

Slovenia

1. Introduction

Slovenia became an independent country in 1991, with the disintegration of Yugoslavia. In that same year, a new Constitution was adopted.¹ The present Criminal Code (hereinafter: CC) and the Code of Criminal Procedure (hereinafter: CCP), which were brought in line with the new Constitution, were enacted in September 1994 and entered into force in January 1995. On 20 May 2008, the National Assembly of Slovenia adopted a new CC, which came into force on 1 November 2008. The new Code contains, *inter alia*, the introduction of lifelong imprisonment for criminal acts of genocide, crimes against humanity and war crimes, a registry of paedophiles, and an option that enables judges to sentence persons to an alternative to prison, such as humanitarian or community-oriented work.

Slovenian criminal procedure developed from the so-called mixed (inquisitorial-accusatorial) criminal procedure systems. The main source of the Slovenian law of criminal procedure is the mentioned CPC. Since its adoption, and especially in the last ten years, the CCP has been amended several times.² Accession to the EU has contributed to some changes of criminal procedure. At present, a new amendment is expected, which will change the procedure substantially. The CCP has three major sections, of which Sec. 2, Chapter 15 deals with the pre-trial procedure. This Code governs the main rulings on custody. Other relevant regulations are, *inter alia*, the Police Act of 1998, the Penal Executive Code 2000, the Rules on (Pre-trial) Detention Enforcement, and the Rules on Prison Sentence Enforcement. The Constitution also contains relevant provisions on criminal procedure, and custody in particular, of which the relevant provisions will be dealt with later on.

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

2. Empirical background information

Various sources provide statistics on the size of the prison population, the number of pre-trial detainees/remand prisoners etc. in Slovenia. In this paragraph, attention will be paid to, *inter alia*, data from the Council of Europe’s SPACE I, the International Centre for Prison Studies of King’s College London, and the European Sourcebook of Crime and Criminal Justice. After presenting the data, the statistics will be discussed.

¹ Adopted on 23 December 1991.

² Such as in October 1998, December 2001, June 2003, November 2005, February 2007 and July 2008.

Data from the Council of Europe Annual Penal Statistics, SPACE I, Survey 2006³

The numbers relate to 1 September 2006 (stock); they include the total prison population and not only those who are held in penal institutions and no measures (legislative or other) influencing directly the trends in the number of prisoners have been taken in the course of the last 12 months.

Table 1: Slovenia and its prisoners in general

Population 2006, annual estimates (thousands)	2,000.8
Total number of prisoners (including pre-trial detainees)	1,301 ⁴
Prison population rate per 100,000 inhabitants	65.0
Total capacity of penal institutions/prisons	1,116
Prison density per 100 places	116.6

Table 2: Special groups of prisoners⁵

Number of female prisoners (including pre-trial detainees)	53
Percentage of female prisoners (including pre-trial detainees)	4.1
Number of foreign prisoners (including pre-trial detainees)	151
Percentage of foreign prisoners (including pre-trial detainees)	11.6
Of which: number of foreign pre-trial detainees	69
Percentage of foreign prisoners who are pre-trial detainees	45.7

Table 3: Legal status of prison population I

Untried prisoners (no court decision yet reached)	271
Convicted prisoners, but not yet sentenced	68
Sentenced prisoners who have appealed or who are within the statutory time limit for doing so	57
Sentenced prisoners (final sentence)	869
Other cases	36
Total	1,301

Table 4: Legal status of prison population II

Percentage of prisoners not serving a final sentence	33.2
Rate of prisoners not serving a final sentence per 100,000 inhabitants	21.6
Percentage of untried prisoners (no court decision yet reached)	20.8
Rate of untried prisoners (no court decision yet reached) per 100,000 inhabitants	13.5

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

⁴ This number includes the category of persons held in institutions for juvenile offenders (30).

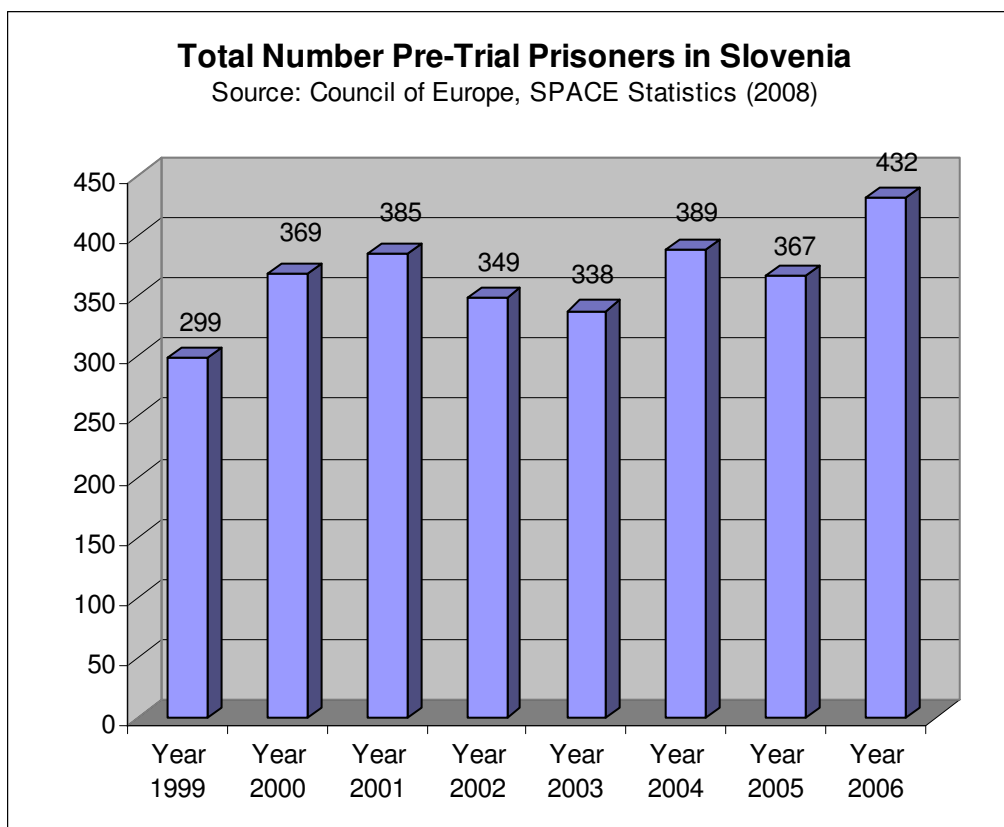
⁵ SPACE provides no numbers on juveniles in particular.

Table 5: Number and percentage of pre-trial prisoners in Slovenia

Year⁶	Number⁷	Percentage⁸
1999	299	34,2
2000	369	35,1
2001	385	34,4
2002	349	33,1
2003	338	32
2004	389	34,5
2005	367	33
2006	432	33,2
Average percentage		33,7

Source: Council of Europe, SPACE I Statistics

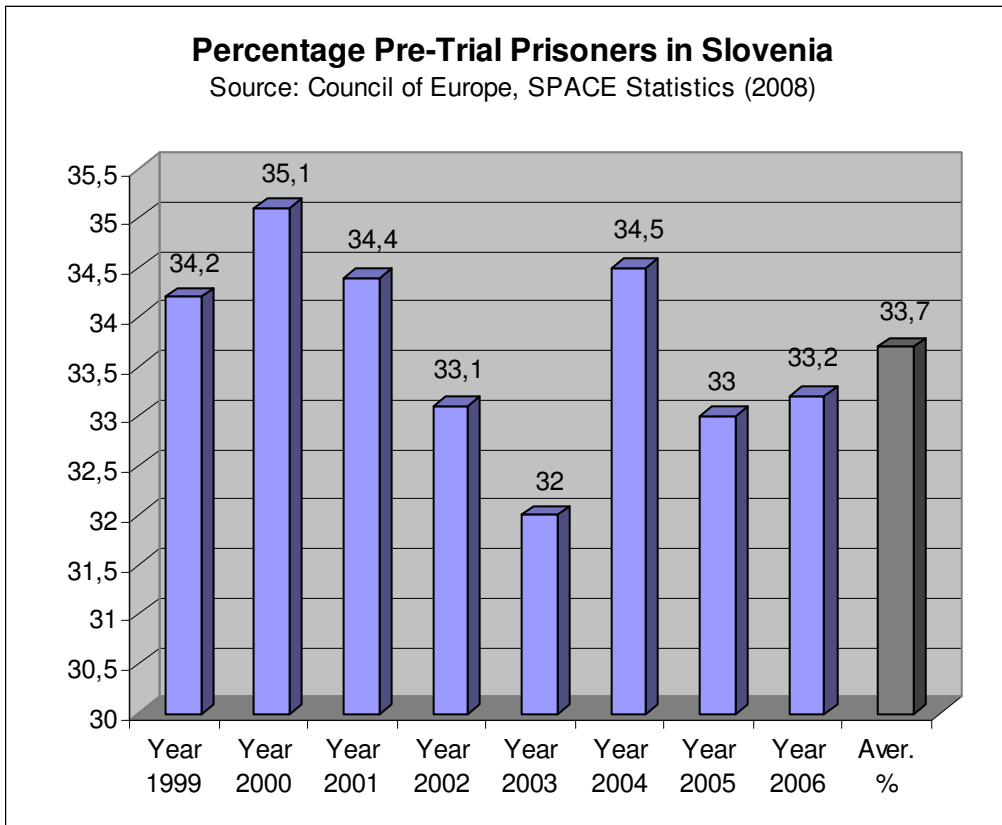
Table 6:



⁶ Per 1 September of mentioned year.

⁷ This number includes: untried prisoners (no court decision yet reached), convicted prisoners but not yet sentenced, sentenced prisoners who have appealed or who are within the statutory time limit for doing so.

⁸ Percentage of the total prison population.

Table 7:**Table 8: Evolution of prison population between 2000 and 2006**

	Total number of prisoners (including pre-trial detainees) on 1 September of each year	Prison population rate per 100,000 inhabitants on 1 September of each year
2000	1,136	57.3
2001	1,155	58
2002	1,120	56.2
2003	1,099	55.1
2004	1,126	56.4
2005	1,132	56.7
2006	1,301	65.0

- The change between 2000 and 2006 = evolution (in percentage) of prison population rates between 2000 and 2006: 13.5
- The change between 2005 and 2006 = evolution (in percentage) of prison population rates between 2005 and 2006: 14.7

If we look at some numbers regarding the prison population from further in the past, we can observe the following:

Year	Total prison population	Prison population rate per 100,000 inhabitants
1992	836	42
1995	825	41
1998	756	38
2001	1,148	58
2004	1,070	54

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

Table 9: Prison Brief 2007

Prison population total (including pre-trial detainees/remand prisoners) ⁹	1,317 on 1 September 2008 (national prison administration)
Prison population rate (per 100,000 of national population)	65 based on an estimated national population of 2.04 million in September 2008 (Eurostat)
Pre-trial detainees/remand prisoners (percentage of prison population)	25.1% (1 September 2007)
Female prisoners (percentage of prison population)	3.1% (1 September 2007)
Juveniles/minors/young prisoners (percentage of prison population)	0.4% (1 September 2007 – under 18)
Foreign prisoners (percentage of prison population)	10.5% (1 September 2007)
Official capacity of prison system	1,094 (1 September 2007)
Occupancy level (based on official capacity)	122.1% (1 September 2007)

If we look at some numbers regarding prison capacity and occupancy from further in the past, we can observe the following:

⁹ Prison Brief for Slovenia,
http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_country.php?country=164

Table 10: Total prison capacity and occupancy from 1968 to 2002 (pre-trial detainees, persons convicted for criminal offences and administrative offences)

Date	Prison capacity	Prison occupancy	%
01 January 1968	2,184	1,512	69.2
01 August 1988	2,616	1,331	50.9
01 December 1992	2,257	886	39.3
15 November 1994	1,796	844	47.0
01 October 1995	1,555	652	41.9
31 December 1997	993	733	73.8
31 December 1998	927	823	88.8
31 December 1999	988	924	93.5
31 December 2000	988	1,128	114.2
31 December 2001	1,072	1,203	112.2
31 December 2002	1,058	1,147	108.5

Sources:

– 1988-1995: *Porocila kazenskih zavodov. Arhiv Franc Brinc.*

– 1997-2002: *Letno porocilo (1997, 1998, 1999, 2000, 2001, 2002). Ministrstvo za pravosodje RS. Uprava za izvrševanje kazenskih sankcij, Ljubljana.*

Table 11: World Pre-trial/Remand Imprisonment List¹⁰

Total number in pre-trial/remand imprisonment	337
Date	1 September 2006
Percentage of total prison population	25.9
Estimated national population (at date shown)	2.0 million
Pre-trial/remand population rate (per 100,000 of national population)	17

Table 12: World Female Imprisonment List¹¹

Female prison population (number of women and girls in penal institutions, including pre-trial detainees/remand prisoners)	46
Date	24 February 2005
Female prisoners as a percentage of the total prison population	4.1

Data from the European Sourcebook of Crime and Criminal Justice 2006

Table 13: Prison population: percentage of pre-trial detainees in the total stock

2000	27
2001	28
2002	25
2003	24

Of the various sources (whose numbers are quite similar to each other), Table 9 gives us the most recent number (dated 1 September 2008) of the total prison population in Slovenia:

¹⁰ Roy Walmsley, January 2008,

<http://www.kcl.ac.uk/depsta/law/research/icps/downloads.php?searchtitle=World%20Pre-trial&search=search&type=0&month=0&year=0&lang=0&author> The List refers to those persons who, in connection with an alleged offence or offences, are deprived of their liberty following a judicial or other legal process but have not been definitively sentenced by a court for the offence(s).

¹¹ Roy Walmsley, August 2006,

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

1,317. This means that the prison population rate per 100,000 inhabitants is 65 persons – a low rate compared to the average total prison population in the rest of Europe. We can see that the change in the prison population rate between 2000 and 2006 is 13.5%; between 2005 and 2006, the change is 14.7%. The prison system's total capacity is 1,094, resulting in an occupancy level of 122.1%; this indicates that overcrowding is a problem in Slovenian prisons. In the reports on its visits to Slovenia, the CPT pointed at the situation of overcrowding in certain prisons.¹² The Commissioner for Human Rights also paid attention to this problem on his visit to Slovenia in 2003.¹³ The issue of overcrowding will be discussed more elaborately in paragraph 7.

On 1 September 2007, the percentage of pre-trial detainees among the prison population was 25.1. As we can see in Table 7, the average percentage pre-trial detainees between the years 2001 and 2006 is 33.7. With regard to the specific group of foreigners, Table 2 shows us that a total of 151 foreigners were imprisoned on 1 September 2006, of whom 69 were in pre-trial detention – a high percentage of 45.7. Most of the foreigners in pre-trial detention are from other parts of former Yugoslavia. With 3.1% of the total prison population, the number of detained women in Slovenia is below the European average (4.4%).

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

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

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

Basic regulations regarding the judicial system can be found in the Act on Courts. The court system consists of three instances – first instance: Regional and District Courts; second instance: High Courts (Appellate Courts); and third instance: the Supreme Court. Alongside the regular courts, there is the Constitutional Court. In Regional Courts, cases of criminal offences punishable by a fine or imprisonment of up to three years are heard by a single judge, following the rules on summary proceedings. District Courts try cases of criminal offences punishable by three to fifteen years of imprisonment (by panels of three judges) and offences punishable by fifteen or more years of imprisonment (by panels of five judges).¹⁴ Offences are divided into criminal offences and misdemeanours (less dangerous offences, covered by the Misdemeanours Act).

Most criminal offences are prosecuted *ex officio*, which means that only the public prosecutor may initiate the procedure.¹⁵ For some offences, the victim, too, may initiate the procedure; and in some cases, the public prosecutor upon consent of the victim/private prosecutor (Art. 19-20 CCP). There are two types of criminal procedure: an ordinary procedure for criminal offences punishable by imprisonment of more than three years, and a summary procedure for criminal offences punishable by a fine or by imprisonment of not more than three years.¹⁶ The regular procedure consists of four phases: the pre-trial

¹² See CPT/Inf (2008) 7 and CPT/Inf (2002) 36.

¹³ Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights, Council of Europe, Visit to Slovenia 11-14 May 2003, Strasbourg, 15 October 2003.

¹⁴ K. Sugman Stubbs, "Criminal Procedure in Slovenia", in *Criminal Procedure in Europe*, Vogler/Huber (eds), Berlin: Duncker & Humblot 2008, p. 490.

¹⁵ The most important legal acts regulating the work of the State prosecutor are the Constitution, CCP, Office of the State Prosecutor Act, and – partially – the Judicial Service Act.

¹⁶ In order to speed up the procedure and provide for restorative justice, some special forms of procedure have been introduced:

- One of these procedures is the penal order, which can be imposed for criminal offences punishable by a fine or a prison term of up to three years when the prosecutor assesses that enough evidence has

procedure, the filing of the charges, the trial, and the judicial review procedure. The pre-trial procedure consists of two parts, namely the preliminary proceedings and the investigating phase. In preliminary proceedings, the police may act as an autonomous investigating agent when carrying out so-called “informal investigative acts”. In this sense, the preliminary proceeding is organised on the basis of the inquisitorial principle. For all formal investigative acts, a written order of the investigating judge is needed; this could be viewed as an accusatorial element limiting the investigative powers of the police. Basically, the investigation phase is also organised on the basis of the inquisitorial principle, since the investigating judge has the task of establishing the facts relevant to issuing a lawful decision fully and according to the truth. The investigation phase also involves some accusatorial elements. The whole process of deciding on pre-trial detention is organised in an adversarial manner, with the obligatory presence of the defence lawyer. There are strict rules providing the legal conditions under which the formal investigative acts may be conducted. In case the police do not adhere to these rules, the evidence thus gathered is subject to exclusion. The trial stage, in the narrow sense of the term, begins with the prosecutor’s submission of the indictment to the court. In a wider sense, the pre-trial stage is deemed to have been concluded when the indictment filed by the competent prosecutor becomes final. From that moment, the trial court is seized and preparations for the trial begin.¹⁷

Slovenian law permits remand in custody under certain circumstances (which will be discussed in paragraph 4) to ensure the presence of the accused, to prevent reoffending, and to ensure successful conduct of the criminal proceedings. The rules regarding arrest, detention and remand in custody are prescribed in the CCP and the Constitution. Art. 19.2 of the Constitution prescribes that no person can be deprived of his liberty except in such cases, and pursuant to such procedures, as are laid down by statute. The principle of presumption of innocence is prescribed in the CPC (Art. 3) and the Constitution (Art. 27), which state that a person cannot be regarded as guilty until he/she is found guilty by a final condemnatory decision. Prisoners keep the status of remand detainees until the court decision (judgement) is final. During the appeal procedure, the remand status is preserved. If a final judgement is quashed by a (Supreme) Court decision on an extraordinary legal remedy, the detainee loses the status of a convict – a (sentenced) prisoner – and becomes a remand detainee again. Under Art. 367.7 CCP, upon the request of a defendant who is on remand after being sentenced to a prison term in the first-instance court, the court can decide to send such remand prisoner to a prison for sentenced prisoners (until the appeal has been decided on and the judgement is final). This means that the defendant keeps the status of a remand detainee, but enjoys the prison regime of a sentenced prisoner. Material and living conditions for sentenced prisoners are much better and less strict than for remand prisoners.

The police can detain persons found at the scene of a crime for six hours if such persons can supply information likely to be of assistance to the criminal investigation (Art. 149.1 CCP). The police may detain a person, for a maximum of 48 hours, if grounds for suspicion exist that he has committed a criminal offence liable to State prosecution, if detention is necessary for identification, the checking of an alibi, the collecting of information and items of evidence for the criminal offence in question, and if grounds for pre-trial detention exist. If it is clear that police detention will last longer than six hours, a

been gathered in the case for him simply to propose that the court issue a penal order without proceeding through a trial phase;

- The prosecutor may, with the consent of the accused and the injured party, decide to refer petty cases (offences punishable by a fine or a prison term of up to three years) to one of two forms of alternative procedures. The two forms are mediation (Art. 161a CCP) and deferment of prosecution, both of which may take place before the filing of the indictment. If diversion is concluded successfully, the injured party does not have the right to continue the proceedings instead of the State prosecutor. The injured party is to be informed of this before consenting to diversion proceedings;
- The public prosecutor may, with the consent of the injured party, suspend prosecution of a criminal offence punishable by a fine or a prison term of up to three years if the suspect is willing to behave as instructed by the prosecutor and to perform certain actions. For more details, see Art. 162 CCP.

¹⁷ Sugman, Jager, Persak and Filipcic, *Criminal Justice systems in Europe and North America: Slovenia*, Heuni 2004, p. 25-29.

written decision must be delivered to the suspect immediately (not when the six hours have almost expired). The detainee has the right to complain against the decision.¹⁸ Before the expiry of 48 hours, the apprehended person must be released or brought before the investigating judge, who has the power to order remand in custody (Art. 157 CCP).¹⁹ The investigating judge can order remand in custody upon the request of the public prosecutor (Art. 20 Constitution and 202.1 CCP). Before the decision to release or remand a person under Art. 200.2 CCP has to be made, Art. 307.2 CCP allows for remand detention for up to a month as a measure to guarantee the presence of the defendant at the trial. This detention does not count as a period of “regular” detention on remand.

During the pre-trial stage, the defendant has a series of rights, of which the most important are:

- The defendant has the right to be informed on the grounds of detention in a language he or she understands (Art. 5 CCP);
- The defendant has the right to a defence counsel from the moment he or she has been deprived of liberty, which usually happens in pre-trial proceedings. The presence of a defence counsel is mandatory during proceedings for determining whether to place the suspect in pre-trial detention as well as during the period the suspect is in pre-trial detention. If a suspect who has been deprived of liberty does not have the means to retain counsel by himself or herself, the police, upon his or her request, have to appoint a counsel at the expense of the State, if this is in the interest of justice (Art. 4.4 CCP, Art. 12 CCP). The payment of legal aid for the defendant depends on (1) whether or not a defence counsel was appointed *ex officio*, and (2) the type of judgment passed by the court (see also Art. 203.3 CCP). During its 2006 visit to the country, the CPT found that the right to an attorney at times became effective only after a person had been detained. Many of the persons interviewed by the delegation claimed that they had not been permitted to contact a lawyer until being questioned by the criminal police;²⁰
- The defendant has the right to remain silent with respect to the charges brought against him or her as well as the right not to incriminate himself or herself (Art. 148.4 CCP);
- The defendant has the right to examine and copy files and to inspect items of evidence (Art. 128 CCP);
- The defendant has the right to appeal against the ruling of remand in custody (Art. 202.4 CCP).

The prescribed rights of the defendant are complemented by international instruments such as the European Convention on Human Rights, and the International Covenant on Civil and Political Rights. These international instruments have an eminent position within the Slovenian legal system, as since their ratification they do not only form part of national law but also prevail over conflicting provisions of national law pursuant to Art. 8 of the Constitution.

The objective of pre-trial detention and the rules regarding arrest/detention have been discussed above. However, the question remains on which grounds pre-trial detention can be ordered. This question will be dealt with in the following paragraph.

¹⁸ The complaint shall not stay the decision and it must be decided by a court within 48 hours (Art. 20 Constitution and 157 CCP).

¹⁹ According to Art. 43 of the Police Act, the police may detain a person who disrupts or threatens public order for a maximum of 24 hours. Pursuant to the same provision, a person handed over to the police by foreign law enforcement authorities for transfer to a competent authority may be detained by the police for up to 48 hours.

²⁰ CPT/Inf (2008) 7.

4. Grounds for pre-trial detention

With regard to remand in custody, Art. 200.1 CCP prescribes that it may only be ordered on grounds provided by the CCP. According to Art. 201.1 CCP, remand in custody may be ordered only when there is a reasonable suspicion that a certain person has committed a criminal offence prosecuted *ex officio* and for one or more of the following reasons:

- The person is hiding, his or her identity cannot be established, or other circumstances exist which point to the risk that he or she will attempt to flee;
- There are grounds to believe that he or she will destroy the traces of crime, or specific circumstances indicate that he or she will obstruct the criminal procedure by influencing witnesses or accomplices; or
- The seriousness of the criminal offence, the way in which the criminal offence was committed, the personal characteristics of the person in question, or any other special circumstances give rise to concern that he or she will repeat the criminal offence, bring to completion an attempted criminal offence or commit the criminal offence that he or she is threatening to commit.²¹

5. Grounds for review of pre-trial detention

Concerning the issue of legal remedies, the Slovenian system makes a distinction between ordinary remedies (which can be filed against non-final judgments) and extraordinary remedies (which can be filed against a final judgment) for the decisions of an authority responsible for criminal proceedings. The general legal remedy is an appeal against the judgment of the court of the first instance within fifteen days of the serving of the copy of the judgment (Art. 366 CCP). When an accused person has appealed against the decision for remand in custody, the court of second instance shall send its decision to the court of first instance within three months at the latest from the day it received the files from the court below (Art. 396.2 CCP). Extraordinary remedies include the reopening of criminal proceedings, extraordinary mitigation of punishment, and request for protection of legality.²²

According to Art. 202.4 CCP, the detainee may, within 24 hours of being served with the ruling on detention, lodge a complaint against the ruling with the court panel. If the first interrogation of the detainee takes place after the expiry of that time period, the detainee may lodge a complaint during the interrogation. A complaint shall not stay execution of the ruling. If the investigating judge disagrees with the motion of the public prosecutor for remand in custody to be decreed, the investigating judge shall request that the matter be decided by the panel. The detained person may appeal the ruling by which the panel has ordered remand in custody, but the complaint shall not stay execution (Art. 202.5). In the instances referred to in both of the foregoing paragraphs, the panel is obliged to decide the complaint within 48 hours.

The defendant and his or her counsel may request a review at any time during the duration of the detention. If a charge sheet has been filed, the trial panel is obliged to review the matter every two months in order to determine whether grounds for remand in pre-trial detention still exist, and to render a ruling on extension or abrogation of the remand in custody. The detainee may appeal against this ruling. In summary proceedings, the judge has to verify if grounds for detention exist once a month (Art. 432.3 CCP).

²¹ With regard to summary proceedings, see Art. 432 CCP, which states that remand in custody may exceptionally be ordered against a person suspected with good reason of committing a criminal offence for which a fine or a prison term of up to three years is provided and which is prosecuted *ex officio*:

1. if he/she is hiding, if his/her identity cannot be established, or if other circumstances point to an obvious danger of flight,

2. if the criminal offence involved is against public order, sexual inviolability, or an offence with elements of violence, subject to two years of imprisonment.

²² The last-mentioned remedy, which is otherwise reserved for the final judgment, may be filed to the Supreme Court in respect of a decision on pre-trial detention.

Remand in custody shall, at any stage of proceedings, be cancelled as soon as the reasons for detention cease to exist (200.3).

6. Length of pre-trial detention

According to Art. 200.2 CCP, remand in custody shall last the shortest possible time. The detainee may remain in custody for a maximum of three or six months from the date on which he or she was arrested, depending on the seriousness of the charges. Based on the decision of the investigating judge, the detainee may be remanded in custody for one month from the day he was arrested at the longest (Art. 205.1). After that time period, he may be kept in custody only under a ruling of the non-trial panel (three judges of a District Court) ordering the extension of remand in custody by two months at the longest. The ruling of the panel may be appealed against, but the appeal shall not stay the execution. If proceedings are in progress for a criminal offence punishable under law by imprisonment of more than five years, the panel of judges of the Supreme Court may extend remand in custody for another three months at the longest (Art. 205.2 CCP and Art. 20 Constitution). If a charge sheet is not filed before the expiry of these time limits, custody shall be cancelled (Art. 205.3). After the charge sheet has been filed, remand in custody may last for two years at most. If a sentence or condemnation is not passed on the accused within this period, the remand in custody shall be cancelled and the accused released (Art. 207.5). Before the filing of a summary charge in summary proceedings, the remand in custody may not last longer than fifteen days (Art. 432.2 CCP).²³

7. Other relevant aspects

Several elements in relation to pre-trial detention have already been discussed in the previous paragraphs. Some of the remaining questions, such as whether the time spent in pre-trial detention is taken into account, whether there is a mechanism for compensation if the accused is not sentenced, whether there are alternatives to pre-trial detention, and the practice regarding the execution of pre-trial detention, will be treated in this paragraph.

In practice, persons on remand usually receive a prison sentence that at least covers the period spent on remand. In case of a guilty verdict, the trial court has to deduct the entire period spent in pre-trial detention from the sentence. One day of house arrest also counts as one day of a prison sentence (the same as one day of detention on remand). With regard to detention and sentences served abroad, Art. 15 CC prescribes that “any period of detention, confinement during the extradition procedure or sentence of imprisonment served under the judgment of a foreign court shall be credited towards the sentence imposed for the same criminal offence by the domestic court. If a different type of sentence is imposed on a perpetrator by the domestic court, the latter shall decide on the appropriate method of deduction of the period served abroad.”

Concerning the issue of compensation for detained persons who are eventually not sentenced, Art. 30 of the Constitution states that “any person unjustly convicted of a criminal offence or deprived of his liberty without due cause has the right to rehabilitation and compensation, and other rights provided by law”. Art. 13 of the CCP is similar to the above-mentioned article in the Constitution. From Art. 538 on, the CCP deals with “Proceedings for Compensation, Rehabilitation and the Exercise of other Rights of Unjustifiably Convicted or Arrested Persons”.

As discussed earlier, Slovenian law permits remand in custody under certain circumstances to ensure the presence of the accused, to prevent reoffending, and to ensure successful conduct of the criminal proceedings. In order to achieve these purposes, the CCP also provides a number of measures other than remand in custody. These are the compulsory appearance (Art. 194), the promise of the accused not to absent himself from

²³ In reaction to excessive court delays and the denial of effective remedy, an “Act on the protection of the right to a trial without undue delay of the Republic of Slovenia” was adopted (21 August 2006). Legal remedies are appeal, motion to set a deadline, and claim for just satisfaction (Art. 3).

this place of residence (Art. 195), prohibition of approaching a specific place or person (Art. 195a), attendance at police stations (Art. 195b), bail (Art. 196-199), and house arrest (Art. 199a). The provisions of the CCP concerning remand in custody shall apply, *mutatis mutandis*, to the ordering, duration, extension and removal of these alternative measures.²⁴

With regard to the execution of remand in custody in practice, it can be stated that remand prisoners are held in special remand premises, or in separate, closed parts of an institute for the serving of prison sentences or of a department thereof (Art. 212 CCP). Remand prisoners are always separated from sentenced prisoners. Only few prisoners are accommodated in single cells; most detainees are held in multiple-occupancy cells. In 1995, the desired minimum space per prisoner was set to 7 m² in multiple-occupancy cells and to 9 m² in single cells. But this is theory. In practice, detainees have less space at their disposal, as overcrowding is still a problem in Slovenian prisons. In his report on the 2003 visit to Slovenia, the Commissioner for Human Rights stated that, in this respect, Maribor and Dob prisons were the worst.²⁵ The CPT, too, reported that overcrowding continued to be an issue in some prison establishments, in particular at the remand section of Ljubljana prison. However, the CPT also stated that, in order to solve the problem of overcrowding, the authorities had taken steps – a new prison in Koper had been opened and existing establishments were being reconstructed.²⁶

Regarding the treatment of prisoners, the law prohibits torture and other inhuman or degrading treatment or punishment (Art. 18 Constitution).²⁷ While being remanded in custody, the detainee's person and dignity must not be abused. The detained must be treated in a human manner and his physical and mental health must be protected (Art. 209.1 CCP, 108 CC and 21 Constitution). A provision is included in the Police Act which states that "police officers are required to act in accordance with the Constitution and the law, and to respect and protect human rights and basic freedoms" (Art. 30).²⁸ In its last report, the CPT noted the following concerning the treatment of prisoners by the police:²⁹ "As had been the case during previous visits to Slovenia, the majority of the persons met by the delegation who were, or had recently been, held by the police indicated that they had been treated in a correct manner, both at the time of apprehension and during questioning. Nevertheless, the delegation heard a few allegations of physical ill-treatment of detained persons by police officers, mainly at the time of apprehension and, on occasion, during subsequent questioning after the person had been handcuffed." According to Art. 28 of the Police Act, an individual who believes the action of a police officer has violated his rights or freedoms, may file a complaint with the police not later than thirty days after the incident. First, his complaint is processed by the Head of Unit to which police officer who allegedly violated rights and freedoms belongs. Procedure within Head of Unit has to be completed in 15 days since complaint was filed. If applicant does not agree with the conclusions of the Head of Unit, or in case there is suspicion of criminal offence which is prosecuted *ex officio*, Ministry of Interior proceeds with the complaint and has to finish the procedure within 30 days from the day procedure was concluded at the Head of Unit. Under the Constitution, Slovenia also has an Ombudsman, to whom complaints can be filed against violations of human rights.³⁰

Remand prisoners can be visited by family members. Art. 213b CCP prescribes that, with the permission of the investigating judge who is conducting the investigation and

²⁴ For more information on these alternative measures, see chapter 9 of A.M. van Kalmthout, J. Robberts & S. Vinding (eds.), *Probation and Probation Services in the EU accession countries*, Nijmegen: Wolf Legal Publishers, 2003.

²⁵ See footnote 10.

²⁶ CPT/Inf (2008) 7.

²⁷ Article 10 of the Penal Execution Act gives a definition of torture and under the new CC a provision is included on the prohibition of torture.

²⁸ See ECtHR *Matko vs. Slovenia*, 2 November 2006 (Application No. 43393/98), in which the Court decided that there was a violation of Art. 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights concerning the applicant's allegations that he was ill-treated by the police.

²⁹ CPT/Inf (2008) 7.

³⁰ The powers of the Ombudsman are included in the "Human Rights Ombudsman Act". For more information on the Slovenian Ombudsman, see <http://www.varuh-rs.si/index.php?L=6&id=1>

under his supervision or the supervision of someone appointed by him, close relatives may visit the detainee. Remand prisoners are generally allowed one visit a week, but close relatives may be permitted to visit up to three times a week. Each visit can last for at least one hour. Remand prisoners normally spend four hours a day out of their cells, which is longer than in other Central and Eastern European countries, but still only half the time recommended by the CPT.

8. Special groups

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

8.1 Juveniles

There is no separate court system for juveniles, nor special codes. Provisions on special criminal proceedings for juvenile offenders are contained in the CCP (Art. 451-490). These provisions apply to proceedings involving juveniles who have committed a criminal offence as minors (between the ages of 14 and 18) and have not attained the age of 21 at the time of the proceedings (Art. 451 CCP). In first instance, juvenile cases are treated by juvenile judges and a panel for juvenile offenders in regular District Courts. Panels for juvenile offenders in higher courts and in the Supreme Court are competent to prescribe legal remedies.

The minimum age of criminal responsibility is 14 years. Below the age of 14, a juvenile is not criminally liable (Art. 71 CC). This is the absolute limit and courts are not allowed any discretion on a case-by-case basis. Juveniles who, at the time of the commission of an offence, have reached the age of 14 but not yet 16 are criminally liable, but only educational measures may be applied (Art. 72 CC). Safety measures may also be ordered. Juveniles who, at the time of the commission of an offence, have reached the age of 16 but not yet 18 (so-called “older juveniles”) are criminally liable. In general, educational measures may be applied, but in exceptional cases the court may impose juvenile detention or a fine (Art. 72 CC). In addition, the revoking of a driving license and banishment from the country may be imposed as accessory sentences. All safety measures may also be ordered, except for a prohibition to engage in certain occupations. In case the offender is a so-called “young adult” (a person who has committed an offence as an adult but has not yet reached the age of 21 by the end of the trial), instead of imposing a prison sentence, the court may order that the offender be placed under the supervision of the social services or may impose any institutional measure.³¹

With regard to the issue of remand in custody, the CCP prescribes that in exceptional cases the juvenile judge may decree remand in custody against a juvenile on account of the possibility of escape or the danger of collusion. Remand in custody under a ruling rendered by the juvenile judge may last up to one month. The juvenile panel of three judges of the same court may, for valid reasons, extend detention by another two months at most (Art. 472.2 CCP). This means that, during the preparatory procedure, remand in custody may not last for more than three months, even if the preparatory procedure cannot be completed in that time. After the filing of a motion for a sentence or educational measure, only the panel for juvenile offenders may order pre-trial detention; it must examine whether reasons for detention still exist every two months. After the filing of a prosecutor’s motion for a sentence or educational measure, detention may not last longer than two years (the same as for adults). Remand in custody is rarely ordered and usually all proceedings are completed within a year. Time spent in pre-trial detention is included as part of the imposed sentence.³²

³¹ Sugman, Jager, Persak and Filipic, *Criminal Justice systems in Europe and North America: Slovenia*, Heuni 2004, p.18.

³² K. Filipic, “Dealing with juvenile delinquents in Slovenia”, *International Review of Penal Law* (75) 2004, p. 504-505.

8.2 Women

According to the law, women in prison have to be accommodated separately from men. In paragraph 2, it is mentioned that 3.1% of the total prison population in Slovenia consists of women; this percentage is below the European average. During its last visit to Slovenia, the CPT also visited the Ig Prison for women. With regard to the remand sections, the following was observed:³³ “It should also be noted that the section for remand prisoners and the reception section were in a poor state of repair and cleanliness, and access to natural light in the reception section left much to be desired.” Furthermore, the CPT noted that “in addition to the two hours of daily outdoor exercise, remand prisoners were allowed periods of association in a common room (two hours and 15 minutes per day). However, they did not benefit from any organized activities.”

8.3 Foreigners

The Constitution prescribes that everyone in Slovenia shall be guaranteed equal human rights and fundamental freedoms irrespective of national origin, race, sex, language, religion, political or other conviction, material standing, birth, education, social status or any other personal circumstance (Art. 14). The law prescribes that foreigners shall be immediately instructed of their right to contact the diplomatic mission of their country and to receive visits by representatives of their authorities. Instructions must be given in the defendant’s mother tongue or in another language he or she understands. Irregular migrants who are facing removal can be detained for a maximum of six months, with an extension of another six months in administrative detention.³⁴

8.4 Alleged terrorists

Slovenia does not have special legislation in the field of terrorism. *Mutatis mutandis*, the provisions of the CCP are applied; these include secret surveillance measures (Art. 149a and further CCP). The police may conduct anti-terrorist searches (Art. 40 Police Act). Several provisions are included in the CC regarding acts of terrorism, such as Art. 108 - 111, 250/IV.³⁵

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³³ CPT/Inf (2008) 7.

³⁴ The “Foreigners Act” regulates the position of foreigners in Slovenia.

³⁵ CODEXTER, Slovenia November 2005, www.coe.int/gmt

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