

# Cyprus

## 1. Introduction

In 1960, Cyprus became an independent sovereign republic. This was also the year that the country signed and put into force its Constitution, which is currently still applicable and counts as the supreme law of the country. Before Cyprus gained its independency, it was occupied by various foreign rulers. This is the reason why modern Cypriot Law has its origins in a wide variety of legal systems.<sup>1</sup> As the British were the last rulers before the country gained its independence, Cyprus has adopted the Anglo-Saxon legal system. According to Art. 188 of the Constitution, “all existing laws in force on 16 August 1960, subject to their modification and adaptation to the provisions of the Constitution, should remain in force in the Republic”. Nowadays, English cases are under certain conditions treated as binding, but often used as guidelines. Though Cyprus is a common-law country, it also has written legislation. Besides the Constitution, relevant for mentioning within the scope of this report are the Criminal Code (Cap 154) and the Criminal Procedure Law (Cap 155),<sup>2</sup> which were codified in 1959.

Cyprus has an accusatorial system of criminal justice similar to common law. The procedural aspect of Cypriot Criminal Law is to be found in the Criminal Procedure Law.<sup>3</sup> This Law is based on English statutes and states that, where no provision is made in the Law or in any other enactment in force for the time being in Cyprus, every court shall, in criminal proceedings, “apply the law and rules of practice relating to criminal procedure for the time being in force in England”.<sup>4</sup> Criminal proceedings begin by an act of prosecution and end by decision of a court; they are divided into the pre-trial stage and the trial.

In this report, the pre-trial stage will be discussed thoroughly. The aim is to give an analysis of the minimum standards in pre-trial detention and the grounds for regular review in Cyprus.<sup>5</sup> After dealing with some empirical background information in paragraph 2, the legal basis (scope and notion of pre-trial detention) will be discussed in paragraph 3. Paragraphs 4 and 5 concern the grounds for pre-trial detention and the grounds for review of pre-trial detention, respectively. The length of pre-trial detention will be treated in paragraph 6, after which other relevant aspects in relation to pre-trial detention follow (paragraph 7). Paragraph 8 will focus on the system of pre-trial detention regarding special groups.

## 2. Empirical background information

Besides the national statistics from the Cypriot Statistical Service, various international sources also deliver statistics on the size of the prison population, pre-trial detention/remand imprisonment etc. in Cyprus. In this paragraph, attention will be paid to, *inter alia*, data from the Council of Europe’s SPACE I, from the International Centre for

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<sup>1</sup> For more information on the history of the legal system in Cyprus, see: S. C. Symeonides, “The Mixed Legal System of the Republic of Cyprus”, *Tulane Law Review* (vol.78), 2003.

<sup>2</sup> Law amended in 1996.

<sup>3</sup> Other sources of rules for criminal procedure are, *inter alia*, the Police Regulations, Police Standing Orders 3/3, Judges’ Rules and the Rights of Persons who are Arrested and Detained Law 2004.

<sup>4</sup> See A. Neocleous & D. Bevir, “Chapter 1, The Legal History”, in A. Neocleous & Co, *Introduction to Cyprus Law*, Salzburg: Yorkhill Law Publishing, 2000, p.12.

<sup>5</sup> The Northern part of Cyprus, which is Turkish territory, will not be dealt with in this report, as it is not part of the EU.

Prison Studies of King's College London, and from the European Sourcebook of Crime and Criminal Justice. After presenting the data, the statistics will be discussed.

**Data from the Statistical Service: Criminal Statistics 2006<sup>6</sup>**

**Table 1: Prisoners awaiting trial 1976-2006**

1976	1980	1985	1990	1995	2000	2003	2004	Outcome of the proceedings		
2005	2006									

**ABSOLUTE NUMBERS**

103	202	148	182	195	503	653	1,005	1,026	1,095	Admissions of prisoners awaiting trial
102	187	146	184	212	494	625	972	1,026	1,080	Tried
42	46	68	97	98	237	291	474	496	602	Returned to custody upon conviction
60	141	78	87	114	257	335	498	530	478	Acquitted or given non-custodial sentences
100	100	100	100	100	100	100	100	100	100	<b>Of those tried %</b>
41.2	24.6	46.6	52.7	46.2	48.0	46.4	48.8	48.3	55.7	Returned to custody upon conviction
59.8	75.4	53.4	47.3	53.8	52.0	53.6	51.2	51.7	44.3	Acquitted or given non-custodial sentences

**Table 2: Prisoners awaiting trial in 2006 presented by month**

Admissions	Returned to custody upon conviction	Acquitted or convicted to non-custodial sentence	Prisoners awaiting trial at the end of the month	Month
76	32	27	100	January

<sup>6</sup> This publication was prepared by Ms. G. Ioannou of the Demography, Social Statistics and Tourism Division, under the supervision of Mrs. D. Kyriakides, Head of the Division, October 2008.

80	47	38	95	February
102	48	40	109	March
54	71	32	60	April
101	37	39	85	May
86	45	42	84	June
88	46	44	82	July
91	48	21	104	August
104	44	49	115	September
113	73	43	112	October
119	71	57	103	November
81	40	46	98	December
1,095	602	478	...	Total

**Data from the Council of Europe Annual Penal Statistics, SPACE I, Survey 2006<sup>7</sup>**

Remarks: The numbers relate to 1 September 2006 (stock); they include the entire prison population and not only those who are held in penal institutions and no measures (legislative or other) directly influencing the trends in the number of prisoners have been taken in the course of the last twelve months.

**Table 3: Cyprus and its prisoners in general**

Population 2006, annual estimates (thousands)	845.6
Total number of prisoners (including pre-trial detainees)	599 <sup>8</sup>
Prison population rate per 100,000 inhabitants	70.8 <sup>9</sup>
Total capacity of penal institutions/prisons	550 <sup>10</sup>
Prison density per 100 places	108.9

**Table 4: Special groups of prisoners<sup>11</sup>**

Number of female prisoners (including pre-trial detainees)	21
Percentage of female prisoners (including pre-trial detainees)	3.5
Number of foreign prisoners (including pre-trial detainees)	290
Percentage of foreign prisoners (including pre-trial detainees)	48.4
Of which: number of foreign pre-trial detainees	72
Percentage of foreign prisoners who are pre-trial detainees	24.8

<sup>7</sup> 23 January 2008, PC-CP (2007)9 rev3, by M.F. Aebi, N. Delgrande: University of Lausanne, Switzerland.

<sup>8</sup> This number includes the following categories: persons held in facilities that are not under the authority of the Prison Administration (162), mentally ill prisoners held in psychiatric institutions or hospitals (1), asylum seekers or illegal aliens held for administrative reasons (0).

<sup>9</sup> Prison population figures do not include areas not under the effective control of the government of the Republic of Cyprus. Therefore, the prison population rate per 100,000 inhabitants is underestimated.

<sup>10</sup> Of this total, there are 340 places in prisons and 210 in police stations.

<sup>11</sup> SPACE provides no numbers on juveniles. The total number of prisoners under 18 years of age and from 18 to 21 years old is twenty.

**Table 5: Legal status of prison population I**

Untried prisoners (no court decision yet reached)	104
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)	495
Other cases	..
Total	599

**Table 6: Legal status of prison population II**

Percentage of prisoners not serving a final sentence	17.4
Rate of prisoners not serving a final sentence per 100,000 inhabitants	12.3
Percentage of untried prisoners (no court decision yet reached)	17.4
Rate of untried prisoners (no court decision yet reached) per 100,000 inhabitants	12.3

**Table 7: Evolution of prison populations between 2000 and 2006**

	<b>Total number of prisoners (including pre-trial detainees) on 1 September of each year</b>	<b>Prison population rate per 100,000 inhabitants on 1 September of each year</b>
<b>2000</b>	...	...
<b>2001</b>	369	48.6
<b>2002</b>	345	45.1
<b>2003</b>	355	44.2
<b>2004</b>	546	66.7
<b>2005</b>	529	63.2
<b>2006</b>	599	70.8

- The change between 2005 and 2006 = evolution (in percentage) of prison population rates between 2005 and 2006: 12.1

### **Data from the International Centre for Prison Studies, King's College London**

**Table 8: World Pre-trial/Remand Imprisonment List<sup>12</sup>**

Total number in pre-trial/remand imprisonment	81 (does not include Northern Cyprus)
Date	11 April 2006
Percentage of total prison population	14
Estimated national population (at date shown)	760,000 (does not include Northern Cyprus)
Pre-trial/remand population rate (per 100,000 of national population)	11

<sup>12</sup> Roy Walmsley, January 2008,

<http://www.kcl.ac.uk/depsta/law/research/icps/downloads.php?searchtitle=World%20Pre-trial&search=search&type=0&month=0&year=0&lang=0&author>.

The List refers to those persons who, in connection with an alleged offence or offences, are deprived of their liberty following a judicial or other legal process but have not been definitively sentenced by a court for the offence(s).

**Table 9: World Female Imprisonment List<sup>13</sup>**

Female prison population (number of women and girls in penal institutions, including pre-trial detainees/remand prisoners)	16
Date	11 April 2006
Female prisoners as a percentage of the total prison population	2.8

**Data from the European Sourcebook of Crime and Criminal Justice 2006****Table 10: Prison population: percentage of pre-trial detainees in the total stock**

2000	8
2001	20
2002	9
2003	13

As we can see in Table 3, the size of the total prison population in Cyprus is 599, which means that the prison population rate per 100,000 inhabitants is 70.8. The prison system's total capacity is 550 and the density per 100 places is 108.9. These figures indicate that overcrowding is a problem in Cypriot penal institutions. Over the last years, this problem has been brought to the attention of the Cypriot authorities. The Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) of the Council of Europe has often visited Cyprus and in its reports repeatedly mentioned the situation of overcrowding in the Central Prison in Nicosia, Cyprus' only prison.<sup>14</sup> On his visits to Cyprus in 2003 and 2005, the Commissioner for Human Rights also paid attention to the problem of overcrowding.<sup>15</sup> Although Cyprus has already taken action to combat overcrowding by renovating and expanding the prison, the problem still remains. It is particularly the high number of foreigners imprisoned for entering the country illegally, for theft or for drug trafficking that contributes to the problem of overcrowding. As Table 4 shows, 290 foreigners were detained in September 2006, which is 48.4% of the total prison population. 24.8% of these foreigners (290 persons) were in pre-trial detention.

Table 1 shows that, in addition to the convicted prisoners, 1,095 untried prisoners were admitted into prison during 2006. Compared to the numbers from the past (e.g. 202 in 1980 and 503 in 2000), the admission has increased considerably. Of the 1,095 untried prisoners in 2006, 1,080 were subsequently tried; 602 (55.7%) were returned to prison upon conviction and 478 (44.3%) were acquitted or given a non-custodial sentence. The share of convicted persons returned to custody ranged from 24.6% in 1980 to 48% in 2000 and, as stated above, 55.7% in 2006.

According to Table 5, there were 104 untried prisoners on 1 September 2006, which is 17.4% (a rate of 12.3 per 100,000 inhabitants). With regard to the number of females, SPACE mentions a share of 3.5% of the total prison population (21 persons), while ICPS mentions 2.8% (16 persons). As the numbers from the two sources are stock data from different dates (April and September 2006), they are actually quite similar.

With this, we will conclude this paragraph on empirical background information and continue with the legal basis of pre-trial detention in Cyprus. The scope and notion of this concept will be discussed in the following paragraph.

<sup>13</sup> Roy Walmsley, August 2006, <http://www.kcl.ac.uk/depsta/law/research/icps/downloads.php?searchtitle=world+female+imprisonment+list&type=0&month=0&year=0&lang=0&author=&search=Search>

<sup>14</sup> See Reports of the visits to Cyprus, CPT/Inf 2008 (17), CPT/Inf 2003 (1).

<sup>15</sup> Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights, Council of Europe, Visit to Cyprus 25-29 June 2003, Strasbourg, 12 February 2004, and Follow-up report, Assessment of the progress made in implementing the recommendations of the Council of Europe Commissioner for Human Rights of 29 March 2006, CommDH(2006)12.

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

In relation to the scope and notion of pre-trial detention, several aspects will pass in review in this paragraph, such as the definition of pre-trial detention, the primary objective of pre-trial detention, beginning and end of pre-trial detention according to the law, the competent authorities for arrest/further detention, and the procedural rights of the accused at the time of arrest/during detention.

Cyprus has a two-tier court system in which the subordinate courts can lodge appeals to the Supreme Court. In the first instance, criminal jurisdiction in Cyprus is exercised by the Assize Courts and by the District Courts. The structure and jurisdictions of the courts are regulated by the Courts of Justice Law 1960.<sup>16</sup> The Assize Court is a Court of first instance with unlimited criminal jurisdiction. Its jurisdiction is regulated by the provisions of Sec. 20 of the above-mentioned law. District Courts have jurisdiction to try summarily any offence punishable with imprisonment not exceeding five years and/or a fine not exceeding CY £ 5,000 (on 1 January 2008, Cyprus started using Euros, so this amount is not correct anymore). With regard to the categories of offences, the Criminal Code makes a distinction between felonies and misdemeanours.

Any private individual aggrieved by an act constituting an offence under the Law has the right, subject to certain statutory limitations, to bring a charge before the court. Parallel to this right, the power and duty of the State to institute public prosecutions lies with the Attorney General, who is an independent officer of the Republic. The Attorney General does not only have the right to institute, at his discretion, criminal proceedings, but also the right to conduct, take over, continue or discontinue any criminal proceedings instituted by another person (Art. 113.2 Constitution). There are two forms of criminal trial, namely summary trial and trial on information, for which a preliminary inquiry must be held.<sup>17</sup>

A person is considered to be detained from the moment he is arrested and deprived of his liberty. The rules regarding arrest and pre-trial detention are prescribed in the Constitution and CPL. Art. 11.3 of the Constitution states: "Save when and as provided by law in case of a flagrant offence punishable with death or imprisonment, no person shall be arrested save under the authority of a reasoned judicial warrant issued according to the formalities prescribed by the law."

According to Art. 18 of the CPL, a judge may issue an arrest warrant if he/she is satisfied with the written submissions that there is reasonable suspicion that the person in question has committed the offence or that the detention of the person is reasonably necessary for preventing the commission of offences or the escape of the suspect.<sup>18</sup> Once a warrant has been issued, it remains in force until it is executed or until it is cancelled by a judge (Art. 19.4 CPL). If not released, an arrested person shall, as soon as practicable and in any event not later than 24 hours after the arrest, be brought before a judge (Art. 11.5 Constitution).

In Art. 12.4 of the Constitution, the principle of presumption of innocence is laid down. The detention of an unconvicted person is seen as an exceptional measure. Cypriot law permits detention on remand in certain circumstances (which will be discussed in detail in paragraph 4). The Constitution prescribes that the judge before whom the arrested person is brought shall, as soon as possible and in any event not later than three days from such appearance, either release the arrested person on such terms as he may deem fit or – if the investigation into the commission of the offence for which the person was arrested has not been completed – remand him in custody. The arrested person may be remanded in custody from time to time for periods not exceeding eight days at any one time (Art. 11.6). Art. 24 of the CPL also concerns remand in custody. It must be applied and seen in the light of Art. 11.6 of the Constitution. This article states: "For the purpose of facilitating the investigation of the police into the commission of a criminal offence, where it is made to appear to a Judge that the investigation into the commission of an offence for which the suspect has been arrested has not been completed, whereupon it shall be lawful for the Judge, whether or not he has jurisdiction to deal with the offence for which the

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<sup>16</sup> Law 14 of 1960 as amended by a number of subsequent enactments.

<sup>17</sup> A.N. Loizou & G.M. Pikiş, *Criminal Procedure in Cyprus*, Nicosia, Proodos Press, 1975, p. 63-64.

<sup>18</sup> Art. 14 and 15 of the CPL make arrest without a warrant possible in certain cases.

investigation is made, to remand from time to time such arrested person in the custody of the police for a period not exceeding eight days at any one time as the Court shall think fit, the day following the remand being counted as the first day.”<sup>19</sup>

What can be concluded from both articles, is that the primary question the court must resolve when dealing with a remand application is, whether detention is justified for any legitimate purpose of the investigation. Although in general, remanded persons are taken to prison, the above-mentioned Art. 24 of the CPL also makes it possible that a judge remands a person in police custody for renewable periods of up to eight days. In its reports, the CPT has paid attention to this issue and indicated that “prolonged periods of detention of suspects in police premises may lead to high risk situations. In the interest of the prevention of ill-treatment, it is far preferable for all persons remanded in custody by a judge to be placed in an establishment administered by the prison authorities and staffed by prison officers.”<sup>20</sup> At the moment, Art. 24 of the CPL is still in force and persons are being remanded in custody in police establishments.

During arrest and detention, the defendant has a series of rights. These are prescribed in various legislations, such as the Constitution, the CPL, the Rights of Persons who are Arrested and Detained Law 2004 (entered into force on 30 December 2005), and Police Provision no.3.<sup>21</sup> The defendant’s most relevant rights are:

- the right to be informed promptly, in a language he understands and in detail of the nature and grounds of the charge preferred against him (Art. 12.5 (a), 11.4 Constitution);
- the right to an interpreter (Art. 12.5 (e) Constitution);
- the right to inform a close relative or another person of the situation (Art. 6 Police Provision no.3, 3.1 (a) Rights of Persons who are Arrested and Detained Law 2004);
- the right of access to a lawyer and the right to have adequate time and facilities for the preparation of the defence (Art. 11.4, 12.5 (b-c), 30.3 (d) Constitution, 6.1 Police Provision no.3, 13 CPL, and 3.1 (a), 11-14 Rights of Persons who are Arrested and Detained Law 2004). Although, in principle, the right of access to a lawyer is guaranteed by Cypriot legislation, the CPT reports that in practice it occurs that detained persons do not have access to a lawyer from the very outset of detention.<sup>22</sup> In this connection, the new Rights of Persons who are Arrested and Detained Law 2004 provides for criminal sanctions in cases where staff responsible for the place of detention obstruct the exercise of certain rights, including the right of access to a lawyer.<sup>23</sup> Furthermore, it must be mentioned that the services of a lawyer are paid for by the government if, after investigation, it becomes clear that the defendant has no financial means of his own to pay for his lawyer (see also the law providing for the provision of legal aid, Law 165(I)/2002). The police are not allowed to monitor any correspondence of the person under custody with his/her lawyer, as this is considered confidential;
- the right to question witnesses against him and present evidence or witnesses on his behalf;
- the right to appeal the decision of the judge to remand him in custody (Art. 11.6 Constitution);
- the right to be informed of the possibilities of obtaining bail (Art. 13, 157 and further CPL, and 9 Police Provision no.3)<sup>24</sup>.

Part II of the Cypriot Constitution, which concerns the fundamental rights and liberties, is mainly based on the European Convention on Human Rights.<sup>25</sup> International instruments such as this Convention have an eminent position within the Cyprus legal system. Art.

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<sup>19</sup> The application has to be made by a police officer not below the rank of inspector.

<sup>20</sup> CPT/Inf (97) 5 [Part 2], p. 14.

<sup>21</sup> Detainees are informed of their rights by a “Notice to Persons in Custody”, which has been translated into English, Arabic, Russian, Chinese and Turkish. This notice is also posted in all police detention centres.

<sup>22</sup> CPT/Inf (2008) 17 under point 31, CPT/Inf (2003) 1.

<sup>23</sup> Art. 33 of the Rights of Persons who are Arrested and Detained Law 2004.

<sup>24</sup> The subject of bail will be discussed in paragraph 4.

<sup>25</sup> Ratification Law, Law 39 of 1962. See also P. Evangelis, *The Republic of Cyprus and its Constitution with special regard to the constitutional rights*, Difo-Druck GmbH, Bamberg 1996.

169.3 of the Constitution states that all international legal instruments are, by virtue of their ratification and publication in the Official Gazette, incorporated into the Republic's municipal law and are as from the date of their publication of superior force to any municipal law.

The objective of pre-trial detention and the rules regarding arrest/detention have been discussed above. However, the question remains on which grounds pre-trial detention can be ordered. This question will be dealt with in the following paragraph. Attention will also be paid to the phenomenon of bail, which can be granted to persons charged with committing an offence.

#### **4. Grounds for pre-trial detention**

In Cyprus, a person can be remanded in custody when he or she is suspected of having committed an offence for which imprisonment is not provided as a penalty. No special considerations are specified in respect of such a situation.<sup>26</sup> According to Art. 11.2 of the Constitution, no person shall be deprived of his liberty save in the cases enumerated therein, when and as provided by law. If the detention of a person is ordered for reasons other than those contained in this article, it is considered unlawful. With regard to pre-trial detention, Art. 11.2 (c) is relevant; this subsection is similar to Art. 18 CPL: "The arrest and detention of a person effected for the purpose of bringing him before the competent legal 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."

Before making an order for the remand in custody of a person, the judge must be satisfied that there is a genuine and reasonable suspicion of involvement of the accused in the crime under investigation. Such reasonable suspicion, as stated in the article above, must exist at every stage of the investigation. The judge must also determine that the inquiries and investigations conducted by the police into the commission of the offence have not yet been completed, whether the suspect is likely to interfere with prosecution witnesses, destroy or hide any incriminating evidence, commit further offences and abscond or generally interfere with the investigation process. If, before a judge, the facts indicate that the arrested person might obstruct the proper administration of the investigative process, this is considered a factor in support of detaining the accused. In such a case, the court will have to inquire into the likelihood of any of the above acts occurring and whether such possibility is reasonably justified in the light of the circumstances of the case.<sup>27</sup>

Besides the power to order a remand in custody, the court also has the power to grant the accused bail at any stage of the proceedings. Art. 157-165 of the CPL deal with this matter. The starting point is that every person charged with a criminal offence is entitled to bail, unless there are cogent reasons to the contrary, and that bail should not be withheld as a means of punishing the accused. Art. 157.1 CPL states that "a court will grant bail if it thinks proper under the circumstances". The Supreme Court decided that the words "if it thinks proper" must be given their full effect, indicating the high level of discretion courts may exercise when deciding on bail.<sup>28</sup> In *Rodosthenous and Another vs. The Police*,<sup>29</sup> the court elaborated on the factors relevant to the exercise of the court's discretion; the main factor being the likelihood of the accused attending his trial. The court has the power to impose, in the exercise of its discretion, conditions as may appear reasonably necessary to secure the attendance of the accused at the trial and to prevent the commission of new offences. The most common conditions imposed include the provision of sureties to ensure that the accused appears at the hearing, and the deposit of a sum of money by the accused.<sup>30</sup>

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<sup>26</sup> European Committee on Crime Problems, *Analysis of the questionnaire on the law and practice of member states regarding remand in custody*; Report by Jeremy McBride PC-DP (2003) 9.

<sup>27</sup> See A. Thoma, "Chapter 12, Criminal Law and Procedure", in A. Neocleous & Co, *Introduction to Cyprus Law*, Salzburg: Yorkhill Law Publishing, 2000, p. 469-471.

<sup>28</sup> *Attorney General vs. Mustafa Ibrahim and Others* (1964) CLR 195.

<sup>29</sup> *Rodosthenous and Another vs. The Police* (1961) CLR 50.

<sup>30</sup> See A. Thoma, "Chapter 12, Criminal Law and Procedure", in A. Neocleous & Co, *Introduction to Cyprus Law*, Salzburg: Yorkhill Law Publishing, 2000, p. 473.



This concludes our discussion of the grounds for pre-trial detention. The next paragraph will focus on the grounds for review. Can the accused appeal for a review? Are there automatic reviews after a certain period of detention? These and other questions regarding review will be dealt with next.

## **5. Grounds for review of pre-trial detention**

The issue of legal remedies is regulated by the provisions of Part V of the CPL, the Courts of Justice Law 1960, and also the Constitution. According to Art. 25.2 of the Courts of Justice Law, an accused has the right to appeal his conviction and sentence. The prosecutor also has an unqualified right to appeal the sentence imposed. Although, in general, there is no right of appeal against interlocutory orders of a court exercising criminal jurisdiction, the decision of a court to remand a person in custody can be appealed. This right is granted to the accused on the basis of Art. 11.6 of the Constitution.<sup>31</sup> Such appeal does not make it possible to rehear the case. The Supreme Court will only consider whether the judge exercised his discretion judicially, by examining if the judge was guided by the appropriate principles. Such principles include the burden of proof, its discharge by the police, the existence of reasonable suspicion, and the nature and level of investigations conducted into the commission of the crime.<sup>32</sup> An appeal against an interlocutory judgment or decision must be filed within fourteen days from the date the judgment or decision was made.

The Cypriot legal system contains an automatic review procedure for pre-trial detention. As already mentioned in paragraph 3, a judge can remand a person in custody from time to time for periods not exceeding eight days at any one time. The total period is three months (Art. 24 CPL and 11.6 Constitution).

## **6. Length of pre-trial detention**

Although the CPL does not contain a set term concerning the length of pre-trial detention, the Constitution states that the total period of remand in custody shall not exceed three months of the date of the arrest, on the expiration of which every person or authority having the custody of the person arrested shall forthwith set him free (Art. 11.6 Constitution).<sup>33</sup> According to the Country Report on Human Rights Practices 2007, most periods of investigative detention did not exceed ten days before formal charges were filed, and the Attorney General generally made efforts to keep pre-trial detention to a minimum, especially in cases of serious crimes.<sup>34</sup> The Criminal Statistics 2006 of the Cypriot Statistical Service show that the average time spent awaiting trial is eight days. After the lapse of the original period of remand, for an arrested person to be remanded further, an application for an extension of remand must be made on the last day of the original period of remand.

Furthermore, it must be mentioned that Art. 48 of the CPL prescribes that, when the court adjourns the case, the accused may be remanded for a period of up to eight days for each case for summary trial or for preliminary inquiries, the day following the adjournment being counted as the first day. This article is connected to the constitutional right of the accused to a speedy trial (Art. 30.2 of the Constitution).

## **7. Other relevant aspects**

Several elements in relation to pre-trial detention have already been discussed in the previous paragraphs. Some of the remaining questions, such as whether the time spent in

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<sup>31</sup> A decision to grant or withhold bail is also liable to review on appeal. For more information, see A.N. Loizou & G.M. Piki, *Criminal Procedure in Cyprus*, Nicosia, Proodos Press, 1975, p. 63-64.

<sup>32</sup> A. Thoma, "Chapter 12, Criminal Law and Procedure", in A. Neocleous & Co, *Introduction to Cyprus Law*, Salzburg: Yorkhill Law Publishing, 2000, p. 471.

<sup>33</sup> See Charalambos Shiakallis vs. The Republic, Criminal Appeal 6297, 14 May 1997.

<sup>34</sup> Cyprus, Country Reports on Human Rights Practices 2007, March 11, 2008, released by the Bureau of Democracy, Human Rights, and Labor of the US Department of State.

pre-trial detention is taken into account, whether there is a mechanism for compensation if the accused is not sentenced, and the practice regarding the execution of pre-trial detention, will be treated in this paragraph.

Regarding the question of deduction can be said that the time starts to count from the moment of charging before the court. The period from that time until the end of the trial is deducted from the final sentence which is given. On the issue of compensation for unlawful detention, Art. 11.8 of the Constitution prescribes that every person who has been the victim of arrest or detention in contravention of the provisions of Art. 11 of the Constitution has an enforceable right to compensation.

With regard to the execution of pre-trial detention in practice, detainees are confronted with the problem of overcrowding. The CPT as well as the Commissioner for Human Rights have reported on the issue of overcrowding.<sup>35</sup> Due to overcrowding, it is often not possible to separate convicted criminals from pre-trial detainees.<sup>36</sup> In principle, remanded persons are placed in Nicosia Central Prisons, but on the basis of Art. 24 of the CPL, they can also be taken into custody by the police and kept in police cells. This situation is being criticised by the CPT, which stated in its reports that a police station, by definition, is not an appropriate place to hold persons on remand, as the material conditions there are not fit.<sup>37</sup> The Committee also believes that prolonged periods of detention of suspects in police premises may lead to high-risk situations.<sup>38</sup> Although it is the prison system's policy to accommodate remand prisoners in individual cells wherever possible (except when detainees prefer to share a cell or a detainees has been identified as a suicide risk), it is not always possible to implement this policy. Most remand prisoners are held in accommodations for 2-4 persons. The minimum amount of space per prisoner is 7 m<sup>2</sup> in single cells and 4 m<sup>2</sup> in multiple-occupancy accommodations.<sup>39</sup>

Regarding the treatment of prisoners, the law prohibits torture and other inhuman or degrading punishment, or treatment as described in, *inter alia*, the Constitution (Art. 8), Police Provision No. 3, and the Rights of Persons who are Arrested and Detained Law 2004. The police are subject to a broad variety of restraints, but in practice, violations do occur. According to the CPT, the rights of persons in police detention centres are not respected. In the course of the 2000 visit, the Committee concluded that the positive trend registered in the 1996 report with respect to the treatment of persons held by the police had not been sustained, and that physical ill-treatment of persons deprived of their liberty by the police remained "a serious problem" in Cyprus.<sup>40</sup> In its report on the 2004 visit, the CPT states<sup>41</sup> "that the problem persists and that having regard to article 3 of the Convention, the time has come for the Cypriot authorities to be much more energetic in combating ill-treatment by the police". Besides the CPT, several NGOs have also expressed concern on the mistreatment of individuals during arrest and detention.<sup>42</sup> Based on the CPT reports and judgments of the European Court of Human Rights,<sup>43</sup> the Cypriot authorities have taken measures to combat ill-treatment by the police. Some of these measures are:<sup>44</sup>

- The Independent Authority for the Investigation of Complaints and Allegations (Concerning the Police) Law 2006 entered into force on 17 February 2006. This new law confers the responsibility of investigating offences regarding police

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<sup>35</sup> Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights, Council of Europe, Visit to Cyprus 25-29 June 2003, Strasbourg, 12 February 2004, and Follow-up report, Assessment of the progress made in implementing the recommendations of the Council of Europe Commissioner for Human Rights of 29 March 2006, CommDH(2006)12.

<sup>36</sup> Cyprus, Country Reports on Human Rights Practices 2007, March 11, 2008, released by the Bureau of Democracy, Human Rights, and Labor of the US Department of State.

<sup>37</sup> CPT/Inf (2003) 1 under point 77.

<sup>38</sup> See paragraph 3 for a discussion of this issue.

<sup>39</sup> European Committee on Crime Problems, Conditions of Detention of Remand Prisoners, Analysis of responses to a questionnaire; Report by Roy Walmsley, PC-DP (2004) 6.

<sup>40</sup> CPT/Inf (2003) 1.

<sup>41</sup> CPT/Inf (2008) 17.

<sup>42</sup> See, *inter alia*, *Cyprus: Police brutality must not go unpunished* (AI Index: EUR 17/001/2006), *Amnesty International Report 2007*, <http://report2007.amnesty.org/eng/Regions/Europe-and-Central-Asia/Cyprus>

<sup>43</sup> *Egmez vs. Cyprus* (21 December 2000) and *Denizci and others vs. Cyprus* (23 May 2001).

<sup>44</sup> Follow-up report, Assessment of the progress made in implementing the recommendations of the Council of Europe Commissioner for Human Rights of 29 March 2006, CommDH(2006)12.

misbehaviour to a new independent agency. The Authority will consist of a board of five members of recognised prestige and moral standing, of whom at least two must be knowledgeable in the law and one may be a senior former police officer;

- The Rights of Persons who are Arrested and Detained Law 2004 not only addresses procedural safeguards against ill-treatment, such as compulsory medical examination, mandatory presence of a lawyer etc., but also imposes sanctions on persons responsible for the place of detention, or other police officers or prison staff convicted of violating the rights mentioned in this law;
- Law 36(III)/2002, amending Law 235/1990, ratifying the Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, shifts the burden on the person in charge or the interrogating officer to prove that the ill-treatment has not been inflicted by them, by providing a reasonable explanation of the manner in which the ill-treatment has been caused. If an apprehended person brought before a judge alleges ill-treatment, the judge shall immediately request a medical examination of the person concerned.

To conclude this paragraph, it must be mentioned that the usual frequency of visits to a remand prisoner is more than once a week. Remand prisoners spend 17-18 hours a day outside of their cells.<sup>45</sup>

## **8. Special groups**

This paragraph will consider the special regulations (if any) with respect to pre-trial detention for vulnerable groups in Cyprus. Attention will be paid to juveniles, women, foreigners and alleged terrorists. The particular groups will be dealt with separately.

### **8.1 Juveniles**

With the Amendment Law 18(I)/2006,<sup>46</sup> the age limit for criminal responsibility was raised. The current situation is that children under the age of 14 are not criminally responsible at all and that young persons up to the age of 16 are criminally responsible, but dealt with according to the Juvenile Offenders Law (Cap.157).

As far as pre-trial detention for juveniles is concerned, Art. 6 and 7 of the Juvenile Offenders Law are relevant. Art. 7.1 states: "A Court on remanding or committing for trial a child or young person who is not released on bail, shall, where practicable, instead of committing him to prison commit him to custody in a police station to be there detained for the period for which he is remanded or until he is thence delivered in due course of law."

The Juvenile Offenders Law contains provisions for a Juvenile Court with the jurisdiction to hear criminal cases against young persons and children, with the exception of cases where juveniles are co-accused with adults. The Law provides that the Juvenile Court shall sit in a different building or room from that in which the ordinary sittings of the District Court are held, or on different days or at different times from such sittings (Art. 5.1). The Juvenile Court follows a procedure adapted to the young age of the accused. It has been designed to deal with the problems specific to juveniles in the best possible way. In the Rights of Persons who are Arrested and Detained Law 2004 as well as in the Juvenile Offenders Law, it is stated that detainees under the age of 18 years old must be kept separate from adults. The practice shows that, due to overcrowding, this is not always the case.<sup>47</sup>

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<sup>45</sup> European Committee on Crime Problems, Conditions of Detention of Remand Prisoners, Analysis of responses to a questionnaire; Report by Roy Walmsley, PC-DP (2004) 6.

<sup>46</sup> The 1999 Amendment Law 15(I)/99 raised the age of criminal responsibility from 7 to 10. In 2006, the age limit was raised again.

<sup>47</sup> European Committee on Crime Problems, Conditions of Detention of Remand Prisoners, Analysis of responses to a questionnaire; Report by Roy Walmsley, PC-DP (2004) 6.

## 8.2 Women

As can be seen in Table 4, on 1 September 2006, there were 21 female prisoners (including pre-trial detainees), which is 3.5% of the total prison population.

According to the World Female Imprisonment List, there were 16 females imprisoned in April 2006, which was 2.8% of the total prison population. According to Art. 28 of the Constitution, all persons are equal and discrimination on the ground of, *inter alia*, sex is prohibited. Regarding the category of women, the Police Provision no.3 and the Rights of Persons who are Arrested and Detained Law 2004 further state that female prisoners can be searched only by women and must be held separate from male prisoners. The report on the follow-up visit of members of the Commissioner of Human Rights' Office to Cyprus in 2005 shows that activities for women include gym and art classes; vocational training was not offered.<sup>48</sup>

## 8.3 Foreigners

As discussed in paragraph 2, foreigners constitute a large share of the prison population in Cyprus. In September 2006, almost half the prison population consisted of foreign prisoners, of which 24.8% were in pre-trial detention. Most foreign detainees are imprisoned for immigration issues based on Art. 11.2 (f) of the Constitution, which prescribes that no person shall be deprived of his liberty save in the following cases when and as provided by law: "The arrest or detention of a person to prevent him effecting an unauthorized entry into the territory of the Republic or of an alien against whom action is being taken with a view to deportation or extradition."

According to the Aliens and Immigration Law,<sup>49</sup> in principle, detention by the immigration authorities is not supposed to exceed eight days. However, if their removal has not been possible within that time, foreigners who have entered illegally or are unlawfully within Cypriot territory may be prosecuted on criminal charges, placed on remand and given prison sentences. If so, they serve the sentence before being deported.<sup>50</sup> Foreigners detained under the Aliens and Immigration Law can be held in custody for prolonged periods in police establishments together with criminal suspects. The CPT has criticised this practice, as administrative detainees are not criminal suspects and should not be treated as such. Besides, the Committee considers police establishments to be inadequate for holding persons for longer periods of time. The Rights of Persons who are Arrested and Detained Law 2004, which prescribes, *inter alia*, the right to be informed in a language one understands, the right to contact a lawyer, the right to an interpreter etc., is also applicable to foreigners who are arrested/detained under the Aliens and Immigration Law.

## 8.4 Alleged terrorists

No special comments.

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<sup>48</sup> Follow-up report, Assessment of the progress made in implementing the recommendations of the Council of Europe Commissioner for Human Rights of 29 March 2006, CommDH(2006)12.

<sup>49</sup> Cap. 105 of 1952, subsequently amended by Laws 2 of 1972, 54 of 1976, 50 of 1988, and 197 of 1989.

<sup>50</sup> Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights, Council of Europe, Visit to Cyprus 25-29 June 2003, Strasbourg, 12 February 2004.

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