Spain

1. Introduction

The Spanish terminology for pre-trial detention is prisión provisional or prisión preventiva. Pre-trial detention under Spanish law is regulated in the articles 502 to 527 of the Criminal Procedure Code of Spain (LECrim - Ley de Enjuiciamiento Criminal). The LECrim regulates the grounds for pre-trial detention, the (procedural) rights of the accused, the types of pre-trial detention, the authorities who are entitled to decree pre-trial detention, and the possibilities for (judicial) review of the decision to pre-trial detention. The latest modifications to the LECrim concerning pre-trial detention took place in 2003.[1]

Some specific regulations on pre-trial detention can also be found in for example the Spanish General Prison Act, la Ley Orgánica General Penitenciaria, which regulates the places of detention, and la Ley Orgánica 5/2000, de 12 de enero, reguladora de la responsabilidad penal de los menores, which regulates the liability of minors for criminal offences.

2. Empirical Background Information

This chapter contains statistical information about pre-trial detention in Spain. In particular, attention will be paid to the development of the number of pre-trial detainees during years. Moreover, an analysis will be made of the development of the different groups of pre-trial detainees, e.g. minors, women and foreigners. In order to give an overview of these developments, data has been collected from several sources such as the Centre for Prison Studies (ICPS), the European Sourcebook, Eurostat and the National Statistic Institute (INE) of Spain.

2.1 Prison population according to legal status

The national statistics of Spain show that the total prison population of Spain has been increasing since 2002 (table 1).

Table 1: Prison population of Spain

	2002	2003	2004	2005	2006
TOTAL	51.882	56.096	59.375	61.054	64.021
Source: Ministry of Internal Affairs /Copyright INE 2008					

The total prison population registered by the INE consists of a) the number of prisoners held in detention after being sentenced, b) the number of prisoners held in preventive/pre-trial detention, and c) a rest-category consisting of prisoners held in weekend detention, prisoners in transit, and prisoners held in confinement as a substitute for not paying a fine or as a safety measure (table 2). However, it should be noted that the number prisoners registered by the INE does not include the number of minors, i.e. persons younger than 18 years, who are held in detention. In 2000 a new legislation on juvenile offenders came into force. Since then, minors have not been included in the correctional statistics. The preventive detention of minors will be addressed in section 4.

[1] See Ley Orgánica 13/2003, de 24 de octubre, de reforma de la Ley de Enjuiciamiento Criminal en materia de prisión provisional.

Table 2: Prison population according to legal status

	2002	2003	2004	2005	2006
Sentenced prisoners	39.032	42.744	45.384	46.426	48.073
Prisoners in preventive detention	11.810	12.276	13.112	13.720	15.065
Rest-category	1.040	1.076	879	908	883
Source: Ministry of Internal Affairs /Copyright INE 2008					

The group of pre-trial detainees consists of prisoners who are retained without a final sentence. The question that may be posed is whether the increasing prison population of Spain can be attributed to an increasing amount of pre-trial detainees. Table 2 shows that the number of prisoners held in pre-trial detention has been increasing since 2002. However, it should be noted that although the number of pre-trial detainees has increased during years, the use of pre-trial detention is not the main reason for the increasing prison population of Spain. Table 3 shows that the number of sentenced prisoners has increased more drastically compared to the number of pre-trial detainees and the number of prisoners belonging to the rest-category.

Table 3: Increase and decrease of the prison population according to legal status

	2002	2003	2004	2005	2006
Sentenced prisoners	0	+ 3712	+ 2640	+ 1042	+ 1647
Prisoners in preventive detention	0	+ 466	+ 836	+ 608	+ 1345
Rest-category	0	+ 36	- 197	- 29	- 25

In conclusion, it can be stated that the increasing number of pre-trial detainees has contributed an increasing prison population of Spain, but that the latest is nonetheless mainly attributed to the increasing amount of sentenced prisoners.

2.2 Pre-trial detainees as percentage of the prison population

It is remarkable that although the number of pre-trial detainees has been increasing since 2002, the amount of pre-trial detainees as a percentage of the prison population remains stable (figure 1).

Figure 1: Pre-trial detainees as percentage of the prison population

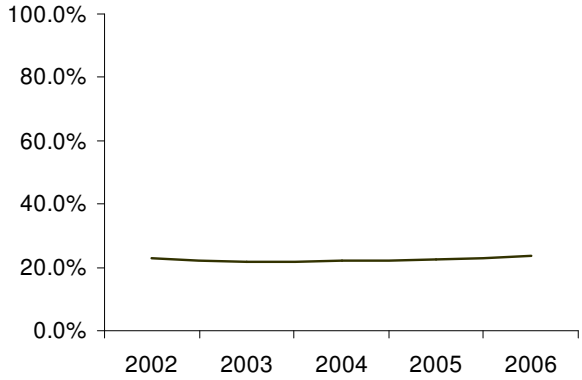

Table 4 shows that the amount of pre-trial detainees as percentage of the prison population remains between 21.5 and 23.5 percent. However, it should be noted that since 2003, the percentage of pre-trial detainees has been increasing very slightly. The highest percentage, namely 23.5%, has been reached in 2006.

Table 4: Pre-trial detainees as a percentage of the prison population

	2002	2003	2004	2005	2006
Prisoners in preventive detention	11.810	12.276	13.112	13.720	15.065
Total prison population	51.882	56.096	59.375	61.054	64.021
Percentage of pre-trial detainees	22.8%	21.9%	22.1%	22.5%	23.5%

Consequently, the question that may be posed is whether the percentage of pre-trial detainees will continue to increase. Statistical data on the prison population and the number of pre-trial detainees over the year 2007 and after has yet not been provided by the INE.

According to the latest publication of the International Centre for Prison Studies (ICPS) on pre-trial detention around the world, the percentage of pre-trial detainees in Spain in 2007 has increased compared to 2006. The number of pre-trial detainees on 26 October 2007 amounted to 15.956 persons. This is 23.9% of the total prison population.[2] However, it should be noted that the statistical information provided by the ICPS only refers to the number of persons held in pre-trial detention on a given day, while the data provided by the INE refers to the number of persons submitted to pre-trial detention during the course of the year. It is for this reason that the information provided by the ICPS over the year 2007 cannot be seen as complementary to the information provided by the INE.

Moreover, it is a question whether the term pre-trial detention is interpreted in the same way by both institutions. As mentioned already, pre-trial detainees according to the INE are those prisoners who are retained without a final sentence. For the ICPS, prisoners held in pre-trial and other forms of remand imprisonment are "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)".[3] In particular, the legal process of these prisoners will be in one of the stages mentioned hereinafter. The first stage is the investigation, i.e. stage in which the detainee is being interrogated to see if there is justification for bringing a court case against him/her. The second stage is the 'awaiting trial' stage, which is the stage after the investigation has ended and a decision has been taken to bring a court case. The third stage, namely the 'trial' stage, is the stage in which the trial is actually taking place. The fourth stage is the 'convicted un-sentenced' stage in which the accused has been convicted by the court, but has yet not been sentenced. The last stage is the 'awaiting final sentence' stage. The accused who finds himself in this stage has been provisionally sentenced by the court, but is still waiting for the result of an appeal process.[4]

It is not clear whether the first stage, namely the investigation stage, also includes the persons held in initial police custody. However, it should be noted that the information concerning Spain has been collected from the Ministry responsible for the prison administration in Spain, namely the Ministry of Internal Affairs, which is the same source of data collected by the INE. The data provided by the Ministry of Internal Affairs on pre-trial detention does not include the number of persons held in initial custody. Therefore, it can be concluded that the number of pre-trial detainees who found themselves in the investigation stage does, as far as it concerns Spain, not include the number of prisoners held in initial (police) detention.

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[2] R. Walmsley, World Pre-trial / Remand Imprisonment List (Pre-trial detainees and other remand prisoners in all five continents), London: International Centre for Prison Studies 2008, pp. 5.
[3] R. Walmsley, World Pre-trial / Remand Imprisonment List (Pre-trial detainees and other remand prisoners in all five continents), London: International Centre for Prison Studies 2008, pp. 1.
[4] R. Walmsley, World Pre-trial / Remand Imprisonment List (Pre-trial detainees and other remand prisoners in all five continents), London: International Centre for Prison Studies 2008, pp. 1.

Next to the ICPS, statistical information about pre-trial detainees in Spain can also be found in the European Sourcebook. The third edition of the European Sourcebook, which is the last published edition, contains information about the number of pre-trial detainees as a percentage of the total prison population in Spain over the years 2001 till 2003 (table 5 and 6), and of the pre-trial detention rates.[5] The pre-trial detention rates will be addressed in the third section.

Table 5: Prison population: percentage of pre-trial detainees in the total STOCK

	2000	2001	2002	2003
Percentage of pre-trial detainees	20	22	23	22
Source: European Sourcebook – 2006, 3th edition				

Table 6: Prison population: percentage of pre-trial detainees in the total FLOW

	2000	2001	2002	2003
Percentage of pre-trial detainees	65	66	69	...
Source: European Sourcebook - 2006, 3th edition, pp. 135				

Total stock refers to the number of persons that are actually held in prison, while total flow refers to the number of persons that are admitted to prison.[6] It is for this reason that the total-flow is higher than the total-stock. A comparison of table 4 with table 5 shows that the data provided by the European Sourcebook is consistent with the data provided by the INE, meaning that there are no differences between the two different sources as regards the percentages of pre-trial detainees over the years 2002 and 2003. With regard to the percentage of pre-trial detainees over the years 2004 till 2007, it should be noted that the fourth edition of the European Sourcebook, covering the years 2003-2007, is not available yet and will be published in 2009.

2.3 Pre-trial population rates

The pre-trial population rate is the number of pre-trial detainees per 100.000 of the national population. Table 7 shows the pre-trial population rates over the years 2002 till 2006.

Table 7: Pre-trial detention rate: pre-trial detainees per 100.000 of the national population

	2002	2003	2004	2005	2006
National population of Spain	41.837.894	42.717.064	43.197.684	44.108.530	44.708.964
Prisoners in preventive detention	11.810	12.276	13.112	13.720	15.065
Pre-trial detention rate	28	29	30	31	34
Source: INE					

From table 7, it can be deduced that, although the percentage of pre-trial detainees remained stable, the number of pre-trial detainees per 100.000 of the national population has been increasing since 2002. However, the pre-trial population rate has not increased drastically over the past years (figure 2).

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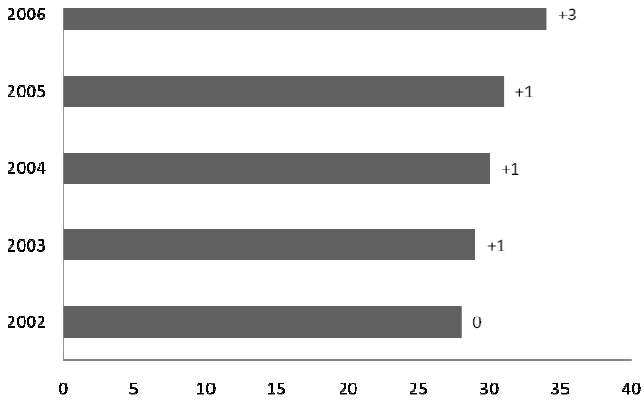
[5] European Sourcebook of Crime and Criminal Justice Statistics - 2006, third edition, Meppel: Boom Juridische Uitgevers 2006, pp. 5.

[6] European Sourcebook of Crime and Criminal Justice Statistics - 2006, third edition, Meppel: Boom Juridische Uitgevers 2006, pp. 125.

Figure 2: Development of the pre-trial detention rate



It is most probably that the pre-trial population rate of Spain will continue to increase. On the 26th of October 2007, the number of pre-trial detainees per 100.000 of the national population was 35.[7] However, it should be noted that the pre-trial population rate in Spain, such as in the majority of countries (namely 60%), is still below 40 pre-trial detainees per 100.000 of the national population.[8]

2.4 Pre-trial prison population according to different groups

Within the category of prisoners held in pre-trial detention, it is also possible to make a distinction between the different groups of pre-trial detainees. In this section, attention will be paid to the development of the following groups: juveniles, females and foreigners.

a. Females in pre-trial detention

Another category of pre-trial detainees that can be distinguished is the female population. Table 8 shows that the number of female prisoners held in pre-trial detention has been increasing since 2002.

Table 8: Pre-trial prison population according to gender

	2002	2003	2004	2005	2006
Male prisoners	10.824	11.214	11.963	12.494	13.567
Female prisoner	986	1.062	1.149	1.226	1.498
Prisoners in preventive detention	11.810	12.276	13.112	13.720	15.065
Source: Ministry of Internal Affairs /Copyright INE 2008					

However, it should be noted that the male population is still dominant within the pre-trial prison population. Although the number of females held in pre-trial detention has been increasing, this category of pre-trial detainees forms less than 10% of the total pre-trial prison population (table 9).

[7] R. Walmsley, World Pre-trial / Remand Imprisonment List (Pre-trial detainees and other remand prisoners in all five continents), London: International Centre for Prison Studies 2008, pp. 5.
[8] R. Walmsley, World Pre-trial / Remand Imprisonment List (Pre-trial detainees and other remand prisoners in all five continents), London: International Centre for Prison Studies 2008, pp. 1.

Table 9: females as a percentage of pre-trial prison population

	2002	2003	2004	2005	2006
Female prisoner	986	1.062	1.149	1.226	1.498
Prisoners in preventive detention	11.810	12.276	13.112	13.720	15.065
Percentage of females in preventive detention	8.3%	8.7%	8.8%	8.9%	9.9%
Source: Ministry of Internal Affairs /Copyright INE 2008					

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

3.1 Definition of pre-trial detention

The term 'prisión provisional', the Spanish terminology for pre-trial detention (in broad sense), is as such not defined in the LECrim. A definition of this terminology can nonetheless be deduced from Article 5 of the Spanish General Prison Law, which states that the main purpose of the Spanish legal system of preventive detention is to keep the remand prisoner at disposal of the judicial authorities. From this Article, it is possible to deduce that pre-trial detention under Spanish law is a precautionary measure with the purpose of keeping the remand prisoner at disposal of the judicial authorities. This definition of pre-trial detention corresponds with the definitions that can be found in literature. In literature, pre-trial detention is often defined as a precautionary measure which implies deprivation of liberty of the accused by a judicial authority during the course of the criminal process, in order to guarantee effective enforcement of criminal law.[9]

The legal basis for pre-trial detention can be found in Art. 17 of the Spanish Constitution. In essence, paragraph one of this article explicitly states that "every person has a right to freedom and security" and that "no one may be deprived of his or her freedom except in accordance with the provisions of this article and in the cases and in the manner provided by the law". An exception to the right of personal freedom in the form of pre-trial detention is provided for by the LECrim.

3.2 Initial (police) detention versus detention following a judicial decision

In general, a distinction can be drawn between on the one hand detention following initial (police) arrest (Article 5(1)(c) ECHR), and on the other hand detention following a judicial decision that a person should remain in custody (Article 5(3 and 4) ECHR).

Detention following initial police arrest, la detención, is regulated in the Articles 489 to 501 of the LECrim. First of all, Article 489 of the LECrim explicitly states that a person -national or foreigner- may be arrested only in those situations which are prescribed by law. Article 490 of the LECrim regulates the situations in which a civilian may arrest a person. If a situation as prescribe in Article 490 of the LECrim is not present, a person may be arrested only by a competent authority or a police officer, once a situation as prescribe in Article 492 of the LECrim has taken place. From the Articles 490 and 492 it can be deduced that the decision on initial arrest of a person can be taken by an authority or a police officer, and in the exceptional circumstances mentioned in Article 490 of the LECrim, also by a civilian.

According to Article 17(2) of the Spanish Constitution, preventive arrest may not last longer than the time strictly necessary in order to carry out the investigations to ascertain the facts. The competent authority or the police officer who has arrested a person should, in any case, place this person at the disposal of the judicial authority or release him, within 72 hours after the arrest (Article 17(2) Spanish Constitution and Article 520 LECrim).[10] Art. 17(2) of the Constitution should be understood in such a way that even though the maximum time limit of 72 hours has yet

[9] See. e.g: V. J. Martínez Pardo, 'La prisión provisional. Régimen jurídico', *Revista Internauta de Practica Jurídica* 2001-7, pp. 2, and M. D. Beses Miguel, La prisión provisional: Aspectos técnicos y sociológicos, *Revista Internauta de Práctica Jurídica* 2002-11, pp. 7.

[10] The civilian who has arrested a person should immediately hand this person over to the police or the investigating judge.

not been exceeded, the constitutional right to personal freedom (safeguarded in Art. 17(1)) will still be violated, if the initial detention has last longer than the time strictly required in order to carry out the necessary investigations aimed at establishing the facts.

The competent judge (or court) to whom the arrested person has been handed over, should decide whether initial detention will be elevated to pre-trial detention (Article 497 LECrim). This decision should be taken within 72 hours, starting from the moment the arrested person has been handed over (Article 497 LECrim).From the above-mentioned provisions, it can be deduced that detention following initial arrest has a maximum length of 144 hours, which consists of 72 hours detention before being handed over to a judge, plus 72 hours detention before the judge has taken a decision to elevate the initial detention to pre-trial detention.

In conclusion, it can be stated that the LECrim explicitly distinguishes between detention following initial arrest, 'la detención', and detention following a judicial decision, 'prisión provisional'. The initial (police) detention does not fall under the notion of pre-trial detention under current Spanish law. According to the LECrim, pre-trial detention, which is regulated in the articles 502 to 527 of the LECrim, only includes preventive detention following a judicial decision.

3.3 Start and end of pre-trial detention

Pre-trial detention starts once the judge has taken the decision to elevate the initial (police) detention to pre-trial detention (Article 497 LECrim). Therefore, Article 502 of the LECrim states that pre-trial detention may be decreed by an examining judge or magistrate, a judge of the preliminary proceedings, and a judge or criminal court competent to decide on the case.[11] According to Article 504 of the LECrim, pre-trial detention may not last longer than the period necessary to achieve one of the goals listed in Article 503 of the LECrim. Consequently, pre-trial detention shall end when the grounds for detention cease to exist, even though the maximum time limits for detention have yet not been exceeded (Article 528 and 504(1) LECrim).

Pre-trial detention shall however end when the maximum length for detention determined in Article 504 of the LECrim has been exceeded (Art. 503 LECrim and 17(4) of the Spanish Constitution). The maximum length of pre-trial detention will be discussed in chapter five. Finally, pre-trial detention shall end when it has been proven that the accused is not guilty of the criminal charge(s) against him. To this end, Article 528 of the LECrim states that if during the course of process, notwithstanding its stage, it has been proven that the accused is innocent, he/she shall be released immediately.

3.4 Principles underlying pre-trial detention

The Spanish legal system of preventive detention is based on some fundamental legal principles, namely: the presumption of innocence, the principle of last resort and the principle of proportionality. These principles will be discussed hereinafter.

a. Presumption of innocence

Article 24(2) of the Spanish Constitution explicitly states that "every person has the right to (...) be presumed innocent".Presumption of innocence means that everyone charged with a criminal offence shall be presumed innocent until proven guilty according to law (Article 6 (2) ECHR). According to Article 5 of the LOGP, presumption of innocence is one of the leading principles underlying the Spanish legal system of preventive detention. The system of preventive detention refers to both the stage of initial police detention and the stage of pre-trial detention (Article 8 LOPG).

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[11] The examining judge or magistrate is the judge (or magistrate) competent to direct the criminal investigation in a particular case. According to Art. 14(2) of the LECrim, the competent judge (or magistrate) to direct the criminal investigation is the judge who has jurisdiction over the place where the criminal offence was committed *(forum delicti commissi)*. In case of urgency, a judge who has no jurisdiction over the particular case (the so called judge of the preliminary proceedings) may apply one or more preliminary measures (primeras diligencias) pursuant to Art. 13 of the LECrim, until the competent judge has taken over the case. Such a measure can also include preventive detention.

b. Principle of last resort

The principle of last resort is laid down in Article 502(2) of the LECrim. This provision explicitly states that pre-trial detention may not be imposed, if other measures can be taken which are less far reaching in deprivation of liberty, but are nonetheless effective in order to achieve the objectives pursued with pre-trial detention. Pre-trial detention is thus a last resort; a precautionary measure which may be applied only when there are no other measures available to achieve one of the goals listed in Article 503 of the LECrim.

c. Principle of proportionality

Proportionality lies in the fact that the goal(s) pursued with pre-trial detention may not be disproportional to the particular circumstances of the case, including the consequences that detention may have for the accused. Therefore, Article 502(3) of the LECrim prescribes that, when a judge has to decide on whether pre-trial detention shall be decreed, he should consider the particular circumstances of the case, the type of sentence that may be imposed, and the consequences that detention may have for the accused regarding his personal circumstances. Moreover, once pre-trial detention has been decreed, it should be carried out in a way that is the least damaging to the prisoner, his reputation and/or property (Article 520(1) LECrim). In order to restrict the damage that may be caused to the prisoner, Article 528 of the LECrim states that all authorities involved in the process have the obligation to ensure that pre-trial detention shall endure as short as possible.

3.5 Procedural rights of the accused

An accused who is held in pre-trial detention is first of all entitled to the procedural rights listed in Article 520 of the LECrim, namely:

a. the right to be informed promptly and in a way that is understandable of the charges against him, and of the reasons for being deprived of his liberty (Article 520(2) LECrim);
b. the right to remain silent (Article 520(2)(a) LECrim). The right to remain silent means that the accused cannot be obliged to give a statement or to answer the questions posed to him. He is also entitled to declare that he shall give a statement only in presence of a judge;
c. the right not to incriminate himself or to confess guilt (Article 520(2)(b) LECrim);
d. the right to legal assistance of a lawyer of his own choosing or, if he has not chosen one, to be assigned a counsel (Article 520(2)(c) LECrim). The assisting lawyer should however ensure that his client shall be informed of his procedural rights listed in Article 520 (2) of the LECrim, as well as his right to medical examination listed in Article 520(2)(f) of the LECrim (Article 502(6)(a) LECrim). Moreover, the right to legal assistance entails that the accused may request his lawyer to be present at interrogations by police or judicial authority, and to intervene with all investigations concerning his identification (Article 502(2)(c) LECrim). Moreover, the right to legal assistance includes the right talk to with one's lawyer in private (Article 502(6)(c) LECrim);
e. the right to inform his family or other persons of his detention and of the place were he is being held. In case the accused is a juvenile or a disabled person, these circumstances shall be notified to his parents or guardians. Moreover, if the accused is a foreigner, he also has the right to communicate (the place of) his to his national embassy or consulate (Article 520(2)(d) LECrim). ;
f. the right to free assistance of an interpreter, if he is a foreigner who does not understand or speak Spanish (Article 520(2)(e) LECrim);
g. the right to medical examination by a forensic doctor (Article 520(2)(f) LECrim).

As regards the procedural rights mentioned under b, c, d and e, it should be noted that the accused is not only entitled to these rights, but has also to the right to be informed promptly and in an understandable manner of his entitlement to these rights (Article 520 LECrim). Next to the procedural rights listed above, a pre-trial detainee also has the right to appeal the decision to pre-trial detention. For now, it can be mentioned that the right to appeal is attributed to the accused in two different stages of the process. The first stage is the stage in which initial detention is elevated to pre-trial detention and the second stage is the stage in which pre-trial detention is being prolonged (Article 507 LECrim). The right to appeal will be further discussed in chapter six.

In addition, it should be noted that a person who is held in pre-trial detention may, on the basis of a judicial decision, be subjected to the so called 'prisión provisional incomunicada'. The prisión provisional incomunicada is a more severe type of deprivation of liberty compare to the ordinary pre-trial detention (prisión provisional comunicada). According to Article 527 of the LECrim, the prisoner placed in prisión provisional incomunicada does not enjoy the rights that ordinary pre-trial detainees are entitled to; e.g. the right to receive visits (Article 523 LECrim) and the right to correspond or communicate with the outside world (Article 524 LECrim). These rights will be further discussed in chapter seven. However, prisoners held in incomunicado detention continue to enjoy the rights guaranteed by Article 520 of the LECrim. Article 527 of the LECrim nonetheless imposes some restrictions:

- the first restriction is on Article 520 (2) (c). The prisoner held in incomunicado detention is not entitled to appoint a lawyer of his own choice; his lawyer shall in all cases be officially appointed;
- the prisoner held in incomunicado detention is not entitled to the communication provided for in Article 520 (2) (d), i.e. to have the fact of his detention and the place in which he is being held at any given time made known to the relative or other person of his choice;
- the prisoner held in incomunicado detention is not entitled to the interview with his lawyer provided for in Article 520 (6) (c), i.e. an interview in private upon completion of the proceedings in which the lawyer has taken part.

4. Grounds for pre-trial detention

4.1 Grounds for detention

The mere fact that a serious offence has been committed and that there is a reasonable suspicion against the accused is not enough to decree pre-trial detention. In addition, it should be noted that pre-trial detention should satisfy a goal, i.e. there should be a ground for pre-trial detention. The grounds for pre-trial detention are listed in Article 503(1)(3) of the LECrim.

First of all, pre-trial detention may be decreed in order to guarantee the presence of the accused at trial, when it is deemed that the accused presents a flight risk (Article 503(1)(3)(a) LECrim). Whether such a risk is present, should be determined on the basis of: a) the nature of committed offence, together with b) the severity of sentence that may be imposed on the offender, c) the financial, familial and work-related circumstances of the accused, and d) the imminence of the court hearing, especially when it is presumable that the speedy proceeding regulated in the Articles 795 to 803 of the LECrim will be initiated. There is one exceptional situation in which pre-trial detention can be decreed in order to prevent that accused may flee, even if the committed offence does not belong to the category of offences mentioned in Article 503(1)(1) of the LECrim. This exceptional situation is regulated in Article 503(1)(3)(a) of the LECrim, namely when at least two warrants have been issued by a judicial authority for the search and summon of the accused person.

Next to flight risk, pre-trial detention may also be decreed in order to avoid alteration, destruction or hiding of evidence which may be relevant for the case (Article 503(1)(3)(b) LECrim). Pre-trial detention on this ground can be decreed, only if there is a well-founded and concrete risk that one of these actions will be performed. That such a risk is present can, however, not be deduced from the mere fact that the accused person has actually exercised his/her right to defence or has failed to cooperate to the process of investigation. In order to determine whether there is a danger that the process of investigation will be disrupted, it should be taken into account whether the accused -by himself or through another person- can access relevant evidences, and/or can influence those who are or could be a witness, an expert, or another accused person.

A third ground for pre-trial detention is to prevent the accused from taking action against the (legal) interests of the victim; especially when the victim is one of those persons referred to in Article 173(2) of the Criminal Code (Article 503 (1)(3)(c) LECrim). If pre-trial detention is decreed on this ground, it is not required that the committed offence is an offence which falls under the categories listed in Article 503(1)(1) of the LECrim. Consequently, pre-trial detention in order to protect the interests of a victim may also be decreed when a less serious offence than those mentioned in Article 503(1)(1) has been committed.

The last ground for pre-trial detention is regulated in Article 503(2) of the LECrim. According to this Article, pre-trial detention may be decreed in order to avoid the risk that the accused will commit another offence. Whether this risk is present should be assessed by the particular circumstances of the case, such as the gravity of the offence that may be committed by the accused. Pre-trial detention on this ground is allowed, only when the committed offence for which pre-trial detention has been ordered is an offence involving *mens area*. Moreover, if from the criminal record of the accused, and/or from information provided by police or the particular facts and circumstances of the case, it can reasonably be deduced that the accused is acting together with one or more persons who have organized themselves as a group for the commission of criminal offences or for regularly performance of criminal activities, it is not required that the committed offence falls under the categories listed in Article 503(1)(1) of the LECrim.

4.2 'Serious' offence

Not all offences are of such a serious degree, that they may justify pre-trial detention of the accused. Article 503(1)(1) of the LECrim makes clear that pre-trial detention of the accused is justifiable, only if he/she has committed an offence which may be punished with a prison sentence whose maximum is equal to or higher than two years. If the maximum length of the custodial sentence that may be imposed is less than two year, pre-trial detention may only be decreed when the person concerned has a criminal record which has yet not been cancelled nor is susceptible of being cancelled, and the record is obtained for the commission of an offence involving 'mens rea'.

In addition, it should be noted that there are some exceptions to the rules of Article 503(1)(1) of the LECrim. These exceptions are related to the grounds for pre-trial detention and have already been addressed above.

4.3 Reasonable suspicion

Next to the prerequisite of 'serious' offence, pre-trial detention may be decreed, only when there are serious reasons to believe that the person concerned is criminally liable for the committed offence. This prerequisite is explicitly mentioned in Article 503(1)(2) of the LECrim, and means (according to domestic case-law) that based on the circumstances, one can rationally suppose that the person concerned is liable to the committed offence.

5. Length of pre-trial detention

5.1 Legal provisions

The maximum length of pre-trial detention that may be imposed varies depending on the type of pre-trial detention that has been decreed. The LECrim draws a distinction between three different types of pre-trial detention, namely: the prisión provisional comunicada, the prisión atenuada and the prisión provisional incomunicada.

a. Prisión provisional comunicada

Prisión provisional comunicada is the ordinary type of pre-trial detention that may be imposed when there is no reason to impose one of the types of pre-trial detention that will be discussed beneath. The length of the ordinary pre-trial detention is determined in Article 504 of the LECrim. According to this Article, the duration of pre-trial detention may vary, depending on the type of offence that has been committed and the grounds on which detention has been decreed.

If pre-trial detention has been decreed in order to guarantee the presence of the accused at trial when it is deemed that the accused presents a flight risk (Article 503(1)(3)(a) LECrim), or to avoid the accused from taking action against the (legal) interests of the victim (Article 503(1)(3)(c) LECrim), or to avoid the risk that the accused will commit other criminal acts (Article 503(2) LECrim), detention may not last longer than:

1. one year, if the sentence that may be imposed involves deprivation of liberty for a maximum of three years. The period of one year may be extended with another six months, if it is unlikely that the case can be brought to trial within one year (Article 504(2) LECrim);
2. two years, if the sentence that may be imposed involves deprivation of liberty for more than three years. The period of two years may be extended with another two years, if it is unlikely that the case can be brought to trial within two years (Article 504(2) LECrim).

Furthermore, it should be noted that in the event the accused has been convicted and he/she has appealed the conviction, pre-trial detention can be extended up to the maximum of one half of the sentence that has effectively been imposed, as long as such an extension is necessary (Article 504(2) LECrim). If pre-trial detention has been decreed in order to avoid alteration, destruction or hiding of evidence (Article 503(1)(3)(b) LECrim), detention may not last longer than:

3. six months, regardless the seriousness of the offence that has been committed. Contrary to the above mentioned situations, pre-trial detention that has been decreed on this ground may not be prolonged (Article 504(3) LECrim).

In addition, it should be noted that when determining whether the maximum time limits mentioned above have been reached, the time spent in initial police custody and/or in previous pre-trial detention for the same cause must also be considered (Art. 504(5) LECrim). Once the maximum time limit for detention has been reached, the person concerned must immediately be released. Note that a person who has been released because of expiration of the maximum time limit for his/her detention can, once again, be put in pre-trial if he/she has, without a justifiable reason, failed to attend before the judge or court when ordered to do so (Art. 504(4) LECrim).

b. Prisión atenuada

The prisión atenuada is regulated in Article 508 of the LECrim. It is a type of pre-trial detention which is comparable to house arrest. Article 508(1) of the LECrim prescribes that the judge or court may decree that pre-trial detention shall be carried out - under surveillance- at the domicile of the accused, if imprisonment of this person will be of great danger to his medical condition, because of the illness or disease he is suffering from. The judge or court who has decreed prisión atenuada may however grant the accused permission to leave his domicile for the necessary medical treatment. Likewise, Art. 508(2) of the LECrim prescribes that pre-trial detention may be carried out at a drug rehabilitation centre, when the accused is a drug addict who is undergoing a rehabilitation programme, and detention in prison can endanger the outcome of this programme.

Article 508 shows that the medical condition of the accused should be taken into account when executing pre-trial detention. However, the length of prisión atenuada is not shorter than the length of the ordinary pre-trial detention. The length of pre-trial detention determined in Article 504 of the LECrim is also applicable in case of prisión atenuada.

c. Prisión provisional incomunicada

Current Spanish law allows for a maximum of thirteen days of on-notified pre-trial detention (prisión provisional incomunicada). Note that this maximum includes both the stage of initial detention and pre-trial detention. In first instance, the incomunicado status may not exceed a maximum of five days (Article 509 (2) LECrim). However, if the offence has been committed by a terrorist, a rebel, or a person who is involved in or connected with arms trafficking (see Article 384 LECrim), detention may be extended with another five days (Article 509 (2) LECrim). Extending detention with another five days is also allowed, if the committed offence was a planned and organized action taken by two or more individuals (Article 509 (2) LECrim).

Article 509 paragraph 2 of the LECrim also allows the judge to order three more days of the incomunicado status, even if detention has already been notified. This provision was apparently designed to allow judges to re-impose the incomunicado status at a later stage in the investigation. A literal reading of Article 509, however, suggests that under current law it is permissible to impose the three additional days immediately.[12] Once the maximum length of the incomunicado status has been exceeded and the prisoner has yet not been released, prisión incomunicada should be replaced by the ordinary prisión comunicada.

[12] Human Rights Watch, 'Setting an Example. Counter-Terrorism Measures in Spain', Human Rights Watch (17) 2005, p. 27.

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6. Judicial review of pre-trial detention

6.1 Review procedure of Article 539

Article 539 states that a decision to pre-trial detention may be revised during the whole course of the procedure (Article 539 LECrim). As a consequence, the pre-trial detainee may be released whenever appropriate. The decision to pre-trial detention may be revised by a judge or court of first instance (Article 539 LECrim). In addition, it should be noted that the judge or court is not entitled to decree pre-trial detention of free person or to replace release on bail (*libertad provisional*) by pre-trial detention without a petition of the Public Prosecutor, or another prosecuting party. Such a petition shall be dealt with in a court hearing as prescribed in Article 505 of the LECrim (Article 539 LECrim). A petition of the Public Prosecutor is not required, if the judge or court wants to release the pre-trial detainee. Such a decision can be taken at any time and on own initiative of the judge or court (Article 539 LECrim).

6.2 Right of appeal (Article 507 and 766 LECrim)

The decision to decree, dismiss or prolong pre-trial detention can be appealed within five days after notification of the decision (Article 507 and 766 (3) LECrim). According to Article 766 (3) of the LECrim, appeal should be lodged in written form and the grounds for appeal should be mentioned explicitly. Note that appeal may be grounded on any reason.

The competent authorities to whom appeal should be addressed are the Provincial Courts (Article 220 and 766 LECrim). Provincial Courts are entitled to hear appeals established under law against judgments issued by Courts of Enquiry and Criminal courts in the province.[13] Once the appeal has been allowed, a decision should be taken within a maximum of thirty days (Article 507 LECrim). Note that appeal will not suspend the execution of the decision to apply (or not) pre-trial detention, unless prescribed by law (Art. 518 and 766(1) LECrim). The prisoner who has lodged an appeal against the decision to pre-trial has a right to legal assistance of a lawyer of his own choice, or to be appointed a lawyer, if he has yet not assigned one (Article 767 and 768 LECrim).

7. Other relevant aspects

7.1 Pre-trial detention and outcome of the trial

7.1.1 Deduction on sentence

Articles 58 and 59 of the Spanish Criminal Code (Código Penal) both regulate the possibilities to deduct the pre-trial detention suffered from the sentence that has effectively been imposed on the defendant. In particular, Article 58(1) prescribes that the sentencing judge or court shall deduct the pre-trial detention suffered in the proceeding where pre-trial detention was ordered, in full from the sentence (or sentences) to be effectively executed. Moreover, the second paragraph of Art. 58 prescribes that the Penitentiary Judge (Juez de Vigilancia Penitenciaria) may, on own initiative or on requested on the convicted person, deduct the pre-trial detention suffered in a different proceeding than the one where the sentence has been imposed.[14] In such cases, deduction is only possible if the pre-trial detention suffered has not already been deducted from the sentences imposed in another proceeding, and only after hearing the public prosecutor. Furthermore, it should be noted that according to the third paragraph of Art.58, pre-trial detention suffered in a different proceeding can only be deducted, if the measure was applied previous to the commission of the offences which have leaded to the imposition of the sentence. According to Art. 59 of the

[13] See article 82 (1)(2) of the *Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial* (Organic Law on the Judiciary).
[14] In Spain, the execution of sanctions is the competence of the judiciary authority. In the jurisdictional hierarchy there is a specific judge, namely Penitentiary Judge (Juez de Vigilancia Penitenciaria), who directs and supervises the execution of sanctions. His functions are to control the concrete duration of the prison term, to resolve issues pertaining to parole and other benefits, to control the suspension of the sentence for legal reasons, to pass resolutions concerning the specific basis for fulfilling the sanction, etc.

Criminal Code, pre-trial detention suffered by the sentenced person can also be deducted in case the judge has imposed a non-custodial sentence or a fine. In such cases, the judge or court shall order that (the part of) the sentence from which pre-trial is deducted, will be considered as already executed.

The LECrim does not contain any special provision as regards the possibilities to deduct pre-trial detention suffered abroad. Such a provision can nonetheless be found in the Act of 14 March 2003, implementing the framework decision on the European Arrest Warrant. According to Art. 5(4) of this Act, the Spanish judicial authorities who have issued a European warrant "shall deduct all periods of detention arising from the execution of a European warrant from the total period of detention to be served in Spain as a result of a custodial sentence or detention order being passed".

7.1.2 Compensation for unjust detention

The right to compensation for unjustifiable or unlawful pre-trial detention is regulated in the Articles 121 of the Spanish Constitution and 294(1) of the Organic Law on the Judiciary (Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial). Art 121 of the Constitution explicitly states that "damages caused by judicial errors as well as those arising from irregularities in the administration of justice, shall be subject to compensation by the State, in accordance with the law". The right to compensation because of damages caused by judicial errors or irregularities in the administration of justice is also guaranteed in Art. 292 of the Organic Law on the Judiciary. However, Article 295 of the Organic law explicitly states that there is no right to compensation if the judicial errors or the irregularities in the administration of justice are caused due to negligence or own fault of the person concerned.

Furthermore, Article 294(1) of the Organic Law on the Judiciary prescribes that a person who has been subject to pre-trial detention is entitled to compensation for the harm caused to him/her by reason of his/her unnecessary stay in prison, if he/she is found not-guilty to the offence, or if the proceedings against him/her have been definitively dropped. In addition, it should be noted that compensation is only possible if the person concerned is acquitted or if the proceedings against him/her have been definitively dropped on the ground that there is no case to answer. This means -according to existing case-law of the Supreme Court- that it is proved that the person concerned is not liable to the committed offence or that the act to which he/she is liable is not a criminal offence.[15] As a consequence, the right to compensation according to Art.294 (1) does not apply if the person concerned is acquitted due to lack of evidence. If such is the case, the person concerned should ground his/her claim on Art. 121 of the Constitution and 292 of the Organic Law, and should therefore argue that his/her detention is based on a judicial error, or is a consequence of irregularities in the administration of justice.

The damage caused by reason of unlawful or unjustifiable pre-trial detention may include both material and immaterial damage. The amount of compensation to which a person is entitled depends on the length of time he/she has spent in pre-trial detention, and the consequences his/her detention has had for his/her personal and family situation (Art.294(2)). According to Art. 293(2) and 294(3) of the Organic Law, a request for compensation should be filed within one year from the moment the judgment becomes executable.

7.1.3 Alternatives to pre-trial detention

The LECrim provides for some precautionary measures which may be used an alternative to pre-trial detention. Release on bail (libertad provisional) is for instance one of these measures. An accused who has been bailed will preserve his/her liberty during the course of the criminal proceedings. Note that release on bail is always subject to the performance of certain accessory duties. The duty to appear before the court on specific days and as many times as required by the judge or court shall, in any case, be imposed on the accused who has been released on bail (Article 530 LECrim).

In particular, two types of bail can be distinguished, namely: *libertad provisional sin fianza* and *libertad provisional con fianza*. Both types are regulated in the Articles 529 to 544 of the LECrim. *Libertad provisional con fianza* is money bail. The imposition of surety as one of the conditions for

[15] See Decision no. 98/1992 of 22 July 1992 of the Constitutional Court (Sentencia del Tribunal Constitucional 92/1992, de 22 de Julio).

release on bail is however not mandatory, but rather at discretion of the judge (Article 529 LECrim). The *libertad provisional sin fianza* is the type of bail where surety has not been imposed by the judge.

Next to bail, Art.544bis of the LECrim also provides for the possibility to impose special interim measures on the accused. Such measures can be imposed only when the committed offence is one of the offences referred to in Art. 57 of the LECrim. In particular, the judge may order that the accused is prohibited to go or to reside at a certain place, district, town, province, island, or autonomous region. Moreover, the judge may also issue an order prohibiting the accused from approaching or communicating with certain persons.

In case of domestic violence, Art.544ter of the LECrim also provides for the possibility to apply the so called "protection order for the victims of domestic violence". Other precautionary measures which may be applied by the judge in case of domestic violence can also be found in Organic Law no. 1/2004 on the Integrated Protection Measures against Domestic Violence. This Organic Law provides, inter alia, for the following measures: mandatory expulsion of the accused from the family home, prohibition for the accused to approach the protected person, withdrawal from the accused of parental rights, guardianship or custody over children, suspension of access by the accused to his/her children, and suspension of the accused from the right to possess, bear or use arms.

Finally, Art. 529bis and 764(4) of the LECrim provide for the possibility to withdraw the driving licences from the accused, in case the committed offence is connected with the driving of a motor vehicle.

7.2 Execution of pre-trial detention; human rights aspects

7.2.1 Human rights provisions in the LECrim

When executing pre-trial detention, there are some human rights aspects that should be taken into account. Pre-trial detention may not degenerate into an inhuman and degrading treatment of the accused. It is therefore that the LECrim explicitly mentions the rights to be respected of those who are held in pre-trial detention. These rights are listed beneath:

- The right to be held separately. Article 521 of the LECrim states that all prisoners shall, if possible, be held separately. If separation is not possible, the examining judge or court should ensure that men and women are not held together, and moreover, that juveniles and first offenders are separated from persons of age respectively repeat offenders. Accused or defendants to the same facts may neither be held together;
- the right to comforts and possessions. Article 522 of the LECrim states that a prisoner may, at his expense, obtain comforts or possessions that are compatible with the aim of his detention, and with the regime of the institution in which he is being held. These objects may be obtained as long as they do not compromise the security of the prisoner or the confidentiality of investigation;
- the right to be visited. The right to have visits is regulated in Article 523 of the LECrim. A prisoner has the right to be visited by a priest of his religion, a doctor, a person with whom he has an interest in common, his relatives, or by those who can give him advice. Such a visit should be allowed as long as the conditions prescribed in the prison regulations are met, and it does not compromise the outcome and the secrecy of the case. However, it should be noted that a prisoner may never be deprived from being visited by his lawyer;
- the right to correspond and to communicate with the outside world. Article 524 of the LECrim describes that the examining judge shall determine which means of correspondence and communication may be used by the prisoner. Correspondence and communication with the outside world is allowed, as long as they do not compromise the outcome of the investigation. A prisoner may, however, in no circumstances be deprived from the right to write to a Civil Servant of the judicial system;
- the right not to be subjected to extraordinary security measures. The prisoner held in pre-trial detention may not be subjected to any extraordinary security measure, unless he has been disobedient, violent or rebellious, or has tried to or prepare to escape from the detention place. Such a security measure can be adopted only temporarily, and may not last longer than strictly necessary (Article 525 LECrim).

Note that the rights listed in Article 521 to 525 of the LECrim are attributed to the prisoners held in prisión provisional comunicada; the ordinary type of pre-trial detention. Article 527 of the LECrim explicitly states that prisoners held in prisión provisional incomunicada are not entitled to these rights, with exception of the procedural rights listed in Article 520 of the LECrim (see chapter three, section 5).

In order to ensure that these rights are being respected, Article 526 of the LECrim prescribes that the examining judge shall visit the local prisons once a week, without determining a day and without previous warning. During the visit, he shall be accompanied by a Public Prosecutor. The aim of these visits is to find out what the conditions are in which prisoners are being detained, and to adopt- within their competence- the necessary measures to end the violations they have noticed.

7.2.2 Violation of human rights in pre-trial detention

In 2007 the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has paid its last visit to the detention places in Spain. The report on this visit has not yet been published. Its previous visits to Spain were in 2005, 2003, 2001, 1998, 1994 and 1991. This section deals with the CPT findings on the treatment of prisoners held in pre-trial detention during the last visit, namely in 2005.

During its previous visits to Spain, the CPT has paid much attention to the situation of persons deprived of their liberty in connection with terrorist offences. However, during the visit in 2005, the CPT had examined the efficacy of safeguards against ill-treatment of persons detained in connection with "ordinary" criminal offences. In brief, it can be mentioned that the CPT is concerned about the way prisoners held in custody are protected against ill-treatment by law enforcement officials. First of all, the CPT noted that it is most likely that these prisoners - at or after the time of their detention - are not being informed properly of their rights; more in particular of their right to legal assistance by a lawyer of one's own choice, and their right to be assigned a lawyer free of charge if the they cannot afford to pay one. Therefore, these prisoners may experience a lengthy delay before first seeing a lawyer.[16]

It is common practice for detained persons to be granted access to a lawyer only at the moment when his or her formal statement is taken by law enforcement officials. Such access is, in general, limited to the lawyer's passive presence while the detained person's statement is taken and signed.[17] Subsequently, there is no guarantee that such a person will be brought physically into the presence of an investigating judge. Moreover, complaints lodged by prisoners held in custody about ill-treatment by law enforcement officials, seems to be investigated in an unsatisfactory way. The CPT concluded that, although the injuries to persons held in custody as a result of ill-treatment may be recorded by the prison's admissions or medical staff, an effective investigation would not necessarily follow. Such may also be the case even if prima facie evidence of ill-treatment is submitted in writing to an investigating judge.[18]

"In short, the information gathered by the Committee concerning information on rights, access to a lawyer and the role of judges, indicate that the safeguards currently in place for persons deprived of their liberty by law enforcement agencies do not adequately protect them from ill-treatment. Consequently, it is imperative that the Spanish authorities review the existing framework and operation of safeguards against ill-treatment for persons deprived of their liberty, from the very outset and up to, and including, the crucial stage of judicial oversight".[19]

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[16] Report to the Spanish Government on the visit to Spain carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 12 to 19 December 2005, pp. 22.

[17] Report to the Spanish Government on the visit to Spain carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 12 to 19 December 2005, pp. 13.

[18] Report to the Spanish Government on the visit to Spain carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 12 to 19 December 2005, pp. 22.

[19] Report to the Spanish Government on the visit to Spain carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 12 to 19 December 2005, pp. 22.

8. Vulnerable groups and groups of special interest

8.1 Juveniles

As has been mentioned previously, Spain has a special regulation on the criminal responsibility of minors, namely la Ley Orgánica 5/2000, de 12 de enero, reguladora de la responsabilidad penal de los menores. Article 1 of this Organic Law defines minors as those persons who are older than 14 years, but have yet not reached the age of 18 years. Persons who have yet not reached the age of 14 years cannot be prosecuted for committing a criminal offence.

In particular, the Organic Law also regulates the possibility of preventive detention of minors. The relevant provision, namely Article 28 reads as follows:: "the public prosecutor may, when there are reasonable indications of the commission of a crime or there is a risk of obstruction of the investigation process due to actions taken by the minor, request the Juvenile Court Judge at any time, to adopt precautionary measures regarding the custody or defence of the minor". One of the measures that may be adopted is placement in an institution. Whether this precautionary measure shall be adopted depends on the gravity of the case, its consequences and the social order disturbance which has been caused. The personal and social circumstances of the minor should, however, always been taken into consideration by the judge (Art.28 (2)).

Furthermore, it should be noted that placement in an institution, once adopted as a precautionary measure, may not last longer than six months (Art.28 (3)). This time period may however, on request of the Public Prosecutor, be extended with another three months.

8.2 Women

In Spain, there is no special regulation for the pre-trial detention of women. Neither does the LECrim provide for special provisions as regards the pre-trial detention of this group. Special provisions as regards the execution of pre-trial detention in case of females can nonetheless be found in the Spanish General Prison Act (la Ley Orgánica General Penitenciaria) and the Royal Decree on the Adoption of the Prison Regulations (Real Decreto 190/1996, por el que se aprueba el Reglamento Penitenciario). In particular, Art. 16 of the Prison Act states that women shall be held separately from men. Moreover, Art. 29 of the Prison Act governs the situation in which a pregnant women held in detention cannot be obliged to work. Similar provision can also be found in the Royal Decree on the Adoption of the Prison Regulations. Furthermore both Laws contain provisions governing the medical treatment of pregnant women and the possibilities for women to kept their children under the age of three with them in prison.

8.3 Foreigners

In Spain, there is no special regulation for the pre-trial detention of foreigners. Neither does the LECrim provide for special provisions as regards the pre-trial detention of this group. Generally, foreigners held in a Spanish penitentiary system deserve the same treatment as Spanish prisoners. Nonetheless, there are a few specific provisions related to foreigners in order to make some of their rights effective or in order to facilitate the application of the expulsion measure.[20]

8.4 Alleged terrorists

Article 571 of the Criminal Code defines terrorists as "those belonging, acting in the service of or collaborating with armed groups, organizations or groups whose objective is to subvert the constitutional order or seriously alter public peace" who commit the attacks described in Article 346 (attacks on buildings or transportation or communications infrastructure with the use of explosive devices) and Article 351 (arson, causing risk of injury or death). Note that this Article does not criminalize the mere act of belonging to a terrorist group, but rather the commission of criminal acts by members of these groups with the above-mentioned goals.

Spain does not have a special antiterrorism law. The penalisation and the prosecution of terrorist offences are regulated in the Criminal Code and the LECrim. In particular, the LECrim

[20] A.M. van Kalmthout, F.B.A.M. Hofstee-van der Meulen, & F. Dünkel, (eds), *Foreigners in European Prisons*, Nijmegen: Wolf Legal Publishers 2007, pp. 759-760.

establishes the conditions for pre-trial detention of terrorist suspects and the rights of those terrorists held in pre-trial detention. However, it should be noted that there is no specific regulation in the LECrim, concerning only this group of detainees. The prisión provisional incomunicada is the type of pre-trial detention which is mostly used for the preventive detention of terrorists. It allows for terrorists to be deprived of their liberty in the investigative stage, and to be deprived of those rights which persons held in ordinary pre-trial detention may not be deprived of (see chapters 3, 5 and 7).

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