

Sweden¹

1. Introduction

The penal procedure in Sweden has a long history and is rooted in the Germanic law tradition. However, influences of foreign law are also visible. It is based on written law for the greater part, while case-law is not that important. The first Swedish penal law saw its light in 1734. In 1864, a new penal law, which existed until 1965, replaced the first one. The Swedish legal system has an accusatorial character with a public prosecutor representing the State and a defence lawyer representing the defendant. Police officers or prosecutors sanction the majority of the crimes and offences by way of summary fines. The Swedish Code of Judicial Procedure contains the rules on criminal proceedings.

When we look at the Swedish penal procedure system, as it is written in the laws, we can conclude that it is well-organised. Pre-trial detention finds its legal basis in Chapter 24 of the Code of Judicial Procedure, where its scope, notion, grounds and length are ruled in accordance with international standards. The formal and material conditions of pre-trial detention in Sweden are well-arranged. Women and juveniles are treated differently than adult men. However, there are always some points of improvement, as can be seen in the reports of the former Human Rights Commissioner and the CPT. The criticism of these organs of the Council of Europe concerns the restrictions that can be imposed on pre-trial detainees, the overcrowding in penal institutions and the limited possibilities for outdoor activities. However, since the CPT's last visit (2003) and the 2004 visit of the Commissioner of Human Rights, Mr. Gil-Robles, the Swedish government has undertaken great efforts in order to meet up with the increasing numbers of persons coming into contact with the prison system as (remand) prisoners. These efforts include measures such as the expansion of the prison and remand prison capacity. When building new premises to accommodate (remand) prisoners, the Swedish authorities bear in mind the recommendations formulated in the international and European prison standards. For instance, newly built and rebuilt penal and remand institutions always provide proper out-of-cell facilities. There must also be enough space for detainees to go outside and exercise.

Another result of the recommendations from the Council of Europe's bodies is that the Swedish legislator amended Sec. 10 of Chapter 23 of the Code of Judicial Procedure into a provision stating that any person heard by the police during the preliminary investigation has the right to have a defence counsel present when giving statements (provided that this does not frustrate the investigation). The right to a counsel can be exercised by, among others, persons who are not yet reasonably suspected of having committed a crime but who may become a suspect, as well as by witnesses.

In 2007, the average prison population was 6,420, of whom 1,740 were remand prisoners. The prison population rate (per 100,000 of the national population) was 70.² Although the Swedish penal sanction system can very well be regarded as a mild one, over the last years, people (the society) have called for harsher punishments and greater use of imprisonment.³ The trend is that the prison population is increasing.⁴

¹ The author wishes to thank Mrs. Susanne Södersten for providing the necessary legal and statistical material, for commenting on and correcting earlier drafts of this report, and for taking part in the first expert meeting, 3-4 October in Tilburg, the Netherlands. Mrs. Susanne Södersten is a legal advisor at the Swedish Department of Justice, Division for Prosecution Issues.

² P. Lindström and E. Leijonram, *The Swedish prison system*, in: Peter J.P. Tak & Manon Jendly (eds.), *Prison policy and prisoners' rights*, Nijmegen: Wolf Legal Publishers 2008, p. 560.

³ M. Cavadino & J. Dignan, *Penal systems, a comparative approach*, London: Sage 2006, p. 159.

⁴ Lindström and E. Leijonram, *The Swedish prison system*, in: Peter J.P. Tak & Manon Jendly (eds.), *Prison policy and prisoners' rights*, Nijmegen: Wolf Legal Publishers 2008, p. 560.

2. Empirical background information

The first set of data is based on the resources of Statistics SPACE I, the annual penal statistics on the prison population, provided by the Council of Europe. These numbers are put together in clear figures that are shown after this explanation of resources. The following remarks have to be made: The data relate to 1 October 2006 and no measures (legislative or other) influencing directly the trends in the number of prisoners have been taken in the course of the last twelve months. The second set of data has its foundations in the research of the International Centre for Prison Studies (hereafter: ICPS), which publishes its World Pre-trial / Remand Imprisonment List⁵ every year. These numbers concern the Kingdom of Sweden and focus especially on pre-trial detention.

Sweden and its prisoners in general

Population 2006, annual estimate	9,078,200
Total number of prisoners (including pre-trial detainees)	7,175
Prison population rate per 100,000 inhabitants	79.0
Total capacity of penal institutions/prisons	6,756
Prison density per 100 places	106.2

Special groups of prisoners

Number of prisoners under 18 years old (data only available for sentenced prisoners)	14 (0.2 %)
Number of prisoners under 18 years old in pre-trial detention	11 ⁶
Number of prisoners from 18 to less than 21 years old (data only available for sentenced prisoners)	206 (2.9 %)
Number of female prisoners (data only available for sentenced prisoners)	293 (4.1 %)
Number of female prisoners in pre-trial detention	113 ⁷
Number of foreign prisoners (data only available for sentenced prisoners)	1,533 (21.4 %)
Percentage of foreign pre-trial detainees	Not available via SPACE I
Percentage of European prisoners among the foreign prisoners	Not available via SPACE I

Legal status of prison population I

Untried prisoners (no court decision yet reached)	1,595 (It is not possible to separate these groups in the statistics.)
Convicted prisoners, but not yet sentenced	
Sentenced prisoners who have appealed or who are within the statutory time limit for doing so	
Sentenced prisoners (final sentence)	5,533
Other cases (cases of enforcement against a person; fine defaulters) ⁸	47
Total	7,175

⁵ R. Walmsley, World Pre-trial / Remand Imprisonment List, Pre-trial detainees and other remand prisoners in all five continents 2007, available at <http://www.kcl.ac.uk/depsta/law/research/icps/downloads/WPTRIL.pdf>

⁶ Ministry of Justice of Sweden, *Basic facts, The Swedish Prison and Probation Service 2007*, available at <http://www.kriminalvarden.se/upload/Informationsmaterial/Basic%20Facts%202007.pdf>, p. 10.

⁷ Ibid.

⁸ The category "other cases" includes drug addicts, illegal immigrants awaiting deportation, persons awaiting placement in a psychiatric institution, and persons who have broken probation rules.

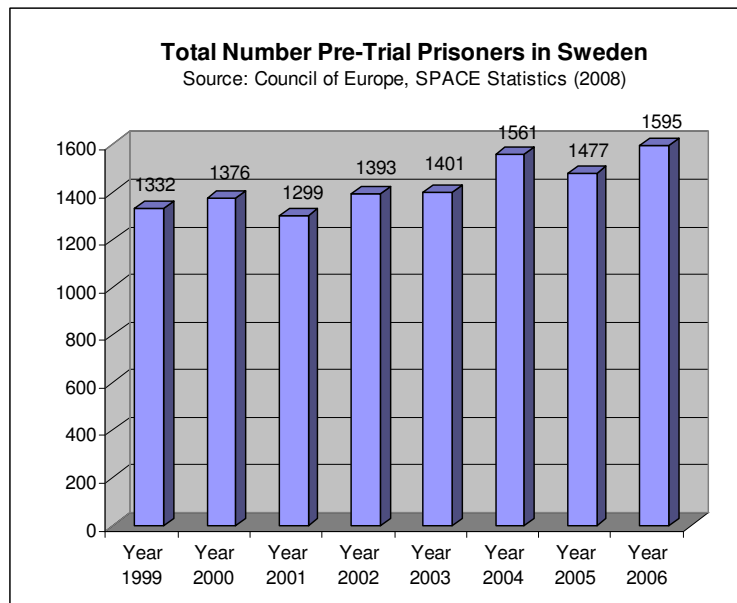
Legal status of prison population II

Percentage of prisoners not serving a final sentence	22.9%
Rate of prisoners not serving a final sentence per 100,000 inhabitants	18.1
Percentage of untried prisoners (no court decision yet reached)	22.2%
Rate of untried prisoners (no court decision yet reached) per 100,000 inhabitants	17.6

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

Year ⁹	Number ¹⁰	Percentage ¹¹
1999	1332	24,5
2000	1376	24,4
2001	1299	21,4
2002	1393	21,9
2003	1401	20,9
2004	1561	21,4
2005	1477	21,1
2006	1595	22,4
Average percentage		22,3

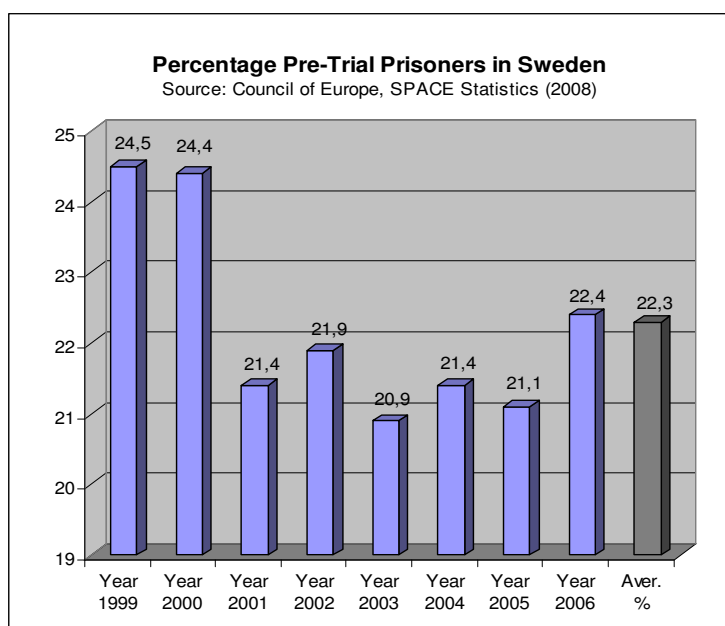
Source: Council of Europe, SPACE I Statistics



⁹ Per 1 October of mentioned year.

¹⁰ This number includes: untried prisoners (no court decision yet reached), convicted prisoners but not yet sentenced and sentenced prisoners who have appealed or who are within the statutory time limit for doing so.

¹¹ Percentage of the total prison population.



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

Prison population according to legal status:	
Total number in pre-trial/remand imprisonment	1,595
Date	1 October 2006
Percentage of the total prison population	22.2 %
Estimated national population (at date shown)	9.08 million
Pre-trial/remand population rate (per 100,000 of the national population)	18

The first figure shows the number of prisoners in Sweden in general. Sweden has a population of around 9 million, whereof 7,175 persons are detained. The prison population rate per 100,000 inhabitants is 79.0. When looking at the total capacity of the penal institutions and prisons, it can be seen that this is 6,756. Therefore, the prison density per 100 places is 106.2. This means that there are more people who have been deprived of their liberty than there are available places. A strongly increasing prison population has placed the issue of expanding the capacity of the prison system on the national agenda. The lack of capacity has led to a situation where the ambitions of offering each sentenced person a place in a prison matching his individual needs is meeting great difficulties¹². Nevertheless, efforts are being made to expand the capacity of the penal institutions or prisons¹³.

The second figure tells us that there are fourteen prisoners under 18 years old; this is 0.2 % of the total prison population. About eleven of these juveniles are in pre-trial detention. There are 206 prisoners from 18 to less than 21 years old: 2.9% of the total prison population. The 293 female prisoners make out 4.1% of the total prison population. Some 113 female prisoners are placed under pre-trial detention. Finally, the number of foreign prisoners: There are 1,533 detained foreigners – 21.4% of the total prison population. Unfortunately, no data is available on the percentage of foreign pre-trial detainees and the percentage of European prisoners.

The first figure concerning the legal status of the prison population shows that the statistics do not distinguish between untried prisoners, convicted but not yet sentenced prisoners, and sentenced prisoners who have appealed or who are within the statutory time limit for doing so. All together, there are 1,595 prisoners who fall within these groups. The number of sentenced

¹² Swedish government, Response of the Swedish Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Sweden, from 27 January to 3 February 2003, 18 November 2004, CPT/Inf(2004) 33, available on the website of the Council of Europe.

¹³ United States Department of State, the Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices 2007, Sweden, 11 March 2008, available at <http://www.state.gov/g/drl/rls/hrrpt/2007/100587.htm>, p. 1.

prisoners is 5,533. The residual category contains 47 prisoners. In total, the prison population is 7,175.

The second figure concerning the legal status of the prison population shows us the percentage of prisoners not serving a final sentence. This is 22.9 %. The rate of prisoners not serving a final sentence per 100,000 inhabitants is 18.1. When looking at the percentage of untried prisoners – prisoners in whose cases no court decision has been reached yet – it can be seen that this is 22.2 %. Finally, the rate of untried prisoners per 100,000 inhabitants is 17.6.

The last figure focuses on pre-trial detention. It tells us that there are 1,595 persons in pre-trial or remand imprisonment (as of 1 October 2006). This is 22.2% of the total prison population. The pre-trial or remand population rate per 100,000 of the national population is 18.

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

Source	Date	Total prison population (including pre-trial detainees/remand prisoners)	Number of pre-trial detainees	Pre-trial detainees as a percentage of the total prison population	Prison population rate per 100,000 of national population	Pre-trial detention rate per 100,000
International Centre for Prison Studies ¹⁴	1 October 2007	6,770	1,503	22.2	74	17
SPACE I (Council of Europe) ¹⁵	1 September 2006	7,175	1,595	22.2	79	17.7
European Sourcebook ¹⁶	2003	-	-	27	75	-
Eurostat ¹⁷	2006	7,175	-	-	-	-
National Statistics ¹⁸	2006	7,196	1,522	21	61 ¹⁹	-

Source	Pre-Trial detention (numbers) between		Pre-trial detention (percentage) between		Origin of foreigners in pre-trial detention (percentage)	
	Nationals	Foreigners	Nationals	Foreigners	EU nationals	Third-country nationals
International Centre for Prison Studies	-	-	-	-	-	-
SPACE I (Council of Europe)	743	98	78.9	21.1	-	-
European Sourcebook	-	-	-	-	-	-

¹⁴ International Centre for Prison Studies, World Pre-trial/Remand imprisonment list January 2008.

¹⁵ M.F. Aebi, N. Delgrande, University of Lausanne, Switzerland, Council of Europe Annual Penal Statistics – SPACE I – Survey 2006, pc-cp\space\documents\pc-cp (2007) 09 rev3.

¹⁶ European Sourcebook of Crime and Criminal Justice Statistics – 2006 Third edition STOCK data.

¹⁷ Eurostat, population and social conditions, criminal and criminal justice, prison population (http://epp.eurostat.ec.europa.eu/extraction/retrieve/en/theme3/crim/crim_pris?OutputDir=EJOutputDir_621&user=unknow&clientsessionid=1CBF25260BEF17D1F309141D087444F4.extraction-worker-2&OutputFile=crim_pris.htm&OutputMode=U&NumberOfCells=602&Language=en&OutputMime=text%2Fhtml&)

¹⁸ Ragnar Kristoffersen (ed.), Correctional Statistics of Denmark, Finland, Iceland, Norway and Sweden 2002 – 2006, report 6/2008 & Ministry of Justice of Sweden, Basic facts, The Swedish Prison and Probation Service 2007, available at <http://www.kriminalvarden.se/upload/Informationsmaterial/Basic%20Facts%202007.pdf>, p. 10 (in total on remand according to the same statistics: 1,922).

¹⁹ Sentenced per 100,000 of the total population; the overall number of registered inmates per 100,000 of the total population is 79.

Eurostat	-	-	-	-	-	-
National Statistics	-	-	-	-	-	-

Source	Females in pre-trial detention (numbers)	Females as a percentage of the total number of pre-trial detainees	Juveniles in pre-trial detention (numbers)	Juveniles as a percentage of the total number of pre-trial detainees
International Centre for Prison Studies	-	-	-	-
SPACE I (Council of Europe)	-	-	-	-
European Sourcebook	-	-	-	-
Eurostat	-	-	-	-
National Statistics	113	6%	11	0.6%

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

3.1 Definition and primary objective of pre-trial detention

Before giving the definition and the primary objective of pre-trial detention in Sweden, it has to be mentioned that the Swedish Code of Judicial Procedure does not differentiate between crimes and infractions. The classification of crime in the official crime statistics is based on the legal crime definitions given in the Penal Code. Although there is no differentiation, main groups of crimes are divided into subcategories.²⁰ These divisions are guided by general principles. A logical system cannot be found. These subdivisions have developed over a long period of time and have been determined from a pragmatic point of view.²¹ A second point to mention is that Sweden has two parallel types of courts, namely general courts, which deal with criminal and civil cases, and general administrative courts, which deal with cases relating to public administration.²² The court system has three tiers: District Courts, Courts of Appeal, and the Supreme Court.²³ Appeals against judgments of District Courts can be lodged before a Court of Appeal and appeals against the decisions of Courts of Appeal can be put forward before the Supreme Court.²⁴ However, the possibility of having an appeal heard in the Supreme Court is sometimes subject to special permission. This is, however, not the case for decisions on detention. Such permission is given if it is important for the enforcement of the law that the appeal should be heard by the Supreme Court.²⁵

Point of departure is that the task of the prosecutor is to prove that the accused is guilty beyond reasonable doubt. As a consequence, the accused does not need to prove that he or she is innocent. In this basic assumption, lies the *presumptio innocentiae*. According to Sec. 4, Chapter 23, during the preliminary investigation, also circumstances in the suspect's favour shall be considered, and any evidence in his favour shall be preserved. The prosecutor has the obligation to continuously inform the suspect of the development of the investigation, to the extent possible without impediment to the investigation (Sec. 18, Chapter 23, Code of Judicial Procedure). Upon the conclusion of the preliminary investigation, the suspect and his defence have the right to access the entire investigation material.

²⁰ Crime and Society, *A comparative criminology tour of the world: Sweden*, available at <http://www-rohan.sdsu.edu/faculty/rwinslow/europe/sweden.html>, p. 3.

²¹ Wikstrom P.H. and Dolmen L., *World Fact book of Criminal Justice Systems: Sweden*, 1993, available at <http://www.ojp.usdoj.gov/bjs/pub/ascii/wfbcjswc.txt>, p. 2.

²² Ministry of Justice of Sweden, *The Swedish judicial system, a brief presentation*, 20 December 2007, available at <http://www.sweden.gov.se/content/1/c6/01/62/79/023155e4.pdf>, p. 10.

²³ Wikstrom P.H. and Dolmen L., *World Fact book of Criminal Justice Systems: Sweden*, 1993, available at <http://www.ojp.usdoj.gov/bjs/pub/ascii/wfbcjswc.txt>, p. 13.

²⁴ Ibid, p. 13.

²⁵ Crime and Society, *A comparative criminology tour of the world: Sweden*, available at <http://www-rohan.sdsu.edu/faculty/rwinslow/europe/sweden.html>, p. 12.

A definition of pre-trial detention is not given by the Swedish Code of Judicial procedure, but Chapter 24, Sec. 1 puts forward the obligatory prerequisites and grounds for pre-trial detention. “Any person suspected on probable cause of an offence punishable by imprisonment for a term of one year or more, may be placed in detention if, in view of the nature of the offence, the suspect’s circumstances, or any other factor, if there is a reasonable risk that the person will 1) flee or otherwise evade legal proceedings or punishment, 2) impede the inquiry into the matter at issue by removing evidence or in another way, or 3) continue his criminal activity.” A person suspected on probable cause of an offence punishable by imprisonment for a term of one year or more may be placed in detention. This section also determines that “detention may only occur if the reason for the detention outweighs the intrusion or other detriment to the suspect or some other opposing interest”.²⁶ The Swedish Constitution provides for the principle of the individual’s right to personal freedom. The instrument for government²⁷ rules in Chapter 2, article 8 that “every citizen shall be protected in his relations with the public institutions against deprivation of personal liberty. He shall also in other respects be guaranteed freedom of movement within the Realm and freedom to depart the Realm.” The court should, without delay, examine a person’s deprivation of liberty if the deprivation of liberty was carried out by another public authority than the court itself. The protection against deprivation of liberty may only be restricted by law and “be imposed only to satisfy a purpose acceptable in a democratic society. The restriction must never go beyond what is necessary having regard to the purpose, which occasioned it, nor may it be carried so far as to constitute a threat to the free formation of opinion as one of the fundamentals of democracy. No restriction may be imposed solely on grounds of a political, religious, cultural or other such opinion” (Art. 12, paragraph 2).

Another prerequisite mentioned in Sec. 1 of Chapter 24 is: “If a penalty less severe than imprisonment for two years is not prescribed for the offence, the suspect shall be detained unless it is clear that detention is unwarranted.” Besides these situations in which pre-trial detention can be ordered, Sec. 2 of Chapter 24 also makes it possible to place a suspect in pre-trial detention if his/her identity is unknown, or if he/she does not reside in Sweden and there is a reasonable risk he/she will avoid legal proceedings or a penalty by fleeing the country. Sec. 3 of Chapter 24 provides another situation in which a person can be placed in pre-trial detention: “Also a person, who is only reasonably suspected of an offence, may (...) be detained if 1) the conditions for detention stated in Section 1, paragraph 1, 3 and 4, or Section 2 are otherwise satisfied, and 2) it is of extraordinarily importance that he be detained pending further investigation of the offence.” According to Sec. 4 of Chapter 24, the well-being of the suspect is primary; if there is a fear that detention will cause serious harm to the suspect, detention cannot be arranged. “The same rule applies to a woman, who has given birth so recently that it may be feared that her detention will serious harm the child.”²⁸

If there are reasons to believe that a criminal offence under public prosecution has been committed, a pre-trial investigation should be initiated to find out who is reasonably suspected of the crime and if there is sufficient evidence to prosecute the suspect.²⁹

Before placing a suspect in pre-trial detention, he or she may be placed under arrest (if there are grounds for detention) while awaiting the court’s determination of the detention issue³⁰. Decisions concerning arrest are made by the public prosecutor.³¹

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

The public prosecutor plays an important role in the criminal proceedings as he decides whether a suspect is to be placed and kept under arrest. He constantly has to keep the suspect informed of the procedure. The maximum period for which a suspect can be held without a warrant of arrest is twelve hours.³² An application for a detention order shall be made without delay and no later than noon on the third day after the arrest order.³³

²⁶ Chapter 24, Sec. 1, paragraph 3 of the Code of Judicial Procedure.

²⁷ Available at http://www.riksdagen.se/templates/R_Page_6307.aspx

²⁸ Chapter 24, Sec. 4, paragraph 1 of the Code of Judicial procedure.

²⁹ Crime and Society, *A comparative criminology tour of the world: Sweden*, available at <http://www-rohan.sdsu.edu/faculty/rwinslow/europe/sweden.html>, p. 11.

³⁰ Chapter 24, Sec. 6, first paragraph of the Code of Judicial Procedure.

³¹ Chapter 24, Sec. 6, third paragraph of the Code of Judicial Procedure.

³² Crime and Society, *A comparative criminology tour of the world: Sweden*, available at

Decisions to retain a person in detention are made by the court after hearing³⁴ the issue at hand. The suspect, his counsel and the public prosecutor are present at this hearing. Following a request for pre-trial detention, the court holds a session to decide upon the detention.³⁵ This is usually done on the same day, but always within four days from the day the suspect was apprehended or the arrest order was executed.³⁶ If the court decides to remand the suspect in custody, it shall at the same time set a date on which prosecution shall be initiated according to Sec. 18 of Chapter 24 of the Code of Judicial Procedure. If the court does not order detention, the court shall withdraw the arrest order immediately.³⁷ It is also possible for the public prosecutor to ask the court to order detention of a person who has not been arrested.³⁸

Pre-trial detention, at the latest, ends when the prosecution of the suspect is initiated. Until this moment, the pre-trial detention order will be reviewed at least every two weeks. A decision on detention can either be re-considered at any time at the request of one of the parties or if the Court finds that it is necessary (Sec. 20, Chapter 24). Sec. 18 of Chapter 24 states: “If a prosecution is not instituted within two weeks, the court shall hold a new hearing on the issue of detention at intervals of not more than two weeks, as long as the suspect is detained and until the prosecution is initiated.” The same section also emphasises the promptness of the proceedings by stating that “the court shall ensure that the inquiry is being pursued as speedily as possible”.

The foregoing deals with the situation in which a person is suspected on probable cause of an offence punishable by imprisonment. However, in the case of a person who is only reasonably suspected of an offence, as stated in Sec. 3 of Chapter 24, there are other time limits concerning pre-trial detention. The court will hold a hearing within one week after the detention decision.³⁹

The court shall discontinue a detention order if: a) within the time prescribed in Sec. 18, the prosecutor has neither initiated prosecution nor requested an extension; or b) the grounds for the order no longer exist.⁴⁰ The second paragraph of Sec. 20 of Chapter 24 determines that the prosecutor may, at any time, remove a detention order before the prosecution is initiated.

In short, pre-trial detention ends when it appears that the dossier is complete and that there is sufficient evidence to bring the case before the court. If not, proceedings are dropped either by the public prosecutor or by the court.

Within this respect, it is noteworthy that – in general – the Swedish system has been built upon the idea that the entire process should be speedy; this goes for both the pre-trial and the trial stage. According to Swedish law (Chapter 45, Sec. 14 of the Code of Judicial Procedure), when the defendant is under arrest or in detention, the main hearing shall be held within one week from the date of the institution of the prosecution. According to Chapter 30, Sec. 7 of the Code of Judicial Procedure, the judgment shall be made and delivered in open court on the same day as the conclusion of the main hearing or, if this is really not possible, within one week of the conclusion of the hearing. There are also time limits for the appeal courts in handling cases in which a person has been deprived of his or her liberty.

3.3 Procedural rights

As already mentioned, it is the task of the prosecutor to prove that the accused is guilty beyond reasonable doubt. The suspect does not need to prove that he or she is innocent. A decision to prosecute cannot be taken unless the suspect and his counsel have been informed of the suspicion and have had an opportunity to read the files and comment on them.

Detainees have the right to prompt access to a lawyer.⁴¹ If this is necessary, the court is required to ensure that the suspect is provided with the assistance of a public defence counsel.⁴² The counsellor must be a trained lawyer⁴³ and a member of the Swedish Bar Association; he is

<http://www-rohan.sdsu.edu/faculty/rwinslow/europe/sweden.html>, p. 12, and Wikstrom P.H. and Dolmen L., *World Fact book of Criminal Justice Systems: Sweden*, 1993, available at <http://www.ojp.usdoj.gov/bjs/pub/ascii/wlfbcsjswc.txt>, p. 13.

³³ Chapter 24, Sec. 12, first paragraph of the Code of Judicial Procedure.

³⁴ Chapter 24, Sec. 13 of the Code of Judicial Procedure.

³⁵ Chapter 24, Sec. 16, first paragraph of the Code of Judicial Procedure.

³⁶ Chapter 24, Sec. 13 of the Code of Judicial Procedure.

³⁷ Chapter 24, Sec. 16, third paragraph of the Code of Judicial Procedure.

³⁸ Chapter 24, Sec. 17 of the Code of Judicial Procedure.

³⁹ Chapter 24, Sec. 19, first paragraph of the Code of Judicial Procedure.

⁴⁰ Chapter 24, Sec. 20, first paragraph of the Code of Judicial Procedure.

⁴¹ Chapter 21, Sec. 3 of the Code of Judicial Procedure.

⁴² Chapter 21, Sec. 3a, first paragraph of the Code of Judicial Procedure.

⁴³ Chapter 21, Sec. 5, first paragraph of the Code of Judicial Procedure.

remunerated for his assistance to the suspect out of public funds as determined in Sec. 10 of Chapter 21. Through his lawyer, the suspect has the right to request his freedom at any time. In this respect, Sec. 8 of Chapter 21 provides that “during the preliminary investigation and the court proceedings, defence counsel may make any request and take any measure required to protect the rights of the suspect”. Furthermore, the right to appeal a decision regarding the placement in pre-trial detention can be based on Sec. 1 of Chapter 52 of the Code of Judicial Procedure. This provision determines that there is no time limit for appealing an order that requires a person to be placed or kept in detention and permits restrictions.

According to a relatively new section, 21a in Chapter 24 of the Code of Judicial procedure,⁴⁴ the close relatives of a person deprived of his or her liberty shall be informed of the deprivation of liberty at an earlier stage and in more cases than before.

4. Grounds for detention

A pre-trial detention order has to be based on one or more grounds, which can be found in Sec. 1 of Chapter 24 of the Code of Judicial Procedure. The first paragraph of this section determines that a person can only be placed in detention when “there is a reasonable risk that the person will 1) flee or otherwise evade legal proceedings or punishment, 2) impede the inquiry into the matter at issue by removing evidence or in another way, or 3) continue his criminal activity”. In short, the legal grounds for pre-trial detention under Swedish law are: danger of absconding, danger of suppression of evidence, and danger of re-offending and recidivism. When the ground to keep a person in pre-trial detention no longer exists, the court shall rescind the detention order immediately according to Chapter 24, Sec. 20.

There are two grades of suspicion. The first one is determined in Sec. 1 of Chapter 24 and the second one in Sec. 3 of Chapter 24. The former requires a person suspected on *probable* cause of an offence punishable by imprisonment for a term of one year or more; the latter requires a person who is only *reasonably* suspected of an offence punishable by imprisonment for a term of one year or more. This situation asks for supplementary conditions, namely that the requirements for detention stated in Sec. 1 or those in Sec. 2⁴⁵ are satisfied and that it is of extraordinarily importance that the person be detained pending further investigation of the offence.⁴⁶

According to a rather old report from the National Courts Administration (“Anhållande och häktning – en utvärdering av 1996 års ändring av fristerna vid anhållande och häktning”, hereafter: DV rapport 1997:6), in 98% of the decisions on detention the suspect was suspected on probable cause and only in 1% of the decisions the level of suspicion was “reasonably suspected”. In the remaining 1% of the cases, the suspect was placed in detention as both “reasonably suspected” and “suspected on probable cause”.⁴⁷ According to the DV rapport, the most frequent combination of grounds for detention was the risk that the suspect would impede the inquiry together with the risk that he or she would continue his/her criminal activity (41%). The risk of recidivism (continuing of the criminal “carrier”) was the most common ground used for detention. The decision on detention was based on that ground only, or in combination with other grounds, in 78% of the decisions on detention. In 63% of the decisions, the basis for remanding a person into custody was the risk of collusion.

5. Grounds for review of pre-trial detention

If a prosecution is not instituted within fourteen days, the court shall hold a new hearing on the issue of detention at intervals of not more than two weeks, as long as the suspect is detained and

⁴⁴ Information from the expert. The section entered into force on 1 April 2008.

⁴⁵ This section provides the possibility to place a person in pre-trial detention if his/her identity is unknown or if he/she does not reside in Sweden, and there is a reasonable risk that the person will avoid legal proceedings or a penalty by fleeing the country.

⁴⁶ Chapter 24, Sec. 3 of the Code of Judicial Procedure.

⁴⁷ Information from the expert (provided on 9 October 2008): The report is based on available statistics and a study of cases from the courts conducted by the National Courts Administration; it contains material from 61 District Courts for the period 24 February 1997 – 4 April 1997. All criminal cases decided in that period in which there had been a demand for detention judged by the Court, were studied.

until the prosecution is initiated.⁴⁸ The court has the possibility to extend the periods if, in view of the investigation or any other circumstance, it is evident that holding hearings within the initiated time would serve no purpose. In the case of a person who is only reasonably suspected of an offence, the public prosecutor shall notify the court as soon as he concludes that there is probable cause to believe that the suspect has committed the offence. The court shall hold a new hearing on the issue of detention without delay. This hearing must always be held within one week after the detention decision according to Sec. 19 of Chapter 24: “If at the hearing no probable cause is shown to believe that the suspect has committed the offence or that there otherwise are no longer grounds for detention, the court shall rescind the detention order immediately.”⁴⁹ A decision on detention can be re-considered at any time, either at the request of one of the parties or if the court finds that it is called for.

6. Length of pre-trial detention

In respect of review and reflection proceedings, the notion of reasonable time appears in Chapter 32 of the Code of Judicial Procedure. Sec. 1 of this Chapter states: “When a party or another person is required by a court order to appear before the court or otherwise to perform any other act in the proceedings, he shall be afforded a reasonable time to comply therewith.” This notion does not give concrete indications for the length of pre-trial detention. Swedish law does not stipulate a maximum period of remand.⁵⁰ Although at first glance this might seem strange, in practice, it does not pose a serious problem. The European Court of Human Rights has dealt with only one case related to this issue, namely the case of McGoff vs. Sweden in which the Strasbourg Court found that had been a breach with article 5 paragraph 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.⁵¹

From the principle of proportionality in Sec. 1, Chapter 24 of the Code of Judicial Procedure, it can be assumed that a person should not be held in detention for a longer period than is proportionate in relation to the individual and the suspected crime, and never for a longer period than the expected sanction if the suspect is convicted.⁵² As Sweden is a member of European and international organisations, such as the Council of Europe, within this respect it should also be noted that the European Convention for the Protection of Human Rights and Fundamental Freedoms is incorporated into Swedish law.⁵³

According to the DV rapport 1997:6, the average time spent in pre-trial detention (counted from the apprehension of the person until the sentence in first instance) was 24 days. In 80% of the cases, the time spent in pre-trial detention was six weeks or less.⁵⁴

7. Other relevant aspects

7.1 Restrictions during pre-trial detention

Public prosecutors have the possibility to put restrictions upon remand prisoners. The prosecutor must have a general permission from the court on the use of restrictions in the specific case in order to have the power to decide upon specific restrictions. Such general permission presupposes that the suspect is placed in detention because of a risk that he or she removes evidence or in another way impedes the inquiry into the matter at issue. The court’s general permission for the prosecutor to impose restrictions regarding the suspect (Chapter 24, Sec. 5a of the Code of Judicial Procedure) can be appealed to the Court of Appeal and to the Supreme Court.⁵⁵ Prosecutors are

⁴⁸ Chapter 24, Sec. 18 of the Code of Judicial Procedure.

⁴⁹ Chapter 24, Sec. 19, second paragraph of the Code of Judicial Procedure.

⁵⁰ Ministry of Justice of Sweden, *Basic facts, The Swedish Prison and Probation Service 2007*, available at <http://www.kriminalvarden.se/upload/Informationsmaterial/Basic%20Facts%2007.pdf>, p. 10.

⁵¹ The judgment is not directly relevant for the understanding of the current Swedish legislation on detention. The judgment is from 1984, and is based on the legislation of that time. It has caused changes in the Code of Judicial Procedure. The changes imply, *inter alia*, that a detention hearing may never be held later than four days after the suspect was apprehended or the arrest order was executed (information provided by the expert).

⁵² Information from the expert.

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ Information from the expert.

required to present to the court the grounds on which a request for the court's general permission to impose restrictions is based.⁵⁶ These grounds are orally put forward during the remand hearing. From 1 January 1999, public prosecutors "have been obliged to state the grounds for restrictions in writing on the form 'instructions relating to apprehended/arrested/remanded persons' which notifies a place of detention (and in some cases the detained person) of the specific restrictions which the prosecutor intends to apply. A prosecutor thus only becomes subject to a duty to record the grounds on which specific restrictions are being applied after the court has granted that prosecutor a general permission to impose whatever restrictions he/she thinks fit."⁵⁷ However, according to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereafter: CPT), in practice, public prosecutors do not fully comply with this obligation.⁵⁸

Sec. 17 of the Act on the Treatment of Persons Arrested or Remanded in Custody provides that a remand prisoner "may request that the district court review a decision (...) to impose restrictions of a particular kind". The same section states that "the court's decision cannot be appealed". Therefore, there is an absence of an effective right of appeal against court decisions regarding restrictions of a particular kind. Examples of possible restrictions are: denying the suspect access to association, telephone calls and visits, and censoring correspondence.⁵⁹ Imposing restrictions on persons in pre-trial detention has to be an exceptional measure, but in practice it seems to be the rule.⁶⁰

7.2 Deduction of pre-trial detention

Chapter 33 of the Penal Code, named "On deduction of period of arrest and remand in custody", deals with the question whether time spent in pre-trial detention has to be taken into account. Sec. 5 of this chapter states that "a person sentenced to imprisonment for a fixed term or to closed juvenile care, or if the court orders (...) that such sanction shall cover further crimes, and if the sentenced person has been deprived of liberty through arrest, remand in custody or admission to a forensic psychiatry unit under (...) for at least twenty-four hours by reason of being suspected of a crime that has been tried and subject to sentence, the period of such deprivation of liberty, insofar as enforcement of another sentence has not proceeded simultaneously, shall be considered as time served in prison or in a special youth institution in consequence of the sentence imposed". Furthermore: "If the time by which the sentence of imprisonment exceeds the period of deprivation of liberty is small, the court may direct that the term of imprisonment shall be considered to have been served in full as a result of the deprivation of liberty." Finally, if imprisonment for a fixed period is imposed because a conditional sentence or a sentence of probation is revoked, then – insofar as the deduction provided for in the first or third paragraph has not been made – the provisions of the first paragraph shall also be applicable to: deprivation of liberty preceding the conditional sentence or the sentence to probation, deprivation of liberty preceding a judgment directing that the conditional sentence or sentence to imprisonment shall include further crimes, and to any detention provided for in Chapter 28, Sec. 6b or Sec. 11, third paragraph. If a person is sentenced to a fine and has been deprived of liberty in the manner described in the first paragraph of Sec. 5 of Chapter 33 by reason of being suspected of a crime that has been subject to sentence, the court may direct that the sentence has been enforced in full or in part as a result of the deprivation of liberty.

7.3 Deduction of foreign pre-trial detention

Sec. 5 may also be applied to the extent found to be reasonable to a deprivation of liberty which took place outside the Realm (Sec. 6 of Chapter 33).

⁵⁶ Chapter 24, Sec. 14 of the Code of Judicial Procedure.

⁵⁷ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Report to the Swedish Government carried out by the CPT, from 27 January to 5 February 2003, 18 November 2004, CPT/Inf (2004) 32, available on the website of the Council of Europe, p. 26.

⁵⁸ Ibid.

⁵⁹ Report by Mr. Alvaro Gil-Robles, Council of Europe Commissioner for Human Rights, *On his visit to Sweden*, following his visit from 21 to 23 April 2004, CommDH (2004) 13, July 8, 2004, available at <http://wcd.coe.int/ViewDoc.jsp?id=758789&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679>, paragraph 5.

⁶⁰ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Report to the Swedish Government carried out by the CPT, from 27 January to 5 February 2003, 18 November 2004, CPT/Inf (2004) 32, available on the website of the Council of Europe, p. 27.

A decision on a question dealt with in Sec. 5 and 6 of Chapter 33 may be amended in a trial by a higher court of an appeal concerning the imposition of a sanction even though no appeal has been lodged against such decision.

7.4 Compensation for unnecessary pre-trial detention

A person who has been arrested or placed in detention for more than 24 hours has the right to compensation from the State if the suspicion does not lead to prosecution or if the court announces a verdict of not guilty (Sec. 2 lagen [1998:714] om ersättning vid frihetsberövande och andra tvångsåtgärder⁶¹). This means that not only unlawful pre-trial detention is compensated for, but also detention that has not led to indictment.

7.5 Alternatives to pre-trial detention

There are three alternatives to pre-trial detention: supervision, travel ban, and report order. If a person is reasonably suspected of an offence for which imprisonment may be imposed, and there is – with regard to the nature of the offence, the circumstances of the suspect or some other factor – a reason to believe that he will flee or in some other way evade legal proceedings or penalty, but there is otherwise no reason to detain or arrest him, he may instead be ordered, if this is sufficient, not to leave the assigned place of residence or to report to the police authority at certain times.⁶² However, “travel prohibition or obligation to report may be ordered only if the reasons for the measure can be assumed to outweigh the consequent intrusion or other detriment to the suspect or to any other adverse interest”.⁶³

In connection with a travel ban or an obligation to report, the suspect may be required to be at his place of residence or work at specified times.⁶⁴ Other conditions needed for his supervision may also be imposed. A travel ban and an obligation to report may be imposed simultaneously.⁶⁵ These measures can be issued by the public prosecutor or the court.

7.6 Execution of pre-trial detention

7.6.1 Place of execution of pre-trial detention

A person who is being detained shall be taken to a remand centre without delay according to Sec. 22 of Chapter 24 of the Code of Judicial Procedure. “There are separate provisions concerning the treatment of arrested or detained persons” as determined in Sec. 24 of Chapter 24. These separate provisions can be found in the Act on the Treatment of Persons Arrested or Remanded in Custody.

7.6.2 Judgment of the former Commissioner of Human Rights

In his report of July 2004,⁶⁶ Mr. Gil-Robles, the former Commissioner of Human Rights, expressed himself to be very pleased regarding the conditions of persons in pre-trial detention and the respect shown for human rights in Sweden. However, he added that there are always issues that can be improved. Although the report is very positive, it also contains some points of criticism. The first is that there are penal institutions and prisons without appropriate outdoor facilities, so access to fresh air is limited.⁶⁷

The second point of criticism concerns the use of restrictions on remand prisoners, especially isolation. “The maximum restrictions entail isolation for 23 hours a day, the prohibition of all correspondence, phone calls, and communication with anyone other than their lawyers and prison staff.”⁶⁸ Mr. Gil-Robles notes that it is difficult to escape the conclusion that restrictions that ought to be applied exceptionally are in fact applied almost as a rule.⁶⁹ He states that “further

⁶¹ Information from the expert.

⁶² Chapter 25, Sec. 1, first paragraph of the Code of Judicial Procedure.

⁶³ Chapter 25, Sec. 1, third paragraph of the Code of Judicial Procedure.

⁶⁴ Chapter 25, Sec. 2, first paragraph of the Code of Judicial Procedure.

⁶⁵ Ibid.

⁶⁶ Report by Mr. Alvaro Gil-Robles, Council of Europe Commissioner for Human Rights, *On his visit to Sweden*, following his visit from 21 to 23 April 2004, CommDH (2004) 13, July 8, 2004, available on <http://wcd.coe.int/ViewDoc.jsp?id=758789&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679>

⁶⁷ Ibid, paragraph 4.

⁶⁸ Ibid, paragraph 5.

⁶⁹ Ibid.

consideration be given to ways in which the use of restrictions could be limited only to those situations where it is absolutely necessary. It is to be recalled moreover, that restrictions ought to be imposed only for such purposes as are prescribed by the law and not as a simple way of encouraging greater cooperation during the course of investigations.”⁷⁰

The third point of criticism is related to the small overcrowding problem, which causes some bad effects on the educational and occupational opportunities. These activities are being reduced, because all available places are necessary to accommodate new detainees.⁷¹ Mr. Gil-Robles recommends allocating resources to overcome the problems of overcrowding in prisons. In the year 2009, it can be said that Sweden has picked up the recommendations immediately, as the relevant Swedish authorities are working on them by building new prisons and by rebuilding older facilities in order to provide for enough (outdoor) space.

7.6.3 CPT report of the visit to Sweden

In its report of November 2004,⁷² the CPT formulated some recommendations concerning persons in (pre-)trial detention in Sweden. In the following, the most important recommendations will be mentioned. First, there are some recommendations regarding detainees’ rights. The CPT emphasises that “all persons detained by the police should have a formally recognised right to inform a relative or another third party of their choice of their situation, as from the outset of their detention. Any possibility exceptionally to delay the exercise of this right should be clearly circumscribed in law and made subject to appropriate safeguards.”⁷³ The right of access to a lawyer for all categories of persons obliged to remain with the police has to be respected more too.⁷⁴ The same goes for the right of access to a doctor.⁷⁵

Secondly, in general, it can be said that the conditions of detention meet the criteria of the CPT. However, the CPT also criticises the restrictions placed on pre-trial detainees. It recommends that the imposition of restrictions is well reasoned and laid down in writing by the public prosecutor. Furthermore, it should be considered to introduce legislation requiring that court decisions regarding the initial imposition and the prolongation of restrictions are individualised and fully reasoned.⁷⁶ Thirdly, the material conditions of detention. These are generally of a good standard.⁷⁷ However, the CPT adds that space for outdoor exercise is limited⁷⁸ and that insufficient activities are offered to remand prisoners.⁷⁹

The criticism from the CPT regarding the use of restrictions focuses on the fact that restrictions are being used routinely rather than in exceptional cases only. With regard to this issue, the Swedish authorities have responded to the CPT that it is important to keep in mind that only few persons suspected of a crime are actually detained awaiting trial. When this does happen, it is usually for a short period. Moreover, in the majority of cases, the reason for detention is the risk that the suspect will impede the investigation. This means that several of the persons detained with restrictions would not have been in detention at all, had there been no ground for restrictions.⁸⁰

Sweden has amended regulations to ensure that law and practice are in compliance with European standards. In 2005, the government called upon a commission to propose a new law on the treatment of persons arrested or remanded in custody. In March 2006, the commission presented a proposal that includes a change in the Code of Judicial Procedure aimed at securing a uniform and legally secure use of restrictions. The proposal implies that a possibility is introduced

⁷⁰ Report by Mr. Alvaro Gil-Robles, Council of Europe Commissioner for Human Rights, *On his visit to Sweden*, following his visit from 21 to 23 April 2004, CommDH (2004) 13, July 8, 2004, available on <http://wcd.coe.int/ViewDoc.jsp?id=758789&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679>, paragraph 7. A useful observation from the expert: The Swedish government agrees with Mr. Gil-Robles in the cited quote in section 7.4, that restrictions should not be used as a means of encouraging greater cooperation. However, it is important to underline that Mr. Giles-Robles does not say that restrictions are used that way in Sweden, and the Swedish government has no indications that this is the case.

⁷¹ *Ibid*, paragraph 8.

⁷² European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Report to the Swedish Government carried out by the CPT, from 27 January to 5 February 2003, 18 November 2004, CPT/Inf (2004) 32, available on the website of the Council of Europe.

⁷³ *Ibid*, paragraph 27.

⁷⁴ *Ibid*, paragraph 28.

⁷⁵ *Ibid*, paragraph 30.

⁷⁶ *Ibid*, paragraph 49.

⁷⁷ *Ibid*, paragraph 50.

⁷⁸ *Ibid*, paragraph 53.

⁷⁹ *Ibid*, paragraph 56.

⁸⁰ Information from the expert.

to appeal against the court's decision regarding specific restrictions. The proposal has been circulated for comments and is currently under consideration in the Ministry of Justice. A bill based on the proposal is planned for 2009.⁸¹

8. Special groups

8.1 Juveniles

With regard to the detention of juveniles, Swedish law states: "There are special provisions otherwise restricting on the detention of persons under eighteen years of age."⁸² These special provisions can be found in the Act on certain provisions on young offenders (Lag [1964:167] med särskilda bestämmelser om unga lagöverträdare⁸³). Where no special rules exist, the general provisions of the Swedish Code of Judicial Procedure apply. The rules in the Act on certain provisions on young offenders apply regardless of whether the person is detained or not. According to Sec. 23, a person under the age of eighteen can only be placed in detention if there are extraordinary reasons for doing so. The act also contains specific provisions concerning time limits for the preliminary investigation and the court hearing for young suspects. A preliminary investigation against a person under the age of eighteen concerning an offence punishable with imprisonment must be concluded within six weeks of the notification of suspicion. The time limit can only be exceeded if this is necessary in consideration of the investigation or for other special reasons, or because of victim-offender mediation. As a main rule, the court trial of a case against an accused under the age of eighteen must be conducted within two weeks of initiating prosecution if the offence is punishable with imprisonment for more than six months.⁸⁴ If a person under the age of eighteen is suspected of a crime, his/her parents or other persons caring for him/her must be notified immediately. They must also be convened for the questioning of the juvenile. If the juvenile has committed an offence punishable with imprisonment, the Social Services must be notified as well. If possible, representatives of the Social Services should be present when the juvenile is questioned. Juveniles may be subject to a waiver of prosecution. The juvenile must be notified of such waiver by the prosecutor personally. At this meeting, the custodial parent and a representative of the Social Services should also be present.⁸⁵

Furthermore, Sec. 5 of Chapter 30 of the Penal Code determines that "if a crime has been committed by a person who has not attained the age of eighteen, the court may impose imprisonment only if there are extraordinary reasons for doing so".

Sec. 8 of Chapter 1 of the Prison Treatment Act deals with the various rules related to the age of juveniles. In cases in which a person who has reached the age of eighteen but not yet twenty-one has committed a crime, the court may impose imprisonment only if, "in view of the penal value of the crime or other special reasons, this course of action is justified".⁸⁶ Any juvenile aged fifteen years or older can be served with a remand order, but juveniles between the ages of fifteen and eighteen can only be held on remand on specific grounds.⁸⁷ The alternative is committal to a special youth detention centre.⁸⁸

8.2 Women

As mentioned above, there are 293 female detainees,⁸⁹ of which 113 are in pre-trial detention. Women are treated differently than men. According to Sec. 8a of Chapter 1 of the Prison Treatment Act, "a woman shall normally be placed in a prison especially designated for women only. A woman may not be placed in prison where men are placed without her agreement." However, not a lot of information can be found on this particular subject. Women are accommodated in separate institutions, more suitable for their special needs. There are six prisons

⁸¹ Ibid.

⁸² Chapter 24, Sec. 4, second paragraph of the Code of Judicial Procedure.

⁸³ Information from the expert.

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Chapter 30, Sec. 5, second paragraph of the Penal Code.

⁸⁷ Ministry of Justice of Sweden, *Basic facts, The Swedish Prison and Probation Service 2007*, available at <http://www.kriminalvarden.se/upload/Informationsmaterial/Basic%20Facts%202007.pdf>, p. 10.

⁸⁸ Ibid.

⁸⁹ This is 4.1% of the total prison population.

for female detainees, which are spread over the whole country. One of the prisons is an institution providing treatment for drug abusers.

8.3 Foreigners

The number of foreign detainees is 1,533; this corresponds to 21.4% of the total prison population. The number and percentage of foreign pre-trial detainees are not available. Neither is there any information on the number and percentage of European pre-trial detainees in Sweden.

Foreign remand prisoners are detained in the same penitentiary institutions as Swedish citizens. In principle, they have access to the same living conditions and facilities as “regular” detainees.

8.4 Alleged terrorists

For certain serious crimes (among which terrorist offences), a special law (1952:98) made it possible to have a person reasonably suspected of an offence detained for four weeks, instead of the one week in accordance with Chapter 24, Sec. 19 of the Code of Judicial Procedure. This law expired at the end of 2008. From 1 January 2009, a new law containing provisions for investigating certain crimes dangerous to society (2008:854) has entered into force. However, the possibility to have a person reasonably suspected of an offence detained for a longer period than one week has no equivalent in the new law. The need for such a provision was considered not important enough to motivate its existence.⁹⁰

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⁹⁰ Information from the expert.

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