for the Compensation of Detention (France) or the Minister of Justice, as far as the claim is aiming at compensation for unnecessary detention.

7.3 Alternatives to pre-trial detention

The principle that pre-trial detention should be applied only as a last resort implies the availability of a range of non-custodial alternatives. Recommendation Rec(2006)13 of the Committee of Ministers to Member States on the use of remand in custody presents in article 2(1) an illustrative and not exhaustive list of alternatives that are already available in the Member States. Table 7.3 shows that in practice many alternatives have been developed and are practiced in the various countries. The table is based on the information, as could be found in the relevant legislations, completed with data provided by experts from the respective countries. Although this table is more comprehensive than the summing up in the above mentioned Recommendation, it is neither meant as an exhaustive list. In many countries, where the alternatives are not specified by law, the public prosecutor, the investigating judge or the court have often the discretionary power to conditionally suspend the pre-trial detention or to decide not to issue a remand warrant. It is up to the deciding authority to attach conditions to this decision. These conditions are not always explicitly listed in the law. In practice, these conditions are similar to the conditions which can be attached to a conditional or suspended sentence or a conditional waiver. Also the bail in some countries entails more than only the obligation to deposit an amount of money as guarantee. In some countries it can also include many other requirements, which in other countries can be attached to a suspended pre-trial detention, conditional freedom etc., such as to reside at a specific place, to be placed under supervision, to undergo a treatment, house arrest etc.

Table 7.3 alternatives to pre-trial detention

Alternatives to pre-trial detention	**AT**	**BE**	**BG**	**CYP**	**CZ**	**DK**	**EE**	**FI**	**FR**	**DE**	**GR**	**HU**	**IE**	**IT**	**LV**	**LT**	**LU**	**MT**	**NL**	**PL**	**PT**	**RO**	**SK**	**SL**	**ES**	**SE**	**UK**
Undertakings to appear before a judicial authority	X		X	Y	X				X		Y							Y	X			Y	X	X			X
Undertakings not to interfere with the course of justice	X			Y	X				X		Y							Y				Y					
Undertakings not to engage in particular conduct, including that involved in a profession or requirements to accept supervision by an agency or trusted person appointed by the judicial authority				Y	0	X	X		X		Y				X	X	X	Y		X		Y				X	
Electronic monitoring				Y							Y	X						Y	X		X	Y					
Requirement (Req) to reside at a specific address or place	X			Y		X	X	X	X		Y	X		X			X	Y	X		X	Y		X		X	X
Req. not to leave specific places or to leave the country without authorisation/travel ban	X			Y				X	X	X	Y	X		X	X	X	X	Y	X	X	X	Y		X		X	
Req. not to meet specified persons or places without authorization	X			Y		X			X	X	Y	X		X			X	Y	X		X	Y		X			X
Req. to surrender passports or other identification papers	X			Y		X			X	X	Y					x		Y				Y					
Req. to provide or secure financial or other forms of guarantees as to conduct pending trial (bail)	X	X	X	Y		X	X	X	X	X	Y		X		X	X	X	Y	X	X	X	Y	X	X	X		X
Req. to comply with certain orders (not to use alcohol or drugs)	X			Y		X					Y						X	Y				Y					
Req. to undergo medical or other treatment	X			Y				X	X		Y						X	Y	X			Y					
Preliminary probation	X			Y	X						Y							Y	X			Y					

Alternatives to pre-trial detention	**AT**	**BE**	**BG**	**CYP**	**CZ**	**DK**	**EE**	**FI**	**FR**	**DE**	**GR**	**HU**	**IE**	**IT**	**LV**	**LT**	**LU**	**MT**	**NL**	**PL**	**PT**	**RO**	**SK**	**SL**	**ES**	**SE**	**UK**
Freedom under conditions		X		Y							Y							Y	X			Y			X		
House arrest		X	X	Y							Y	X		X	X	X		Y	X		X	Y					
Req. to report to the police etc				Y	X			X		X	Y			X	X		X	Y	X		X	Y		X		X	X
Controlled freedom/judicial supervision				Y					X		Y						X	Y				Y					
Req. not to carry weapons etc,				Y							Y						X	Y				Y					
Req. to refrain from driving vehicles/handing in driving licence				Y					X		Y						X	Y				Y					
Conditional suspension of pre-trial detention/conditional release		X		Y						X	Y						X	Y	X			Y					
Req. to leave the country				Y											X			Y				Y					
Req. to exercise a certain job															X			Y				Y					
Req. to live separated from the victim														X			X	Y				Y					
Victim-offender mediation																	X	Y				Y					
Guarantee by a responsible person																		Y		X		Y					
Guarantee by a social entity																		Y		X		Y					
Temporary ban on engaging in a given activity																				X		Y					
Suspension from the exercise of functions, occupations and rights																					X	Y					

AT (Austria); BE (Belgium); BG (Bulgaria); CYP (Cyprus); CZ (the Czech Republic; DK (Denmark); EE (Estonia); FI (Finland); FR (France); DE (Germany); GR (Greece); HU (Hungary); IE (Ireland); IT (Italy); LV (Latvia); LT (Lithuania); LU (Luxembourg); MT (Malta); NL (the Netherlands); PL (Poland); PT (Portugal); RO (Romania); SK (Slovakia); SL (Slovenia); ES (Spain); SE (Sweden); UK (United Kingdom).

Y = no information available yet

Main observations

Looking at the practical meaning of these alternatives one has to conclude that there is little evidence that, generally speaking, the introduction of alternatives for pre-trial detention has resulted in a reduction of the percentage of pre-trial detentions in the prisons. As example can be referred to a study by An Raes and Sonja Snacken of Belgium that shows that, while in most cases the public prosecutors requested remand custody from the investigating judge (92%) and that, in the majority of cases, the investigating judge followed this request, 63% resulted in remand custody, 30% in a simple release, and only 8% in freedom under conditions. According to this study, the judge is too quick to rule in the case of certain accused persons and offenses, that pre-trial detention is the safest measure to protect society. Judges' decisions are influenced by the opinions of organizations such as the police, who are in favour of pre-trial detention. Likewise, judges must make their decisions within twenty-four hours, which places them under enormous work pressure. That is why they often choose the safe way: pre-trial detention. Finally, the many practical problems involved in organizing and monitoring freedom under conditions make it more attractive for judges to choose pre-trial detention for an accused person. The researchers suggest setting up a Court House Service as a possible solution. This service would advise the judge in his choice of alternatives to pre-trial detention. It would have to be established in the court, so the judge could access it directly. The service would ensure that specialists in this field provide advice and that the pressure on judges is reduced.

Also the Hungarian report refers to the little support that alternatives, especially the recently introduced home curfew and house arrest, enjoy from the judiciary and public prosecutors. From 2000-2006, the judge ordered house arrest 705 times and the prosecutor proposed it – within the same period – 158 times. The numbers increase every year (from 2000 until 2006) but still it has to be said that this alternative to pre-trial detention is unpopular, especially compared to the number of pre-trial detainees. According to some authors, a reason for choosing for pre-trial detention instead of (one of) its alternative(s) could be that with the former one, the presence of the defendant is more or less guaranteed before criminal proceedings. The fragile issue with regard to house arrest is the dwelling, as most offenders do not have one.

Another example that alternatives are not playing an important role in practice can be found in Latvia and Poland. In 2006, security measures were applied 10,484 times. House arrest was applied 13 times; a security deposit twice. In 2007, security measures were applied 16,791 times, among them house arrest twice, security deposit 30 times. In Poland statistics show that pre-trial detention is not used as ultima ratio but that it is the second most common preventive measure, police supervision being the most common. In 90% of all applications by the public prosecutor, detention is granted by the court.

Another problem that can be observed in several countries is that even in countries where alternative measures are explicitly mentioned in the law, the law itself does not give an explicit objective of these alternatives and not rarely, also the conditions under which they might be applied are lacking. For that reason, in at least two cases, the European Court of Human Rights criticized the Estonian authorities for not having considered any alternative means of ensuring the applicants' appearance at court and thus applied detention without the needed restraint.

Finally, it is remarkable that in contrast to the UK, bail, in the sense of a financial security, seems not to be very popular in the continental countries. In many of these countries the possibility of bail is disputed with regard to the equality before the law principle. In some country reports mention is made that –as far as bail is granted- in fact it is only granted to wealthy suspects.

7.4 The Enforcement of pre-trial detention

In all country reports the enforcement of pre-trial detention is described in headlines. The information about this topic is partly based on relevant legislation, jurisprudence and law books, and partly on reports written by national and international supervisory bodies or non-Governmental Human Rights organizations. Generally speaking, these reports do not give a full picture of the way pre-trial detention is enforced in the respective country. The visits, upon which the reports normally are based, are not covering all penitentiary institutions or police stations, but refer only to a selection of the establishments.

Also the dates of visits vary which makes it difficult to compare the findings and to draw general and far-reaching conclusions.

Another aspect that we should not lose track of is, that in the reports and prison studies, a distinction is not always made between pre-trial detainees and convicted prisoners. Therefore, some of the following findings have wider implications than the enforcement of the pre-trial detention alone. This is, for instance, the case with the issue of overcrowding. This does not only occur in pre-trial institutions and the consequences can be found in other penitentiary institutions as well. We tried to look at the relevance for pre-trial detention in selecting the subjects that will be discussed below.

- In most of the countries the enforcement of remand detention is governed by the same legal provisions as are applied to sentenced prisoners. As this might be regarded as problematic with regard to the presumption of innocence, some Codes of Criminal Procedure or Penitentiary Acts contain basic rules for the treatment of remand detainees, inter alia, that the latter principle always has to be borne in mind while executing pre-trial detention. In Belgium, for instance, the Penitentiary Principles Act explicitly stipulates that remand prisoners must be considered innocent as long as they have not been convicted without appeal. In Germany, the CCP contains the principle of segregation (as far as possible) and a provision stating that the detainee may only be subject to such restrictions that are required by the objective of pre-trial detention and the maintenance of the order of the institution. Far reaching restrictions such as captivation must be ordered by a judge. Similar provisions can be found in Portugal, where the Law on enforcement of sanctions stresses that "remand prisoners must benefit from the presumption of innocence and be treated accordingly". Moreover, it states that "remand in custody must be executed in such a way as to exclude any restriction of liberty that is not strictly indispensable to the aims for remand, to ensure discipline, security and order in prison". For instance, pre-trial detainees should have the possibility to receive visitors every day, as long as it is possible and in accordance with the internal rules. They also have the right to use their own clothes and to receive food from outside the prison, provided that they bear the expenses. Furthermore, pre-trial detainees may not be obliged to work, but may, at their request, be authorised to work, to follow education and training courses or other courses, and to participate in other cultural, recreational, or sportive activities organised in prison. In some other countries, specific provisions that can be found with respect to the principle of innocence are more restrictive and refer only to the right to wear own clothing or the right but not the duty to work. Sometimes, but not in all countries, pre-trial detainees are allowed more visiting hours than sentenced prisoners. In Belgium, for instance, they can get visits every day, in Austria two times a week. This in contrast to countries like Bulgaria and the Czech Republic where the visits are restricted to two and three times a month. In Latvia, the maximum is fixed at three hours a month. In Lithuania, according to the Law on Pre-trial Detention, untried prisoners shall be permitted to get visits, from relatives or other persons, only with the consent of the officer investigating the case or the court in whose jurisdiction the case is. This means that no minimum number and duration of visits is laid down by law, the internal regulations even restrict the visits by specifying that at the most once every two weeks a visit is possible.

- In most of the countries the rules regulating the prison regime and prisoners' rights and duties are applicable to untried and sentenced prisoners as well. Only in a few countries (e.g. Finland and Lithuania) specific laws exist on the enforcement of pre-trial detention. Many of the general penitentiary laws and ordinances have recently been revised, in particular in the Central- and East European countries. Generally speaking, one can say that the existing prison rules are compatible with international and European standards such as the revised European Prison rules. However, this does not mean that these rules are always applied in the way they are meant. Generally it can be said that the discrepancy between the legal provisions and legal reality with regard to detention is the biggest when it comes to the practical living conditions. Particularly problematic points are the overall living conditions, the rights to correspond and file complaints as well as the contact to the outside world in remand prisons, but particularly in police detention facilities. Another particularly problematic point is the contact with the outside world, with regard to receiving visits as well as parcels, making phone calls and sending letters.

One of the countries where the legal position of pre-trial detainees explicitly is based on the equality principle is Finland. For the remand prisoners this means that in principle there should be no difference between pre-trial and sentenced prisoners and that remand prisoners should have the same rights with respect to outdoor exercises, accommodation and allocation in the prison, activities, own work, property and income, social rehabilitation, childbirth, religious practice, library, correspondence and visits. This is not in all countries the case.

- As a rule the enforcement of pre-trial detention in the Member States of the EU takes place in court prisons, remand prisons or separate wings or sections of ordinary prisons. Normally, legal provisions prescribe that remand prisoners will be kept separated from sentenced prisoners. An exception can be found in the Netherlands where it has been possible, since 2006, to transfer pre-trial detainees to ordinary prisons as soon as they have been convicted in first instance to a prison sentence of at least three months. In some countries, like Denmark, pre-trial detainees can be detained in penitentiary institutions that are designed to accommodate persons awaiting trial, sentenced persons serving a short sentence (of six months or less), and sentenced persons awaiting placement in a prison.

- A particular problem that can be observed in a large number of countries concerns the accommodation of remand prisoners in police cells even after their first appearance in court (Finland, Hungary, Latvia). In these countries suspects can be hold in police custody for a long period. In Hungary, for example, it is possible to execute pre-trial detention in police establishments for a maximum of 60 days. In Romania, the CPT found a large number of remand prisoners and even some sentenced persons, who are subject to criminal investigations, and who were in police establishments for prolonged periods. Some were there for six months and, in some exceptional cases, even for one and a half year. During its last visit to the Netherlands in 2007, the CPT noted that a significant number of persons spent between 10 and 14 days detained in a police cell. This appeared particularly to be the case for juveniles between 16 and 18 years of age. According to the opinion of the CPT delegation apparently this was due to capacity problems in juvenile detention facilities, which suggested that police cells are being used as surplus capacity for remand prisons and alien holding facilities. The CPT notes that a shortage of remand capacity, combined with a policy of keeping prison occupation rates below 100% (….) may encourage prolonged detention in police facilities. However, the fact remains, as was repeated by the CPT in various reports, that police facilities do not offer suitable accommodation for lengthy periods of detention, particularly as concerns juveniles. Cases of ill-treatment have been encountered many times by the CPT, especially with respect to the detention in police stations. The CPT particularly criticised in many reports the lack of indoor and outdoor activities in police stations, the material conditions of the police premises, the lack of contact with the outside world, the control on the correspondence and conversations, the determination of the internal procedures and regime in the police unit and the fact that sometimes juveniles are not kept separated from adults. Many reports also show that persons deprived of their liberty by the police are not from the very outset of deprivation of liberty informed systematically and in a written form of their rights of notification of their custody, of access to defence counsel, and a doctor.

- Similar shortcomings as mentioned for police stations can also be observed in remand prisons. As in many countries, the opportunity to pursue meaningful activities while being detained on remand is a problem for most remand prisoners. It is in various countries more the rule than the exception that prisoners stay in their cells for 23 hours a day without anything to do. This is the case, for instance, in Austria, Bulgaria, Estonia, Latvia, Romania, Slovakia, Poland and Sweden where remand prisoners spend one hour a day out of their cells/rooms, while on the other hand in Malta remand prisoners are out of their cells for over 11 hours and in Cyprus 17-18 hours a day. In the England and Wales it appeared that the out of cell time for remand prisoners could be as little as two hours per day.

- In many reports there is mention of one of the most urgent problems with respect to the remand prisons: overcrowding. Many countries are confronted with it, such as Austria. Bulgaria, Czech

Republic, Estonia, France, Hungary, Italy, Latvia, Lithuania, Luxembourg, Poland, Portugal and the UK. The problem of overcrowding has negative consequences for the material and living conditions: multi-occupancy cells with a living space per prisoner of less than $3m^2$, reduced possibilities to work or to attend educational/vocational activities, and limited other out-of-cell activities. Overcrowded prisons entail, inter alia, cramped unhygienic accommodations, a constant lack of privacy, overburdened health-care services, increased tension and hence more violence between prisoners and between prisoners and staff.

- Point of concern is also the possibility, existing for example in Spain, to subject a remand prisoner to a regime of total incommunication or to a regime of restricted communication.

VIII. Vulnerable groups and groups of special interest

In all country reports attention is paid to specific categories of detainees, who generally speaking, are considered as particular vulnerable prisoners: juveniles, women, and foreigners. Also has been examined which provisions have been introduced with respect to persons, who have been suspected of having committed a 'terrorist crime'.

8.1 Juveniles

Table 8.1 gives an overview of the most relevant topics with respect to pre-trial detention for juveniles: the age of criminal responsibility, the existence of specific laws for juveniles, the question whether countries have established specific rules for the reduction of the length of the period that a juvenile can be kept in pre-trial detention, and whether there are specific grounds, allowing the application of pre-trial detention on juvenile. The table also gives an overview of the countries where specific alternatives for pre-trial detention for juveniles are available and if the regulations entail specific provisions with respect to the involvement of parents/guardians during the pre-trial investigation.

Table 8.1

	Age of criminal responsibility	Specific laws for juveniles	Specific rules for the reduction of pre-trial detention for juveniles	Specific grounds for pre-trial detention of juveniles	Specific alternatives for pre-trial detention for juveniles	Specific provisions with respect to parents, guardians etc.
Austria	14	X	X	X	-	X
Belgium	16*/**18	X	X	X	X	X
Bulgaria	14	X	X	X	X	x
Cyprus	7	X	-	-	X	-
Czech Republic	15	-	X	-	X	-
Denmark	15	-	-	-	X	-
Estonia	14	-	-	-	-	-
Finland	15	-	-	-	-	-
France	10 ***/13	X	X	-	-	-
Germany	14	X	X	X	X	-
Greece	8***/13	-	X	X	-	-
Hungary	14	-	X	-	X	-
Ireland	12	X	-	-	X	-
Italy	14	X	X	X	X	X
Latvia	14	-	X	X	X	X
Lithuania	14**/16	-	X	-	X	X
Luxembourg	10	-	-	-	-	-
Malta	9	-	-	-	-	-
Netherlands	12	-	X	-	X	X
Poland	13	X	X	-	X	X
Portugal	12****/16	X	-	-	-	-
Romania	14**/16	-	-	-	-	-
Slovakia	14/15	-	-	-	-	-
Slovenia	14**/16	-	X	X	X	-
Spain	14	X	X	X	X	-
Sweden	15	X	X	X	X	-
United Kingdom	10	X	X	X	X	-

* only for traffic offence
** only for specific serious crimes
*** only educational measures
**** special juvenile protection law applied

Main observations with respect to juveniles:

- The legal possibilities to apply pre-trial detention on juveniles depend to a large extent of the age that a juvenile can be held criminally responsible. The current age limits of criminal responsibility in the EU Member States show a broad variety. They range from 7 to 18 years. In the majority of the countries pre-trial detention can be applied on juveniles >15 years. Whether pre-trial detention can be applied and for how long time can also be dependent of the gravity of the offence. In different countries juveniles <16, who are suspected of having committed less serious crimes cannot be given a pre-detention order or only for a limited period of time.
- In about half of the countries pre-trial detention of juveniles is regulated by specific Juvenile Acts. In the remaining countries the general provisions on pre-trial detention, as laid down in the general Code of Criminal Procedure are also applicable on juvenile offenders.
- In the majority of the EU-Member States exist specific provisions for the reduction of the length of pre-trial detention for juveniles. However, the maximum period that according to the law, a juvenile can be held in remand in the various countries varies from 2 weeks to 2 years. In some countries the time limit for remand detention is set at half or two-third of the possible periods for adults.
- In many, but not in all countries juveniles, the law guarantees legal assistance to juveniles during pre-trial (investigations).
- In many, but not in all countries the law guarantees the immediate notification to parents/guardians etc by the authorities of any pre-trial detention of a juvenile. However, practice shows that this obligation is not always fulfilled.
- In most of the countries pre-trial detention for juveniles is considered as last resort. As a consequence in almost half of the countries specific grounds for the application of pre-trial detention for juveniles have been developed. These grounds are stricter than for adults and refer mostly to the risk of absconding if the juvenile has already escaped, prepared to escape or has no permanent home address.
- In the majority of the countries priority is given to alternatives to pre-trial detention. These alternatives can consist of various types of bail, conditional suspension of pre-trial detention, application of protective and educational measures, placement in a special centre for juveniles, supervision by the parents or the guardian, supervision by the administration of an educational establishment, supervision by a special commission for the protection of juveniles, probation supervision. Other alternatives that are applied are court instruction orders with respect to study and work, home restriction order, curfew, house arrest, entrustment to the care of a public or authorised community; in some countries it is also possible to apply a family law or a youth welfare law directive.
- In several countries, but not in all countries, the minor has granted a special right of involving parents, guardians or trusted adults in the first pre-trial proceedings.

Not in all countries the law requires that juveniles should be separated from adults and that pre-trial (juvenile) detainees should be kept separated from sentenced prisoners. Even in countries where these requirements exist, practice shows that these separation principles are not kept because of the problem of overcrowding in the penitentiary institutions or because the number of juvenile detainees are too low to set up special juvenile units.

- In some countries it is not unusual to keep juvenile pre-trial detainees for more than a few days in police stations.
- In several reports, the CPT criticised the living circumstances in pre-trial institutions, especially with respect to the limited possibilities for out-of-cell activities, living space, access to activity programmes, restrictions of contacts with the outside world, and the non-compliance with the separation principle.

8.2 Women in pre-trial detention

Table 8.2

	Specific regulations for women in pre-trial detention	Specific provisions for mothers with children	Specific provisions for suspected pregnant women
Austria	-	-	-
Belgium	-	X (< 3 years)	-
Bulgaria	-	-	-
Cyprus	-	-	-
Czech Republic	X	-	-
Denmark	-	-	-
Estonia	-	-	-
Finland	-	-	-
France	-	-	-
Germany	-	-	-
Greece	-	-	-
Hungary	-	-	-
Ireland	-	X (<1 year)	-
Italy	-	X (<3 years)	-
Latvia	X	X (<1 year)	-
Lithuania	X	-	X
Luxembourg	-	-	-
Malta	-	-	-
Netherlands	-	X(<4 years)	-
Poland	-		X (Draft Law)
Portugal	-	X (3 years)	X
Romania	-	-	-
Slovakia	X	-	-
Slovenia	-	-	-
Spain	-	-	-
Sweden	-	-	-
United Kingdom	-	-	-

Main observations with respect to women

- According the available information, in most of the countries the law does not contain specific rules with respect to the pre-trial detention of women, except that they have to be accommodated separated from men and that pre-trial detainees should be separated from convicted prisoners (double segregation principle).
- In some countries, the law allows mothers to keep their child up to a certain age with them during pre-trial detention. In Ireland and Latvia, this is allowed when the child is not older than 12 months, in Belgium, Italy and Portugal the child may not be older than 3 years and in the Netherlands, children up to 4 years old can stay with their mothers in prison.
- In Lithuania, women who are over three months pregnant may request to be separated from other women. In this country, the law of pre-trial detention also explicitly states that pregnant women and nursing mothers shall be provided with better accommodation and everyday-life conditions. This law also prescribes that some measures of restraint, in particular the use of firearms, cannot (or only in a restricted manner) be used against women, except in cases of self-defence or when they resist with firearms themselves. When the new Law on the Execution of Pre-trial detention will have come into force (2009), pregnant women will be the only ones entitled to receive food packages under certain circumstances.

- Only in three countries special provisions forbid or restrict the use of pre-trial detention on pregnant women or single mothers. This is, for example, the case in Italy where the CCP prescribes that pre-trial detention cannot be imposed on pregnant women and single mothers of children under the age of three, except when the grounds for detention are exceptionally serious. In this country, single fathers of children under the age of three can neither be put in pre-trial detention if the mother of the child is deceased or is completely unable to take care of the child.
- In Latvia pregnant women, women in the post-natal period up to one year and women during the entire period of breast-feeding cannot be detained unless they are held suspect or accused of having committed a serious crime or have violated the provision of another security measure.
- In Portugal, the use of pre-trial detention is restricted by the provision that pre-trial detention may be suspended, if necessary, when the detainee is pregnant or recently has given birth. The suspension ends when the circumstances giving rise to it, end and, in the postpartum case, at the end of the third month following childbirth. During the period of suspension of the pre-trial detention, the female detainee is subject to house arrest and to any other measure that is in conformity and compatible with her condition, particularly hospital detention.
- With respect to the way pre-trial detention is executed in penitentiary institutions, one can conclude from the findings of the CPT reports and national or international Human rights organizations that not in all countries women are allocated in institutions that are specifically dedicated to accommodating women prisoners. Specific problems that have been observed are the problems of overcrowding in female institutions, the lack of sufficient medical care provisions, access to out-door activities, and the state of repair and cleanliness of the institutions.
- A specific problem mentioned in the German report is that female prisoners in pre-trial detention, because of the segregation principle, are kept either isolated in certain prisons or, if accommodated in larger prisons designed only for female prisoners, further away from friends and family with the risk of even more limited contact with the outside world.

8.3 Foreigners

As was shown in the statistical overview in Chapter 2, in the majority of the EU Member States, foreigners are strongly overrepresented within the total prison population as well under the pre-trial detainees. Exceptions are Bulgaria, Hungary, Poland, Romania, Latvia and Lithuania, where the proportion of foreigners in both the pre-trial and the total prison population is not exceeding 5%. The share of foreign prisoners among the total prison population and the total number of pre-trial detainees amounts to about 40% in Austria and Belgium and to 50% in Cyprus, Greece and Malta. The highest proportion can be found in Luxembourg, where 75% of all pre-trial detainees and 88% of the total prison population consists of non-Luxembourgian offenders.

The high percentage of foreign prisoners amongst pre-trial detainees is explained in different reports by referring to the fact that many foreigners do not have a fixed address or even a legal residence permit. The absence of a fixed address or a residence permit is, by many investigating judges and courts, seen as a serious risk of absconding and a risk of recidivism. This means that they will be normally excluded from alternatives to pre-trial detention and will be put in a routinely manner in pre-trial detention, even for minor offences. As one of the few exceptions can be mentioned the provision in the Estonian CCP, which allows the substitution of detention by a payment (to secure the costs of the proceedings and a possible fine) if a person that does not reside in Estonia is suspected of an offence in the second decree punishable by a fine,

In all countries, except Luxembourg, the prerequisites for applying pre-trial detention are not differentiating between national citizens and foreign nationals. This is based on the principle that everyone shall be guaranteed equal human rights and fundamental freedoms irrespective of national origin, race, sex language, religion, political or other conviction, material standing, birth, education social status or any other personal circumstances. However, in Luxembourg, a foreigner without a residence in Luxembourg may already be put under preventive detention if serious indications of guilt exist and the offence is punishable with a custodial sentence. For

Luxembourgian residents this is only possible if the offence can be punished with a custodial sentence of at least two years and the risk exists that the suspect will flee or will meddle with the evidence.

With respect to the detention regimes to which pre-trial detainees are subject and the places where the pre-trial detention is executed, one can conclude from the various country reports that in the legal provisions, in principle, no differentiation is made based on the nationality of the detainee. This in accordance with the principle that every person is entitled to the fundamental rights and freedoms of the individual, whatever his race, place of origin, political opinions, colour, creed or sex may be. This means that foreign (remand) prisoners are detained in the same penitentiary institutions as national citizens and have, in principle, access to the same living conditions and facilities as other prisoners. When they are excluded from certain facilities or privileges it mainly concerns foreign offenders without a residence permit or who are declared 'persona non grata'. The normal procedure is that they will be expelled immediately after release. In many countries, this means that during the detention period, they will be excluded from reintegration programmes, furloughs, weekend leave, transfer to a more open institution, probation assistance and alternatives like semi-detention or electronic monitoring.

As far as the Code of Criminal Procedure, the Penitentiary Act or a special Act for the Execution provide specific articles for foreign detainees, they refer to specific rights that foreigners, who are deprived of their liberty are entitled to. To these rights, which are in all or almost all countries provided by law, belong:

- the right to receive written information sheets explaining their rights and duties in the mother tongue or in a language he/she understands;
- the right to legal aid after apprehension;
- the right to approach the diplomatic mission or consulate of his/her country of origin and to receive visits by its representatives;
- the right to be assisted by an interpreter;

However, we have to conclude from the various country reports that the daily practice is not always reflecting these basis rights.

8.4 Alleged terrorists

Only in less than one third of the EU Member States specific provisions have been introduced with respect to suspects of terrorist crimes. The provisions in the Codes of Criminal Procedure of Austria, the Czech Republic and Italy have only a limited scope, in contrast to the provisions in France, the Netherlands, Spain and United Kingdom. In Austria, the terrorist provision refers to the grounds for pre-trial detention, stating that the prosecutor and the judge, when considering the risk of re-offending, have in particular to take into account, if the risk derives from the membership in a criminal or terrorist organisation (art. 173,3CCP). In the Czech Republic, the only reference to alleged terrorists in the CPC concerns the exclusion of suspects of terrorist crimes from bail.

The Italian CPP does not provide for special provisions regarding the pre-trial detention of terrorists. Once remanded to pre-trial detention, terrorists could however be subject to the emergency measures provided for by the Prison Act, such as the following restrictions:

- limitation of out-of-cell activities to a total of four hours per day (two hours of outdoor exercise in small groups and two hours of indoor group activities, in a room inside the Unit specially equipped for cultural, leisure and sports activities). During these activities, prisoners are only allowed to associate in groups of up to five persons;
- limitation of visits by family members and/or companions to one or two visits per month and only under closed conditions. In practice it is, however, possible for prisoners to see their own children for ten minutes under open conditions, if the child is younger than the age of twelve;
- restriction of the access to telephone in such a way that the access is granted once a month and for a maximum of ten minutes, provided that no visits are received during that month. However, access to telephone is only allowed after an initial waiting period of six months. Furthermore, telephone conversations are subject to strict security conditions (e.g. the obligation of the other party to phone from a law enforcement establishment or prison and systematic recording of the conversations except those with the lawyer);

- application of strict regulations concerning transfers, supplementary food supplies, parcels, etc.;
- prohibition to use tape recorders and CD players. The prohibition of the latter items are, however, not explicitly included in the Prison Act;
- censored incoming and outgoing correspondence, exempt from correspondence with members of Parliament and with European or national authorities having competence in the field of justice.

In France, the anti-terrorism Acts of 1986, 1996 and 2006 have a much larger impact on suspects of terrorist crimes, especially with respect to the first days of police investigation. The maximum term that a suspect can be held in police custody can, under certain conditions, be extended to four or six days, before he/she is brought before a judge to be placed under judicial investigation or released without charge. Suspects may see a lawyer for the first time only after three days in custody, and in some cases four days, and then only for 30 minutes. The lawyer does not have access to the case file or information about the exact charges against his or her client, leaving little scope for providing legal advice.

Since 2004, the Dutch legislator has incorporated specific provisions for suspects of terrorist acts in the Penal Code and Code of Procedure. That year, certain crimes were included in the Criminal Code as terrorist crimes, if they had been committed with a "terrorist intention". In this respect, the penalties for these terrorist crimes were increased significantly, and in 2006 special procedural provisions were also included in the CCP for cases of suspected terrorism. With regard to pre-trial detention, these new provisions also mean that if a terrorist crime is suspected, an order of remand in custody does not require "serious suspicion," but that "reasonable suspicion" will suffice. The period of remand detention can also be extended by nine months at a time until the start of the trial, up to a maximum of two years.

Since 2006, suspects of a terrorist crime can be locked up in separate terrorist departments of two penitentiary prisons: in Vught (males) and Rotterdam (females). This placement takes place pursuant to Article 20a of the Regulation on classification, placement and transfer of detainees, whereby a person charged with – or sentenced of– a terrorist offense, or of spreading a message of extremism among fellow inmates, may be placed in a terrorism department by order of the selection office. At the time of the CPT visit to the Netherlands in 2007, eight male prisoners were being held at Vught prison and two women at Rotterdam prison.

During its last visit to the Netherlands, the CPT was highly critical of these terrorist departments with their restricted high-security regime. The major points of criticism particularly concerned the automatic placement of terrorist suspects in these departments, without a previous risk assessment, the lack of regular review of such a placement, the material conditions in Vught prison and the use of restraint in both departments.

Spain does not have a special antiterrorism law. The penalisation and the prosecution of terrorist offences are regulated in the Penal Code and the Code of Criminal Procedure. In particular the last one establishes the conditions for pre-trial detention of certain groups of serious offenders, such as terrorist suspects, and the rights of those terrorists held in pre-trial detention. The 'prisión provisional incommunicada', is the most strict type of pre-trial detention which is mostly used for the preventive detention of terrorists. It allows for terrorists to be deprived of their liberty in the investigative stage and to be deprived of some rights which persons, held in ordinary pre-trial detention, and may not be deprived of, such as the right to receive visits and the right to correspond or communicate with the outside world. Also, a prisoner held in incommunicado detention is not entitled to appoint a lawyer of his own choice and not entitled to notify his relatives or another person of his choice. Another important restriction is that he is not entitled to the interview in private with his lawyer upon completion of the proceedings in which the lawyer has taken part.

In order to ensure that these rights are being respected, the CCP prescribes that the examining judge shall visit the local prisons once a week, without determining a day and without previous warning. During the visit, he shall be accompanied by a Public Prosecutor. The aim of these visits is to find out what the conditions are, in which prisoners are being detained and to adopt - within their competence - the necessary measures to end the violations they have encountered.

Also in England and Wales, the Terrorism Acts of 2000 and 2006 have extended the time limits for holding a suspect in police custody in case of terrorism investigations. In these terrorism

investigations, the police can detain arrested persons on their own authority for a maximum period of 48 hours. After this period, a warrant for further detention may be obtained from a judicial authority. The pre-charge detention of a terrorism suspect may be initially extended up to seven days, which may be prolonged by periods of seven days repeatedly for up to 28 days. However, a Counter-Terrorism Bill introduced in Parliament on the 24 January 2008, makes provisions for the maximum limit of 28 days to be extended to 42 days in specified circumstances. The plans to extend the pre-charge detention to 42 days were recently rejected by the House of Lords, which means that the government has to shelve the measure.

In their 2008 report on the visit of the United Kingdom, the CPT stated that: "the existing - and a fortiori possible new - provisions regarding the permissible length of pre-charge detention in cases falling under the terrorism legislation are a matter of considerable concern." The CPT furthermore insists that neither the existing nor any new provisions in relation to the length terrorist suspects spend in pre-charge detention should result in criminal suspects spending a prolonged period of time in police custody. The sooner a suspect is turned into the hands of a custodial authority, which is functionally an institution separate from the police, the better. Despite the fact that the Code of Practice (Code H) on detention of persons under the Terrorism Act 2000 prescribes where detention beyond 14 days is authorized, "the detainee must be transferred from detention in a police station to detention in a designated prison as soon as is practicable", the CPT remarks that there are exceptions to the obligation to transfer a suspect to a prison (if the suspect requests to remain in the police station and if transfer to prison would prevent the investigation from being conducted diligently and expeditiously). The exceptions are questionable in the CPT's opinion. They recommend that the necessary steps be taken to ensure that:

- "all persons suspected of offences under the terrorism legislation in respect of whom detention beyond 14 days is authorised are transferred forthwith to a prison;
- appropriate arrangements are in place, enabling terrorist suspects transferred to prison whilst still in pre-charge detention to make effective use of their rights, including that of access to a lawyer".

Besides the Terrorism Acts 2000 and 2006, the Anti-Terrorism, Crime and Security Act 2001 was introduced to create powers to detain without trial persons suspected of international terrorism, in which a derogation from Article 5 ECHR was entered. In 2004, the House of Lords, inter alia, decided that the derogation from Article 5 was incompatible with the Convention. Following the ruling by Britain's highest court, the Prevention of Terrorism Act 2005 came into force on 11 March 2005. This Act replaced Part 4 (ss. 21-32) of the Anti-Terrorism, Crime and Security Act 2001, which made provisions for the indefinite detention of foreign terrorism suspects. The Prevention of Terrorism Act 2005 allows for control orders, restricting the freedom of persons suspected of terrorism activities. These control orders can include several conditions "such as restrictions on movement and travel, restrictions on associations with named individuals and the use of tagging for purposes of monitoring curfews." Despite the fact that indefinite detention is banned from the English law, the new Prevention of Terrorism Act still can count on sharp criticism.