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

Portugal

1. Introduction

Pre-trial detention ("prisão preventiva") is to a large extent regulated in the Portuguese Code of Criminal Procedure ("Código de Processo Penal"). This Code was recently amended by Law no. 48 of 29 August 2007, which entered into force on 15 September 2007. The amendment of the Criminal Procedure Code has also brought significant changes to the adoption of pre-trial detention in Portugal. For instance, the number of offences for which pre-trial detention may be decreed has been diminished. Before, pre-trial detention was permissible for criminal offences punishable by a prison sentence longer than the statutory maximum of three years. The term of imprisonment has now been increased to five years, except when the offence can be considered as terrorism, or as a violent or highly organised crime. In such cases, pre-trial detention is admissible for crimes punishable by a prison sentence longer than the statutory maximum of three years.

The maximum time limits for detention have also been decreased. In addition, it should be noted that, before the last reform, the Portuguese system was frequently criticised because of the excessive periods of pre-trial detention.[1] In 2001, the average detention time was eight months (down from 26 months), while approximately 20% of the preventive detainees spent more than one year in prison.[2] Moreover, pre-trial detention also seemed to be overused.[3] In 2004, the Inspectorate General of Internal Administration (IGAI) received seventeen complaints linked to arbitrary arrests, which were duly investigated.[4]

The before-mentioned reasons were the most important political motives to introduce the legislative reform of 2007. A lengthy period of pre-trial detention gravely prejudices the presumption of innocence and the lives of those acquitted. Furthermore, it can delay the enjoyment by those subsequently convicted of advantageous custodial regimes. When pre-trial detention is both frequently applied and of excessive length, it can also place a considerable burden on prison services to deal with the high number of remand prisoners.[5] The Law amending the Criminal Procedure Code seems an appropriate reaction to the numerous complaints regarding the inappropriate use of preventive custody. This report analyses the possibilities to adopt pre-trial detention under the new Code. Attention will be paid to, *inter alia*, the notion of pre-trial detention, the grounds for pre-trial detention, the possibilities to review a decision to apply remand custody etc. The practicalities regarding pre-trial detention will also be discussed. In this regard, attention will be paid to the statistical development of the pre-trial population in Portugal, and to the conditions of pre-trial detention in the Portuguese prisons.

2. Empirical background information

This paragraph contains statistical information on pre-trial detention in Portugal. In essence, attention is paid to the development of the number of pre-trial detainees and the development of the different groups of pre-trial detainees (e.g. juveniles, women and foreigners). In order to give an

[1] Committee Against Torture, Consideration of reports submitted by State Parties under Art. 19 of the Convention. Fourth periodic reports due in 2002, Addendum Portugal, pp. 24.
[2] Council of Europe, Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights on his visit to Portugal, 27-30 May 2003 (for the attention of the Committee of Ministers and the Parliamentary Assembly), Strasbourg 2003, pp. 3.
[3] Committee Against Torture, Consideration of reports submitted by State Parties under Art. 19 of the Convention. Fourth periodic reports due in 2002, Addendum Portugal.
[4] US. Department of State, Country Reports on Human Rights Practices – 2006. Portugal (Released by the Bureau of Democracy, Human Rights, and Labor on 6 March 2007), pp. 2.
[5] E.U. Network of Independent Experts on Fundamental Rights, *Report on the situation of fundamental rights in Portugal in 2003* (CFR-CDF.repPT.2003), January 2004, pp. 22.

overview of these developments, data has been collected from several sources, namely from the International Centre for Prison Studies (ICPS), the European Sourcebook, the Directorate-General of Penitentiary Services of Portugal, and the Portuguese National Statistic Institute. The collected information will be discussed in the following sections.

2.1 Prison population according to legal status

The prison population of Portugal consists of different categories of prisoners, such as sentenced prisoners and prisoners held in pre-trial detention. Sentenced prisoners are prisoners who have already received a final sentence, while the group of pre-trial detainees includes both prisoners awaiting trial ("aguardar julgamento") and prisoners waiting for a final sentence ("aguardar trânsito em julgado"). Next to these categories, there are also persons subjected to safety measures (e.g. placement in a mental hospital or a similar institution). This group is not always included in the national statistics, but is nonetheless part of the national prison population. Table 1 illustrates the number of prisoners in Portugal over the years 2001-2008 (on 31 December of each year). Note that these figures also include juveniles (persons from 16 to 20 years).

Table 1: Prison population according to legal status

Year	Total prison population	Number of pre-trial detainees	Number of sentenced prisoners	Number of persons subjected to safety measures
2001	13,260	3,690	9,335	235
2002	13,918	4,219	9,491	208
2003	13,817	3,492	10,069	256
2004	13,152	3,000	9,895	257
2005	12,889	3,044	9,588	257
2006	12,636	2,921	9,455	260
2007	11,587	2,327	9,010	250
2008	10,830	2,111	8,537	182
Source: Directorate-General of Penitentiary Services				

Table 1 shows that the number of pre-trial detainees in Portugal has been decreasing since 2005. This development is mainly attributed to the criticism of academics and influential persons, during the 1997-1998 campaigns, on the size of the pre-trial population. The new Code did, however, not bring any significant changes to the already decreasing number of pre-trial detainees in Portugal. After its entering into force on 15 September 2007, a further decrease of only 0.6% in the number of pre-trial detainees can be noted.

2.2 Pre-trial detainees as a percentage of the prison population

The number of pre-trial detainees is also measurable in percentages. Table 2 shows that the group of pre-trial detainees is a minor part of the total prison population in Portugal. The highest share of pre-trial detainees (30.3%) was reached in 2002. Since then, the percentage of pre-trial detainees has been decreasing. In 2008, pre-trial detainees accounted for 19.5% of the total prison population.

Table 2: Pre-trial detainees as a percentage of the total prison population

Year	Total prison population	Number of pre-trial detainees	Pre-trial detainees as a percentage of the total prison population
2001	13,260	3,690	27.8%
2002	13,918	4,219	30.3%
2003	13,817	3,492	25.3%
2004	13,152	3,000	22.8%
2005	12,889	3,044	23.6%
2006	12,636	2,921	23.1%
2007	11,587	2,327	20.1%
2008	10,830	2,111	19.5%
Source: Directorate-General of Penitentiary Services			

2.3 Pre-trial detention rates

The Portuguese pre-trial prison population can also be measured using rates (the number of pre-trial detainees per 100,000 of the national population). The pre-trial detention rates for the years 2001-2008 are shown in Table 3.

Table 3: Pre-trial detention rate 2001-2008

Year	National population	Number of pre-trial detainees	Pre-trial detention rate
2001	10,329,340	3,690	36
2002	10,407,465	4,219	41
2003	10,474,685	3,492	33
2004	10,529,255	3,000	28
2005	10,569,592	3,044	29
2006	10,599,095	2,921	28
2007	10,617,575	2,327	22
2008	-	2,111	-
Sources: Directorate-General of Penitentiary Services and the Portuguese National Institute of Statistics			

2.4 Pre-trial prison population according to different groups

a. Juveniles in pre-trial detention

The available statistics do not contain any information on the number of juveniles held in pre-trial detention by the end of the year. Nonetheless, the Directorate-General of Penitentiary Services has registered the number of juveniles entering the prison system as pre-trial detainees. These numbers are shown in Table 4.

Table 4: Juvenile pre-trial detainees entering the prison system

Year	Central prisons	Regional prisons	Special prisons	Total
2001				
2002	314	389	136	839
2003	218	270	94	582
2004	171	296	26	494
2005	190	287	18	498
2006	115	232	29	468
2007	94	239	30	365
2008	-	-	-	-
Sources Directorate-General of Penitentiary Services				

b. Females in pre-trial detention

The Portuguese pre-trial prison population can also be divided according to gender. Table 5 shows the number of men and women held in pre-trial detention over the years 2001-2008.

Table 5: Pre-trial prison population according to gender

Year	Total number of pre-trial detainees	Male detainees	Female detainees
2001	3,690	3,264	426
2002	4,219	3,752	467
2003	3,492	3,110	382
2004	3,000	2,693	307
2005	3,044	2,772	272
2006	2,921	2,664	257
2007	2,327	-	-
2008	2,111	-	-
Source: Directorate-General of Penitentiary Services			

The number of male pre-trial detainees is much higher than the number of female detainees. Table 6 shows that, until 2006, the percentage of women in pre-trial detention did not exceed 12%. Since 2001, the percentage of female pre-trial detainees has been decreasing. At the moment of writing, the 2007 and 2008 figures were not yet available. However, it is likely that the decrease has continued over these two years.

Table 6: Females as a percentage of the pre-trial prison population

Year	Total number of pre-trial detainees	Female detainees	Females as a percentage of the pre-trial prison population
2001	3,690	426	11.5%
2002	4,219	467	11.1%
2003	3,492	382	10.9%
2004	3,000	307	10.2%
2005	3,044	272	8.9%
2006	2,921	257	8.8%
2007	2,327	-	
2008	2,111	-	
Source: Directorate-General of Penitentiary Services			

c. Foreigners in pre-trial detention

Table 7 shows the number of foreigners held in pre-trial detention over the years 2001-2008.

Table 7: Pre-trial prison population according to nationality

Year	Portuguese nationals	Foreign nationals	Number of pre-trial detainees
2001	3,060	630	3,690
2002	3,216	1,003	4,219
2003	2,650	842	3,492
2004	2,046	954	3,000
2005	2,039	1,005	3,044
2006	1,850	1,071	2,921
2007	-	-	2,327
2008	-	-	2,111
Source: Directorate-General of Penitentiary Services			

The number of foreigners among the pre-trial prison population has increased drastically over the last years. In 2006, almost 37% of the pre-trial detainees were foreigners.

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

3.1 General

This paragraph analyses the legal basis, the scope and the notion of pre-trial detention in Portugal. However, in order to understand the "status" of a pre-trial detainee in Portugal, and the procedural rights and duties related to this status, it is necessary to highlight at least some significant aspects of the Portuguese criminal procedure, starting with the inquiry.

The inquiry (inquérito) is the first phase of the criminal proceeding. According to Art. 262(2) of the CPP, an inquiry can always be opened when notice of a crime has been given. The inquiry comprises a set of actions aimed to investigate the existence of a crime, to determine its agents and their responsibility, and to discover and collect evidences; this all with the view of taking a decision on prosecution (Art. 262(1) CPP). The inquiry is directed by the public prosecutor, assisted by the criminal police (Art. 263(1) CPP). However, Art. 268 of the CPP prescribes that during the inquiry the application of a measure of constraint (for instance, pre-trial detention) or of credit guarantee can only be ordered by the investigating judge.

The maximum terms of the inquiry can be found in Art. 276 of the CPP. According to this provision, the public prosecutor should conclude the inquiry within the maximum term of eight months, unless the defendant is held in pre-trial detention or is placed under house arrest. In such cases, the inquiry must be concluded within six months.[6] The inquiry is concluded by closing it or by bringing a charge (Art. 276(1) CPP). Note that the public prosecutor should, in any case, close the inquiry by means of an order, as soon as he has collected sufficient evidence that the crime has not been verified, or that the defendant has not committed the crime under investigation, or that the procedure is not legally admissible (Art. 277(1) CPP). The inquiry is also closed if the public prosecution was not able to collect sufficient signs of the verification of the crime or of its agents (Art. 277(2) CPP).

Once the inquiry has been closed, the second phase of the criminal proceeding, namely the so called preliminary judicial inquiry (instrução), can be opened. However, the preliminary judicial inquiry is optional (Art. 286(2) CPP). The purpose of the preliminary judicial inquiry is judicial confirmation of the decision to prosecute or to close the inquiry, in order to submit (or not submit) the case to trial (Art. 286(1) CPP).[7] The opening of the preliminary judicial inquiry may be requested by one of the following persons within twenty days of a notice of prosecution or of closure:

a) the defendant, in respect of the facts which are prosecuted by the public prosecutor or, in case the procedure depends upon private prosecution, by the private prosecutor (Art. 287(1)(a) CPP);
b) the private prosecutor, if the procedure does not depend upon private prosecution, in respect of the facts which are not prosecuted by the public prosecutor (Art. 287(1)(b) CPP).

The request for preliminary judicial inquiry is not subject to special formalities, but must briefly state the factual and legal reasons for disagreement as to the prosecution or non-prosecution. Whenever relevant, it must also indicate the preliminary judicial inquiry acts the applicant wishes the judge to carry out, the means of evidence not considered during the inquiry, and the facts expected to be proved (Art. 287(2) CPP). Note that the private prosecutor who has requested an preliminary judicial inquiry must also report (in brief) the facts which may justify the imposition of a sentence or security measure on the defendant, including – if possible – the place, the time and the motivation of the commission of these facts, the level of participation of the person concerned to these facts, and the relevant circumstances for the determination of the penalty that must be imposed on him (Art. 287(2) and 283(3)(b) CPP). Moreover, the private prosecutor must also indicate the legal provisions applicable in the case (Art. 287(2) and 283(3)(c) CPP).

The preliminary judicial inquiry is directed by an investigating judge, assisted by the criminal police bodies (Art. 288(1) CPP). The maximum length of the preliminary judicial inquiry is determined in Art. 306 of the CPP. According to the first paragraph of this provision, the judge should conclude the preliminary judicial inquiry within a maximum term of four months, unless the defendant is held in pre-trial detention or has been placed under house arrest. In such cases, the preliminary judicial inquiry should be concluded within two months.[8] Upon conclusion of the

[6] This term starts from the moment the inquiry is opened or the suspect is officially considered a defendant (Art. 276(3) CPP. Note that the term of six months is extended to eight months if one of the crimes mentioned in paragraph 2 of Art. 215 of the CPP is the object of the inquiry; to ten months if, regardless of the type of crime, the procedure reveals to be of special complexity, pursuant to the last sentences of Art. 215(3) of the CPP; and to twelve months in the cases mentioned in Art. 215(3) of the CPP.

[7] Note that an preliminary judicial inquiry is not possible in the special forms of procedure (Art. 286(3) CPP).

[8] The term of two months is extended to three months if the object of the preliminary judicial inquiry is one of the crimes foreseen in the second paragraph of Art. 215 of the CPP (Art. 306(3) CPP). Note that the term starts from the date of receipt of the application for opening the preliminary judicial inquiry (Art. 306(3) CPP).

preliminary judicial inquiry, the judge issues an order to send or not to send the defendant to trial (Art. 307 and 308 CPP).

A person under investigation of having committed a crime may – during both the inquiry and the preliminary judicial inquiry – be placed in pre-trial detention as a measure of constraint. In the following sections, attention will be paid to the legal basis of pre-trial detention, to the implications of pre-trial detention for the procedural rights of the defendant held in detention, and to the underlying principles which must be considered by the judge deciding whether or not to impose this measure.

3.2 Definition of pre-trial detention

The wording used in Portugal for pre-trial detention (in the broad sense of the term) is "prisão preventiva". In general, pre-trial detention ("prisão preventiva") can be defined as deprivation of liberty prior to a court sentence, mainly for procedural purposes such as preventing escape, disruption to the criminal proceedings or the carrying on of criminal activities by the accused. The conditions for pre-trial detention are regulated in the Portuguese Code of Criminal Procedure ("Código de Processo Penal" (CPP)). However, the legal basis of pre-trial detention is laid down in Art. 27 and 28 of the Portuguese Constitution. Art. 27(2) of the Constitution states that "no one may be deprived of his or her freedom, in whole or in part, except as a result of a court judgment convicting him or her to a prison sentence on account of an offense punishable by law, or as a result of judicial application of a security measure". Apart from safeguarding the right to liberty, this article also provides for an exception to this right in the form of pre-trial detention (Art. 27(3)(a) of the Constitution). Pre-trial detention is, however, an exceptional measure which may not be imposed or continued "where it can be replaced by bail or by any other more favourable measure provided by law" (Art. 28(2) of the Constitution and Art. 193(2) and 202(1) CPP). The principle of last resort is thus one of the main principles underlying the system of pre-trial detention in Portugal. This principle, together with other relevant principles, will be further discussed below.

Pre-trial detention should be distinguished from initial police custody. Once a suspect has been arrested, he/she can be held in police custody. A person may be arrested when he/she is caught red-handed, provided that the committed offence is punishable by imprisonment (Art. 255 CPP). However, there are some exceptional situations in which a suspect may be arrested by the police, even though he/she is not caught red-handed. This is the case if, considering the committed offence, there are grounds for fearing that the suspect will flee and, given the circumstances, it is impossible to wait for an arrest warrant by the court or public prosecutor services. Note that these conditions are cumulative (Art. 257(2) CPP). In all other cases, arrest is only permissible if an arrest warrant has been issued by the court or the public prosecutor services (Art. 257(1) CPP).

Furthermore, arrest should always serve the purpose of bringing the arrested person before the court for immediate trial or for the application of a precautionary measure such as pre-trial detention. In such cases, the arrested person may be held in police custody for up to 48 hours (Art. 254(1)(a) CPP). A person may also be arrested for the purpose of bringing him before the court or public prosecutor for pre-trial proceedings. If this is the case, police custody may not last longer than 24 hours (Art. 254(1)(b) CPP). Note that detention by police officials for identification purposes is possible, too, but only for a maximum period of six hours and provided that the person is caught in a public place or places under police surveillance, that the conditions to be detained are met, and that the person concerned is not capable of identifying himself by means of documents or witnesses (Art. 250 CPP).

If the authority who ordered the arrest finds that the wrong person has been arrested, or that the arrest is unlawful, unfounded or unnecessary, it should order the immediate release of the detained person (Art. 260 CPP). In any case, the detainee must be brought before the examining judge within 48 hours. The judge then decides whether the detainee shall be released, released on bail, or remanded to pre-trial detention (Art. 141 CPP).

3.3 Principles underlying pre-trial detention

Although the Constitution provides for the possibility of pre-trial detention, it also makes clear that pre-trial detention is not unconditional. Therefore, Art. 27(3) of the Constitution explicitly states that pre-trial detention may only be imposed "for the period and under the conditions laid down by law (principle of legality)". The importance of the principle of legality is stressed again in Art.

191(1) of the CPP, which explicitly states that "persons' freedom may only be, total or partially, limited, due to procedural requirements of protective nature, by measures of constraint and of credit guarantee foreseen in the law". The applicability of measures of constraint (including pre-trial detention) and of credit guarantee depends upon the suspect having the legal status of a defendant, pursuant to Art. 58 (Art. 192(1) CPP). The legal status of a defendant will be discussed in the sections below.

In general, the law prescribes that pre-trial detention may only be imposed if the measure is necessary, adequate to the protective requirements that the case demands and, in any case, proportional to the seriousness of the committed offence and to the sentence to be likely imposed (Art. 193(1) CPP). Note that pre-trial detention may never be applied when there is good reason to believe that there are grounds for exemption from responsibility or lapse of responsibility, or of extinction of the criminal procedure (Art. 192(2) CPP). Neither may the judge, during the inquiry, impose a precautionary measure which is more severe than the measure requested by the public prosecutor (Art. 194(2) CPP).[9] In this regard, it should be noted that pre-trial detention is a measure of last resort, i.e. a measure which may be imposed only when other precautionary measures prove inadequate and/or insufficient (Art. 193(2) and 202(1) CPP). That pre-trial detention should always be applied as *ultimum remedium* is once again stressed in the third paragraph of Art. 193, which states that "when a custodial measure (...) should be applicable to the case, preference shall be given to house arrest, whenever such measure reveals to be sufficient to satisfy the protective requirements". Finally, Art. 193(4) prescribes that the "execution of pre-trial detention should not prevent the exercise of basic rights which are not incompatible with the protective requirements that the case demands".

3.4 Start and end of pre-trial detention

According to Art. 194(1) of the CPP, measures of constraint, including pre-trial detention, and of credit guarantee are applicable by order of the judge, during the inquiry upon request of the public prosecutor and afterwards even at own initiative, after hearing the public prosecutor. From this provision, it can be deduced that pre-trial detention starts once the judge has decreed a court order for pre-trial detention. However, Art. 212(1) of the CPP prescribes that this measure must be revoked immediately by court order if it is applied in cases or under conditions not provided for by law, or if the circumstances justifying detention have ceased to exist. Revocation shall take place on own initiative of the judge, or upon request of the public prosecutor or the defendant (Art. 212 (4) CPP). The possibility to request revocation can thus be seen as a tool for the pre-trial detainee to have the lawfulness of his/her (further) detention reviewed by a judge. Therefore, it shall be further discussed in paragraph 5.

Next to the possibility of revoking pre-trial detention, it is also possible to terminate pre-trial detention by replacing it with a less severe measure. To this end, Art. 212(3) prescribes that the judge should replace pre-trial detention by a less serious measure or determine a less serious way of its execution, if the protective requirements that determined its applicability have decreased. Moreover, pre-trial detention shall also end:

- if the inquiry (which takes place during the first phase of the criminal procedure) is discontinued or an preliminary judicial inquiry (which takes place during the second phase of the criminal procedure) is not requested (Art. 214(1)(a) CPP);
- if the preliminary judicial inquiry ends with a decision not to submit the case to trial (Art. 214(1)(b) CPP);
- if the decision of the trial court not to accept the charge becomes final under Art. 311, paragraph 2, under a, of the CCP. This may occur when the charge is clearly unfounded (Art. 214(1)(c) CPP);
- if the accused is acquitted, even if an appeal has been filed (Art. 214(1)(d) CPP);
- if the sentence becomes final (Art. 214(1)(e) CPP);
- if the accused is convicted (even if an appeal has been filed) and the prison term imposed does not exceed the pre-trial detention already suffered by the person concerned (Art. 214(2) CPP);
- if the maximum time limit for detention has elapsed (Art. 215 CPP).

According to Art. 217(1) of the CPP, a pre-trial detainee should be released as soon as the measure ends, unless he/she has to be kept in (pre-trial) detention for another trial. Note that the judge may

[9] This matter was disputed by scholars and courts until the 2007 reform.

still subject the released person to one or more of the measures foreseen in Art. 197 to 200 of the CPP, if release takes place by virtue of the termination of the maximum term of pre-trial detention (Art. 217(2) CPP).[10]

3.5 Procedural rights of the defendant

In the pervious sections, it has already been mentioned that the applicability of pre-trial detention depends upon the suspect having the legal status of a defendant, pursuant to Art. 58 of the CPP. According to this article, assigning the suspect the status of a defendant is compulsory whenever:

a. an inquiry has been initiated against a person in relation to whom there is a grounded suspicion of the commission of a crime, and such person renders statements before a judicial authority or a criminal police body (Art. 58(1)(a) and 272(1) CPP);
b. a measure of constraint or of credit guarantee must be applied to a person (Art. 58(1)(b) CPP);
c. a suspect is arrested under and for the purposes of Art. 254 to 261 (Art. 58(1)(c) CPP); or
d. a notice record has been drawn up indicating a person's involvement in a crime, and such person has been informed of this record, unless the notice is clearly unjustified (Art. 58(1)(d) CPP).

The most relevant is the situation described under b.[11] A person to whom the measure of pre-trial detention has been applied shall, by virtue of Art. 58(1)(b) CPP), always acquire the legal status of a defendant. Art. 58(2) CPP of the CPP prescribes that the status of a defendant is assigned to the person concerned through an oral or written communication by a judicial authority or by a criminal police body. This communication must state that the person concerned shall be considered a defendant in a criminal proceeding; it must also indicate (and, if necessary, explain) the procedural rights and duties listed in Art. 61 of the CPP.[12] The legal status of a defendant is maintained throughout the proceedings (Art. 57(2) CPP). Once a person has acquired the legal status of a defendant, the exercise of his procedural rights and duties is ensured, without, however, prejudicing the applicability of measures of constraint and of credit guarantee, and/or the effectiveness of evidentiary actions within the terms foreseen in the law (Art. 6o CPP).

According to Art. 61 of the CPP, a pre-trial detainee, like any other defendant, is entitled to the following procedural rights:

a. the right to be present at proceedings that directly concern him;
b. the right to be heard by the court or the investigating judge whenever such entities shall take a decision which personally affects him;
c. the right to be informed of the charges against him, before rendering statements to any entity;
d. the right not to answer questions asked by any entity concerning the acts attributed to him or the content of any statements he might have made about such acts. Note that the suspect or defendant is still obliged to answer any questions concerning his identity (Art. 61(3)(b) CPP);
e. the right to choose a counsel or to request the court to appoint one. According to Art. 64(2) of the CPP, a defence counsel may be appointed to the defendant upon request of the court or of the defendant, whenever the law provides that the defendant may be assisted by counsel and he has not chosen one, and as long as the circumstances of the case reveal the

[10] These measures are: surety (Art. 197 CPP), the obligation to periodically report to an authority (Art. 198 CPP), suspension from the exercise of functions, occupations and rights (Art. 199 CPP), prohibitions as regards presence, absence and contacts (Art. 200 CPP), and house arrest, with or without electronic monitoring (Art. 201 CPP and Law no. 122 of 20 August 1999).

[11] Next to Art. 58 of the CPP, Art. 57 and 59 also regulate some situations in which a person will assume the legal status of a defendant. Art. 57(1) prescribes that the status of a defendant shall be acquired by any person who has been formally charged or against whom an preliminary judicial inquiry (the second phase of the criminal proceeding) has been requested. If none of the situations described in Article 57 and 58 apply, a person will acquire the status of a defendant if, during the course of an examination of the person concerned, a grounded suspicion arises that he/she has committed a crime. In such case, the entity leading the act should promptly suspend it and perform the communication mentioned above (Article 59(1) CPP). A person suspected of having committed a crime is also entitled to be assigned, upon his request, the status of a defendant whenever actions are being carried out with the purpose of proving accusations that affect him/her personally (Article 59(1) CPP).

[12] If a person is assigned the status of a defendant by a criminal police body, this should be communicated to the judicial authorities within ten days. The status change must be assessed by the judicial authorities within ten days, in order for it to be valid (Article 58(3) CPP).

need or convenience that the defendant is assisted. Note that the appointment of a defence counsel is mandatory once the defendant has been charged and the defendant has not yet chosen an attorney (Art. 64(3) CPP);

f. the right to be assisted by a counsel during any proceedings in which he takes part and, in case of detention, the right to communicate in private with his counsel.[13] If required for security reasons, private communications shall take place under surveillance. However, this surveillance should be conducted in such a manner that the person responsible for surveillance can not hear the private communication (Art. 61(2) CPP);
g. the right to take part in the inquiry ("inquérito") and the preliminary judicial inquiry ("instrução") by providing evidence and availing himself of such procedures as he may deem necessary;
h. the right to be informed of his rights by the judiciary authorities (judge or public prosecutor) or the criminal police body before which he is required to appear;
i. the right to appeal decisions which are unfavourable to him, as provided for by law.

As regards the right to legal assistance, it should be noted that there are some situations in which the assistance of counsel is compulsory. According to Art. 64 of the CPP, legal assistance is mandatory:

- during any questioning of an arrested or imprisoned person;
- during the phase of preliminary judicial inquiry and trial, except where the proceedings cannot lead to the imposition of a prison sentence or security measure involving imprisonment;
- during any part of the proceedings – with the exception of the assignment of the legal status of a defendant – if the defendant is blind, deaf or dumb, if he is illiterate, if he does not know Portuguese, if he is under 21 years of age, or if the question of his lack of accountability or diminished capacity arises;
- during ordinary or extraordinary appeals;
- in cases of testimonies and statements of the defendant for future memory (Art. 271 and 294 CPP);
- during trials held in the absence of the defendant;
- in any other cases provided for by law.

4. Grounds for pre-trial detention

4.1 Grounds for detention

Art. 204 of the CPP prescribes that pre-trial detention may be imposed only when the suspect or defendant has fled or if there is a risk that he/she may flee, when there is a danger of interference with the inquiry or preliminary judicial inquiry and, in particular, with the collection, preservation or veracity of evidence, or when considering the nature and circumstances of the crime and the personality of the defendant, there is a danger of disturbance of the public order or of continuation of the criminal activity.

4.2 Other prerequisites

For the imposition of pre-trial detention, it is also required that there is a strong indication that a voluntary (*dolus*) offence has been committed punishable by a prison sentence exceeding the statutory maximum of five years (Art. 202(1)(a) CPP), or that there is a strong indication that the voluntary offence is an act of terrorism, a violent crime, or a highly organised crime punishable by a prison sentence exceeding the statutory maximum of three years (Art. 202(1)(b) CPP). Finally, pre-trial detention is also permissible if the suspect has unlawfully entered Portuguese territory, is illegally staying in Portuguese territory, or is the subject of ongoing extradition or expulsion proceedings (Art. 202(1)(c) CPP).

If the suspect is mentally disturbed, the judge, having heard the defence counsel and (whenever possible) a relative of the suspect, may decide that, as long as the disturbance lasts, the suspect will be held in a psychiatric hospital or in another appropriate establishment. Moreover, the judge may

[13] See also Art. 62 CPP.

decide that the necessary measures will be taken to prevent the suspect from fleeing or repeating the offence (Art. 202(2) CPP).

5. Grounds for review of pre-trial detention

5.1 Request for revocation or replacement (Art. 212 CPP)

As mentioned earlier, a pre-trial detainee can have the lawfulness of his/her (further) detention reviewed by a judge, by requesting revocation or replacement of the measure (Art. 212(4) CPP). However, if the judge considers the request of the defendant to be clearly unjustified, he shall order him to pay a fine varying from 576.00 to 1,920.00 Euros (Art. 212 (4) CPP).

The judge to whom such a request is filed, must verify whether pre-trial detention has been applied outside the assumptions or conditions foreseen by law, whether the circumstances that justified its applicability still exist, and whether the protective requirements that determined its applicability have decreased (Art. 212(1) and (3) CPP). Art. 212(4) of the CPP prescribes that the defendant, unless this is really impossible, must be heard by the judge deciding on revocation or replacement of the measure. Note that, if pre-trial detention is revoked, it may be applied again for subsequent reasons legally justifying its applicability, unless the maximum term of pre-trial detention laid down by law has expired (Art. 212 (2) CPP).

5.2 Automatic review (Art. 213 CPP)

According to Art. 213(1) of the CPP, the judge must reconsider the grounds for pre-trial detention every three months and decide whether pre-trial detention is maintained, replaced or revoked. Automatic review is also compulsory when a prosecution order has been issued, when an order has been issued to commit the defendant to trial, or when a final decision in the proceeding is issued without terminating the measure. In order to take a decision on replacement, revocation or maintenance of pre-trial detention, the judge may – either on his own initiative, or at the request of the public prosecutor or the defendant – order the preparation of a personality report or a social welfare report, or request for additional information from the Social Rehabilitation Department, provided the defendant agrees to such an act (Art. 213(4) CPP). If necessary, the judge may also hear the public prosecutor or the accused (Art. 213(3) CPP).

5.3 Appeal (Art. 219 CPP)

The right of appeal is regulated in Art. 219 of the CPP. In essence, the first paragraph of this article prescribes that both the defendant and the public prosecutor (in aid of the defendant) may appeal an order to apply, maintain or replace pre-trial detention. Appeal is thus allowed only when it is in favour of the defendant. Therefore, Art. 219(3) of the CPP explicitly states that a decision not to apply, or to revoke or terminate a measure of constraint – including pre-trial detention – and of credit guarantee is not subject to appeal. The competent authority to hear the appeal is the Tribunal da Relação, i.e. the Court of Appeal (Art. 219, 399, 427 and 432 CPP).[14] Once an appeal has been lodged, the court should take a decision within thirty days (Art. 219(4) CPP).

5.4 The remedy of *habeas corpus* (Art. 220 and 221 CPP)

According to the CPP, there are two kinds of *habeas corpus*, namely: *habeas corpus* as a remedy for illegal imprisonment, and *habeas corpus* as a remedy for illegal pre-trial detention. The legal remedy of *habeas corpus*, which is granted by the Constitution,[15] is a legal action through which a person can seek relief from unlawful imprisonment or unlawful pre-trial detention.

Habeas corpus as a remedy for illegal imprisonment is regulated in Art. 222 of the CPP. According to paragraph 1 of this article, the competent authority to decide on *habeas corpus* is the Supreme Court of Justice ("Supremo Tribunal de Justiça"). *Habeas corpus* can either be demanded by the prisoner himself or by any citizen in enjoyment of his political rights (Art. 222(2) CPP). A request for *habeas corpus* should be submitted to the President of the Supreme Court of Justice and mention one of the following grounds: imprisonment has been performed or ordered by an

[14] See Art. 219, 399, 427 and 432 *a* CPP.
[15] See Art. 31 of the Portuguese Constitution.

incompetent authority, imprisonment has been imposed where the law does not permit it, or imprisonment is maintained beyond the terms established by law or by judicial decision (Art. 222(2) CPP). The Court must rule on a motion for *habeas corpus* within eight days, at a hearing in the presence of both parties (Art. 31(3) of the Constitution).

Art. 220 of the CPP provides for the remedy of *habeas corpus* in case of unlawful pre-trial detention. According to paragraph 1 of this article, the competent authority to decide on *habeas corpus* is the investigating judge ("Juiz de Instrução Criminal"). In this case, too, *habeas corpus* can be demanded by the pre-trial detainee himself or by any citizen in enjoyment of his political rights (Art. 220(2) CPP). A request for *habeas corpus* must be submitted to the investigating judge and mention one of the following grounds: pre-trial detention has been imposed or ordered by an incompetent entity or authority, pre-trial detention has been imposed where the law does not allow it, pre-trial detention is maintained where the maximum time limit provided for by law has already been reached, or pre-trial detention is executed in a place not admissible by law (Art. 220(1) CPP). The judge must rule on a motion for *habeas corpus* immediately, at a hearing in the presence of the public prosecution and the defence counsel (Art. 221(1-3) CPP). If the judge considers the request totally inadmissible, he will impose upon the applicant a fine, varying from 576.00 to 1,920.00 Euros (Art. 221 (4) CPP).

6. Length of pre-trial detention

The maximum periods of pre-trial detention are stipulated in Art. 215 of the CPP. According to paragraph 1 of this article, pre-trial detention shall be terminated if:

a. four months have elapsed without an indictment beeing presented;
b. eight months have elapsed without the preliminary judicial inquiry resulting in a decision;[16]
c. one year and two months have elapsed without a conviction in first instance;
d. one year and six months have elapsed without a final conviction.

The second paragraph of Art. 215 provides for the possibility to increase these time limits to six months, eight months, one year and six months and two years, respectively, in cases of terrorism, violent or highly organised crime, in the case of a crime punishable by a prison sentence of more than eight years, and in the case of one of the crimes listed in the second paragraph of Art. 215.[17] Furthermore, paragraph 3 prescribes that the time limits provided for in paragraph 1 may be increased to one year, one year and four months, two years and six months, and three years and four months, respectively, if the proceedings relate to one of the crimes referred to in paragraph 2 of Art. 215 and prove to be exceptionally complex because of the number of defendants or victims, or because of the highly organised nature of the crime. Finally, paragraph 5 prescribes that the time limits referred to in paragraph 1(c) and (d), as well as those referred to in paragraphs 2 and 3, are increased by six months in the event of an appeal to the Constitutional Court or where the criminal proceedings have been suspended for the purpose of the hearing of a preliminary issue in another court.

However, note that the time limits for pre-trial detention may be suspended. To this end, Art. 216 of the CPP prescribes that pre-trial detention shall be suspended in case the defendant is hospitalised although his presence is essential for conducting the investigation. Consequently, pre-trial detention stops, and then starts again at the end of the suspension.

[16] This situation is applicable only if there has been an preliminary judicial inquiry.

[17] The offences listed in Art. 215(2) of the CPP are: (a) the offences indicated in the Articles 299(1), 312(2), 315(1), 318, 319, 326, 331(1) and 333 of the Penal Code; (b) car theft or forgery of related documents, as well as elements identifying vehicles; (c) counterfeiting currency, credit instruments, tax documents, stamps and seals; (d) fraud, fraudulent insolvency, mismanagement in the public or cooperative sector, forgery, corruption, appropriation of public assets, economic participation in business; (e) laundering of money, assets or proceeds of crime; (f) fraud in the perception or mismanagement of subventions or credit, (g) any offence covered by a convention on the safety of air navigation or shipping.

7. Other relevant aspects

7.1 Relation between pre-trial detention and the outcome of the trial

7.1.1 Deduction from the sentence

According to Art. 80(1) of the Criminal Code ("Código Penal"), the time spent in detention, pre-trial detention and house arrest shall be entirely deducted from the term of imprisonment to which the defendant is convicted. Detention, pre-trial detention and house arrest shall also be deducted if the imposed sentence is a fine. In such a case, one day of detention will correspond to at least one day of fine (Art. 80(2) Criminal Code).

7.1.2 Compensation for unlawful or unjustifiable pre-trial detention

Art. 225 and 226 of the CPP provide for the possibility of compensation for time spent in unlawful or unjustifiable pre-trial detention. In essence, Art. 225(1) of the CPP prescribes that a person who has been subject to pre-trial detention may file a petition for compensation:

a. if detention was unlawful under Art. 220(1) or Art. 222(2) of the CPP;
b. if considering the particular facts underlying pre-trial detention, the order to detention was based on manifest or notorious mistake;
c. if the defendant is found not-guilty to the offence, or if his act is justifiable.

Note that compensation for the reasons mentioned in subparagraphs b and c is not granted if pre-trial detention has occurred due to negligence or own fault of the person concerned (Art. 225(2) CPP). The petition for compensation should be submitted within one year of the conclusive judgement or release of the person concerned (Art. 226(1) CPP).

7.1.3 Alternatives to pre-trial detention

The CPP provides for a number of precautionary measures that must be used before using pre-trial detention. Pre-trial detention is a measure of *ultimum ratio*, which cannot be applied if alternative precautionary measures prove sufficient and adequate. The relevant alternative measures are: surety (Art. 197 CPP), the obligation to report periodically to an authority (Art. 198 CPP), suspension from the exercise of functions, occupations and rights (Art. 199 CPP), prohibitions as regards presence, absence and contacts (Art. 200 CPP), and house arrest with or without electronic monitoring (Art. 201 CPP and Law no. 122 of 20 August 1999).

It should be noted that courts and scholars do not always agree on the nature of the so-called "Termo de Identidade de Residência" (TIR). This measure entails the obligation to provide proof of one's identity and residence, as well as the prohibition to leave one's residence for more than five days without notifying the court (Art. 196 CPP). In fact, this measure is mandatorily imposed on all persons who have acquired the legal status of defendants. This fact in itself seems to be an argument for not considering the TIR a measure of constraint. Nonetheless, imposing this measure will evidentially lead to a limitation of a defendant's freedom of movement. Therefore, it can be argued that this measure, which in itself is a limitation of the defendant's physical liberty to go from one place to another, is a measure of constraint.

7.2 Execution of pre-trial detention; human rights aspects

7.2.1 Human rights provisions in national legislation

The decree-law on the enforcement of measures involving deprivation of liberty (Decree-Law no. 265 of 1 August 1979) provides for the rights of persons held in prison institutions. Art. 216a of the decree-law explicitly states that the rules for the execution of sentences involving deprivation of liberty (stipulated in this law) also apply to remand in custody, unless otherwise mentioned in the law.

Portuguese law explicitly provides for the separation of convicted prisoners and pre-trial detainees. Usually, pre-trial detainees are held in regional prisons.[18] They typically spend the day together with other detainees in small groups; during the night, they are isolated. This regime does not apply to detainees who are held incommunicado according to the law, who have expressly

[18] See Art. 158 of Decree-Law no. 265 of 1 August 1979: Regional prisons are meant for housing remand prisoners and prisoners serving sentences up to six months.

requested so to the prison director, who show that they are not adapted to the normal regime, who are presumed to be especially dangerous because of the facts that caused their detention or because of their criminal record, or whose physical or mental condition does not allow for the normal regime (Art. 210(2)).

As regards the possibility of incommunicado detention, it should be noted that a pre-trial detainee may, upon a decision of the competent authority and in conformity with the provisions of the Code of Criminal Procedure, be subjected to a regime of total incommunication or to a regime of restricted communication (Art. 211(1)). If a prisoner is placed in a regime of incommunication or restricted communication, the competent authority must issue a warrant in writing and, in case of restricted communication, explicitly mention the limitations attached (Art. 211(2)). The fact that communication has been restricted or totally prohibited does not prevent the detainee from communicating with the prison director, the doctor, the religious assistant, members of staff authorised by the prison director, and any other person who, under the law, is entitled to personally communicate with the detainee (Art. 211 (3)). If isolation seriously harms the detainee, in particular his physical or mental health, the prison director (having heard the doctor) will report the case to the authority that issued the warrant (Art. 211 (4)).

Articles 209 to 216-A of the above-mentioned decree-law specify the special rights of pre-trial detainees. First of all, Art. 209 stresses that "remand prisoners must benefit from the presumption of innocence and be treated accordingly". Moreover, it states that "remand in custody must be executed in such a way as to exclude any restriction of liberty that is not strictly indispensable to the aims for remand, to ensure discipline, security and order in prison". For instance, pre-trial detainees should have the possibility to receive visitors every day, as long as this is possible and in accordance with the internal rules (Art. 212). Pre-trial detainees also have the right to use their own clothes and to receive food from outside the prison, provided they bear the expenses themselves (Art. 213 and 214). Furthermore, pre-trial detainees are not obliged to work, but they may, at their own request, be authorised to work, to follow education courses, training courses or other courses, and to participate in other cultural, recreational or sport activities organised in prison (Art. 215). The fact that a pre-trial detainee is not obliged to work does, however, not free him from the obligation to clean and tidy up his room, and to assist in the general up-keeping of the prison (Art. 215(3)). More information on prisoners' rights can be found in the decree-law.

7.2.2 Violation of human rights in pre-trial detention

In 2008, the CPT paid its last visit to the Portuguese prison system. The report on this visit has not yet been published. Previous visits were made by the CPT in 2003, 2002, 1999, 1996, 1995 and 1992. In this subparagraph, attention will be paid to the CPT's findings following the 2002 and 2003 visits. In 2002, the CPT only visited one prison establishment, namely Oporto Central Prison. The CPT reported that positive measures had been taken to improve the conditions of detention in this prison. However, the facts found during the December 2002 visit demonstrate that the situation at Oporto Central Prison remains far from satisfactory.[19] At the time of the visit, the prison was still facing a problem of overcrowding: the prison's official capacity was 720, but in reality it housed 1,135 detainees. Just over half of the detainees were awaiting trial.[20]

Although some improvements had been made concerning the material conditions, the negative effects of overcrowding were still evident in the men's section of the prison; male prisoners were living in cramped accommodations and had no privacy. The overall state of repair of the prison left a lot to be desired, too,[21] as did the conditions found in the infirmary. In essence, dormitories were overcrowded and sometimes filthy, while the distribution of medicines was usually carried out by prisoners with few possibilities to verify the identity of inmates receiving medicines (including prescription drugs) and without any supervision from nursing staff.[22] Premises accessible during out-of-cell time to inmates who did not participate in any activities were often poorly equipped and too small for the number of detainees.[23]

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[19] Report to the Portuguese Government on the visit to Portugal carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 17 to 20 December 2002, p. 8.
[20] Ibidem, p. 9.
[21] Ibidem, pp. 13-14.
[22] Ibidem, p. 15.
[23] Ibidem, p. 14.

The pressure of overcrowding had also affected the level of tension and violence within the prison.[24] In particular, many complaints were made regarding intimidation by fellow inmates. Some prisoners even stated that they felt like their lives and/or physical integrity were at risk, and several prisoners told that they had requested to be transferred to another wing in order to escape potential aggressors.[25] However, only a few allegations were made of ill-treatment of prisoners by prison staff. These allegations mostly concerned rough treatment, punches and kicks, and frequently related to night-time incidents with prisoners trying to attract the attention of staff by banging on their cell doors (in the absence of a proper call system). Some allegations of verbal abuse were also recorded.[26] In a few cases, the prison's healthcare services had gathered medical evidence consistent with allegations of ill-treatment. Records made following medical examinations were, however, rather cursory and did not include the doctor's conclusions.[27] Finally, the CPT reported that drug trafficking remained an acute problem in prison.[28]

The situation described above led the CPT to the conclusion that prisoners held in the visited establishment were subjected to conditions that were neither safe nor healthy. Efforts to improve the prison conditions had had only marginal effects, while several significant problems persisted (e.g. violence, drugs, insufficient staff, overcrowding). Consequently, the CPT concluded that prisoners were being treated in an inhuman and degrading way.[29] In general, it can be said that in 2003 the situation had not changed, despite some minor improvements that had been made in some of the prisons.

8. Special groups

8.1 Juveniles

According to Art. 19 of the Portuguese Penal Code, minors under the age of 16 are not criminally responsible. Juveniles over the age of 16 but under 21 are tried under rules laid down in special legislation (Art. 9 of the Penal Code). Decree-Law no 401 of 23 September 1982 provides for special provisions for the criminal prosecution of juveniles. However, neither the CPP nor this specific decree-law contain provisions as regards pre-trial detention of juveniles. Special provisions concerning the execution of pre-trial detention in juvenile cases can nonetheless be found in Decree-Law no. 265 of 1 August 1979 on the enforcement of measures involving deprivation of liberty. Art. 216 of this law prescribes that, if liable, young adults aged 25 or less should be placed in separate prisons or prison sections.

8.2 Women

Currently, there are no special regulations on pre-trial detention for women. The CPP contains only one specific provision, which applies to pre-trial detention of pregnant women and single mothers. In essence, Art. 211 of the CPP prescribes that pre-trial detention may be suspended, if necessary, when the detainee is pregnant or in puerperium (post-partum situation). The suspension ends when the circumstances that gave rise to it end. In the case of post-partum, the suspension terminates at the end of the third month following childbirth. During the period of suspension of pre-trial detention, the detainee is subject to house arrest and/or to any other measure appropriate in her condition, particularly hospital detention.

Decree-Law no. 265 of 1 August 1979 also provides for some special rules applicable to pregnant inmates and inmates who have recently given birth. Art. 203(1) of the decree-law, for instance, prescribes that pregnant inmates and inmates who have recently given birth are entitled to medical assistance adapted to their situation. As far as possible, measures should be taken to ensure that inmates give birth in a non-prison hospital (Art. 203(3)). During delivery, the inmate should be assisted by a midwife or, if necessary, by a doctor (Art. 203(4)). Moreover, pregnant inmates, inmates who have recently given birth, and inmates who suffered abortion or a miscarriage have the right to all necessary pharmaceutical and other care (Art. 204). Finally, Art.

[24] Ibidem, p. 14.
[25] Ibidem, p. 11.
[26] Ibidem, p. 9.
[27] Ibidem, p. 10.
[28] Ibidem, p. 12.
[29] Ibidem, p. 16.

203(2) prescribes that the general rules on the protection of working mothers, in particular rules concerning the nature and duration of work, are also applicable to women inmates. Art. 206 of the decree-law grants female inmates the right to keep their young children with them. In essence, this article prescribes that "women inmates' children aged three or less may remain in prison with their mother if such is in the advantage of the child and if such is authorised by the person entitled to fix the place of residence of the child".

8.3 Foreigners

In Portugal, there are no special rules concerning pre-trial detention for foreigners. The only exception is the rule that foreigners who have unlawfully entered Portuguese territory or are illegally staying in Portuguese territory may be detained even if the committed offence is not punishable by a prison sentence exceeding the statutory maximum of five years (in case of an act of terrorism, a violent crime, or a highly organised crime: three years) (Art. 257 (2)(a) and 202 (1)(c) CPP).

8.4 Alleged terrorists

Art. 1(i) of the CPP describes the act of terrorism as "conducts which integrate the crimes of terrorist organisation, terrorism and international terrorism". In Portugal, there are no special provisions concerning (the execution of) pre-trial detention in case the defendant is charged with an act of terrorism. However, the seriousness of such an offence may be reason enough to subject the defendant to a regime of total incommunication or restricted communication (provided for by Art. 211 of Decree-Law no. 265 of 1 August 1979 on the enforcement of measures involving deprivation of liberty).

9. Summary

Pre-trial detention ("prisão preventiva") is to a large extent regulated in the Portuguese Code of Criminal Procedure ("Código de Processo Penal"). However, the legal basis of pre-trial detention is laid down in Art. 27 and 28 of the Portuguese Constitution. Art. 27(2) of the Constitution states that "no one may be deprived of his or her freedom, in whole or in part, except as a result of a court judgment convicting him or her to a prison sentence on account of an offence punishable by law, or as a result of judicial application of a security measure". Apart from safeguarding the right to liberty, this article also provides for an exception to this right in the form of pre-trial detention (Art. 27(3)(a) of the Constitution). Pre-trial detention is, however, an exceptional measure which may not be imposed or continued "where it can be replaced by bail or by any other more favourable measure provided by law" (Art. 28(2) of the Constitution and Art. 193(2) and 202(1) CPP).

The prerequisites for pre-trial detention can be found in Art. 202 and 204 of the CPP. In essence, it can be stated that, according to the CPP, pre-trial detention may be imposed if there is a strong indication that a voluntary (*dolus*) offence has been committed punishable by a prison sentence exceeding the statutory maximum of five years (Art. 202(1)(a) CPP), or that there is a strong indication that the voluntary offence is an act of terrorism, a violent crime, or a highly organised crime punishable by a prison sentence exceeding the statutory maximum of three years (Art. 202(1)(b) CPP). Finally, pre-trial detention is also permissible if the suspect has unlawfully entered Portuguese territory, is illegally staying in Portuguese territory, or is the subject of ongoing extradition or expulsion proceedings (Art. 202(1)(c) CPP). However, pre-trial detention can only be applied if at least one of the following grounds is present:

- The suspect or defendant has fled or there is a risk that he/she may flee (Art. 204(a) CPP);
- There is a danger of interference with the inquiry or preliminary judicial inquiry and, in particular, with the collection, preservation or veracity of evidence (Art. 204(b) CPP);
- There is a danger of disturbance of the public order or of continuation of the criminal activity, when considering the nature and circumstances of the crime and the personality of the defendant (Art. 204(c) CPP).

The maximum time limits for pre-trial detention are determined in Art. 215 of the CPP. When applying the measure of pre-trial detention, there are some essential legal principles which must be taken into account by the judge. These are: the principle of legality (Art. 191(1) CPP and 27(3) of

the Constitution), the principles of proportionality and adequacy (Art. 193(1) CPP), the principle of last resort (Art. 193(2) CPP, 202(1) CPP and 28(2) of the Constitution), and the principle of safeguarding basic (human) rights (Art. 193(4) CPP).

A pre-trial detainee is entitled to a number of legal remedies aimed at judicial review of the lawfulness and justifiability of his/her detention. The CPP provides for the possibility to request for revocation or replacement of the measure (Art. 212 CPP), the right of appeal (Art. 219 CPP), and the *habeas corpus* remedy (Art. 220 and 221 CPP). Next to these remedies, Art. 213 of the CPP also ensures the automatic review of pre-trial detention by the judge whenever a significant decision is taken in the criminal proceeding or, in any case, after the lapse of a three-month period.

If pre-trial detention proves to be unlawful or unjustifiable, the person who has suffered pre-trial detention has the right to claim compensation. The possibilities for compensation are regulated in Art. 225 and 226 of the CPP. Note that the period of time spent in pre-trial detention should, in any case, be deducted from the term of imprisonment to which the defendant is convicted (Art. 80(1) of the Criminal Code), and/or be reflected in the amount of the imposed fine (Art. 80(2) Criminal Code). With respect to special groups such as juveniles, women, foreigners and alleged terrorists, it should be mentioned that, apart from a few special provisions in the CPP and Decree-Law no. 265 of 1 August 1979 (on the enforcement of measures involving deprivation of liberty), there are no specific regulations for (the execution of) pre-trial detention.

BIBLIOGRAPHY

National literature

Direcção Geral de Serviços Prisionais, *Estatísticas Prisionais 2001. Apresentação i Análise.*
Direcção Geral de Serviços Prisionais, *Estatísticas Prisionais 2002. Apresentação i Análise.*
Direcção Geral de Serviços Prisionais, *Estatísticas Prisionais 2003. Apresentação i Análise.*
Direcção Geral de Serviços Prisionais, *Estatísticas Prisionais 2004. Apresentação i Análise.*
Direcção Geral de Serviços Prisionais, *Estatísticas Prisionais 2005. Apresentação i Análise.*
Direcção Geral de Serviços Prisionais, *Estatísticas Prisionais 2006. Apresentação i Análise.*
Direcção Geral de Serviços Prisionais, *Estatísticas Prisionais 2007. Apresentação i Análise.*

English literature

Committee Against Torture, *Consideration of reports submitted by State Parties under Art. 19 of the Conevntion. Fourth periodic reports due in 2002, Adendum Portugal.*

Council of Europe, *Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights on his visit to Portugal 27- 30 May 2003 (for the attention of the Committee of Ministers and the Parliamentary Assembly),* Strasbourg 2003.

European Sourcebook of Crime and Criminal Justice Statistics - 2006, third edition, Meppel: Boom Juridische Uitgevers 2006.

E.U. Network of Independent Experts on Fundamental Rights, *Report on the situation of fundamental rights in Portugal in 2003 (CFR-CDF.repPT.2003), January 2004.*

Report to the Portuguese Government on the visit to Portugal carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 17 to 20 December 2002.

R. Walmsley, *World Pre-trial / Remand Imprisonment List (Pre-trial detainees and other remand prisoners in all five continents)*, London: International Centre for Prison Studies 2008.

US. Department of State, *Country Reports on Human Rights Practices – 2006. Portugal (Released by the Bureau of Democracy, Human Rights, and Labor on March 6, 2007).*

Internet sources

www.ine.pt.

www.mj.gov.pt

http://www.dgsp.mj.pt/

http://www.dgaj.mj.pt/