

Ireland¹

1. Introduction

The Irish criminal justice system is regulated by Statute as Ireland does not have Code of Criminal Procedure. The statutes have been interpreted by case law and are translated in Irish as well as English. Irish is the official language. The four main courts in Ireland are the District Court, the Circuit Court, the High Court, and the Supreme Court. The District Court can hear cases of minor civil and criminal matters. An accused can appeal a decision of the District Court to the Circuit Criminal Court. The Circuit Court deals with more serious criminal and civil cases and an accused can appeal a decision of this court to the High Court; the High Court may deal with the most serious criminal offences, e.g. murder. The Supreme Court is the highest court for civil and criminal matters and presided over by the Chief Justice.²

A criminal offence can be tried in the lower court (District Court) before a judge without a jury or in the higher courts, *inter alia* the Circuit Criminal Court (i.e. the Circuit Court with jurisdiction in criminal cases), before a judge and a jury. A so called summary offence must be dealt by a judge at a District Court, without a jury, while a so called indictable offence may be or must be dealt with by a judge, with a jury. In Ireland, the following types of criminal offences exist: summary offences, indictable offences, minor offences, serious offences, and arrestable offences. Ireland has these categories, because the way a criminal offence is investigated and prosecuted depends on the type of criminal offence. All common law offences are indictable offences but therefore not all dealt with by a judge and a jury as, *inter alia*, criminal laws distinguish between types of crimes. Consequently, these laws “differentiate on how different criminal offences are dealt with by the courts”.³

Sine 1953, Ireland is a party to the European Convention on Human Rights.⁴ In the field of prisoners’ rights and penal policy, Ireland is bound by several international instruments, namely “the European Convention on Human Rights (ECHR), the Convention for the Prevention of Torture and Inhuman and Degrading Treatment from the Council of Europe, the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture (CAT) from the United Nations”⁵. Ireland has ratified each document so Ireland “is required legally to implement and observe its provisions”⁶. As a result of the ECHR Act, 2003, the standards of the Convention on Human Rights have added value in the domestic legal system of Ireland. Also,

¹ The author wishes to thank Mrs. Ursula Kilkelly for providing the necessary legal material and for commenting on an earlier draft of this report. Dr Ursula Kilkelly is a Senior Lecturer at the Faculty of Law, University College Cork and Chair of the Irish Penal Reform Trust. The author also wishes to thank Mrs. Shane Kilcommins – who is a Senior Lecturer at the Centre for Criminal Justice and Human Rights, University College Cork – for answering some questions, which arose when drafting the report and for recommending the book *Terrorism, Rights and the Rule of Law, Negotiating justice in Ireland*, by Barry Vaughan and Shane Kilcommins.

² Clfona J.M. Kimber, Criminal Justice Systems in Europe, Ireland, Helsinki: HEUNI 1995 and information from the Citizens Information, available at <http://www.citizensinformation.ie/categories> (last retrieved 9 March 2009). The website is an eGovernment website, which was developed and maintained by the Citizens Information Board. The latter is responsible “for supporting the provision of information, advice and advocacy to the public on the broad range of social and civil services” and even won a World Summit Award in the category eGovernment (see for more information: <http://www.citizensinformation.ie/about/about>).

³ Information from the Citizens Information, available at <http://www.citizensinformation.ie/categories> (last retrieved 9 March 2009).

⁴ Freedom, security and justice, Pre-trial detention and alternatives to such detention, Response to Member States’ questionnaire (Brussels, 18 July 2002, JAI/B/3/TL), European Commission, DG Justice and Home Affairs, response of Ireland to question 2 on p. 18.

⁵ C. Hamilton and U. Kilkelly, “Human Rights in Irish Prisons”, *Judicial Studies Institute Journal*, 2008, p. 58-85; the article is downloadable via the website of Judicial Studies Institute Journal, available at [http://www.jsijournal.ie/html/Volume_8_No._2/\[2008\]2_Kilkelly_Hamilton_Prisons.pdf](http://www.jsijournal.ie/html/Volume_8_No._2/[2008]2_Kilkelly_Hamilton_Prisons.pdf) (last retrieved 9 March 2009).

⁶ *Ibid.*

within the framework of the Council of Europe, the European Prison Rules (EPR) are an important document for the legal position of persons who are deprived of their liberty. In many instances, the individual Rules (of the EPR) are in line with the standards set by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereafter: CPT).⁷

Criminal proceedings can be divided into the pre-trial phase, the trial and enforcement phase, and the post-release phase. During the pre-trial phase, a person may be detained after arrest by the police, detained for administrative purposes by the police, or remanded in custody by a court of law. Apart from the police, responsible for the arrest, detention for administrative purposes does not require authorisation from other actors within the criminal proceedings. Pre-trial detention starts from the moment the person is brought into police custody. Once a person has been arrested with the intention of detaining him/her⁸ without charge (“pre-charge detention”⁹) under one of the relevant statutory provisions, he or she should be brought into custody as quickly as possible, as it is only in custody that various safeguards arise (e.g. access to a lawyer). The period of detention without a charge ends when the person is charged with the offence, when he/she is released, or when the detention period expires.

If a person is charged with an offence, awaiting trial, station bail may be given for minor offences or an application for bail may be made to the court. The police may seek to oppose bail, in which case the individual is remanded into custody until trial.

The period of detention without charge can vary from 24 hours up to seven days. However, a detention period longer than 24 hours can only be extended in stages; some of the later stages require judicial approval. An individual who has been charged and is on remand pending trial can seek to appeal a refusal of bail to the High Court.

Detention after arrest to ensure the suspect’s appearance before the court or the proper investigation of an offence is laid down by different statutes. The powers of detention for the Irish police (Gardaí) have been increased over the past 20 years. As Vaughan and Kilcommins point out: “the 1984 Criminal Justice Act made provision for the first time for the detention of ‘ordinary suspects’ for a maximum of 12 hours”¹⁰. Nowadays, a person may be detained under the 1984 Criminal Justice Act for up to 24 hours in police custody. In addition, Vaughan and Kilcommins that “prior to this, the purpose of an arrest for an ordinary crime was to secure the suspect’s presence in court. Provision had already existed in the terrorist domain for detention without charge”¹¹. They mention in this respect the Offences against the State Act, 1939:

“a suspect could be detained for a maximum of 48 hours without charge. The Offences against the State (Amendment) Act 1998, introduced following the Omagh bombing, extended this period of detention by a further 24 hours, when necessary”¹².

An individual may be detained for a cumulative total of seven days on suspicion that he/she has committed a drug-trafficking offence. Sec. 9 of the Criminal Justice Act 2006 makes it possible that the Chief Superintendent may extend the period of detention by twelve hours (for ordinary, though serious, crime). With regard to these examples Vaughan and Kilcommins mention that “there is thus a trend towards expanding the duration of pre-trial detention in Ireland”.¹³

The Criminal Justice Act 1984, Sec. 4, the Criminal Justice Act 1999, Sec. 42, the Offences Against the State Act 1939, Sec. 30, the Criminal Justice (Drug Trafficking) Act 1996, Sec. 2, and

⁷ Van Zyl Smit, D. & Snacken, S., *Principles of European Prison Law and Policy*, Oxford: University Press 2009, p. 36.

⁸ “He” or “him” may also mean “she” or “her”.

⁹ Freedom, security and justice, Pre-trial detention and alternatives to such detention, Response to Member States’ questionnaire (Brussels, 18 July 2002, JAI/B/3/TL), European Commission, DG Justice and Home Affairs, response of Ireland to question 2 on p. 26.

¹⁰ B. Vaughan and S. Kilcommins, *Terrorism, Rights and the Rule of Law, Negotiating Justice in Ireland*, UK/USA: Willan Publishing 2008, p. 122.

¹¹ *Ibid.*

¹² *Ibid.*, p. 123.

¹³ *Ibid.*

the Criminal Justice Act 2007, Sec. 50 deal with the situation in which a person is detained following arrest.¹⁴

In order for the police to detain a person under the Criminal Justice Act 1984, the person must be arrested for an offence punishable with detention: “Any offence for which a person of full age and capacity and not previously convicted may, under or by virtue of any enactment, be punished by imprisonment for a term of five years or by a more severe penalty and to an attempt to commit any such offence” (Sec. 4(1) of the Criminal Justice Act 1984).

The legislation concerning remand in custody can be found in the Criminal Procedure Act 1967, Sec. 24, and in the Criminal Justice (Miscellaneous Provisions) Act 1997, Sec. 4; this latter act substituted the whole Sec. 24 of the Criminal Procedure Act 1967, which nevertheless remains the primary source.

The Prison Rules 2007 entered into force on 1 October 2007. They are in accordance with international and European human rights standards and totally renovate the legal provisions for the Government of Prisons. These rules contain provisions relevant to the enforcement of detention. According to the Rules, a prisoner is “a person who is lawfully detained in prison and includes a person detained (...) on committal by a court on remand or awaiting trial (...)”.¹⁵

Last but not least, the Constitution of Ireland¹⁶ contains fundamentals for criminal proceedings; *inter alia*, “no one shall be tried on any criminal charge save in due course of law” (Art. 38(1)), all human persons shall be held equal before the law (Art. 40(1)) and “no citizen shall be deprived of his personal liberty save in accordance with law” (Art. 40(4)(sub1)). The latter Article is interpreted by the Irish courts “as guaranteeing that no citizen shall be deprived of his or her liberty in accordance with laws that respect his or her fundamental right to personal liberty, that defend and vindicate that right, so far as practicable, and that protect his or her person from unjust attack”¹⁷.

2. Empirical background information

2.1 Different sources

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 (under I). These numbers are put together in clear figures that are shown after this explanation of resources. 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 List¹⁸ every year (under II).

I. SPACE

¹⁴ See chapter 3 for more information on these Acts.

¹⁵ Prison Rules 2007, Part I Interpretation.

¹⁶ Constitution, with amendments up to November 2004, available at the website of the Department of the *Taoiseach* (Head of Government): <http://www.taoiseach.gov.ie/index.asp?docID=243>

¹⁷ Freedom, security and justice, Pre-trial detention and alternatives to such detention, Response to Member States' questionnaire (Brussels, 18 July 2002, JAI/B/3/TL), European Commission, DG Justice and Home Affairs, response of Ireland to question 2 on pp. 12-13.

¹⁸ 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>.

Ireland and its prisoners in general

| | |
|---|--|
| Population 2006, annual estimate | 4.221.200 (within brackets the latest data on 1.9.2007 according to SPACE I ¹⁹ 4.109.100) |
| Total number of prisoners (including pre-trial detainees) | 3.135 (3.305) |
| Prison population rate per 100,000 inhabitants | 74.3 (80.4) |
| Total capacity of penal institutions/prisons | 3.426 (3.596) |
| Prison density per 100 places | 91.5 (91.9) |

Special groups of prisoners

| | |
|--|--|
| Number of prisoners under 18 years old, including pre-trial detainees | 111 (107) |
| Number of prisoners under 18 years old in pre-trial detention | Not available via SPACE |
| Number of prisoners from 18 to less than 21 years old, including pre-trial detainees | 363 (370) |
| Number of female prisoners, including pre-trial detainees | 108 (105) According to SPACE I, Survey 2007, there are 42 foreign female prisoners, which is 40.0% in the total number of female prisoners. |
| Number of female prisoners in pre-trial detention | Not available via SPACE |
| Number of foreign prisoners, including pre-trial detainees | 395 of which 135 pre-trial detainees (474 of which 214 pre-trial detainees) |
| Percentage of foreign pre-trial detainees in the total number of foreign prisoners | 34.2% (45.1%) |
| Percentage of European prisoners among the foreign prisoners | Not available via SPACE |

Legal status of prison population I²⁰

| | |
|--|---------------|
| a. Untried prisoners (no court decision yet reached) | 543 (616) |
| b. Convicted prisoners, but not yet sentenced | 0 (0) |
| c. Sentenced prisoners who have appealed or who are within the statutory time limit for doing so | 2 (0) |
| d. Sentenced prisoners (final sentence) | 2.543 (2.666) |
| e. Other cases (immigration warrants) | 47 (23) |
| Total | 3.135 (3.305) |

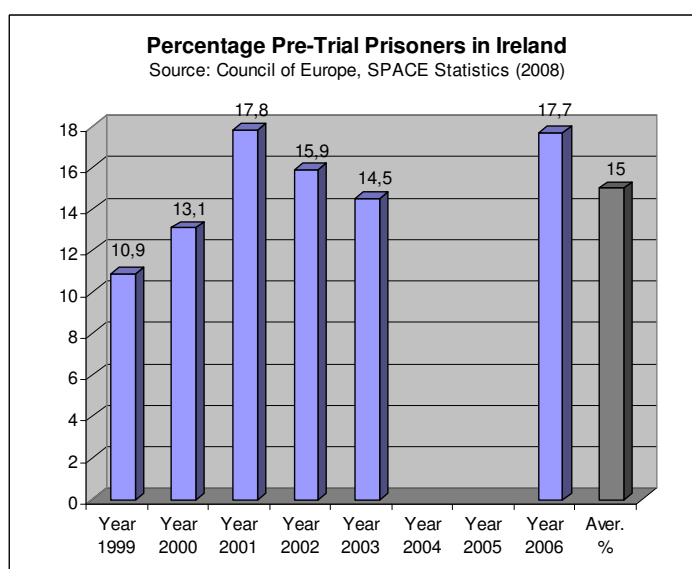
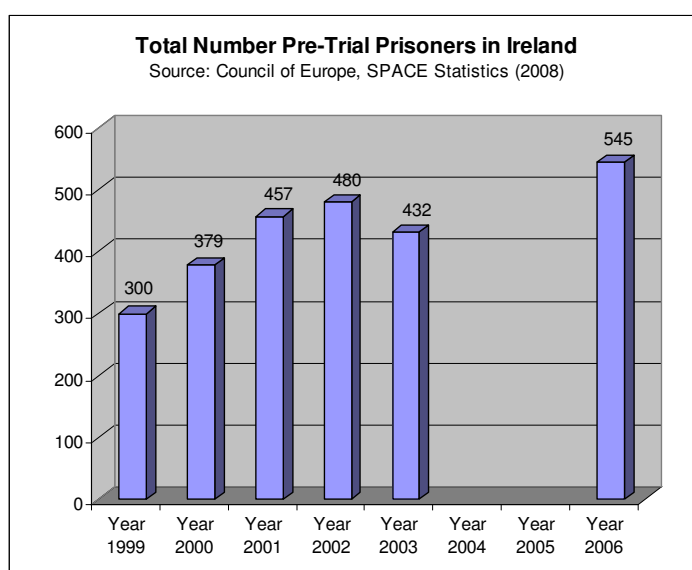
Legal status of prison population II

| | |
|---|--|
| Percentage of prisoners not serving a final sentence | 18.9% (a+b+c+e) (19.3%; a+b+c+e) |
| Rate of prisoners not serving a final sentence per 100,000 inhabitants | 14 (15.6) |
| Percentage of untried prisoners (no court decision yet reached) | 17.3% (only category a) (18.6%; only category a) |
| Rate of untried prisoners (no court decision yet reached) per 100,000 inhabitants | 12.9 (15.0) |

¹⁹ These data became available just after finalising the report. Nevertheless, adding the most recent data into the table gives an impression of the trend from 1 September 2006 up until 1 September 2007. The statistical part of the Introductory Summary to this study was redrafted completely because of these new data. The table which contains data from different sources (e.g. ICPS, Eurostat) below contains the most recent data from SPACE I (by Aebi/Delgrande, Survey 2007, 26 January 2009).

²⁰ In SPACE, information regarding data on pre-trial prisoners is collected under section 'legal structure' and broken down into five different categories (a, b, c, d and e). These five categories are selected to serve as a basis for comparing the situations of the various prison populations.

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



II. 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 | 664 |
| Date | 26.10.2007 |
| Percentage of the total prison population | 20.0% |
| Estimated national population (at date shown) | 4.39m |
| Pre-trial/remand population rate (per 100,000 of the national population) | 15 |

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

III. Different national and European sources

| 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 ²¹ | Different data | 3,653 on 15.12.2008 | 664 on 26.10.2007 | 20% (26.10.2007) | 81, based on an estimated national population of 4.52 million at December 2008 (from Eurostat figures) | - |
| SPACE I (Council of Europe) | 1.9.2007 | 3.305 | 616 | 19.3% (prisoners not serving a final sentence, incl. immigration warrants); 18.6% untried prisoners | 80.4 | 15.6 and 15.0 respectively |
| Eurostat | 2006 | 3,053 | - | - | - | - |
| National Statistics ²² | 7.12.2006 | 3,287 | 519 (remand/awaiting trial/others) | - | - | - |

| 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) | 3.091 | 214 | 93.5% | 6.5% | - | - |
| Eurostat | - | - | - | - | - | - |
| National Statistics | - | 226 (spring 2006) | - | - | 226 (spring 2006) | 109 (spring 2006) |

²¹ R. Walmsley, International Centre for Prison Studies, World Prison Brief, Prison Brief for Ireland available at http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_country.php?country=145 (entails more recent information than World Pre-trial / Remand Imprisonment List; last retrieved 24 February 2009).

²² Irish Prison Service, Annual Report 2006, available at http://www.irishprisons.ie/documents/IPS_Annual_Report_2006.pdf (accessed 9 January 2009) and M. More in: A.M. van Kalmthout, F.B.A.M. Hofstee-van der Meulen, F. Dünkel, *Foreigners in European Prisons Volume 1*, Nijmegen: WLP 2007.

| | 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) | - | - | - | - |
| Eurostat | - | - | - | - |
| National Statistics | - | - | - | - |

2.2 Observations

In Ireland, since the 1990s, the average daily population of prisoners has increased extensively. This could be explained by the expansion of the remand prisoner population.²³ In 1994, the total prison population was 2,141 and in 2003, it was 3,112²⁴; an increase of more than 45%. On 2 December 2003, the total number of prisoners was 3,146, of which 2,640 (2,569 male and 71 female) were sentenced, 488 (465 male and 23 female) were remanded in custody, and 18 (all male) were detained under immigration laws.

More recently, on 23 April 2008, the total prison population was 3,494. 678 (19.4%) of this number were on remand/awaiting trial. Most of the prisoners have the Irish nationality, but approximately 5% are EU nationals and 3% non-EU nationals.²⁵ According to data from the International Centre for Prison Studies (hereafter: ICPS), on 26 October 2007, the total prison population was 3,325, of which 20% (665 persons) were remand prisoners. A remand prisoner population of around 20% of the total prison population is relatively positive with regard to European standards; on average, the share of remand prisoners is approximately 20-25% of the total prison population. In the timeframe from 2 December 2003 to 23 April 2008, the remand prisoner population increased by almost 39%.

In 2004, on average there were 134 children (i.e. juveniles under the age of eighteen years) detained in both children detention schools (CDS) and the Irish Prison Service (IPS; mainly St. Patrick's Institution) mainly St. Patrick's Institution. In 2007 (end September), 117 children were detained in both the CDS and the IPS. According to the Expert Group on Children Detention Schools, "on average, approximately 30% of all children detained in both the CDS and St. Patrick's Institution are on remand"²⁶.

Juveniles under the age of eighteen years mostly commit summary offences.²⁷ Those charges are dealt with at District Court level. The Children Act, 2001, allows for indictable offences to be dealt with at District Court level. More information on juveniles and pre-trial detention is provided by part 8.1 of this report.

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

3.1 Detention after arrest by the police

The legislative framework under which a person may be deprived of his/her liberty after arrest is spread over several Acts.

²³ By M. More in: A.M. van Kalmthout, F.B.A.M. Hofstee-van der Meulen, F. Dünkler, *Foreigners in European Prisons Volume 1*, Nijmegen: WLP 2007.

²⁴ Irish Prison Service, Annual Report 2001, p. 16, available at http://www.irishprisons.ie/documents/annual_report_2001.pdf.

²⁵ By Michael Mellett in: Peter J.P. Tak & Manon Jendly (eds.), "Irish prison policy, prison regime and prisoners' rights", *Prison policy and prisoners' rights*, Nijmegen: Wolf Legal Publishers 2008, p. 411.

²⁶ Expert Group on Children Detention Schools, Final Report, 14 December 2007, downloadable via the website of the Irish Youth Justice Service, available at <http://www.iyjs.ie/en/IYJS/Expert%20Group%20Report.pdf/Files/Expert%20Group%20Report.pdf> (last retrieved 9 March 2009), p. 8.

²⁷ Ibid, p. 7.

Detention is possible under Sec. 4 of the Criminal Justice Act 1984. This primary legislation was amended by Sec. 2 of the Criminal Justice (Miscellaneous Provisions) Act 1997, ruling that continued detention for another criminal offence is possible, and that the time to court for an application relating to the lawfulness of the detention will not be included in the period of detention. Sec. 9 of the Criminal Justice Act 2006 makes it possible that the Chief Superintendent may extend the period of detention by twelve hours (for ordinary, though serious, crime). Consequently, the total length of detention after arrest under Sec. 4 of the Criminal Justice Act 1984 comes to 24 hours. A detention pursuant to Sec. 4 applies to any offence for which an adult, who has not been previously convicted, may be punished by imprisonment for a term of five years or more. In Ireland, most offences for which a person can be arrested carry a penalty like this, so those persons come within the scope of Sec. 4.

Secondly, detention is possible under Sec. 42 of the Criminal Justice Act 1999. Sec. 42 of the Criminal Justice Act 1999 allows the Gardaí to arrest a prisoner who is serving a sentence or awaiting trial. The detention must be in relation to an offence for which one could be punished by imprisonment for five years or more (an arrestable offence) or offences other than the one for which you are in prison. Sec. 2 of the Criminal Law Act 1997 contains the definition of an arrestable offence. Sec. 11 of the Criminal Justice Act 2006 allows for the arrest warrant to cover more than one criminal offence.

Thirdly, detention is possible under Sec. 30 of the Offences Against the State Act 1939. Sec. 30 only provides for a period of detention in relation to offences under the Explosive Substances Act 1883, offences under the Firearms Acts, offences under the Offences Against the State Act 1939, and offences under Sections 6-9 and Section 12 of the Offences Against the State (Amendment) Act 1998, whereas Sec. 4 and Sec. 42 as described below cover detention in relation to a wide range of offences. Sec. 10 of the Offences Against the State (Amendment) Act 1998 enables the Superintendent to apply to the Court for an extension of detention for another 24 hours. Sec. 187 of the Criminal Justice Act 2006 rules that detention shall last until the court decides upon an application for extension of detention (if such an application was made) in case the detention should have expired during the application period.

Fourthly, Sec. 2 of the Criminal Justice (Drug Trafficking) Act 1996 makes detention after arrest possible. If the Gardaí believe that a person has committed a drug trafficking offence, Sec. 2 allows for that person to be detained. A drug trafficking offence is:

- a) an offence under any Regulations made under Section 5 of the Misuse of Drugs Act 1977 which involves the manufacture, importation, exportation, supply, or transportation of a controlled drug;
- b) an offence under Section 15 of the 1977 Act of possessing a controlled drug for unlawful sale or supply;
- c) an offence under Section 20 of the 1977 Act of helping or inducing the commission in another country of an offence punishable under a similar anti-drug-trafficking law in that country;
- d) an offence under the Customs Acts in relation to the importation or exportation of a controlled drug;
- e) an offence under Section 31 of the Criminal Justice Act 1994 in relation to the proceeds of drug trafficking;
- f) an offence under Section 33 or 34 of the 1994 Act (drug trafficking offences involving ships);
- g) an offence of helping or conspiring to commit any of the above offences or inciting another person to do so.²⁸

Sec. 5 of the of the Criminal Justice (Drug Trafficking) Act 1996 mentions that certain provisions of Sec. 4 of the Criminal Justice Act 1984 apply to detention, pursuant to the Criminal Justice (Drug Trafficking) Act 1996. Sec. 10 of the Criminal Justice Act 2006 rules that detention shall last until the court decides upon an application for extension of detention (if such an application was made) in case the detention should have expired during the application period.

Finally, detention is possible under Sec. 50 of the Criminal Justice Act 2007. Under this Act, the Gardaí has the power to detain a person for specified cases: “murder involving the use of a

²⁸ Information via Citizens information’s website.

firearm or an explosive, murder to which section 3 of the Criminal Justice Act 1990 applies, an offence under section 15 of the Act of 1925, or an offence under section 15 of the Non-Fatal Offences against the Person Act 1997 involving the use of a firearm". The police should have a reasonable cause to believe that the person has committed one of the offences in Sec. 50(1a-d) of the Criminal Justice Act 2007.

The Irish police²⁹ may arrest and detain a person suspected of having committed an arrestable criminal offence, with reasonable cause and without an arrest warrant. They may also arrest a person on the basis of an arrest warrant. An "arrestable offence" is an offence punishable with imprisonment of at least five years (in the case of non-recidivists). The ground for detaining an arrested person is to ensure that he/she does not escape criminal proceedings. It is important that he or she appears before the judge to answer charges. Detainment enables the police to properly investigate the case, as the risk that e.g. the suspect influences witnesses is marginal.

In the case of a non-arrestable offence, the person must be charged with the criminal offence and either be brought before a judge of the District Court without delay or released on bail by the officer in charge of the police station (station bail). If a person is arrested after 5 pm, he or she may be brought to the District Court as early as possible before noon on the next day. The judge at the District Court may either release the person on bail or remand him/her in custody.³⁰

Pursuant to the Criminal Justice Act 1984, a person may be detained in a police station for a period not exceeding twelve hours from the moment of the arrest. The person concerned may agree to a rest period between 12 midnight and 8 am. This rest period will not be included in the 12-hour period. In any event, the person must be charged with a criminal offence punishable with imprisonment of five years or more. While being detained under the Criminal Justice Act 1984, a person must inform the police of his name and address. The police do not have general power to e.g. take fingerprints, unless the person consents. If consent is given, the police are allowed to take fingerprints, perform forensic tests, etc.. However, under certain laws, like the Offences against the State Act 1939, the police have extensive powers. They may e.g. detain a person for up to 48 hours before bringing him/her to court.³¹

In short, in case of a non-arrestable offence, the person must either be brought to the District Court as soon as possible (but after the person has been charged with the criminal offence) or released on station bail. In case of an arrestable offence, the police may detain an arrested person if there are grounds for doing so. The detained person must be charged before being brought before the judge of the District Court. If the police cannot charge a person, he/she must be released. The Criminal Justice Act 1984, Sec. 4, the Criminal Justice Act 1999, Sec. 42, the Offences Against the State Act 1939, Sec. 30, the Criminal Justice (Drug Trafficking) Act 1996, Sec. 2, and the Criminal Justice Act 2007, Sec. 50 deal with the situation in which a person is detained following arrest. Detainment makes police work during the criminal investigation easier, but there should always be reasonable grounds for the police to believe that detention is needed in order to properly investigate the case.

The maximum period of detention after arrest varies from 24 hours to seven days. How long the initial period of detention/police custody/pre-charge detention may last, depends on the legislation that applies to a particular case. A police officer with the rank of Superintendent or above may authorise an extension if the first detention period has ended. Further extensions can usually only be authorised by higher-ranking police officers (Chief Superintendent or above).

Because different Acts apply to detention after arrest, it is quite difficult (at least for someone not familiar with the Irish legal system) to get a clear picture of the circumstances (conditions of detention, grounds for detention, grounds for review of detention, length of detention, etc..) under which a person can be detained. Citizens Information provides a schematic overview of the length of detention after arrest (see Table I).

²⁹ *An Garda Síochána* (the National Police Service), information available at <http://www.garda.ie/home.html>

³⁰ Information through Citizens Information, available at: http://www.citizensinformation.ie/categories/justice/criminal-law/criminal-trial/pre_trial_issues_intro/?searchterm=pre-trial

³¹ *Ibid.*

Table I

| | Sec. 4, Criminal Justice Act 1984 | Sec. 42, Criminal Justice Act 1999 | Sec. 30, Offences Against the State Act 1939 | Sec. 2, Criminal Justice (Drug Trafficking) Act 1996 | Sec. 50, Criminal Justice Act 2007 |
|--|--|------------------------------------|---|--|------------------------------------|
| Initial period | 6 hours | 6 hours | 24 hours | 6 hours | 6 hours |
| First extension authorised by Superintendent | 6 hours | 6 hours | 24 hours: by police Chief Superintendent | 18 hours: by police Chief Superintendent | 18 hours |
| Second extension authorised by Chief Superintendent | 12 hours (see Sec. 9 of the Criminal Justice Act 2006) | 12 hours | - | 24 hours | 24 hours |
| First extension authorised by District or Circuit Court | - | - | 24 hours: District Court following an application by a police Superintendent (see Sec. 30 of the Offences Against the State Act 1939) | 72 hours | 72 hours |
| Second extension authorised by District or Circuit Court | | | | 48 hours | 48 hours |
| TOTAL | 24 hours | 24 hours | 72 hours/3 days | 168 hours/7 days | 168 hours/7 days |

The periods of detention in Table I are spent in police premises.

3.2 Detention after arrest for administrative purposes

A person may be arrested by the police for administrative purposes. Apart from the police, responsible for the arrest, detention for administrative purposes does not require authorisation from other actors within the criminal proceedings. It includes detention after arrest for the purpose of, *inter alia*, being charged with a criminal offence. After being charged, the person must be brought before a judge. If there are grounds and reasons for detention after the person's arrest, the person may be detained by the police (see paragraph 3.1).³²

3.3 Remand in custody

Legislation concerning remand in custody can be found in the Criminal procedure Act 1967, Sec. 24, and in the Criminal Justice (Miscellaneous Provisions) Act 1997, Sec. 4, which substituted the whole Sec. 24 of the Criminal procedure Act 1967.

When being charged and brought before a judge of the District Court for the first time, a person may either be remanded on bail by the judge or remanded in custody, also by the decision of the judge. At the first court meeting, the judge of the District Court may remand a person in custody for a period of no longer than eight days (24(1) of the Criminal Justice (Miscellaneous Provisions) Act 1997). After the set number of days have expired, on the so-called "remand date", the person concerned must be brought back to the court. If the judge orders remand in custody, the person is moved from his police cell to a facility for remand prisoners. However, if the person

³² Based on public service information provided by the Citizens Information Board, available at: <http://www.citizensinformation.ie/categories/justice/arrests/detention-after-arrest>

is remanded for a period of four days or less, the court may decide that the person is to be remanded in custody in his police cell and not moved to an accommodation for remand prisoners.

If the person concerned and the prosecutor consent, the court may remand the person on bail for a period longer than eight days (24(2)). This means that the person is released on bail (with or without surety) and that he must appear again before the judge on a set date, the remand date. The person released on bail, with or without surety, must pay at least one-third of the amount of money stipulated in the bail bond.

The second and (subsequent) time(s) a person has to appear before the court, the judge may decide to remand the person in custody for either a period of fifteen days or less (24(3)), or for a period of sixteen to thirty days, if the person concerned and the prosecutor consent (24(4)).

The court may remand a person in custody even if the person is unable to participate in the court's hearing due to illness. In such cases, the remand may exceed fifteen days (24(5(a)(b))). If there is no court session on the remand date, the person will be remanded until the next court session (24(6(a)(b))).

Generally, persons remanded in custody are moved from the police station to a penal institution.

3.4 Procedural rights

After a person's arrest, he must be informed of the reasons for the arrest immediately. He must also be informed of the fact that he has the right to consult a solicitor and that he may contact another person (e.g. a relative or a friend). He has, *inter alia*, the right to remain silent and the right not to incriminate himself.

Vaughan and Kilcommins mention in Chapter 5 ("Entrenching the 'equality of arms' framework in the ordinary criminal justice system in Ireland") of *Terrorism, Rights and the Rule of Law, Negotiating Justice in Ireland, inter alia*, due process values. During the pre-trial phase in criminal proceedings, the police have extensive powers of control and surveillance to investigate crime, apprehend suspects and gather evidence in order to build a case and secure a conviction at trial. In order to maintain the principle of equality of arms, strict safeguards apply to the pre-trial phase. The accused has the right to privacy (this right is based on the Constitution) and "cannot be stopped from raising a question of the admissibility of evidence obtained in breach of that right"³³. The Constitution also guarantees the liberty of the accused, which holds that restriction can only be allowed on foot of specific common-law or statutory powers. Furthermore, despite the considerable powers of the police to stop and question a citizen, there is generally no legal obligation on the person who is stopped to answer any questions asked. Powers to stop and search may only be exercised if there is a suspicion that an offence has been or will be committed.³⁴

Vaughan and Kilcommins continue by mentioning *inter alia* that the police have the obligation to bring an arrested suspect into custody as soon as reasonably possible, as the rights of the arrestee only become operational once he/she is in custody. Detention of an arrested person without charge for the purpose of facilitating further inquiries is possible in limited circumstances. If the grounds upon which an arrested person was detained in custody have ceased to exist, he or she shall be released immediately. Furthermore, if the detainee is kept in custody longer than the provisions provide for, he or she will be deemed to be in unlawful custody; evidence gathered during unlawful detention shall be inadmissible. The Criminal Justice (Treatment of Persons in Custody in Garda Síochána Stations) regulations of 1987 are applicable to, *inter alia*, all persons detained at a police station. The Judges' Rules – nine rules concerning interrogation practices originally formulated by the English judiciary – also guarantee certain rights of persons in custody. Furthermore, detainees have a general right not to answer questions during police investigations and interrogations (provided for in Art. 38 of the Constitution and in Art. 6 of the European Convention on Human Rights) and must be informed of their right to access a lawyer. Once the solicitor arrives at the police station, the detainee should get immediate access to him or her and have the possibility to talk in private. If any of these procedural rights during the pre-trial phase are violated, the detainee will be considered to be unlawfully detained. Any evidence obtained will be excluded as long as this breach of the detainee's constitutional right continues, unless it can be

³³ B. Vaughan and S. Kilcommins, *Terrorism, Rights and the Rule of Law, Negotiating Justice in Ireland*, UK/USA: Willan Publishing 2008, p. 100.

³⁴ *Ibid*, p. 100.

demonstrated that extraordinary excusing circumstances existed.³⁵ But this is paper law. The practice appears to differ from the statues and Acts, as *inter alia* reports from the CPT, CAT etc. show us.

Once the decision is made to charge a person with a criminal offence, he or she must be brought before a court as soon as reasonably possible so as to determine if the person should be released on bail or remain remanded in custody.

4. Grounds for pre-trial detention

The requirement for arrest and detention under the 1984 and the 1996 Criminal Justice Act is that there exists “reasonable cause to suspect that the person has committed an offence within the scope of the relevant Act”³⁶. Sec. 30.1 of the Offences Against the State Act mentions that

“A member of the *Gárda Síochána* (if he is not in uniform on production of his identification card if demanded) may without warrant stop, search, interrogate, and arrest any person, or do any one or more of those things in respect of any person, whom he *suspects* (italic by author) of having committed or being about to commit or being or having been concerned in the commission of an offence under any section or sub-section of this Act or an offence which is for the time being a scheduled offence for the purposes of Part V of this Act or whom he suspects of carrying a document relating to the commission or intended commission of any such offence as aforesaid or whom he suspects of being in possession of information relating to the commission or intended commission of any such offence as aforesaid.”

The courts have however interpreted this section as requiring that the suspicion must be reasonable.³⁷

Detention, before a person is charged with a criminal offence (“pre-charge detention”) and following arrest, in police custody for the purpose of investigating a crime is possible only in accordance with specific statutory provisions.

A detention pursuant to Sec. 4 Criminal Justice Act 1984 applies to any offence for which an adult, who has not been previously convicted, may be punished by imprisonment for a term of five years or more. In Ireland, most offences for which a person can be arrested carry a penalty like this, so those persons come within the scope of Sec. 4.

Sec. 42 of the Criminal Justice Act 1999 allows the *Gardaí* to arrest a prisoner who is serving a sentence or awaiting trial. The detention must be in relation to an offence for which one could be punished by imprisonment for five years or more (an arrestable offence) or offences other than the one for which you are in prison.

Sec. 30 of the Offences Against the State Act 1939 only provides for a period of detention in relation to offences under the Explosive Substances Act 1883, offences under the Firearms Acts, offences under the Offences Against the State Act 1939, and offences under Sections 6-9 and Section 12 of the Offences Against the State (Amendment) Act 1998, whereas Sec. 4 and Sec. 42 as described below cover detention in relation to a wide range of offences.

If the *Gardaí*, with reasonable cause (Sec. 2.1.a.), believe that a person has committed a drug trafficking offence, Sec. 2 of the Criminal Justice (Drug Trafficking) Act 1996 allows for that person to be detained.

Finally, the detention is possible under Sec. 50 of the Criminal Justice Act 2007. The police should have a reasonable cause to believe that the person has committed one of the offences in Sec. 50(1a-d) of the Criminal Justice Act 2007.

³⁵ *Ibid*, p. 101-103.

³⁶ Freedom, security and justice, Pre-trial detention and alternatives to such detention, Response to Member States' questionnaire (Brussels, 18 July 2002, JAI/B/3/TL), European Commission, DG Justice and Home Affairs, p. 27.

³⁷ *Ibid*.

5. Grounds for review of pre-trial detention

The periods of detention without charge vary from 24 hours up to seven days. However, a detention period longer than 24 hours can only be extended in stages; some of the later stages require judicial approval.

Once a person has been brought to the court as it is clear to the police that that person should be charged with a criminal offence, only the court may decide on the person's prolonged remand in custody. In the case that an indictable offence is to be charged, the person is normally charged before the District Court and, following Sec. 21 of the Criminal Procedure Act, 1967, "the Court may, subject to the provisions of this Part, remand the accused from time to time as occasion requires". The remand can be on bail or in custody. The Court shall not remand a person for a period exceeding eight days on the occasion of his/her first appearance before the Court (Sec. 24 of the Criminal Procedure Act, 1967, as amended by Sec. 4 of the Criminal Justice (Miscellaneous Provisions) Act, 1997). "Where the Court remands a person in custody (other than on the occasion of his first appearance before the Court) it may remand him for a period exceeding eight days but not exceeding thirty days if he and the prosecutor consent" (according to Sec. 24.3).

An individual who has been charged and is on remand pending trial can seek to appeal a refusal of bail to the High Court and can be further appealed to the (highest) Supreme Court.³⁸

6. Length of pre-trial detention

Table I: Total length of detention after arrest (pre-charge detention)

| | Sec. 4, Criminal Justice Act 1984 | Sec. 42, Criminal Justice Act 1999 | Sec. 30, Offences Against the State Act 1939 | Sec. 2, Criminal Justice (Drug Trafficking) Act 1996 | Sec. 50, Criminal Justice Act 2007 |
|-------|-----------------------------------|------------------------------------|--|--|------------------------------------|
| TOTAL | 24 hours | 24 hours | 72 hours/3 days | 168 hours/7 days | 168 hours/7 days |

Table II: Length of remand in custody

| | |
|-------------------------|---|
| First meeting in court | No longer than eight days |
| Second meeting in court | 1) no longer than fifteen days 2) sixteen to thirty days |
| Third meeting in court | 1) no longer than fifteen days 2) sixteen to thirty days |

There is no time limit set by law; but the time restrictions in the Tables I and II apply. Unreasonable delay in criminal proceedings could however be a ground for granting a *habeas corpus* order under Art. 40.4 of the Constitution.

The maximum length of time allowed between the date of an offence and the date by which the police must commence criminal proceedings is generally six months and applies to most of the offences which are dealt with in the District Court.

7. Other relevant aspects

7.1 Compensation of unlawful and unnecessary pre-trial detention

The Irish police have to inform the person who is arrested of the reasons (e.g. drink driving) thereof. The arrest is unlawful when the Garda fails to inform the person in ordinary language the

³⁸ Freedom, security and justice, Pre-trial detention and alternatives to such detention, Response to Member States' questionnaire (Brussels, 18 July 2002, JAI/B/3/TL), European Commission, DG Justice and Home Affairs, p. 108.

reason for the arrest or fails to cite the relevant legal provision. Also, when the arrest is to question a person in relation to another criminal offence, the detention is unlawful. If however the reasons for detention are given at any time during detention, the deprivation of liberty becomes lawful from that moment on.³⁹

If pre-trial detention is found unlawful, the person concerned will usually be released under a *habeas corpus* application. If not, any evidence (such as a confession) obtained during the period of unlawful detention cannot be used at trial. In the case of police abuse, compensation can be claimed.

7.2 Alternatives to pre-trial detention

Bail as such is not considered an alternative to pre-trial detention. However, persons in custody may apply for release on bail both at the police station and in court. These two forms of bail are called “station bail” and “court bail” respectively. If a person has been granted bail, he/she or the surety must pay into court at least one third of the amount of money promised in the bail bond; this money will be returned if the suspected offender appears in court as promised.

The criteria for granting bail have been set by the courts and in certain circumstances provided for in the Bail Act, 1997. The underlying principle of bail is that the detention must be seen as a last resort and that thus an accused person should not be deprived of liberty needlessly.

The court may refuse the application for bail made by a person who is charged with a criminal offence. The grounds for refusal are mentioned in Sec. 2 of the Bail Act, 1997 (“Where an application for bail is made by a person charged with a serious offence, a court may refuse the application if the court is satisfied that such refusal is reasonably considered necessary to prevent the commission of a serious offence by that person.”). A court also takes into account other items (Sec. 2.2) when making the decision to refuse bail, e.g. the severity of the punishment, the prospect of a reasonably speedy case, etc.. The grounds for refusing bail have been widened – due to a bail referendum in 1996 – to thus also include the commission of a serious offence.⁴⁰

7.3 Execution of pre-trial detention

The Prison Rules 2007 entered into force on 1 October 2007. They are compatible with international and European human rights standards and totally renovate the legal provisions for the Government of Prisons. These new rules contain provisions relevant to the enforcement of detention. According to the Rules, a prisoner is “a person who is lawfully detained in prison and includes a person detained (...) on committal by a court on remand or awaiting trial (...)”.⁴¹ The Rules contain specific provisions for special groups, i.e. for .

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment as well as the Commissioner of Human Rights, Thomas Hammarberg, mentioned that the institution of an independent Ombudsman Commission (“Garda Síochána”) that deals with all police complaints is a very positive development.⁴² This is in line with previous CPT recommendations (see CPT/Inf (2002) 36, paragraph 18).⁴³ The Ombudsman investigates complaints made by the public concerning the conduct of police officers. The Ombudsman Commission may use powers such as arrest, detention and search of premises. With regard to complaints of a less serious nature, the Ombudsman Commission may decide that the complaint should be dealt with by the police themselves. In that case, the Ombudsman Commission has the authority to supervise the investigation. If a complaint is rejected by the police and there was no

³⁹ From: <http://www.citizensinformation.ie/categories>

⁴⁰ Freedom, security and justice, Pre-trial detention and alternatives to such detention, Response to Member States’ questionnaire (Brussels, 18 July 2002, JAI/B/3/TL), European Commission, DG Justice and Home Affairs, p. 44-45.

B. Vaughan and S. Kilcommins, *Terrorism, Rights and the Rule of Law, Negotiating Justice in Ireland*, UK/USA: Willan Publishing 2008, p. 126.

⁴¹ Prison Rules 2007, Part I Interpretation.

⁴² Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 2 to 13 October 2006, Strasbourg, 10 October 2007, CPT/Inf (2007)40 & Report by the Commissioner for Human Rights Mr. Thomas Hammarberg on his visit to Ireland, 26-30 November 2007, Strasbourg, 30 April 2008, CommDH(2008)9.

⁴³ Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 20 to 28 May 2002, CPT/Inf (2003) 36.

Ombudsman supervision, plaintiffs have the right to appeal to the Ombudsman Commission (§10 of the Report).

At the time of the CPT's last visit, police cells were of a good size, and equipped with a toilet and proper heating (§21). The CPT delegation noticed that in some police stations up to 40% of the detainees had not signed a form proving that they had been informed of their rights. This could perhaps indicate that they were not or not correctly notified of their rights (§23).

With regard to the situation in prisons, the CPT delegation was very concerned about the increase in inter-prisoner violence. Reference was made to the killing of a prisoner at the hands of a cellmate in Mountjoy Prison on 1 August 2006 (§38-40). Furthermore, the CPT delegation noted that the management of medical services in prisons is weak and that there was too little synergy between the different medical specialisations (§67 et seq).

8. Special groups

8.1 Juveniles

Juvenile justice is administered through the Irish Youth Justice Service (IYJS). This service was established as an executive office of the Department of Justice, Equality and Law Reform in December 2005, with the aim of implementing the criminal justice provisions of the Children Act 2001, as amended by the Criminal Justice Act 2006. These provisions relate to sanctions in the community, restorative justice, diversion projects and the operation of detention schools.

The general age of criminal responsibility is twelve years. However, an exception is made for ten- and eleven-year-olds charged with the most serious offences on the statute book (murder, manslaughter, rape or aggravated sexual assault); they face trial in the Central Criminal Court.⁴⁴

Under the Children Act of 2001, juveniles (persons under the age of 18) may be placed in custody when they are suspected of having committed a criminal offence. The Act places responsibilities upon the police with regard to the welfare of the juveniles in their custody. If there are reasons to believe that a juvenile is in need of special care or protection, the police shall inform the relevant authorities and seek intervention.⁴⁵ According to Part 6 of the Children Act of 2001 (Sec. 55):

“In any investigation relating to the commission or possible commission of an offence by children, members of the Garda Síochána shall act with due respect for the personal rights of the children and their dignity as human persons, for their vulnerability owing to their age and level of maturity and for the special needs of any of them who may be under a physical or mental disability, while complying with the obligation to prevent escapes from custody and continuing to act with diligence and determination in the investigation of crime and the protection and vindication of the personal rights of other persons.”

Juveniles are detained separate from adults in police premises; wherever possible, they are not held in a cell. The police have the duty to inform the juvenile offender of the reasons for his or her detention in a manner he/she understands. Parents or relatives must be informed of the arrest. The police shall also inform the juvenile of his/her right to consult a solicitor. A juvenile may be released on bail with or without sureties.

Furthermore, as a last resort, the court may order to detain a juvenile at a detention school (for juveniles up to 16 years of age) or at St. Patrick's Institution in Dublin. St. Patrick's Institution is a closed institution for male offenders aged 16 to 21 years. The detention school model of care, education and rehabilitation will be extended to include sixteen- and seventeen-year-olds. The Act, as amended, transferred the responsibility for detention schools from the Minister for Education and Science to the Minister for Justice, Equality and Law Reform. The Children Act of 2001, as amended, makes it illegal to detain persons under 18 years of age in prison. At the beginning of 2009, there were four detention schools where juveniles can be held on a court order. Juveniles may be released on bail with conditions (such as the obligation to reside with their

⁴⁴ Information from the Report by the Commissioner for Human Rights Mr. Thomas Hammarberg on his visit to Ireland, 26-30 November 2007, Strasbourg, 30 April 2008, CommDH(2008)9.

⁴⁵ By M. Seymour in: J. Junger-Tas and S.H. Decker (eds.), “Transition and Reform: Juvenile Justice in the Republic of Ireland”, International Handbook on Juvenile Justice, 117-144, Springer 2006, p. 125.

parents). A juvenile's parents or guardians are required by law to attend all stages of any proceedings.

In the case of *D.G. vs. Ireland*,⁴⁶ the European Court of Human Rights (ECtHR) ruled that Ireland had acted in violation of Art. 5 of the European Convention on Human Rights by detaining a sixteen-year-old with serious behavioural problems at St. Patrick's Institution, which is a designated place of detention operated by the Irish Prison Service.⁴⁷

8.2 Women

In accordance with the Prison Rules 2007, men and women are detained separately. If a female detainee has a baby younger than 12 months old, she may be allowed to care for the child in prison. Pregnant detainees can give birth in a hospital.

8.3 Foreigners

In 2004, 1,804 foreigners were sent to prison. Most of them were detained on administrative detention and placed in the pre-trial Cloverhill Prison or the Dochas Centre, a penal institution for women.⁴⁸ Sentenced foreigners are spread over the country. In the spring of 2006, 226 foreigners from 44 different countries, among whom 109 non-EU citizens,⁴⁹ were serving a prison sentence. On admission, foreigners are informed of their right to contact a representative of their country's diplomatic mission.⁵⁰

8.4 Alleged terrorists

With regard to arrest or remand detention, no special provisions are foreseen in Irish law for only alleged terrorists.

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⁴⁶ Case of *D.G. vs. Ireland*, Application No. 39474/98, Strasbourg FINAL 16 August 2002.

⁴⁷ By M. Seymour in: J. Junger-Tas and S.H. Decker (eds.), "Transition and Reform: Juvenile Justice in the Republic of Ireland", *International Handbook on Juvenile Justice*, 117-144, Springer 2006, p. 125.

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⁴⁹ *Ibid.*

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