

# Slovakia<sup>1</sup>

## 1. Introduction

The Code of Criminal Procedure (No. 301/2005; hereafter CCP) contains the rules relevant for the pre-trial procedure. The basis for a person’s deprivation of liberty, and more precisely for pre-trial detention, is captured by the Constitution.<sup>2</sup> The main article in this respect is Art. 17. The CCP entered into force on 1 January 2006 and replaced Act No. 141/1961 Coll. on Criminal Procedure. Rules regarding the execution of pre-trial detention are laid down in Act No. 221/2006.<sup>3</sup> One of the aims of the new criminal procedure is to reduce the burden placed on the presiding judges of panels by removing the responsibility of the evidence from the presiding judges of panels to the parties of the proceedings. It should make criminal proceedings more effective, faster and simpler. The reform should also strengthen the status of prosecutors in pre-trial proceedings. They act as a supervisory and control authority. This development is positive for pre-trial detainees, as the different actors within the pre-trial phase control the justification of the detention much better. Moreover, the reform institutes a judge in pre-trial proceedings.<sup>4</sup>

The Corps of Prison and Court Guard represents the Slovak prison system. Act No. 4/2001 entails rules with regard to the operation of this body (hereafter: the Prison Corps). The Prison Corps, *inter alia*, secures pre-trial detention, serves imprisonment sentences, and cooperates with probation and mediation officers.<sup>5</sup> The Prison Corps consists of the Directorate General, pre-trial detention institutions, institutions for serving imprisonment sentences for adults and juveniles, a hospital for the accused and sentenced, and members of the Prison Corps.<sup>6</sup> In 2009, there are eighteen prison institutions in Slovakia. Ten of them hold pre-trial detainees. Out of the eighteen institutions, four are open institutions, where people are deprived of their liberty but subject to a more open regime with more freedoms. The Act on the execution of pre-trial detention rules that there are different regimes within the remand institutions. Normally, pre-trial detainees are subject to a regime in which they have two hours of education per day. During these hours, they are out of their cells. Within this regime, detainees are allowed to spend one hour in the open air each day. Besides this regime, the execution Act rules that there is another regime, in which pre-trial detainees spend the day working. This is not quite common, but it is a possibility for remand prisoners to work during the day and stay behind bars at night. In order to be qualified for a

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<sup>2</sup> Constitution of Slovakia, available on the website of the Constitutional Court of the Slovak Republic, [http://www.concourt.sk/en/A\\_ustava/ustava\\_a.pdf](http://www.concourt.sk/en/A_ustava/ustava_a.pdf) (accessed 14 January 2009).

<sup>3</sup> By Martin Skamla in: A.M. van Kalmthout, F.B.A.M. Hofstee-van der Meulen, F. Dünkel, *Foreigners in European Prisons. Volume 2*, Nijmegen: WLP 2007, p. 713 and 715. This Act is also called ‘the Law of the National Council of the Slovak Republic about Prison Custody’.

Unfortunately, no English translation is (yet) available of Act No. 221/2006 and of the CCP with its latest amendments. Information from the CCP and the Act on the execution of pre-trial detention (No. 221/2006) has been received through conversations with national experts within the field of pre-trial detention. In this respect, the author wishes to thank in particular Mr. Branislav Bohacik, Mr. Jaroslav Janos and Mr. Mario Ernest for providing the necessary legal and statistical material. Mr. Branislav Bohacik is director of the Division for Judicial Cooperation in Criminal Matters of the International and European Law Department of the Ministry of Justice of the Slovak Republic. Mr. Jaroslav Janos is head specialist and deputy director of the Department of Detention and Execution of Punishment at the General Directorate Corps of the Prison & Court Guard of the Slovak Republic. Mr. Mario Ernest works at the Prosecutor’s Office and is conducting a PhD study on Slovakia’s constitutional law.

<sup>4</sup> Supreme Court of the Slovak Republic, *Judicial Reform in the Slovak Republic*, Bratislava: 13 June 2005.

<sup>5</sup> By Martin Skamla in: A.M. van Kalmthout, F.B.A.M. Hofstee-van der Meulen, F. Dünkel, *Foreigners in European Prisons. Volume 2*, Nijmegen: WLP 2007, p. 715.

<sup>6</sup> *Ibid*, p. 714.

certain regime, the grounds for detention play an important role. If the danger for escaping is only marginal, a prisoner has a higher chance to be submitted to a regime in which he<sup>7</sup> can work during the day. There are no problems with regard to overcrowding in the Slovak prison system. On the contrary – only 65% of the places in remand prisons are occupied.<sup>8</sup>

In short, the CCP governs the complete pre-trial procedure. As soon as the rules of the CCP apply, the pre-trial stage has started. Within the framework of the CCP, we do not talk about police detention or custody. The police, however, may detain a person on the grounds provided for in the relevant Police Act. Moreover, the period of this detainment under the Police Act counts towards the overall period of pre-trial detention, but police detention/custody as such is not part of the Criminal Procedure. Pursuant to the relevant sections in the CCP, the prosecutor has to make a decision with regard to release or pre-trial detention of a person within 48 hours from the moment of the first deprivation of liberty. If the prosecutor decides not to release the person, he files a motion for pre-trial detention. A pre-trial judge then decides on placing the person into custody or not. As soon as the judge decides to remand a person in custody, that person will be moved from his police cell to a cell for pre-trial detainees in a penal institution. National statistics of the Ministry of Justice of the Slovak Republic on the number of pre-trial detainees do not give insight into the number of people detained in police premises; they only count persons subject to pre-trial detention and ignore persons in police cells, as the latter fall under the responsibility of the Ministry of the Interior.

European Prison Rules, recommendations of the Council of Europe relevant for the prison system etc. have served as input for the Slovak Act on the execution of pre-trial detention. This Act has more or less the same structure as the European Prison Rules, and deals with many issues – from food-related aspects to complaint procedures. It even entails an address list for detainees, so they know to which international or European institutions they can write. The Act also contains special provisions concerning women, juveniles and foreigners, but not with respect to alleged terrorists.

## 2. Empirical background information

The first set of data is based on the resources of Statistics SPACE I, the annual penal statistics on the prison population, provided by the Council of Europe. These numbers are put together in clear figures that are shown after this explanation of resources. The 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 List<sup>9</sup> every year.

### Slovakia and its prisoners in general

Population 2006, annual estimate	5.388.100 (within brackets the latest data on 1.9.2007 according to SPACE I <sup>10</sup> 5.4447.500)
Total number of prisoners (including pre-trial detainees)	8.657 (8.235)
Prison population rate per 100,000 inhabitants	160.7 (151.2)
Total capacity of penal institutions/prisons	10.461 (10.575) <sup>11</sup>
Prison density per 100 places	82.8 (77.9)

<sup>7</sup> “He” or “him” may also mean “she” or “her”.

<sup>8</sup> Information from the national experts on 13 January 2009.

<sup>9</sup> 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>

<sup>10</sup> 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).

<sup>11</sup> This number has been calculated by using the surface area of four m<sup>2</sup> per prisoner.

**Special groups of prisoners**

Number of prisoners under 18 years old, including pre-trial detainees	For some unknown technical reasons indicators were not available for 1.9.2006 (1.9.2007: 52)
Number of prisoners under 18 years old in pre-trial detention	Not available via SPACE I
Number of prisoners from 18 to less than 21 years old	For some unknown technical reasons indicators were not available for 1.9.2006 (1.9.2007: 419)
Number of female prisoners, including pre-trial detainees	432 (5% of the total prison population) (1.9.2007: 376 (4.6%)) According to SPACE I, Survey 2007, there are 6 foreign female prisoners, which is 1.6% in the total number of female prisoners.
Number of female prisoners in pre-trial detention	Not available via SPACE I
Number of foreign prisoners, including pre-trial detainees	185 (2.1% of the total prison population) (1.9.2007: 165 (2%))
Number of foreign pre-trial detainees	96 (51.9% of total number of foreign prisoners) (1.9.2007: 102 (61.8%))
Percentage of European prisoners among the foreign prisoners	Not available via SPACE I

**Legal status of prison population I**

Untried prisoners (no court decision yet reached)	2.371 (1.9.2007: 1.952)
Convicted prisoners, but not yet sentenced	No figures available, but the concept exists in the penal system of the country concerned.
Sentenced prisoners who have appealed or who are within the statutory time limit for doing so	Ibid.
Sentenced prisoners (final sentence)	6.286 (6.283)
Other cases	The question is irrelevant, because the item refers to a concept not found in the penal system of the country concerned.
Total	8.657 (8.235)

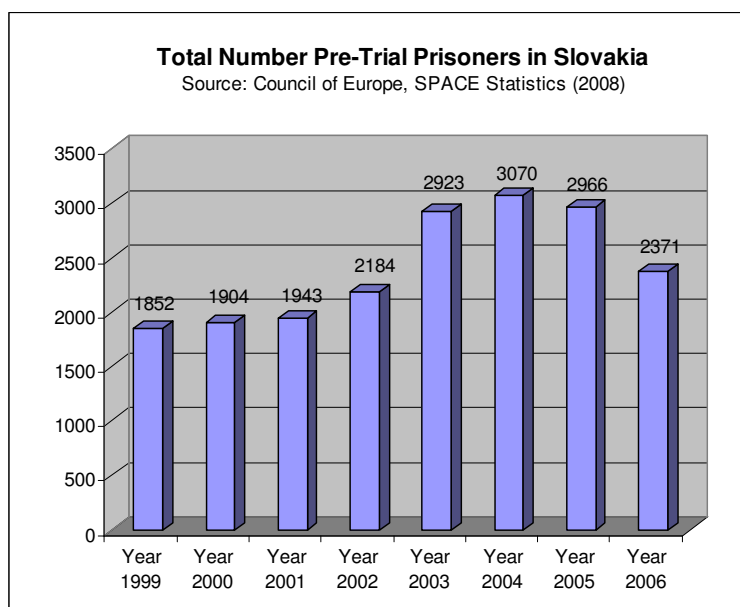
**Legal status of prison population II**

Percentage of prisoners not serving a final sentence	(27.4%) <sup>12</sup> (1.9.2007: 23.7%)
Rate of prisoners not serving a final sentence per 100,000 inhabitants	(44.0) (1.9.2007: 35.8)
Percentage of untried prisoners (no court decision yet reached)	(27.4%) (1.9.2007: 23.7%)
Rate of untried prisoners (no court decision yet reached) per 100,000 inhabitants	(44.0) (1.9.2007: 35.8)

<sup>12</sup> The data of this category (Legal status of prison population I) are placed between brackets as SPACE I (Survey 2006) notes that "they are not strictly comparable with the data requested by SPACE. For example, this applies to items whose definition is not the same as the one used in the SPACE questionnaire. Or when the total number of analysed figure is less or equal to 10 individuals."

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

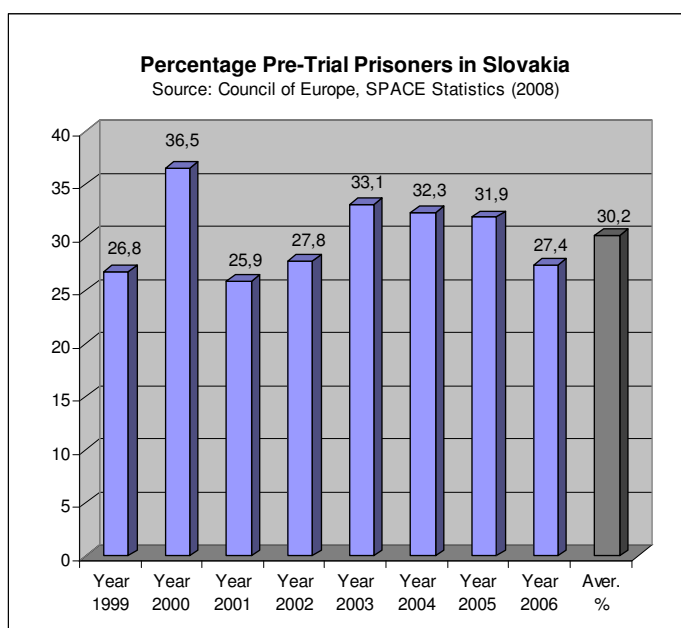
<b>Year<sup>13</sup></b>	<b>Number<sup>14</sup></b>	<b>Percentage<sup>15</sup></b>
<b>1999</b>	1852	26,8
<b>2000</b>	1904	36,5
<b>2001</b>	1943	25,9
<b>2002</b>	2184	27,8
<b>2003</b>	2923	33,1
<b>2004</b>	3070	32,3
<b>2005</b>	2966	31,9
<b>2006</b>	2371	27,4
<b>Average percentage</b>		<b>30,2</b>
Source: Council of Europe, SPACE Statistics up until Survey 2006		



<sup>13</sup> Per 1 September of mentioned year.

<sup>14</sup> This number includes: untried prisoners (no court decision yet reached), convicted prisoners but not yet sentenced and sentenced prisoners who have appealed or who are within the statutory time limit for doing so.

<sup>15</sup> Percentage of the total prison population.



If we also take the latest data of SPACE I into consideration, we see that both the prison population and the pre-trial population have been decreased. The final table in this paragraph underlines this trend as we can see that according to very recent national data (the situation as it was on 13 January 2009) the prison and pre-trial population have even decreased more.

#### **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	2,136
Date	1.5.2007
Percentage of the total prison population	25.5%
Estimated national population (at date shown)	5.39m
Pre-trial/remand population rate (per 100,000 of the national population)	40

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

Source	Date	Total prison population (including pre-trial detainees/remand prisoners)	Number of pre-trial detainees	Pre-trial detainees as a percentage of the total prison population	Prison population rate per 100,000 of national population	Pre-trial detention rate per 100,000 of national population
International Centre for Prison Studies <sup>16</sup>	31 December	7,986	1,853	23.2	148	34.3

<sup>16</sup> International Centre for Prison Studies (ICPS), London (World Prison Population List and World Pre-trial/Remand Detention List as well as the Prison Brief for the respective countries; Prison Brief for Slovakia is available at [http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb\\_country.php?country=163](http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_country.php?country=163) (last retrieved 6 March 2009).

	2007					
SPACE I (Council of Europe)	1 September 2007	8.235	1.952	23.7%	151.2	35.8
European Sourcebook <sup>17</sup>	2003	-	-	33	164	-
Eurostat <sup>18</sup>	2006	8,657	-	-	-	-
	2005 <sup>19</sup>	-	-	-	-	-
National Statistics	13 January 2009	8,206	1,570	19%	152	29

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)	1.850	102	94.8%	5.2%	-	-
European Sourcebook	-	-	-	-	-	-
Eurostat	-	-	-	-	-	-
	-	164	-	-	-	-
National Statistics	1,502	68	96%	4%	38% (26 persons)	62% (42 persons)

Source	Females in pre-trial detention (numbers)	Females as a percentage of the total number of pre-trial detainees	Juveniles in pre-trial detention (numbers)	Juveniles as a percentage of the total number of pre-trial detainees
International Centre for Prison Studies	-	-	-	-
SPACE I (Council of Europe)	-	-	-	-
European Sourcebook	-	-	-	-
Eurostat	-	-	-	-
	-	-	-	-
National Statistics	81	5%	61	4%

<sup>17</sup> European Sourcebook of Crime and Criminal Justice Statistics – 2006 Third edition STOCK data.

<sup>18</sup> Eurostat, population and social conditions, criminal and criminal justice, prison population available at [http://epp.eurostat.ec.europa.eu/extraction/retrieve/en/theme3/crim/crim\\_pris?OutputDir=EJOutputDir\\_621&user=unknown&clientsessionid=1CBF25260BEF17D1F309141D087444F4.extraction-worker-2&OutputFile=crim\\_pris.htm&OutputMode=U&NumberOfCells=602&Language=en&OutputMime=text%2Fhtml&](http://epp.eurostat.ec.europa.eu/extraction/retrieve/en/theme3/crim/crim_pris?OutputDir=EJOutputDir_621&user=unknown&clientsessionid=1CBF25260BEF17D1F309141D087444F4.extraction-worker-2&OutputFile=crim_pris.htm&OutputMode=U&NumberOfCells=602&Language=en&OutputMime=text%2Fhtml&)

<sup>19</sup> By Martin Skamla in: A.M. van Kalmthout, F.B.A.M. Hofstee-van der Meulen, F. Dünkel, *Foreigners in European Prisons. Volume 1*, Nijmegen: WLP 2007, p. 715.

According to the national Prison Corps, the total prison population was 7,986 on 31 December 2007.<sup>20</sup> At the beginning of 2009, the prison population was 8,206, of which 1,570 were in pre-trial detention. 81 women were – at the beginning of 2009 – in pre-trial detention and 61 juveniles.

Data available via Eurostat presents an estimated national population of 5.4 million at the end of 2007. Therefore, the prison population rate per 100,000 inhabitants is 148. According to the International Centre for Prison Studies (hereafter: ICPS), the number of pre-trial detainees was 1,853 (23.2% of 7,986) on 31 December 2007. The statistics of the ICPS do not specifically point out the number of female pre-trial detainees, juvenile pre-trial detainees and foreign pre-trial detainees. However, the ICPS data mentions that the number of female prisoners was 375 (4.7% of 7,986) on 1 May 2007. The number of prisoners under the age of eighteen was 80 (1.0% of 7,986) on 1 May 2007. Finally, the number of foreign prisoners was 176 (2.2% of 7,986) on 31 December 2008.

In 2007, there were eighteen penal institutions. On 31 December 2007, the official capacity of these penal institutions was 10,588.<sup>21</sup> This means that, in 2007, only 75.4% of the places in penal institutions were occupied. There is also no problem regards overcrowding in penal institutions accommodating pre-trial detainees. At the beginning of 2009, only 65% of the total capacity for pre-trial detainees was occupied.

If we look at the trend in the prison population rate, we could say that this rate was rather high in 1995 (147) in comparison with e.g. the years 1992 and 1998, when the prison population rate was 124 and 123 respectively. In 2001, the prison population rate was 138, in 2004 175, and in 2007 148.<sup>22</sup> In 2009, the prison population was 8,206. Based on an estimated population of 5,411,062 (data available via Eurostat), the prison population rate is now 152.

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

#### **3.1 General**

Sec<sup>23</sup>. 7, Art. 46-50 of the Slovak Constitution contains principles that are important for criminal proceedings. Rights may be claimed by procedures laid down by law at an independent and impartial court or, in cases provided by law, at other public authorities of the Slovak Republic (46(1)). There must be rules with regard to procedures during which denied claims can be reviewed (46(2)). Damage caused by an unlawful decision of a court, another public authority or a body of public administration, or by improper official procedures, can be compensated. With regard to pre-trial detention, this means that if the detention or arrest is regarded as unlawful, the (ex-)pre-trial detainee is eligible for receiving compensation (46(3)). Everyone subject to criminal proceedings shall have the right to refuse to give testimony (47(1)). This right may not be denied under any circumstances for persons charged with a criminal offence (50(4)). Everyone shall also have the right to legal advice from the beginning of the proceedings before a court, another public authority or a body of public administration, under the conditions laid down by law (47(2)). The detained person shall have the right to choose a counsel and consult him from the very moment of detention. Persons who do not speak the Slovak language have the right to an interpreter (47(4)). All criminal offences and their subsequent punishments shall be laid down by law (49). Persons shall be heard during criminal proceedings, which shall be open to the public. Furthermore, persons shall be presumed innocent until their guilt has been proved (48(2) jo 50(2)).

Most of these fundamentals are also laid down in the Code of Criminal Proceedings.

#### **3.2 Constitution**

The Slovak Constitution outlines the basis for the pre-trial procedure, which can be found in Art. 17. The Constitution guarantees the personal liberty of every individual: “No one shall be prosecuted or deprived of liberty save for reasons and by means laid down by a law. No one shall be deprived of liberty merely for his or her inability to fulfil a contractual obligation.” (art. 17)1-2)).

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<sup>20</sup> ICPS, World Prison Brief, Prison Brief for Slovakia

([http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb\\_country.php?country=163](http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_country.php?country=163))

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> Sometimes Sec. (section) is referred to as Art. (article).

A person charged with or suspected of a criminal offence may be detained only in cases provided by law. These cases are listed in the Code of Criminal Procedure. A detained person must be informed of the grounds for detention immediately. After interrogation, within 48 hours at the latest, he must be either released or brought before a court. Within 48 hours (in the case of especially serious criminal offences: within 72 hours) after the detained person has been brought before the court, a judge must hear the person and decide on his detention or release (17(3)). A person charged with a criminal offence may be arrested only upon an arrest warrant ordered by a judge (17(4) Constitution jo 73 CCP). An arrested person must be brought before a court within 24 hours. Within 48 hours (in the case of especially serious offences: within 72 hours) after the arrested person has been brought before the court, a judge must hear the person and decide on his detention or release. Pre-trial detention may only be imposed on the grounds and for the period provided for in the CCP and is determined by the court (17(5)).

According to the Act of the National Council of the Slovak Republic No. 171/1993 Coll., a police officer has the right to detain a person (Art. 19(1)(a-d)). Detention on the grounds referred to in this Act cannot last longer than 24 hours from the time the person was restricted in his freedom. The police authority must either hand over the detainee to the prosecutor or release the detained person without delay. Persons detained on the grounds referred to in Art. 19 shall be kept in police cells. Moreover, a police authority is authorised to place a person in a police cell who “a) was detained, b) was arrested on warrant, c) was brought out by the police officer for necessary proceeding regarding detention, imprisonment, or d) shall be transported to serve detention or the sentence of deprivation of liberty” (Art. 42 Act No. 171/1993 Coll.).

In this respect, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereafter: CPT) points out that “a criminal suspect detained by the police (and who is not released beforehand) must be brought before a judge within 48 hours of his apprehension, on the basis of a motion filed by the relevant prosecutor. The judge must question the detained person and, within 48 hours after receiving the prosecutor's motion (or 72 hours for particularly serious offences), decide on the release or remand in custody of the person concerned. Persons detained by the police on the basis of an arrest warrant already issued by a judge must be brought before the relevant court without delay, and not later than within 24 hours. In such cases, the judge once again has 48 hours (or 72 hours as regards particularly serious offences) to notify the accused person of his decision.”<sup>24</sup>

As soon as the pre-trial judge decides to remand a person in custody, that person will be moved from his police cell to a prison unit especially designed to accommodate pre-trial detainees.<sup>25</sup>

### 3.3 Criminal proceedings<sup>26</sup>

Sec. 85 CCP rules that if any of the grounds for custody under Sec. 71(1) CCP are present, a police officer may detain a person suspected of having committed a crime, even before any charges have been lodged against the person. The detention has to be authorised by the prosecutor. As soon as the CCP stage – the pre-trial stage – commences, the prosecutor plays an important role. Without the prosecutor’s authorisation, detention shall only be possible if the matter is urgent and it was not possible to secure the authorisation in advance, in particular if the person concerned was caught in the act of committing a crime or attempting to escape (85(1)). The investigation has a closed character and the prosecutor plays a supervisory role.<sup>27</sup>

Anyone may restrict the personal freedom of a person caught in the act of committing a crime or immediately thereafter, if this is necessary for establishing the person's identity, preventing escape or securing evidence. The police have to take over the suspect without delay.

The police officer who detained a person or to whom a person caught committing a crime was handed over shall notify the prosecutor of the detention and draw up a report containing the place

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<sup>24</sup> CPT/Inf (2006) 5, Report to the Government of the Slovak Republic on the visit to Slovakia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 22 February to 3 March 2005, Strasbourg, 2 February 2006, §12.

<sup>25</sup> Information from the national experts on 13 January 2009.

<sup>26</sup> Ibid.

<sup>27</sup> By Martin Lulei and Ludovit Galbavy in: A.M. van Kalmthout & I. Durnescu (eds.), *Probation in Europe*, Nijmegen: Wolf Legal Publishers 2008, p. 948.



and time of detention, a detailed description of the circumstances, as well as the essential grounds for detention.

If the suspicion is cleared or if the grounds for detention have ceased to exist because of other reasons, the person shall be released immediately. If the detained person is not released, the police shall decide, under the supervision of the prosecutor, that the person is accused of having committed a criminal offence. The person shall then be heard. After the hearing, the police shall submit the file (including the hearing report and other evidence) to the prosecutor, in order to enable him, if appropriate, to file a motion to the court to take the person into custody. The police and prosecutor have to make sure that – if necessary – a pre-trial judge will be involved within 48 hours from the detention or taking over, otherwise the person shall be released.

The detained person shall have the right to choose a counsel and consult him from the very moment of detention. He may also request the presence of his counsel at the hearing, unless the counsel cannot be reached within the time limit specified.

If the prosecutor does not release the person on the basis of the file received and/or further questioning, he shall hand over the detainee to a court within 48 hours from the moment of detention or taking over, and file a motion to place the person in custody. The prosecutor shall attach to the motion any evidence collected up to that point (Sec. 87(1)). The pre-trial judge shall have to hear the detainee and, within 48 hours – in the case of particularly serious offences (crimes carrying a penalty of more than ten years of imprisonment): 72 hours – after receiving the motion, decide on the release or the remand in custody of the person. If the chosen or assigned counsel can be reached and if the detainee asks for his presence, the judge shall, in the prescribed manner, immediately notify the counsel and the prosecutor of the time and place of the hearing. The counsel and the prosecutor may take part in the interrogation and ask questions, but only with the permission of the judge. If the 48-hour time limit (in the case of particularly serious offences: the 72-hour time limit) from the moment of receiving the prosecutor's motion to place the person in custody has expired, the accused has to be released. On the basis of Sec. 86 CCP, the police may detain an accused person if there are sufficient grounds and the matter is urgent. When the police detain an accused person, they shall inform that person of the grounds for the detention and conduct a hearing. The police have to inform the prosecutor without delay and deliver a duplicate of the report about the detention together with the files to the prosecutor so that he/she can decide whether to file a motion to the court for taking that person into custody. The prosecutor has to file the motion within 48 hours from the moment of detention otherwise the person concerned has to be released.

#### **4. Grounds for detention**

According to the Constitution, pre-trial detention can be imposed only on the grounds provided for by law and is determined by a court.<sup>28</sup> Sec. 71(1a-c) CCP states that the accused can only be remanded in custody if there are reasonable grounds to believe that: a) he would escape or go into hiding to avoid prosecution or punishment, in particular if his identity cannot be immediately established and if he does not have a permanent residence, and a serious punishment is to be expected<sup>29</sup> or b) he will try to influence witnesses, expert witnesses or co-accused, or otherwise frustrate the investigation of facts relevant to the criminal prosecution; or c) he will continue his criminal activities, accomplish the attempted crime, or commit the crime he had prepared or had threatened to commit. It should be noted that there always has to be a crime and a person who is accused of having committed this crime, and a reasonable fear to believe that one of the grounds under 71(1a-c) apply.<sup>30</sup>

Furthermore, an accused who has been released from detention can be detained again in connection with the same case if: a) he is on the run or absconding to avoid prosecution or punishment, does not reside at the address he gave to the criminal justice authorities, does not accept the service of documents, or does not respect the orders of criminal justice authorities; or b) he influences witnesses, expert witnesses or co-defendants, or otherwise obstructs the clarification

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<sup>28</sup> Art. 17(5) Constitution of the Slovak Republic.

<sup>29</sup> A serious punishment means, according to the judicial practice, a term of imprisonment of eight years.

<sup>30</sup> Information from the national experts on 13 January 2009.

of facts that are materially relevant to the prosecution; or c) he will continue his criminal activities, accomplish the attempted crime, or commit the crime he had prepared or had threatened to commit; or d) he was released from custody to start serving his punishment of deprivation of liberty and there are certain facts that justify the grounds for custody according to Sec. 1 § 71 CCP; or e) he has been accused of committing another intentional criminal offence.

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

According to the Constitution, the pre-trial judge may impose pre-trial detention only for the period provided by law.<sup>31</sup> In principle, in criminal proceedings, an investigator, a prosecutor and a judge shall have to verify if the grounds for custody are still present or if there was any change (79 CCP). If the grounds for remand in custody are no longer present, the suspect shall be released immediately.

Both the remand prisoner and the prosecutor may appeal against the decision of the pre-trial judge (83 CCP). According to Sec. 79 CCP, all participants within the pre-trial procedure shall, from the moment of deprivation of liberty on, examine if there are still grounds to remand a person. The accused person may at any time put forward a request to be released. If the person is not released upon this request, the prosecutor shall file the request to the court, together with his reasons for not releasing the person. Moreover, the prosecutor will write down why he thinks that there are still grounds to detain the person and advise the court on how to decide. Consequently, the pre-trial judge may release the person in question or decide that he shall stay in pre-trial detention. The judicial authorities shall make their decision without any delay. If the detained person's request to be released is rejected, he may put forward another request for release after thirty days. Moreover, he may appeal against the pre-trial judge's decision to reject the request for release.

When provisions of the CCP about custody have been breached, the Minister of Justice has the right – according to Sec. 371 CCP – to file an extraordinary remedy (about the breach) to the Supreme Court. Furthermore, there is the remedy of the constitutional complaint (Art. 127), which enables prisoners to complain about their deprivation of liberty or about the circumstances under which they are detained. Constitutional complaints, which can be filed by natural as well as legal persons, are decided upon by the Constitutional Court. The Constitutional Court has the power to declare that a person's human rights or freedoms have been violated and to annul the impugned decision, measure or act. Finally, on the basis of the Act on the execution of pre-trial detention (Act No. 221/2006), pre-trial detainees may lodge complaints to international and European institutions.

In the case of *Nestak vs. Slovakia*,<sup>32</sup> the European Court of Human Rights stated that “a court examining an appeal against detention must provide guarantees of a judicial procedure” (§81) and, *inter alia*, provide for equality between the prosecutor, on the one hand, and the person deprived of his liberty and his counsel, on the other. In this case, questions concerning the applicant's detention had been decided in private sessions. With regard to the last-mentioned aspect/guarantee, the Court found a violation of Art. 5(4) of the European Convention of Human Rights (hereafter: the Convention).

## **6. Length of pre-trial detention<sup>33</sup>**

According to Sec. 76 CCP, the length of pre-trial detention shall be limited to an indispensable time. Remand in custody in the pre-trial phase and the trial phase shall not exceed twelve months in the case of criminal proceedings for misdemeanours. Pursuant to Art. 10 of the Criminal Code, a misdemeanour is an offence committed with negligence or intentional offence punishable by a maximum term of imprisonment not exceeding five years. Moreover, remand in custody in the pre-trial and trial stage will not exceed 36 months in the case of criminal proceedings for felonies.

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<sup>31</sup> Art. 17(5) Constitution of the Slovak Republic.

<sup>32</sup> *Nestak vs. Slovakia*, Application No. 65559/01, 27 May 2007.

<sup>33</sup> Information from the national experts on 13 January 2009.

According to Art. 11(1-2) Criminal Code, a felony is an intentional criminal offence carrying a maximum custodial penalty of more than five years in accordance with the Special Part of the Criminal Code. Finally, remand custody in the pre-trial and the trial stage of criminal proceedings will not exceed 48 months in the case of proceedings of particular serious offences. A particularly serious offence is an offence punishable by a minimum term of imprisonment of at least ten years. This includes the crime of terrorism, for which the minimum term of imprisonment is twenty years (419 Criminal Code). Of the periods mentioned, more than one half (seven, nineteen and 25 months respectively) belongs to the pre-trial phase. The other parts belongs to the trial phase, in which the judge must come to a final verdict (conviction or acquittal).

The time limits shall be calculated from the time the person was deprived of his liberty. If the person was not arrested or detained, the time limits shall be calculated from the moment the accused person's freedom was restricted due to the custody decision.

If the prosecutor needs more time for his investigation, he can request the judge for an extension of custody during the pre-trial stage. Furthermore, in the course of his investigation, the prosecutor can always decide to release the detainee. The court shall deal with the application for an extension of custody in the pre-trial phase only if the request was done 20 working days before the 7-month (or 19- or 25-month) time limit has expired. The request can be granted if the criminal proceedings could not be finalised due to the complexity of the case or other serious reasons, and the release of the accused might frustrate or prejudice the purpose of the proceedings.

The time limits do not include any time during which the accused was unable to take part in the criminal proceedings because he was remanded in custody or detained in a foreign country, because of an injury he deliberately inflicted on himself or because he deliberately caused other impediments preventing him from participating. A decision to this effect shall be made by the court or, in pre-trial proceedings, by the pre-trial judge on the request of the prosecutor. Against the decision, a complaint can be filed.

In the case of *Kucera vs. Slovakia*,<sup>34</sup> the applicant complained that his detention on remand had lasted too long. Therefore, he alleged a violation of Art. 5, paragraph 3 ECHR. The Court rejected the national court's opinion that there were reasons to believe that the detainee would hamper the investigation and interfere with witnesses. Therefore, the Court ruled that there had indeed been a violation of Art. 5(3) of the European Convention of Human Rights.

## **7. Other relevant aspects**

### **7.1 Deduction of pre-trial detention from the final sentence**

If it is possible to deduct the pre-trial detention period from the final sentence, then the judge should do so (Sec. 45 of the Criminal Code). Deduction is possible if the final sentence is a custodial sentence. In the case of a non-custodial sentence (e.g. a fine), the judge will bear in mind any time spent in pre-trial detention.

Foreign pre-trial detention is deductible in full length.<sup>35</sup>

### **7.2 Compensation for unlawfully and/or unjustified pre-trial detention**

According to the Constitution of the Slovak Republic, Sec. 46.3, "Everyone shall have the right to compensation of a damage caused by an unlawful decision of a court, of other public authority or of a body of public administration or by improper official procedure".

In the case of an unlawful decision of a court, another public authority or a body of public administration, or in the case of improper official procedures, someone may be eligible for compensation of the damages caused by a detainment decision (Act. no. 514/2003 Col.).<sup>36</sup>

### **7.3 Alternatives to pre-trial detention**

The court can decide on alternatives to pre-trial detention. Alternatives are monetary bail, a guarantee, a written promise by the accused or probation (Sec. 80 jo 81 CCP). In the table in this

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<sup>34</sup> *Kucera vs. Slovakia*, Application No. 48666/99, 17 July 2007.

<sup>35</sup> Information from the national experts on 25 February 2009.

<sup>36</sup> Information from the national experts on 13 January 2009.

paragraph, we can see that the written promise by the accused is the most frequently used alternative to pre-trial detention.

Alternatives to pre-trial detention are possible if there is a crime and a person is accused of having committed that crime, and there is reasonable fear that he will escape or go into hiding to avoid prosecution or punishment, in particular if his identity cannot be immediately established and if he does not have a permanent residence (71(a)), or would continue his criminal activities, accomplish the attempted crime, or commit the crime he had prepared or had threatened to commit (71(c)).

When the judge decides about an alternative, he/she can impose one or more duties and/or restriction upon the person concerned as well. These can be

- A ban to travel abroad
- A ban to execute an activity that led to committing a crime
- A ban to visit certain places
- The duty to give up carrying a gun
- A ban to leave the place of residence
- The duty to get regularly to an office (determined by the court which office)
- A ban to ride a car and duty to give away driving licence
- A ban to contact certain people or ban to approach certain person on a distance closer than 5 metres
- The duty to lodge a sum of money for the purpose of compensation of damage caused.

In the case of a guarantee, a responsible person (or group of people, e.g. a church or trustworthy person) guarantees that the suspect will appear before the court, announce his movements etc. In the case of monetary bail, the judge, on the request of the prosecutor, shall decide to forfeit the bail to the State if the accused, *inter alia*, eludes the service of summons or other written communication from the court, prosecutor or investigator, avoids proceedings, continues his criminal activities etc. Act 550/2003 on probation and mediation clerks is applicable to the work of probation officers.<sup>37</sup>

The table shows the actual use of alternatives to pre-trial detention (in absolute numbers) for the year 2007.

Table on alternatives in 2007<sup>38</sup>

Trade unions	1
Working team	2
Civil association	0
Trustworthy person	1
Church	1
Written promise by the accused	17
Bail	4

#### 7.4 Execution of pre-trial detention

Act No. 221/2006 deals with the enforcement and the execution of pre-trial detention. It is more or less designed like the European Prison Rules and contains two regimes. Noteworthy is that, in one regime, pre-trial detainees spend the day working; this will enable them to stay in touch with daily life and routine. The other regime is more sober: prisoners can spend one hour each day in the open air for exercise and two hours out of their cells for educational activities. The Act contains special provisions concerning (pregnant) women, juveniles and foreigners. Furthermore, it makes it possible for pre-trial detainees to file a complaint against their deprivation of liberty, the circumstances under which they are deprived of their liberty, and other issues relating to their detention. This relatively new Act also provides for rules concerning contact with the outside world, food, religion etc.

In its latest report (2006), the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereafter: CPT) concluded that there is a

<sup>37</sup> By Martin Lulei and Ludovit Galbavy in: A.M. van Kalmthout & I. Durnescu (eds.), *Probation in Europe*, Nijmegen: Wolf Legal Publishers 2008.

<sup>38</sup> Data is provided for by the experts.

continuing lack of out-of-cell activities for remand prisoners.<sup>39</sup> According to the CPT, “the aim should be to ensure that remand prisoners are allowed to spend a reasonable part of the day outside their cells engaged in purposeful activities of a varied nature”.<sup>40</sup> This lack of out-of-cell activities also applies to minors. Therefore, the CPT argued, as a matter of urgency, to provide for educational activities for juveniles held in remand custody. Moreover, remand prisoners should have access to more open arrangements for visits, instead of the booths with a screen between the detainee and his visitor(s) that are now being used.<sup>41</sup> In 2005, the situation with regard to visits had not changed since the CPT visit to Slovakia in 1995. In this respect, the CPT would also very much welcome new legislation introducing the possibility to have telephone contact. The very restrictive regime for remand prisoners, together with the usually lengthy periods of time for which persons can be held in remand, has a de-socialising effect on people. Act No. 21/2006 will most likely improve the issues raised by the CPT, as this relatively new Act contains rules for contact with the outside world as well as a less restrictive detention regime. According to the response of the Slovak government on the findings of this CPT’s visit, in the future, the right to receive visitors is to be extended from a 30-minute visit each month to an hourly visit once every three weeks. However, this does not mean that direct contact between the detainee and his visitor will be possible. Nevertheless, more open arrangements will be created, allowing direct contact.<sup>42</sup>

The law on remand imprisonment (Act. no. 221/2006) coincided with the re-codification of the Criminal Code and the Code of Criminal Procedure. It contains rules for a lighter regime but also for the differentiation of prisoners, enabling their participation in special interest activities.

## **8. Special groups**

Act. No. 221/2006, but also the institutional orders of the penitentiary and custody institutions, provide for specific provisions for special groups such as women, juveniles, foreigners, and alleged terrorist. Sometime these groups are described as ‘vulnerable’. This is *inter alia* surely the case for juveniles, women who are pregnant and persons who do not speak the national language and have limited personal contact(s) in the country where they are to be detained.

### **8.1 Women**

There are no special provisions with regard to women in the CCP, but the Act on remand imprisonment (no. 221/2006) contains special provisions concerning women (Sec. 47-48 of the Act no. 221/2006). According to these rules, women should have a cell space of at least four m<sup>2</sup> and in the case of pregnant women the surface can not be reduced under any circumstances. Women are allowed to shower every day and pregnant women can not get specific types of disciplinary punishment, e.g. solitary confinement, which is possible as a disciplinary punishment for up to 15 days and in case of a juvenile up to 10 days.

### **8.2 Juveniles**

According to the Slovak Criminal Code, Sec. 22, “A person who has not reached the age of fourteen at the time of commission of the criminal offence may not be held criminally liable”. A child may not be held criminally liable for sexual abuse under Sec. 201, if he/she has not yet reached the age fifteen at the time of the commission of the criminal offence. Thus, the general rule is that juveniles may be held criminal liable at the age of fourteen unless he/she has been held criminally liable for sexual abuse under Sec. 201.

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<sup>39</sup> At the time of the visit, remand prisoners were being held in their cells for 23 hours a day. They could only spend their days reading (books from the penitentiary library), sleeping, eating and drinking at set times, listening to the radio, and – in exceptional cases – watching television.

<sup>40</sup> CPT/Inf (2006) 5, Report to the Government of the Slovak Republic on the visit to Slovakia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 22 February to 3 March 2005, Strasbourg, 2 February 2006, §124.

<sup>41</sup> Ibid, §61. The CPT mentions that the objective should be the equivalent of one visit every week, with a duration of at least 30 minutes.

<sup>42</sup> CPT/Inf (2006) 6, Response of the Government of the Slovak Republic to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Slovakia from 22 February to 3 March 2005, Strasbourg, 2 February 2006.

Special rules for proceedings against juveniles can be found in the Criminal Code and the Code of Criminal Procedure. Besides the rules on criminal responsibility, the Criminal Code contains rules on the types of sentences etc.). The CCP contains rules regarding juveniles in Sec. 336 et seq.. According to Sec. 339 CCP, a juvenile may only be taken into custody when the purpose for deprivation of liberty can not be reached in another (non-custodial) way. There are no specific alternatives for juveniles and there are also no specific grounds, which have to be met in order to take a juvenile offender into custody. Also, with regard to the length of pre-trial detention there are no specific provisions in the law. The rules that apply to adults are generally also applicable to juveniles.

In criminal proceedings against juveniles, parents or others who have responsibility for the child are entitled to lodge an appeal against decision that involve the juvenile, to attend the trial at the court, to present a speech for the proceedings in court, etc..

Act No. 221/2006 also contains special provisions concerning juveniles.

### **8.3 Foreigners**

The provisions of the Law of the National Council of the Slovak Republic about Prison Custody (221/2006) also refer to prison custody of foreign untried prisoners. Foreign remand prisoners are detained in the same institutions as national citizens and have the same living conditions as others. The institution where the foreign person is detained must inform him/her about his/her rights, duties and obligations of the execution of the custody in a language that he/she understands. He/she must also be informed about the right to contact the consular office or diplomatic mission of his/her state. People from this post are allowed to visit the foreigner and provide him/her with newspapers and/or books.

### **8.4 Alleged terrorists**

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

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