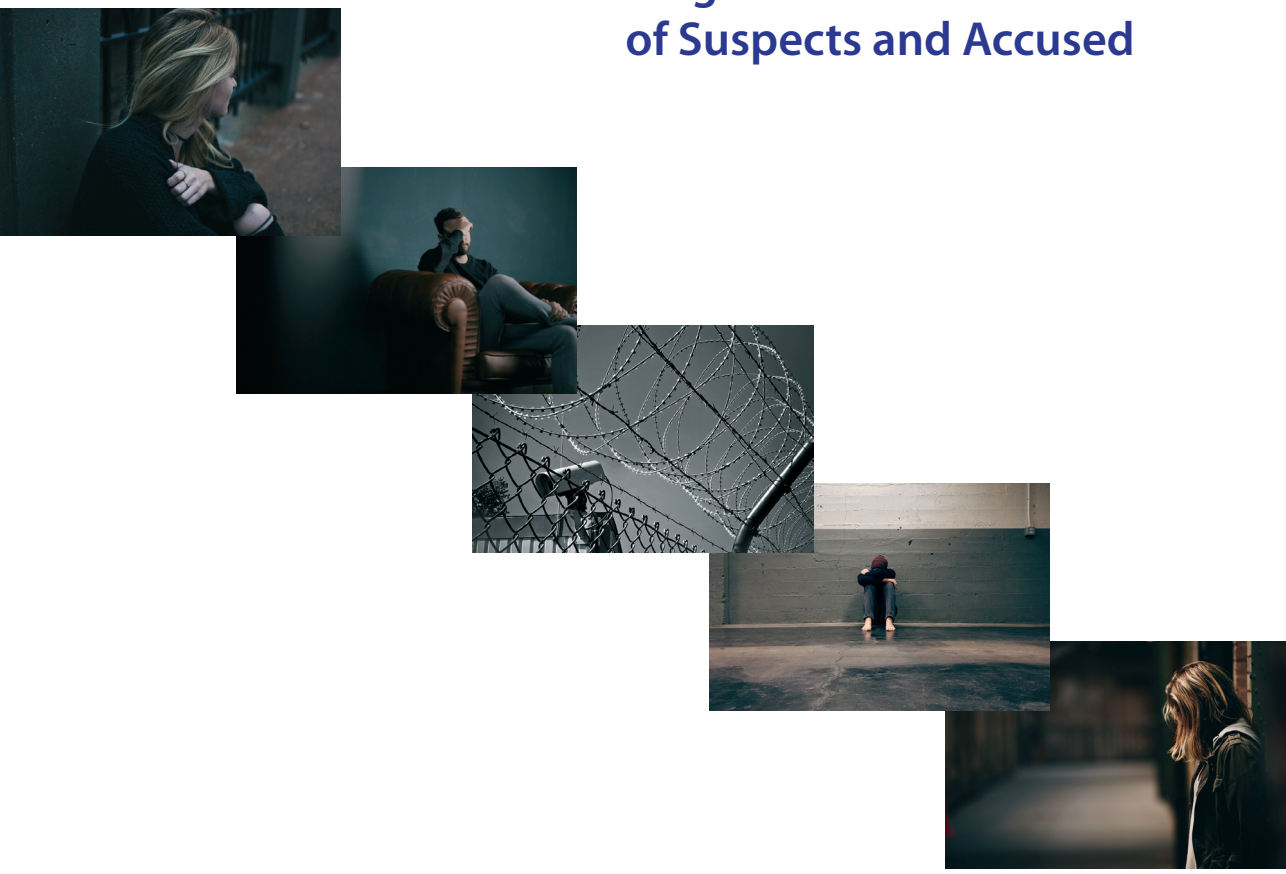
ARISA

Assessing the Risk of Isolation of Suspects and Accused



FACTORS AFFECTING THE SOCIAL STATUS OF SUSPECTS AND ACCUSED

FACTORS AFFECTING THE SOCIAL STATUS OF SUSPECTS AND ACCUSED

This report aims to examine the factors that affect the social status of suspects and accused drawing upon the prevalent legal practices in four European Union Member States: Belgium, Bulgaria, Greece, and Italy. Each of the four national case studies is structured along the following key aspects: legal status of suspects and accused, custodial and non-custodial measures during proceedings, disclosure of information, legal and practical impact of proceedings on suspects and accused, and assessment of the impact of proceedings by competent authorities. The report has been developed within the framework of the project *Assessing the Risk of Isolation of Suspects and Accused – ARISA* (https://arisa-project.eu/), funded by the European Union's Justice Programme (2014 – 2020).

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EXECUTIVE SUMMARY

Around nine million people are the subject of criminal justice proceedings every year in the EU.[1] At the same time, a significant share of those suspected or accused of criminal offences are not found guilty and are never convicted. All suspects, whether finally convicted or not, are presumed innocent until proven guilty according to the law. The presumption of innocence is a fundamental right, a key principle of criminal justice and a universally recognised human rights standard.

Despite the obligation of criminal justice authorities to strictly observe the presumption of innocence, suspects and accused are always subject to certain restrictions and consequences during the criminal proceedings. All of these restrictions have their legitimate purposes but at the same time affect the personal and social sphere of suspects and accused.

During criminal proceedings, suspects and accused, although presumed innocent, are practically placed in an unequal position compared to other members of the society. As a result of the measures and restrictions applied to them, their social status can be affected in a number of ways: temporary or permanent unemployment, loss of income, increased expenses, loss of social benefits, deteriorating relations with family members, etc.

At the same time, the impact of criminal proceedings on suspects and accused is often neglected by the criminal justice authorities, which tend to focus on ensuring the effective progress and outcome of the case, rather than on mitigating the resulting negative implications for suspects and accused. In practice, a criminal case can lead to a certain degree of de-socialisation of the accused person and this risk needs to be taken into account and properly assessed by the criminal justice authorities. Such an assessment should be added to the evaluation of other factors, such as the risk of absconding or re-offending, in order to allow the competent criminal justice body to select and apply the most appropriate combination of measures in each particular case.

This report aims to examine the factors that affect the social status of suspects and accused drawing upon the prevalent legal practices in four European

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[1] EU LIBE Committee, *Fair Trials: Civil Liberties MEPs Back New EU Rules on Presumption of Innocence,* 2015, available at http://www.europarl.europa.eu/news/en/press-room/20151109IPR01741/fair-trials-civil-liberties-meps-back-new-eu-rules-on-presumption-of-innocence

Union Member States: Belgium, Bulgaria, Greece, and Italy. Each of the four national case studies is structured along the following key aspects:

- Legal status of suspects and accused.
- Custodial and non-custodial measures during proceedings.
- Disclosure of information.
- Legal and practical impact of proceedings on suspects and accused.
- Assessment of the impact of proceedings by competent authorities.

Key findings

Belgium

- A suspect is a person suspected of having committed a punishable act and subject to criminal preliminary investigation. The suspect becomes accused or indicted (*inculpé*) when the investigating judge informs them formally about the alleged charges brought against them.
- If there are no explicit mandatory time-limits for completing the investigation and/or the trial, the defendant has a right to be tried by an impartial and independent tribunal within a reasonable time.
- Besides pre-trial detention which a form of custodial measures, non-custodial measures include electronic monitoring, bail, and release under probation conditions.
- Under Belgian law (*Criminal Procedure Code*), the secrecy of the instruction (pre-trial investigation phase) is imposed on any person called upon to lend their professional assistance to the instruction, including judges, prosecutors, investigators, court clerks, and all persons employed by them. Neither the defendant nor third parties (including civil parties) nor the media is bound by the secrecy of the investigation.
- Pre-trial detention in Belgium affects the employment and family status of suspects and accused, as well as their health care and social security. The employment and educational status of suspects and accused may also be affected when electronic monitoring is applied as a '24-hour home detention'.
- Suspects who experience either unlawful (i.e. pre-trial detention in violation of the legal rules) or ineffective/inappropriate pre-trial detention (i.e. because the person is innocent or because the time spent in pre-trial detention exceeds the length of the prison term to which they are sentenced) can claim damages or full compensation under certain conditions.
- Before deciding on the measure to take concerning a suspect, the investigating judge may ask a probation officer (*assistant de justice*) to conduct

a preliminary enquiry (brief information report or social enquiry) into the need for pre-trial detention or the suitability of an alternative measure such as release under conditions.

- A social inquiry is a more general investigative work aimed at situating the alleged offence in a larger psycho-social context. In collaboration with the defendant and their family and social environment, the justice assistant can thus propose an individualised, restorative and future-oriented measure as well as evaluate the potential impact of the relevant proceedings on the defendant's life.

Bulgaria

- In Bulgaria, the legal status of 'suspect' does not exist. The status of accused persons is governed by the *Criminal Procedure Code*. To become an accused person, an individual has to be formally charged by an investigative authority or by a public prosecutor.
- The law does not specify for how long a person can remain accused. As a rule, the pre-trial investigation must be completed within two months.
- During criminal proceedings, there are two categories of measures that can be imposed on accused persons: remand measures and other procedural measures. There are four remand measures listed in the law: mandatory reporting, bail, home arrest and detention in custody. Other procedural measures are mainly of non-custodial nature.
- The legal rules governing the disclosure of information about the proceedings differ substantially at the pre-trial stage and during the trial. As rule, the pre-trial stage is considered confidential and information about the investigation can be disclosed only with the permission of the prosecutor in charge of the case. During the trial, the disclosure of information is less restricted.
- Criminal proceedings can have an impact on the accused person's employment and family status, particularly when the accused is placed in detention. In some cases, the proceedings have had a negative impact on the accused person's business operations and the ability to practice their profession. Compensation cases also reveal the negative impact of proceedings on family links, social life, and physical and mental health.
- Bulgarian legislation contains no general provision obliging the authorities to collect, review and assess specific information about the suspects and accused before making a decision that might affect them. However, such provisions exist in relation to the imposition of remand measures, whereby the accused person's health condition, profession, age and other relevant data are to be taken into account.

Greece

- The term 'suspect' is not defined under Greek law but was introduced as a term into the Greek *Criminal Procedure Code*. The accused is the person against whom a prosecutor has initiated criminal proceedings, i.e. prosecution and who is considered the perpetrator of a criminal act at any stage of the criminal investigation.
- There is no official data on the average duration of criminal proceedings in Greece. It should be noted that the Greek *Criminal Procedure Code* does include a fast-track procedure for certain crimes. This fast-track procedure is applied to misdemeanours where the perpetrator has been caught while committing the crime.
- The Greek *Criminal Procedure Code* contains an indicative catalogue of restrictive measures (custodial and non-custodial) which includes pre-trial detention; bail; appearance on a periodical basis before the inquiry authorities or any other authority; travel ban or restriction to a specific location; ban from meeting or socialising with certain individuals; and house arrest with electronic surveillance (i.e. ankle bracelet).
- The protection of personal data of accused and suspects is guaranteed under the Greek *Data Protection Law*. Another important principle of Greek *Criminal Procedure Code* is that it prohibits any affront to the personality of the accused by the media. As for the trial phase, court hearings are public and every court decision is delivered through a public hearing.
- Criminal proceedings may affect the personal life of suspects and accused and their employment and social security status, even though the principle of secrecy implies that such proceedings shall be kept private.
- One of the most common grounds for complain cited by Greek suspects and accused is the overly long duration of proceedings. Following two pilot judgments of the European Court of Human Rights, the Greek authorities introduced a compensatory remedy, with the aim of providing appropriate and sufficient redress in cases where criminal and civil proceedings, or proceedings before the Audit Court, exceeded reasonable time. In 2014, the European Court of Human Rights found that the new remedy could be regarded as effective and accessible.
- Greece has also been criticised by the European Court of Human Rights for the excessive duration of pre-trial detention and inhuman conditions of detention, especially in relation to migrants.
- There are no available reports on the assessment of impact of the proceedings on the accused by the competent authorities. Interviews with practitioners indicate that police authorities responsible for investigations examine any given case according to the instructions of the prosecutor handling the file.

Italy

- According to the Italian *Criminal Procedure Code*, a suspect is a person who is believed by the authorities to have committed a crime. As a rule, suspects are subject to a preliminary investigation. If the evidence collected during the preliminary investigation is considered sufficient, the suspect is granted the status of 'accused' and a trial process begins.
- Preliminary investigations have a maximum duration of six months from the date on which the name of the suspect has entered in the register of offenses. For serious offenses or organised crime the term is one year.
- Personal precautionary measures are custodial or non-custodial. Custodial precautionary measures include a pre-trial detention; house arrest; and detention in a health care facility. Non-custodial alternative measures to detention include a travel ban; reporting to the police; family restraining order; and prohibition of residence.
- According to the Italian *Criminal Procedure Code*, the investigative acts carried out by the public prosecutor and the judicial police are subject to rules of non-disclosure before the end of the preliminary investigations. Restrictions on data sharing are imposed on all parties who are involved or otherwise aware of the act of investigation.
- According to the *Charter of Duties of Journalists* adopted by the National Federation of the Italian Press and National Council Order of Journalists in 1993, journalists have the duty to uphold the presumption of innocence.
- One of the characteristics of the Italian penitentiary system is the constant presence of prisoners without a definitive sentence. According to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, prisoners without a definitive sentence are often held in dilapidated and overcrowded cells and are frequently subject to poor conditions. Prison overcrowding is still present nowadays but the entry into force of the law 47/2015 reduced the problem during the last three years due to the fact that pre-trial detention has to be considered a last resort and can be ordered only if any ban or other coercive measures are inadequate.
- There are no available reports on the assessment of impact of the proceedings on the accused by the competent authorities and their practices. The decision on the application, withdrawal or modification of pre-trial measures pertains to the judge in charge of the corresponding stage of the trial taking in account that the measure must be appropriate, proportionate and the least depriving.
- Custodial measures, including pre-trial detention can also have a considerable economic impact, particularly as far as the employment status of suspects and accused is concerned, regardless of whether they are employed in the private or public sector.

1. INTRODUCTION

1.1. Rationale

Around nine million people are the subject of criminal justice proceedings every year in the EU.[2] At the same time, a significant share of those suspected or accused of criminal offences are not found guilty and are never convicted. All these persons, whether finally convicted or not, are presumed innocent until proven guilty according to the law. The presumption of innocence is a fundamental right, a key principle of criminal justice and a universally recognised human rights standard. It has been interpreted in a number of decisions of the European Court of Human Rights as well as in many academic works. At EU level, the presumption of innocence is explicitly proclaimed in the *Charter of Fundamental Rights of the European Union* (Article 48) and further elaborated upon in *Directive (EU) 2016/343 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings*.

Despite the obligation of criminal justice authorities to strictly observe the presumption of innocence, suspects and accused are always subject to certain restrictions and consequences during the criminal proceedings, most of which affect their personal and social sphere. All of these restrictions have their legitimate purposes. Some of them are aimed to facilitate the investigation of the crime (e.g. seizure of objects to serve as evidence), some should prevent absconding or re-offending (e.g. detention and noncustodial remand measures, ban to leave the country), some are justified by the need to protect the victims of the crime (e.g. ban to visit certain places or to contact the victims). In addition, information about the criminal proceedings is often publicly released or shared with the media, which further affects the lives of suspects and accused.

During criminal proceedings, suspects and accused, although presumed innocent, are practically placed in an unequal position compared to other members of the society. As a result of the measures and restriction applied on them, their social status can be affected in a number of ways: temporary or permanent unemployment, loss of income, increased expenses, loss of social benefits, worsened relations with family members, etc.

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[2] EU LIBE Committee, *Fair Trials: Civil Liberties MEPs Back New EU Rules on Presumption of Innocence,* 2015, available at www.europarl.europa.eu/news/en/press-room/20151109IPR01741/fair-trials-civil-liberties-meps-back-new-eu-rules-on-presumption-of-innocence

At the same time, the impact of criminal proceedings on the suspects and accused is often neglected by the criminal justice authorities, who tend to focus on ensuring the effective progress and outcome of the case rather than on reducing the damage on the suspects and accused. The restrictions and measures applied on suspects and accused during criminal proceedings may have a long-term impact on their personal and social lives and this impact is often underestimated. In practice, a criminal case can lead to a certain degree of de-socialisation of the accused person and this risk needs to be taken into account and properly assessed by the criminal justice authorities. This assessment should add to the evaluation of other factors like the risk of absconding or re-offending, in order to allow the responsible criminal justice body to select and apply the most appropriate combination of measures in each particular case.

1.2. Report structure and methodology

The report aims to examine the factors that affect the social status of suspects and accused. Part 2 of the report seeks to conceptualise the legal status of suspects and accused both under international human rights law and under the national legislation of four EU Member States: Belgium, Bulgaria, Greece, and Italy. In part 3, a review of different custodial and non-custodial measures that are applicable during criminal proceedings is presented, focusing on the national practices in the four selected EU Member States. Part 4 of the report looks into the mechanisms for disclosure of information during criminal proceedings as regards privacy and the upholding of the presumption of innocence. Part 5 examines the legal and practical impact of criminal proceedings on suspects and accused. Finally, in part 6, the extent to which the impact of criminal proceedings on suspects and accused is assessed by competent authorities is analysed.

The report is grounded in an extensive literature review featuring both primary and secondary sources. In addition, it draws upon four national reports on the factors affecting the social status of suspects and accused covering Belgium,[3] Bulgaria,[4] Greece,[5] and Italy.[6]

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[3] Droit au Droit, *Country Report on the Factors Affecting the Social Status of Suspects and Accused: Belgium,* 2018, available at http://arisa-project.eu/publications/publication/factors-affecting-the-social-status-of-suspects-and-accused-in-belgium/

[4] Center for the Study of Democracy, *Country Report on the Factors Affecting the Social Status of Suspects and Accused: Bulgaria,* 2018, available at http://arisa-project.eu/publications/publication/factors-affecting-the-social-status-of-suspects-and-accused-in-bulgaria/

[5] Centre for European Constitutional Law, *Country Report on the Factors Affecting the Social Status of Suspects and Accused: Greece,* 2018, available at http://arisa-project.eu/publications/publication/factors-affecting-the-social-status-of-suspects-and-accused-in-greece/

[6] Pope John XXIII Community Association, *Country Report on the Factors Affecting the Social Status of Suspects and Accused: Italy,* 2018, available at http://arisa-project.eu/publications/publication/factors-affecting-the-social-status-of-suspects-and-accused-in-italy/

2. LEGAL STATUS OF SUSPECTS AND ACCUSED

The section is divided into two parts, whereby it first provides an overview of the international legal provisions that define the status of suspects and accused. It then looks into the relevant national legal practices of four EU Member States: Belgium, Bulgaria, Greece, and Italy.

2.1. International human rights law

Art. 17 (1) of the *International Covenant on Civil and Political Rights (ICCPR)* states that 'no one should be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation'.[7] The right to be presumed innocent until proved guilty is among the basic principles that condition the treatment to which an accused person is subjected throughout the period of criminal investigations and trial proceedings, up to and including the end of the final appeal.[8] This is stipulated in Art. 14 of the ICCPR:

1. *All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.*
2. *Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.*

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[7] United Nations, *International Covenant on Civil and Political Rights*, 23 March 1976, available at www.ohchr.org/en/professionalinterest/pages/ccpr.aspx

[8] United Nations, Office of the High Commissioner for Human Rights in Cooperation with the International Bar Association, *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers,* Professional Training Series No. 9, 2003.

3. *In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:*
   (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
   (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
   (c) To be tried without undue delay;
   (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
   (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
   (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
   (g) Not to be compelled to testify against himself or to confess guilt.
4. *In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.*
5. *Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.*
6. *When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.*

The presumption of innocence has at least three important and complementary implications.[9] First, the onus to demonstrate guilt rests with the accuser, so that accused persons are deemed innocent until proven guilty in a court of law. Second, arrestees and accused persons have the right not to be presented to the media as 'criminals'. Third, the use of pre-trial detention should be an exceptional measure: any deprivation of liberty before a finding of guilt must be objectively justified and should be of the shortest possible duration.

[9] Open Society Justice Initiative, *Strengthening Pre-Trial Justice: A Guide to the Effective Use of Indicators,* Open Society Foundations, 2015, available at www.opensocietyfoundations.org/publications/strengthening-pretrial-justice-guide-effective-use-indicators-0

Roger Levesque argues that 'ideologies that dominate criminal justice processes are best understood through two metaphors that capture the essence of competing interests in criminal justice processes. One metaphor concerns the ideology of crime control as it describes the criminal process as a high-speed assembly-line conveyor belt operated by police and prosecutors seeking guilty pleas. The other involves core principles of due process as it presents criminal justice processes as obstacle courses in which defence counsels ensure that the police and prosecution respect the accused's rights. The difference between the two ideologies is generally understood as the former's preoccupation with speed, efficiency, and finality in criminal justice processes and outcomes and the latter's concern for ensuring proper respect for the rights of offenders so that the system exhibits fairness to the accused and maintains society's faith in the system'.[10]

Yet Jon Bruschke and William Loges point out that in practical terms defendants in criminal trials enter a system that is fundamentally skewed against them.[11] In their words, the presumption of innocence represents a collective awareness of the system's bias against defendants. That is, the presumption of innocence is not an attribute of the defendant but only exists if the other parties involved in the prosecution recognise it. The defendant's height and weight do not depend on the attitude of the jury but their presumption of innocence does. The presumption is embedded in the legal code as a reminder that a judgement needs to be withhold until evidence is presented, in order to avoid an indulgence to a bias against people accused of crimes.[12]

The right to liberty is guaranteed under international human rights law. Art. 9 and 10 of the ICCPR contain provisions concerning detention, arrest, and treatment of accused persons:

Article 9

1. *Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*
2. *Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.*

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[10] Roger Levesque, *The Psychology of Criminal Justice Processes*, New York: Nova Science Publishers, 2006.

[11] Jon Bruschke and William Loges, *Free Press vs. Fair Trials: Examining Publicity's Role in Trial Outcomes,* London: Lawrence Erlbaum Associates Publishers, 2004.

[12] Jon Bruschke and William Loges, *Free Press vs. Fair Trials: Examining Publicity's Role in Trial Outcomes,* London: Lawrence Erlbaum Associates Publishers, 2004.

3. *Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.*
4. *Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.*
5. *Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.*

Article 10

1. *All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.*
2.
   (a) *Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;*
   (b) *Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.*
3. *The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.*[13]

The *European Convention on Human Rights* is the only treaty that specifically enumerates the grounds, which can lawfully justify a deprivation of liberty in the Contracting States. This list is exhaustive and 'must be interpreted strictly'.[14] Art. 5 of the Convention reads as follows:

1. *Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:*

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[13] United Nations, *International Covenant on Civil and Political Rights*, 23 March 1976, available at www.ohchr.org/en/professionalinterest/pages/ccpr.aspx

[14] United Nations, Office of the High Commissioner for Human Rights in Cooperation with the International Bar Association, *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers,* Professional Training Series No. 9, 2003, available at www.ohchr.org/Documents/Publications/HRAdministrationJustice.pdf

(a) the lawful detention of a person after conviction by a competent court;
(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
(f) the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

2. *Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.*
3. *Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.*
4. *Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.*
5. *Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.*

2.2. National legal practices

Belgium

In Belgian criminal proceedings, a **suspect** is a person suspected of having committed a punishable act and subject to criminal preliminary investigation (*information* or *instruction*).

The suspect becomes **accused** or **indicted** (*inculpé*) when the investigating judge informs them formally about the alleged charges brought against them. The status of **'formal suspect'** may also ensue from the fact that the name of the

suspect appears in the request of the public prosecutor to open a judicial inquiry or in the petition of the civil party (or the alleged victim of an offence by means of an action for damages in a criminal case).

The investigation during the pre-trial phase can take **two forms**:[15]

1) **a preliminary investigation conducted by the public prosecutor** (*information* or *opsporingsonderzoek*). A preliminary investigation led by the public prosecutor is opened at the prosecutor's initiative, after being informed by the police that an offence has taken place or after a complaint by an injured party.
2) **a judicial inquiry** (*instruction judiciaire* or *gerechtelijk onderzoek*) led by an investigating judge (*juge d'instruction* or *onderzoeksrechter*), which is member of a Court of first instance.

If there are **no explicit mandatory time-limits** for completing the investigation and/or the trial, the defendant has a right to be tried by an impartial and independent tribunal within a **reasonable time**.[16] The definition of the term 'reasonable' varies from one case to another and depends on the facts, circumstances and complexity of the case, as well as of the backlog (if any) of the relevant court. At a national level, the consequences of a violation of the right to be tried within a reasonable time are regulated by the Preliminary Title of the Belgian *Criminal Procedure Code*.[17]

Bulgaria

In Bulgaria, the **legal status of 'suspect'** does not exist. Persons who are suspected of having committed a crime, but are not formally charged, are those **arrested by the police** when there is information that that person may have committed a crime. Police detention can last for **up to 24 hours**.

In Bulgaria, the status of the **accused person** (*обвиняем*) is governed by the Bulgarian *Criminal Procedure Code*. To become an accused person, an individual has to be formally charged by an investigative authority or by a public prosecutor. An individual can be **formally charged** at two different **stages**

[15] Laurent Kennes, *L'action pénale: 'information' ou 'instruction'?*, Justice en ligne, 1 September 2009, available at www.justice-en-ligne.be/article105.html

[16] Art. 6 (1) of the European Convention of Human Rights.

[17] Criminal proceedings are laid out in the Belgian *Criminal Procedure Code* (*Code d'instruction criminelle* or *Wetboek van Strafvordering*). According to Art. 21ter of the Preliminary Title of the Belgian *Criminal Procedure Code*, trial courts can either impose a penalty below the statutory minimum or simply pronounce a guilty verdict without imposing a sentence.

of the criminal procedure. As a rule, charges are brought after the criminal procedure has already started and the investigative authority has collected sufficient evidence concerning the offender's guilt. By way of exception, charges can also be brought at the beginning of the procedure, together with the very first investigative action against the alleged offender. In both cases, the investigative authority must inform the public prosecutor. As shown in Table 1, the number of accused persons has significantly decreased since 2010.

Table 1. Accused persons in Bulgaria (2010 – 2016)

Outcome of proceedings	2010	2011	2012	2013	2014	2015	2016
Effective sentence	24,740	23,893	21,204	18,842	16,374	14,567	11,753
Suspended sentence	14,330	17,120	16,792	15,271	15,475	13,220	16,548
Acquittal	1,606	1,282	1,463	1,128	965	820	767
Suspension of proceedings	221	279	288	118	99	80	67
Release from penalty	6,651	4,664	4,913	4,962	4,591	4,298	4,966
Total number of accused persons with proceedings finished	47,548	47,238	44,660	40,321	37,504	32,985	34,101

Source: National Statistical Institute.

The **law does not specify for how long a person can remain accused**. As a rule, the **pre-trial investigation** must be completed within **two months**. For complex cases, this deadline can be extended following a procedure laid down in the law (Art. 234 of the Bulgarian *Criminal Procedure Code*). After the completion of the investigation, the **public prosecutor has one month to decide how to proceed** with the case. For complex cases, this deadline can be extended to two months (Article 242 of the Bulgarian *Criminal Procedure Code*).

Greece

Criminal proceedings (*ποινική δίωξη*) in Greece are initiated by the First Instance Court Prosecutor following a ***notitia criminis*** (i.e. after being notified of the crime).[18] The term '**suspect**' (*ύποπτος*) is not defined under Greek law. However, it was introduced as a term into the Greek *Criminal Procedure Code* following the adoption of Law 4236/2014[19] which transposed Directive 2010/64/EU and in relation to the rights afforded to suspects and accused (Art. 99A of the Greek *Criminal Procedure Code*). Practice shows that the suspect is a potential accused. Circular No. 1/2009 of the Supreme Court Prosecuting Office[20] recognises that during the preliminary examination there are only suspects who are granted the same rights as those of the accused.

The legal status of the **accused** is defined under Greek law. According to Art. 72 of the Greek *Criminal Procedure Code*, the accused *(κατηγορούμενος)* is the person: a) against whom the prosecutor has initiated criminal proceedings, i.e. prosecution *(ποινικήδίωξη)* and b) who is considered the perpetrator of a criminal act at any stage of the criminal investigation *(ανάκριση)*.

Art. 73 of the Greek *Criminal Procedure Code* stipulates that the status of the accused ends only through a court action by either: a) issuing of a final judicial council decision of acquittal *(απαλλακτικό βούλευμα)*, or b) issuing of a final court decision of acquittal or conviction *(απαλλακτική ή καταδικαστική απόφαση)*. Tables 2 and 3 contain data on the number of court decisions on conviction and acquittal for 2016 and the first half of 2017.

There is no official data on the average duration of criminal proceedings in Greece. It should be noted that the Greek *Criminal Procedure Code* (Art. 417-426) does include a fast-track procedure *(διαδικασίααυτόφωρουεγκλήματος)* for certain crimes. This fast-track procedure is applied to misdemeanours where the perpetrator has been caught while committing the crime. Police have a special authority to arrest the perpetrator, without a warrant, up to 48 hours after being caught in the act of committing a crime and detain them for 24 to 48 hours before taking them to court to be tried under the fast-track procedure.

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[18] Article 37 of Greek *Criminal Procedure Code*.

[19] Greece, Law 4236/2014 on the Implementation of Directives 2010/64/EU of the EU Parliament and Council of 20 October 2010 regarding the right to interpretation and translation during the criminal procedure (L 280) and 2012/13/EU of the EU Parliament and Council of 22 May 2012 regarding the right to be informed during criminal proceedings (O.G. 33 A/11-2-2014).

[20] Supreme Court Prosecuting Office, Circular 1/2009, pp. 4-5, available in Greek at www.eisap.gr/sites/default/files/circulars/1-2009.pdf

Table 2. First Instance Prosecuting Offices of Greece: Court Decisions in 2017 (first half of year)

Type of Criminal Court	Cases of 2017 discussed/where a decision was published		
	Convictions	Acquittals	Other[21]
Single-Member Court of Misdemeanours	36,726	25,879	13,418
Single-Member Court of Misdemeanours for Fast-Track Procedure	6,661	1,650	1,895
Three-Member Court of Misdemeanours	16,113	10,248	6,906
Three-Member Court of Misdemeanours for Fast-Track Procedure	901	196	1,532
Single-Member Court of Minors	1,516	393	667
Three-Member Court of Minors	73	21	65
Total	**61,990**	**38,387**	**24,483**

Source: Ministry of Justice.[22]

[21] Such as decisions terminating criminal proceedings, on lack of jurisdiction, etc.

[22] Statistical data of the Greek courts is available at www.ministryofjustice.gr/site/el/ΟΡΓΑΝΩΣΗΔΙΚΑΙΟΣΥΝΗΣ/ΣτατιστικάΣτοιχείαΔικαιοσύνης/Στατιστικάστοιχείαανάβαθμόδικαιοδοσίας.aspx

Table 3. First Instance Prosecuting Offices of Greece: Court Decisions in 2016

Type of Criminal Court	Cases of 2016 discussed/where a decision was published		
	Convictions	Acquittals	Other[23]
Single-Member Court of Misdemeanours	33,065	24,450	7,692
Single-Member Court of Misdemeanours for Fast-Track Procedure	5,238	1,188	1,784
Three-Member Court of Misdemeanours	8,591	9,844	7,532
Three-Member Court of Misdemeanours for Fast-Track Procedure	516	162	1,115
Single-Member Court of Minors	1,779	738	451
Three-Member Court of Minors	33	6	51
Total	**49,222**	**36,388**	**18,625**

Source: Ministry of Justice.[24]

Italy

According to the Italian *Criminal Procedure Code*, a **suspect** is a person who is believed by the authorities to have committed a crime. A person becomes a suspect when they are signed in the relevant register – 'Notizia di reato' (Art. 335 of the Italian *Criminal Procedure Code*), as a result of which they are then subject to a preliminary investigation coordinated by a Preliminary Investigation Judge (*GIP – Giudice per le Indagini Preliminari*). At the end of the preliminary investigation, the Judge of Preliminary Hearing (*GUP – Giudice*

[23] Such as decisions terminating criminal proceedings, on lack of jurisdiction, etc.

[24] Statistical data of the Greek courts is available at www.ministryofjustice.gr/site/el/ΟΡΓΑΝΩΣΗΔΙΚΑΙΟΣΥΝΗΣ/ΣτατιστικάΣτοιχείαΔικαιοσύνης/Στατιστικάστοιχείαανάβαθμόδικαιοδοσίας.aspx

dell'Udienza Preliminare) has to decide if there is enough evidence for initiating a trial. If the evidence collected during the preliminary investigation is considered sufficient, the suspect is granted the status of '**accused**' and a trial process begins. Table 4 shows the number of decisions adopted by the Judge of Preliminary Hearing, as well as the number of cases which reached first instance in 2016 and the first half of 2017.

Table 4. Number of GUP decisions by a Judge of Preliminary Hearing and cases at first Instance in Italy (2016 and first half of 2017)

Type of Proceedings	2016	2017 (first half of year)
Number of decisions adopted by a Judge of Preliminary Hearing	919,308	397,387
Number of cases at first instance	394,985	167,770

Source: Ministry of Justice.

Table 5. Crimes reported, suspects and accused in Italy (2014)

	Total Number
Crimes reported by police to judicial authorities	2,812,936
Total number of suspects	1,650,235
Total number of people accused	784,188

Source: Italian National Institute of Statistics.[25]

[25] Istituto Nazionale di Statistica (ISTAT), *Delitti, Imputati e Vittime di Reati – Una lettura integrata delle fonti su criminalità e giustizia,* 2017.

Preliminary investigations have a **maximum duration** of six months from the date, on which the name of the suspect has entered in the register of offenses. For serious offenses or organised crime, the term is one year (Art. 405 of the Italian *Criminal Procedure Code*).

Table 5 shows the official number of the crimes reported by police to judicial authorities in 2014. The table further contains data on the total number of **people formally accused** by authorities: a share of 47.5 % (784,188 people) of the total number of the **people suspected** for having committed a crime in that year.

3. CUSTODIAL AND NON-CUSTODIAL MEASURES DURING PROCEEDINGS

The section provides an overview of non-custodial (e.g. bail and supervised pre-trial release) and custodial (e.g. pre-trial detention) measures that are used during criminal proceedings. It also looks into the underpinnings of pre-trial risk assessment as an auxiliary tool for judicial decision-making. The final part of the section reviews the types of measures currently in use in Belgium, Bulgaria, Greece, and Italy.

3.1. Non-custodial measures

The *United Nations Standard Minimum Rules for Non-Custodial Measures* (The Tokyo Rules) provide a set of basic principles to promote the use of noncustodial measures, as well as minimum safeguards for persons subject to alternatives to imprisonment. The Rules are intended to promote greater community involvement in the management of criminal justice, specifically in the treatment of offenders, as well as to promote among offenders a sense of responsibility towards society.[26] Art. 5 and 6 of the Rules pertain to the pre-trial stage of legal proceedings and read as follows:

5. Pre-trial dispositions

5.1. Where appropriate and compatible with the legal system, the police, the prosecution service or other agencies dealing with criminal cases should be empowered to discharge the offender if they consider that it is not necessary to proceed with the case for the protection of society, crime prevention or the promotion of respect for the law and the rights of victims. For the purpose of deciding upon the appropriateness of discharge or determination of proceedings, a set of established criteria shall be developed within each legal system. For minor cases the prosecutor may impose suitable non-custodial measures, as appropriate.

6. Avoidance of pre-trial detention

6.1. Pre-trial detention shall be used as a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offence and for the protection of society and the victim.

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[26] United Nations, *United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), UNGA Resolution 45/110*, 14 December 1990, available at www.un.org/ruleoflaw/blog/document/united-nations-standard-minimum-rules-for-non-custodial-measures-the-tokyo-rules/

6.2. Alternatives to pre-trial detention shall be employed at as early a stage as possible. Pre-trial detention shall last no longer than necessary to achieve the objectives stated under rule 5.1 and shall be administered humanely and with respect for the inherent dignity of human beings.
6.3. The offender shall have the right to appeal to a judicial or other competent independent authority in cases where pre-trial detention is employed.

3.1.1. Bail

A form of non-custodial measures is **bail**. A Human Rights Watch report published in 2010 examines the practice of bail in New York City juxtaposing it with alternative measures, such as court date notification and pre-trial monitoring and supervision.[27] Under the New York Criminal Procedure Law, persons arrested for non-felony offenses have a right to release on their own recognisance, or bail. Although the statute does not express a presumption in favour of release on recognisance, it does indicate a legislative intent that defendants accused of non-felonies remain free pending conclusion of their cases, while recognising that in some cases, a pre-trial release should be subject to conditions.

The New York bail statute enumerates the factors for judges to consider in making bail decisions:

a) the defendant's character, reputation, habits and mental condition;
b) their employment and financial resources;
c) their family ties and the length of their residence if any in the community;
d) their criminal record, if any;
e) their record of previous adjudication as a juvenile delinquent, if any;
f) their previous record in responding to court appearances when required or with respect to flight to avoid criminal prosecution, if any;
g) the weight of the evidence against them in the pending criminal action and any other factor indicating probability or improbability of conviction; and
h) the sentence which may be or has been imposed upon conviction.[28]

According to the Human Rights Watch report, however, New York law provides little guidance to judges in how to actually make sound and fair

[27] Human Rights Watch, *The Price of Freedom: Bail and Pre-Trial Detention of Low Income Non-Felony Defendants in New York City,* 2 December 2010, available at www.hrw.org/report/2010/12/02/price-freedom/bail-and-pretrial-detention-low-income-nonfelony-defendants-new-york

[28] Human Rights Watch, *The Price of Freedom: Bail and Pre-Trial Detention of Low Income Non-Felony Defendants in New York City,* 2 December 2010, available at www.hrw.org/report/2010/12/02/price-freedom/bail-and-pretrial-detention-low-income-nonfelony-defendants-new-york

release or bail decisions. Neither the legislation nor the relatively few court decisions interpreting it indicate how the different factors should be weighed and balanced against each other, nor does the law even set a target level of risk of nonappearance that judges should use as a guidepost. As a practical matter, judges' discretion in bail decisions is extremely broad, although not completely unfettered. They have wide latitude in deciding which of the enumerated factors to consider, how much weight to give them, and even what conclusions to draw from them. If the judge decides not to release on recognisance a defendant charged with a non-felony offense, then he must set bail. The court may choose to set bail in any two or more of the authorised forms of bail, designating one as an alternative. The following forms of bail are authorised:

a) cash bail;
b) an insurance company bail bond;
c) a secured surety bond;
d) a secured appearance bond;
e) a partially secured surety bond;
f) a partially secured appearance bond;
g) an unsecured surety bond;
h) an unsecured appearance bond;
i) a credit card.[29]

The American Bar Association has levelled criticism at financial bail pointing out that it undermines the integrity of the criminal justice system, is unfair to poor defendants, and is ineffective in achieving key objectives of the release/detention decision.[30] The American Bar Association 's standards for pre-trial release provide that financial conditions should be used only when no other conditions will provide reasonable assurance a defendant will appear for future court appearance. If financial conditions are imposed, the court should first consider releasing the defendant on an unsecured bond, and if that is deemed an insufficient condition of release, bail should be set at the lowest level necessary to ensure the defendant's appearance and with regard to his financial ability. According to the ABA, when financial conditions are imposed to secure a defendant's appearance in court, they should not be set at an

[29] Human Rights Watch, *The Price of Freedom: Bail and Pre-Trial Detention of Low Income Non-Felony Defendants in New York City,* 2 December 2010, available at www.hrw.org/report/2010/12/02/price-freedom/bail-and-pretrial-detention-low-income-nonfelony-defendants-new-york

[30] Human Rights Watch, *The Price of Freedom: Bail and Pre-Trial Detention of Low Income Non-Felony Defendants in New York City,* 2 December 2010, available at www.hrw.org/report/2010/12/02/price-freedom/bail-and-pretrial-detention-low-income-nonfelony-defendants-new-york

amount that results in a defendant's incarceration solely because he could not post the designated amount.[31]

3.1.2. Supervised pre-trial release

In order to overcome the deficiencies of financial bail, it is argued that judges should have an alternative to the existing choice of release on recognisance or money bail and that one such alternative could be **supervised pre-trial release**.[32] Data from the Pre-trial Justice Institute reveals that 97 % of surveyed pre-trial services programs that exist in the United States provide supervision of defendants released pending adjudication. Defendants in these programs are typically released on their promise to adhere to certain court-ordered, non-financial conditions, such as reporting in-person on a regular basis. Pre-trial services or other criminal justice staff supervise the release of the defendant and enforce compliance with release conditions through methods such as telephone calls or in-person meetings, referrals to substance abuse treatment and/or mental health treatment programs, drug testing, electronic bracelets, reminding defendants of court dates, and reporting to the court. As noted by Human Rights Watch, pre-trial supervision is particularly favoured in those cases in which misdemeanour defendants cannot afford to pay bail, not least because it would allow avoiding pre-trial detention and the significant costs associated with it. In the United States, experience with pre-trial supervision programs indicates that when pre-trial supervision is performed effectively, unnecessary pre-trial detention is minimised, costly jail services are avoided, public safety is increased, and the equity of the pre-trial release process is enhanced because there is less discrimination on the basis of income.[33]

3.2. Custodial measures

Persons involved in criminal proceedings may be detained in an investigation or interrogation stage when it is still being determined whether a case will be brought against them, while they are awaiting trial, while their trial is occurring,

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[31] Human Rights Watch, *The Price of Freedom: Bail and Pre-Trial Detention of Low Income Non-Felony Defendants in New York City,* 2 December 2010, available at www.hrw.org/report/2010/12/02/price-freedom/bail-and-pretrial-detention-low-income-nonfelony-defendants-new-york

[32] Human Rights Watch, *The Price of Freedom: Bail and Pre-Trial Detention of Low Income Non-Felony Defendants in New York City,* 2 December 2010, available at www.hrw.org/report/2010/12/02/price-freedom/bail-and-pretrial-detention-low-income-nonfelony-defendants-new-york

[33] Human Rights Watch, *The Price of Freedom: Bail and Pre-Trial Detention of Low Income Non-Felony Defendants in New York City,* 2 December 2010, available at www.hrw.org/report/2010/12/02/price-freedom/bail-and-pretrial-detention-low-income-nonfelony-defendants-new-york

and when they have been convicted and await sentencing or final sentencing.[34] Juveniles may be remanded for significant periods without the intention of trial as a way to keep them from having criminal convictions while rehabilitative measures are being determined.[35] Police lock-up may precede transfer to a larger remand facility. Psychiatric institutions and facilities for the treatment of drug dependency may also be remand settings, whether or not a trial is envisioned.[36]

In certain cases, the use of custodial measures during proceedings is deemed not only permissible but also necessary. These include situations featuring organised crime, intentional homicide, rape, kidnapping, human trafficking, crimes committed by violent means such as with the use of weapons and explosives, and serious crimes as defined by national security, free personal development, or health legislation.[37]

Pre-trial detention is a form of custodial measures. It could include forms of remand that are not strictly 'pre-trial.'[38] Concerning the use of pre-trial detention, the European Court has emphasised that, 'when the only remaining [reason] for continued detention is the fear that the accused will abscond and thereby subsequently avoid appearing for trial, his release pending trial must be ordered if it is possible to obtain from him guarantees that will ensure such appearance'; where, however, the accused person has not acted in such a way as to suggest that he would be prepared to furnish such guarantees and where, moreover, the judicial authorities cannot be criticised for the conduct of the case, the Court has concluded that there has been no violation of Art. 5(3) of the *European Convention on Human Rights*.[39]

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[34] Roy Walmsley, *World Pre-Trial/Remand Imprisonment List,* 3rd edition, Institute for Criminal Policy Research, 2015, available at www.prisonstudies.org/resources/world-pre-trialremand-imprisonment-list-3rd-edition

[35] Paulo Pinheiro, *World Report on Violence against Children,* United Nations, 2006, available at www.unicef.org/violencestudy/reports.html

[36] Open Society Justice Initiative, *Pre-Trial Detention and Health: Unintended Consequences, Deadly Results,* Open Society Foundations, 2011, available at www.opensocietyfoundations.org/reports/pretrial-detention-and-health-unintended-consequences-deadly-results

[37] Ana Aguilar-Garcia, 'Presumption of Innocence and Public Safety: A Possible Dialogue', *International Journal of Security and Development,* vol. 3:1 (2014), pp. 1-12, available at www.stabilityjournal.org/articles/10.5334/sta.en/

[38] Open Society Justice Initiative, *Pre-Trial Detention and Health: Unintended Consequences, Deadly Results,* Open Society Foundations, 2011, available at www.opensocietyfoundations.org/reports/pretrial-detention-and-health-unintended-consequences-deadly-results

[39] United Nations Office of the High Commissioner for Human Rights in Cooperation with the International Bar Association, *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers,* Professional Training Series No. 9, 2003, available at www.ohchr.org/Documents/Publications/HRAdministrationJustice.pdf

The reasonableness of pre-trial detention is assessed in the light of all circumstances of the particular case, such as:

- the gravity of the offences;
- the risk of absconding;
- the risk of influencing witnesses and of collusion with co-defendants;
- the detainee's behaviour;
- the conduct of the domestic authorities, including the complexity of the investigation.[40]

Whenever feasible, release should be granted pending trial, if necessary by ordering guarantees that the accused person will appear at his or her trial. Throughout detention the right to presumption of innocence must be guaranteed.[41]

Similarly, a report produced by the Quaker United Nations Office notes that pre-trial detention should only be used as a last resort and only if certain conditions are met.[42] The conditions which should be met in order to permit pre-trial detention are:

- that the person concerned is reasonably suspected of having committed an offence; and
- there is legal provision for such pre-trial detention; and
- there is a risk of the suspect either:
  a) absconding (failing to appear for trial), or
  b) interfering with witnesses, evidence or other trial processes, or
  c) committing further offences; and
- there is no alternative way the risk can be addressed other than detention.[43]

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[40] United Nations Office of the High Commissioner for Human Rights in Cooperation with the International Bar Association, Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers, Professional Training Series No. 9, 2003, available at www.ohchr.org/Documents/Publications/HRAdministrationJustice.pdf

[41] United Nations Office of the High Commissioner for Human Rights in Cooperation with the International Bar Association, *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers,* Professional Training Series No. 9, 2003, available at www.ohchr.org/Documents/Publications/HRAdministrationJustice.pdf

[42] United Nations Office of the High Commissioner for Human Rights in Cooperation with the International Bar Association, *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers,* Professional Training Series No. 9, 2003, available at www.ohchr.org/Documents/Publications/HRAdministrationJustice.pdf

[43] Oliver Robertson, *The Impact of Parental Imprisonment on Children,* April 2007, Quaker United Nations Office, available at www.quno.org/resource/2007/4/impact-parental-imprisonment-children

Generally, a person detained on a criminal charge has the right to trial within a reasonable time or to release pending trial. Detainees are further entitled to a set of basic rights. According to *The Jailhouse Lawyer's Handbook*, individuals subject to pre-trial detention have the right 'to be free from cruel and unusual punishment' which includes:

- protection from physical brutality;
- protection from rape, sexual assault, and sexual harassment;
- right to decent conditions in prison; and
- right to medical care.[44]

3.3. Pre-trial risk assessment

Pre-trial evaluation occurs in the period between the arrest and the hearing at which a judge makes the determination to either release or detain a defendant at pre-trial.[45] The evaluation process identifies arrestees' personal characteristics and any risk they may pose to the criminal process and society. Identifying the potential risks permits the criminal justice system's actors, including judges, prosecutors, and defenders, to make more rational pre-trial decisions and recommendations and consider the most appropriate release conditions, reserving pre-trial detention for exceptional cases where the risks cannot be managed by other means.

Release-and-detention decisions made by judges carry enormous consequences for both the community and those accused of committing crimes.[46] A pre-trial risk assessment is a tool intended to assist judicial officers with these decisions by measuring the risk of failure to appear and new criminal activity if a defendant were to be released pending case disposition. In the United States, the first pre-trial risk assessment was used in the early 1960s in New York City to test the hypothesis that defendants could be categorised by the degree of risk they posed to fail to appear in court. The risk assessment, known as the Vera scale, was developed as part of the Vera Institute of Justice's Manhattan

[44] Center for Constitutional Rights and the National Lawyers Guild, *The Jailhouse Lawyer's Handbook: How to Bring a Federal Lawsuit to Challenge Violations of Your Rights in Prison,* 5th Edition, 2010, available at https://ccrjustice.org/sites/default/files/assets/Report_JailHouseLawyersHandbook.pdf

[45] Martin Schonteich, 'Managing Risk through Rational Pre-Trial Detention Practices', *Advancing Corrections Journal,* Vol. 1, 2016, pp. 48-55.

[46] Marie Van Nostrand and Christopher T. Lowenkamp, *Assessing Pre-Trial Risk without a Defendant Interview,* LJAF Paper, November 2013, available at www.arnoldfoundation.org/research-report-assessing-pretrial-risk-without-defendant-interview/; Shima Baradaran Baughman, 'Costs of Pre-Trial Detention', *Boston University Law Review,* vol. 97:1, 2017, pp. 1-30, available at www.bu.edu/bulawreview/files/2017/03/BAUGHMAN.pdf

Bail Project.[47] In the nearly 60 years since that pioneering study, a substantial amount of pre-trial risk assessment research has been conducted. A review of the literature carried out by the Laura and John Arnold Foundation has identified eight multi-jurisdictional pre-trial risk-assessment instruments being used in Colorado, Connecticut, Florida, Kentucky, Ohio, Maine, Virginia, and the federal court system. An examination of these assessments, as well as other assessments developed and used in single jurisdictions, revealed that they all require information collected from defendant interviews, and that information must often be verified. In addition, the assessments use common factors to predict pre-trial outcome, including:[48]

- current charge(s);
- outstanding warrants at the time of arrest;
- pending charges at time of arrest;
- active community supervision at time of arrest (e.g., pre-trial, probation, parole);
- history of criminal arrest and convictions;
- history of failure to appear;
- history of violence;
- residence stability;
- employment stability;
- community ties;
- history of substance abuse.

As a study commissioned by the Laura and John Arnold Foundation in 2013 has demonstrated, a non-interview-based pre-trial risk assessment that accurately differentiates low-, moderate-, and high-risk defendants can also be developed.[49] The Public Safety Risk Assessment has been developed by the Laura and John Arnold Foundation in partnership with leading criminal justice researchers to help judges gauge the risk that a defendant poses.[50] This pre-

[47] Cynthia Mamalian, *State of the Science of Pre-Trial Risk Assessment,* March 2011, Pre-Trial Justice Institute, available at www.pretrial.org/wpfb-file/pji-state-of-the-science-pretrial-risk-assessment-2011-pdf/

[48] Marie Van Nostrand and Christopher T. Lowenkamp, *Assessing Pre-Trial Risk without a Defendant Interview,* LJAF Paper, November 2013, available at www.arnoldfoundation.org/research-report-assessing-pretrial-risk-without-defendant-interview/

[49] Marie Van Nostrand and Christopher T. Lowenkamp, *Assessing Pre-Trial Risk without a Defendant Interview,* LJAF Paper, November 2013, available at www.arnoldfoundation.org/research-report-assessing-pretrial-risk-without-defendant-interview/

[50] Laura and John Arnold Foundation, *Public Safety Assessment: Risk Factors and Formula,* 23 August 2016, available at www.arnoldfoundation.org/public-safety-assessment-risk-factors-formula/. See also Spurgeon Kennedy et al. 'Using Research to Improve Pretrial Justice and Public Safety: Results from PSA's Risk Assessment Validation Project', *Federal Probation,* vol. 77:1, 2013, pp. 28-32, available at www.uscourts.gov/federal-probation-journal/2013/06/using-research-improve-pretrial-justice-and-public-safety-results

trial risk assessment tool uses evidence-based, neutral information to predict the likelihood that an individual will commit a new crime if released before the trial, and to predict the likelihood that he will fail to return for a future court hearing. In addition, it flags those defendants who present an elevated risk of committing a violent crime. The Public Safety Risk Assessment score is calculated based on nine factors:

- current violent offence;
- prior felony conviction;
- prior failure to appear pre-trial older than two years;
- pending charge at the time of the offence;
- prior violent conviction;
- prior sentence to incarceration;
- prior misdemeanour conviction;
- prior failure to appear pre-trial in past two years;
- age at current arrest.[51]

The Public Safety Risk Assessment does not look at any of the following factors:

- race;
- gender;
- income;
- education;
- home address;
- drug use history;
- family status;
- marital status;
- national origin;
- employment;
- religion.[52]

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[51] Laura and John Arnold Foundation, *Public Safety Assessment: Risk Factors and Formula,* 23 August 2016, available at www.arnoldfoundation.org/public-safety-assessment-risk-factors-formula/; LJAF *Developing a National Model for Pre-Trial Risk Assessment,* Research Summary, 15 November 2013, available at www.pretrial.org/wpfb-file/developing-a-national-model-for-pretrial-risk-assessment-ljaf-2013-pdf/

[52] Laura and John Arnold Foundation, *Public Safety Assessment: Risk Factors and Formula,* LJAF, 23 August 2016, available at www.arnoldfoundation.org/public-safety-assessment-risk-factors-formula/; LJAF *Developing a National Model for Pre-Trial Risk Assessment,* Research Summary, 15 November 2013, available at www.pretrial.org/wpfb-file/developing-a-national-model-for-pretrial-risk-assessment-ljaf-2013-pdf/

3.4. National legal practices

Belgium

Art. 12 of the Belgian *Constitution* provides that a person can only be detained on the basis of a well-reasoned judicial decision (*infra*), which has to be issued and served on that person within 48 hours.[53] This means that a suspect cannot be deprived of their liberty for more than 48 hours by the police or the prosecutor, unless the investigating judge issues an arrest warrant.

Pre-trial detention is regulated by the *Pre-trial Detention Act of 20 July 1990*.[54] Belgian law explicitly prohibits the use of detention as a method of immediate punishment or as a measure of force. Pre-trial detention formally starts with an arrest warrant delivered by an investigating judge.

The issuance of an arrest warrant is subject to a number of material and procedural requirements:

(a) the existence of serious indications of the suspect being guilty
(b) an alleged criminal offence punishable by at least one year's imprisonment, implying that pre-trial detention is only possible for crimes and misdemeanours;
(c) an absolute necessity for public safety.

Furthermore, if the statutory maximum penalty for the alleged criminal offence does not exceed 15 years of imprisonment, the requirement of absolute necessity has to be further justified on the grounds that the suspect:

1) would re-offend or commit new crimes or misdemeanours (risk of recidivism);
2) would try to evade justice (absconding);
3) would attempt to destroy or tamper evidence;
4) would collude with third parties and interfere with witnesses.

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[53] Révision de l'article 12 de la Constitution, M.B., 29 novembre 2017, p. 104076. See also: Le délai maximal d'arrestation judiciaire porté à 48 heures, Christelle MACQ Assistante-doctorante UCL (CRID&P), 28 November 2017, available at https://uclouvain.be/fr/instituts-recherche/juri/cridep/actualites/le-delai-maximal-d-arrestation-judiciaire-porte-a-48-heures.html#_ftnref44

[54] 20 Julliet 1990. Loi relative à la détention préventive, available at www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1990072035&table_name=loi. Modification de la loi relative à la détention préventive Par Laurent Kennes Mercredi 27.07.05 La loi du 31 mai 2005, publiée au moniteur belge le 16 juin et entrée en vigueur le 26 juin, a modifié plusieurs dispositions de la loi du 20 juillet 1990 relative à la détention préventive.

While it is not possible to appeal against the decision of the investigating judge to issue an arrest warrant, the pre-trial detention is subject to the **periodic judicial control** of the investigating courts, i.e. the so-called Council Chamber (*Chambre du conseil/Raadkamer* – first instance) and Indictment Chamber (*Chambre des mises en accusation* – appeal).

Pre-trial detention is a temporary measure. On average, it usually lasts between a maximum of six months, for minor offences, to a year for serious offences.[55] There are special rules concerning the judicial control on prolonged pre-trial detention. For instance, the Belgian *Criminal Procedure Code* provides for the automatic supervision by the *Chambre des mises en accusation* if a suspect is kept in pre-trial detention for more than six months.[56]

On 12 January 2005, the federal government passed a law concerning the *internal* legal position of detainees: *Act on Principles of Prison Administration and Prisoners' Legal Status* (commonly referred to as the 'Dupont Act').[57] All pre-trial detainees should – as a rule – be kept apart from convicted prisoners and treated in such a way as not to give the impression that their deprivation of liberty is punitive in nature because they are presumed innocent. In practical terms, all pre-trial detainees should be accommodated in a specific prison facility, known as a 'house of arrest' or 'remand prison'.[58] The penitentiary administration is required to ensure a regular medical monitoring of prisoners. The law provides that any person entering prison must be presented to a doctor within twenty-four hours of their arrival.

Alternative measures to pre-trial detention include electronic supervision at the suspect's home, bail, and release under probation conditions. **Electronic monitoring** has been used in Belgium as a way of executing prison sentences since 2000. With a law of 27 December 2012 (effective since 1st January

[55] Question et réponse écrite n°: 1967 – Législature: 54, Bulletin n°: B126, de Annick Lambrecht (SP.A) au Ministre de la Justice, 8 June 2017, available at www.lachambre.be/kvvcr/showpage.cfm?section=qrva&language=fr&cfm=qrvaXml.cfm?legislat=54&dossierID=54-b126-866-1967-2016201716767.xml

[56] Art. 136ter CCP.

[57] *Loi de principes du 12 janvier 2005 concernant l'administration pénitentiaire ainsi que le statut juridique des détenus (Law on principles/Prison Act of 12 January 2005 concerning the administration of the prison system and the legal position of detainees)*, 1 February 2005, Official Journal (*Moniteur belge/Belgisch Staatsblad*), available at www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2005011239&table_name=l

[58] According to their legal status, Belgian prisons are divided into 'houses of arrest' (remand prisons) and 'houses of punishment' (prisons for sentenced/convicted offenders). Remand prisons are penal institutions where people are incarcerated in application of the *Pre-trial Detention Act* of 1990, such as suspects and accused persons. Houses of punishment, on the other hand, are prisons for adults who have been convicted by the court to an effective prison sentence.

2014), electronic monitoring was introduced as an alternative measure to pre-trial detention.[59] At this stage of the criminal justice process, suspects are monitored using GPS-technology, without limitation in time. In case of non-compliance, electronic monitoring can be converted into pre-trial detention in prison. In 2016, 378 people were placed under electronic monitoring at a pre-trial stage out of a total of 2,550 individuals submitted to electronic monitoring.[60]

The *Pre-Trial Detention Act* of 20 July 1990 provides for release (i.e. release from custody until the trial) on the (sole) condition that **bail** is paid (Art. 35, Par. 4). The judge determines the amount to be paid, as there are no legal criteria for it. The bail must be paid in advance and in full; it is indeed a prerequisite for release.

Release under probation conditions can occur either without a prior arrest warrant or after time is spent in detention.[61] In terms of duration, such release cannot exceed three months (Art. 35, Par. 1) but can be subsequently extended (Art. 36).

Bulgaria

Police detention of persons, suspected of having committed a crime, is **not part of the criminal proceedings**. It is imposed by the police and can last for up to **24 hours**. The 24-hour period starts running from the moment the person is detained. Persons detained by the police are accommodated in special premises of the Ministry of the Interior.

During criminal proceedings, there are **two categories of measures** that can be imposed on accused persons: **remand measures** (*мерки за неотклонение*) and **other procedural measures** (*мерки за процесуална принуда*). The objectives of **remand measures** are to prevent the accused person from

[59] Surveillance électronique des prévenus et des condamnés Analyse des objectifs proclamés et mise en confrontation avec la procédure, Mémoire réalisé par Noémie Verleyen (Promoteur Thibaut Slingeneyer, Année académique 2015 – 2016, Master en droit [120], à finalité spécialisée, available at https://dial.uclouvain.be/memoire/ucl/fr/object/thesis:8037/datastream/PDF_01/view

[60] Administration Générale des Maisons de Justice, Rapport Annuel 2016, p. 33. See also Détention préventive: 7 % des détenus portent un bracelet, voici leur nombre par prison (Tableau), L. N., La Libre Belgique, 11 September 2017, available at www.lalibre.be/actu/belgique/detention-preventive-7-des-detenus-portent-un-bracelet-voici-leur-nombre-par-prison-tableau-59b619f1cd70fc627d74a2c8

[61] A survey conducted among the French-speaking Probation Service in Belgium indicates that in five out of six observed districts, release under conditions was preceded by a period of pre-trial detention, ranging from 61.1 % (Mons) to 81.9 % (Namur). See Alexia Jonckheere, 'Structure de concertation locale des maisons de justice: Détention préventive et liberté sous conditions' 2.

hiding, committing another crime or hindering the execution of the penalty (Art. 57 of the Bulgarian *Criminal Procedure Code*). There are **four remand measures** listed in the law: **mandatory reporting**, **bail**, **home arrest** and **detention in custody (Box 1)**.[62] The competent authority can choose only one of these remand measure and is not allowed to simultaneously impose two or more of them.

Box 1. Remand measures in Bulgaria

Mandatory reporting (*подписка*) is the lightest remand measure. It consists of the obligation of the accused person not to leave their place of residence without permission by the respective competent authority.

Bail (*гаранция*) is the second non-custodial remand measure. It consists of depositing money or securities. Once deposited, the bail cannot be withdrawn. The deposited money or securities are released when the accused person is released from criminal liability, sentenced to a non-custodial penalty or detained for the execution of imprisonment (Art. 61 of the Bulgarian *Criminal Procedure Code*).

Home arrest (*домашен арест*) consists of prohibiting the accused from leaving their home without the permission of the relevant authority. In practice, **home arrest is rarely used** in criminal proceedings. In 2016, 263 persons have been placed under home arrest, which is a slight increase compared to 2015 (232 persons) and 2014 (235 persons).[63]

Detention in custody (*задържане под стража*) is the heaviest remand measure. It can be imposed only when the crime, for which the person is charged, is punishable by imprisonment or a heavier sanction, and the

[62] Mandatory reporting, bail and home arrest can be imposed only on adults (persons over 18 years of age). For juveniles (persons between 14 and 18 years of age), the applicable remand measures are different and include supervision by parents or guardians, supervision by the personnel of the educational institution, which the juvenile attends, and supervision by the local body, responsible for taking care of children with anti-social behaviour. Juveniles can be detained in custody, but only in exceptional cases (Art. 386 of the Bulgarian *Criminal Procedure Code*).

[63] Public Prosecution Office of the Republic of Bulgaria, *Report on the Enforcement of the Law and the Activity of the Prosecution Service and the Investigative Authorities in 2016*, 2017, p. 46, available at www.prb.bg/media/filer_public/a6/4e/a64eace3-f2d0-4c85-9781-64e82cad9e68/godishen_doklad_na_prb_2016.pdf

Box 1. Remand measures in Bulgaria (continued)

collected evidence shows that that there is a real danger that the accused may hide or commit another crime.[64] Detainees are accommodated in **special detention facilities** called **'arrests'** (*apecmu*) which are under the management of the General Directorate on Execution of Penalties of the Ministry of Justice.

There are **mandatory factors**, which the **authorities imposing the remand measures –** the **prosecutor**, the **investigative authority** and the **court –** must take into account before **choosing which remand measure to apply**. Two of them, the gravity of the crime and the evidence against the accused person, are directly related to the crime. The rest are related to the personality of the accused, including their health status, family status, occupation, age and, as defined by the law, any other information about the personality of the accused (Art. 56 of the Bulgarian *Criminal Procedure Code*).

Other procedural measures which can be imposed on the accused include:

- Measures for the protection of the victim – these are different **bans** for preventing the accused from getting in contact with the victim fall within this category;
- Ban to leave the country – it can be imposed only on persons accused of a serious intentional crime or a crime which has resulted in someone's death;
- Temporary suspension from work – it can be imposed only on accused persons, who have been charged with a serious intentional crime, committed in relation to their job, and only when there are sufficient grounds to believe that their position would hamper the performance of a full, objective and comprehensive investigation;
- Temporary revocation of a driving license – can be imposed only for transport-related crimes, which have resulted in the death or injury of a person, and for the so-called traffic hooliganism;

[64] The law lists four options, when, unless otherwise indicated by the evidence, it is assumed that there is real danger for the accused person to hide or commit another crime. These are when: (1) the accused person has been charged for re-offending, (2) the accused person has been charged for a serious intentional crime (a crime punishable by a minimum of five years of imprisonment) after been sentenced to imprisonment of at least one year for another serious crime, (3) the accused person has been charged for a crime punished by a minimum of ten years of imprisonment, or (4) the charges have been brought in the absence of the accused person (Art. 63 of the Bulgarian *Criminal Procedure Code*).

- Accommodation in a psychiatric establishment – this is the only procedural measure of custodial nature;
- Coercive escort – it is applied when the accused person does not show up for interrogation without valid reasons;
- Measures for securing the payment of compensation, financial sanctions and judicial expenses – these are aimed at blocking certain resources belonging to the accused person.

The law sets specific time limits for the different measures imposed on the accused persons during the proceedings. At the **pre-trial stage**, any measure imposed on the accused person cannot last more than **one year and six months** for a serious crime (a crime punishable by a minimum of five years of imprisonment) and **eight months** for any other crime.

Greece

In recent years, following global developments on alternative measures at the pre-trial stage as well as due to the pressures on the criminal justice organisations caused by extreme caseload, certain provisions have been introduced.[65] Accordingly, the prosecutor may refrain from prosecution after conducting a preliminary examination which results in insufficient indications of guilt (Art. 31 Par. 2 of the Greek *Criminal Procedure Code*). On the other hand, the following alternative procedures are restrictively provided in law, which may result in postponement or refraining from prosecution:

a) Victim compensation (reparation – *ικανοποίηση του παθόντος* under Art. 384, Par. 3-5 of the Greek *Criminal Code* and Art. 406, Par. 3-5 of the Greek *Criminal Code* as amended by *Law 3904/2010*),[66] whereby an out-of-court settlement is reached;
b) Criminal mediation in cases of intra-family violence (*ποινική διαμεσολάβηση*, Art. 11-14 of *Law 3500/2006*),[67] whereby the prosecutor acts as a mediator;
c) Postponement of prosecution in cases of drug related offences, under the condition that the suspect will participate in a formal drug treatment

[65] Confederation of European Probation, M. Mavris, N. Koulouris and M. Anagnostaki, *Probation in Europe: Greece*, January 2015, pp. 20-21, available in English at www.cep-probation.org/wp-content/uploads/2015/06/Greece-2015.pdf

[66] *Law 3904/2010 Redefining and improving the awarding of criminal justice and other provisions (Εξ ορθολογισμός και βελτίωση στην απονομή της ποινικής δικαιοσύνη και άλλες διατάξεις.)* (O.G. 218 A/23-12-2010).

[67] *Law 3500/2006 Addressing domestic violence and other provisions (Για την αντιμετώπιση τησενδοοικογενειακής βίας και άλλεςδιατάξεις)* (O.G. 232 A/24-10-2006).

programme (Art. 31, Par. 1(a) of *Law 4139/2013*).[68]

d) Criminal reconciliation in certain felony offences (*ποινική συνδιαλλαγή*, Art. 308B of the Greek *Criminal Procedure Code* as added by *Law 3904/2010*), under the direction of the prosecutor.

If the accused is arrested in the act of committing a misdemeanour, they will be detained at the police station for 24 to 48 hours. They will then be taken straight to court and tried under summary procedures: a fast-track procedure (*διαδικασία αυτόφωρου εγκλήματος*).

Art. 282, Par. 1-4 of the Greek *Criminal Procedure Code* contains the preconditions under which custodial or non-custodial measures may be imposed during the preliminary criminal proceedings (i.e. investigation phase). It further contains an indicative catalogue of restrictive measures (custodial and non-custodial) which includes:

- pre-trial detention;
- bail (εγγυοδοσία);
- appearance on a periodical basis before the inquiry authorities or any other authority;
- travel ban or restriction to a specific location;
- ban from meeting or socialising with certain individuals;
- house arrest with electronic surveillance (i.e. ankle bracelet).

According to the data of the Council of Europe, the total number of persons serving non-custodial measures in Greece is 4,430.[69]

Pre-trial detention can be imposed if:

(a) a person is accused of a felony;
(b) there are serious indications that a person is guilty of committing a crime;
(c) a person does not have known residence in the country or has made preparations to flee;
(d) a person has been a fugitive or has violated restrictions in the past or might commit other crimes.

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[68] *Law 4139/2013 on abusive substances and other provisions (Νόμος περί εξαρτησιογόνων ουσιών και άλλες διατάξεις)* (O.G. 74 A/20-03-2013).

[69] Council of Europe, Annual Penal Statistics, SPACE II, Survey 2015, *Persons serving non-custodial sanctions and measures in 2015*, Updated Version 05-09-2017, available at www.coe.int/en/web/prison/space

The law specifically stipulates that the severity of the act is not in itself sufficient to justify pre-trial detention (Art. 282, Par. 4 of the Greek *Criminal Procedure Code*). In extremely exceptional circumstances, and if it can be established that restrictive conditions are not sufficient, pre-trial detention can be imposed also for the misdemeanour of serial negligent manslaughter, if the accused is likely to flee (virtue of Art. 296 of the Greek *Criminal Procedure Code*). In this case, the maximum limit of detention is six months.

The pre-trial detention varies in duration. Art. 6, Par. 4 of the Greek *Constitution* provides that the maximum duration of detention pending trial is specified by law. It sets however maximum limits: it cannot exceed a period of one year in the case of felonies or six months in the case of misdemeanours. In exceptional cases, these maximum limits can be extended by six or three months respectively, by decision of the competent judicial council (Art. 282 of the Greek *Criminal Procedure Code*).

Italy

Pre-trial/precautionary measures are measures of deprivation of the physical and legal freedom of the suspect or accused person. They are ordered by a judge for the purpose of procedural caution even in the preliminary investigation phase. They are requested by the Public Prosecutor from the Preliminary Investigation Judge and the Judge of the Preliminary Hearing who decide whether to apply them or not.

Law 47/2015,[70] which has been recently introduced in line with the requirements set by the European Court of Human Rights jurisprudence, amended the third paragraph of Art. 275 of the Italian *Criminal Procedure Code*. As a result, pre-trial detention can be ordered only if any ban or other coercive measures are inadequate; imprisonment, therefore, becomes the last resort and, unlike in the past, other measures, may now be applied cumulatively.

Personal precautionary measures are custodial or non-custodial.[71] Custodial precautionary measures include:

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[70] *Law n. 47 of 16 April 2015: Modifications to the Criminal Procedure Code concerning personal precautionary measures. Amendments to the law of 26 July 1975, n. 354, regarding the visit to a person with disabilities in a serious situation (Legge n. 47 del 16 aprile 2015: Modifiche al codice di procedura penale in materia di misure cautelari personali. Modifiche alla legge 26 luglio 1975, n. 354, in materia di visita a persona affette da handicap in situazione di gravità),* available in Italian at www.gazzettaufficiale.it/eli/id/2015/04/23/15G00061/sg

[71] Grazia Parisi et al., *The Practice of Pre-Trial Detention in Italy: Research Report,* 2015, Antigone, available at www.fairtrials.org/wp-content/uploads/The-practice-of-pre-trial-detention-in-Italy1.pdf

- pre-trial detention (Art. 285 of the Italian *Criminal Procedure Code*);
- house arrest (Art. 284 of the Italian *Criminal Procedure Code*);
- detention in a health care facility (Art. 286 of the Italian *Criminal Procedure Code*).

House arrest and detention in a health care facility are similar to pre-trial detention insofar as the time spent under these measures is subtracted from the final sentence. The maximum duration and procedural rules that are applicable are also the same as those for pre-trial detention. Electronic monitoring is not considered an alternative to pre-trial detention, but a possible means of house arrest. House arrest cannot be applied for offences listed in Art 275, Par. 3 of the Italian *Criminal Procedure Code*, or when there has been a previous violation of house arrest or previous violation of other pre-trial measures.

The criteria guiding the use of custodial measures are set out in Art. 273-275 of the Italian *Criminal Procedure Code*: their application must be appropriate, proportionate and with the least detrimental effect taking into account the following conditions:

- danger that the suspect may escape;
- suppression of evidences;
- risk of re-offending.

In certain cases, custodial pre-trial measures can also be applied for crimes that are punished with a maximum sentence of less than five years. For more serious offences the principle of constrained discretion and of last resort still apply. Remand in custody is presumed to meet the precautionary requirements only as regards three particularly serious crimes: mafia crimes; terrorist association; subversive association. For other offences (e.g. murder, rape and kidnapping for ransom), pre-trial detention cannot be applied if the precautionary needs can be met with the use of other measures. Pre-trial detention cannot be applied if the judge believes that in the examined case the final sentence will be less than three years. This provision does not apply in proceedings for offences under Art. 423-bis, 572, 612-bis and 624bis of the Italian *Criminal Code* (such as breaking and entering or forest arson).

In accordance with Art. 59 of *Law 26 July 1975, no. 354 ('Penal Law and Execution of Privatives and Limitations measures to the personal freedom')* adult penitentiary institutions are divided into four categories:

- Preventive detention institutions (also referred to as circondary homes, *Casa Circondariale*) – those house prisoners awaiting trial (pre-trial detainees),

remand inmates and inmates serving sentences of up to three years.

- Penitentiary institutions (*Casa di Reclusione* and *Casa di Arresto*) – those hold sentenced prisoners.
- Institutes for the implementation of security measures (*Casa di Lavoro* or *Colonia Penale*) – those house prisoners who have their completed prison terms but who remain under secure supervision. Such institutes may include farm colonies, work houses, nursing homes, and psychiatric hospitals (OPGs).
- Observation centres (no institute) – these centres were created with a ministerial order in 1961 as autonomous institutes or sections of other institutes for the implementation of a trial measures related to the observation of prisoners' personality. This experimentation was initiated only at the Rebibbia Institute in Rome and was later abandoned.

Table 6 shows the composition of prisoner population as of 31 December 2017. The total number of prisoners was 57,608 and about 34.46 % (19,853 people) were people in custody pending trial.

Table 6. Prisoner population in Italy (31 December 2017)

2017							
Juridical status				Gender		Nationality	
Accused[72]	Condemned[73]	Interned[74]	Total	Women	% of the total	Foreigners	% of the total
19,853	37,451	304	57,608	2,421	4.20%	19,745	34.27%[75]

Source: Department of Prison Administration, Head Office of the Department, Statistical Section (31 October 2017); Department for Justice Affairs General Directorate of Criminal Justice Office I, Statistical and Monitoring Department.

[72] Accused: People awaiting the final sentence.

[73] People who received the final sentence.

[74] People who serve a sentence in an agricultural colony, work-house; rehab-center; psychiatric hospital.

[75] On 30 June 2017, the percentage of the foreigners detained in Italian prison was 41.4 % (Source: Reports on prisons – Antigone. 27 July 2017).

Non-custodial alternative measures to detention include:

- travel ban (Art. 281 of the Italian *Criminal Procedure Code*);
- reporting to the police (Art. 282 of the Italian *Criminal Procedure Code*);
- family restraining order (Art. 282 bis of the Italian *Criminal Procedure Code*);
- prohibition of residence (Art. 283 of the Italian *Criminal Procedure Code*).

4. DISCLOSURE OF INFORMATION

The section provides an overview of existing policies, procedures, and approaches as regards data sharing during criminal proceedings. It first looks into the role of the police in the process of information management concerning suspects and accused. Second, the section reviews the national rules and procedures for disclosing information about criminal proceedings that are in place in Belgium, Bulgaria, Greece, and Italy.

4.1. Police practice in information management

Policies and rules concerning personal data protection seek to uphold the right to privacy and personal integrity by preventing the unauthorised access to, disclosure, and/or dissemination of personal information. For example, in the United Kingdom the Information Commissioner's Office is an independent body up to uphold information rights.[76] The Information Commissioner's Office's *Data Sharing Code of Practice* explains how the United Kingdom *Data Protection Act 1998* applies to the sharing of personal data. It also provides good practice advice of relevance to all organisations that share personal data.[77]

As noted in the Code, the general rule in the *Data Protection Act 1998* is that individuals should, at least, be aware that personal data about them has been, or is going to be, shared – even if their consent for the sharing is not needed. However, in certain limited circumstances the *Data Protection Act 1998* provides for personal data, even sensitive data, to be shared without the individual even knowing about it. Data sharing without an individual's knowledge is in order in cases where, for example, personal data is processed for:

- the prevention or detection of crime;
- the apprehension or prosecution of offenders; or
- the assessment or collection of tax or duty.[78]

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[76] For information on the Information Commissioner's Office, see https://ico.org.uk/about-the-ico/

[77] Information Commissioner's Office, *Data Sharing Code of Practice,* May 2011, available at https://ico.org.uk/for-organisations/guide-to-data-protection/data-sharing/

[78] Information Commissioner's Office, *Data Sharing Code of Practice,* May 2011, available at https://ico.org.uk/for-organisations/guide-to-data-protection/data-sharing/

The New York Rules of Professional Conduct define the principles of professional conduct for lawyers. Rule 3.6 refers to trial publicity and disallow attorneys to 'comment in ways that cast doubt on the character, credibility or reputation of a suspect in a criminal investigation and they are not permitted to reveal the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission or statement given by a defendant or suspect, or that person's refusal or failure to make a statement, or the performance or results of any examination or test, or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented. They are not even permitted to express any opinion as to the guilt or innocence of a defendant or suspect in a criminal matter that could result in incarceration'.

Yet some commentators have argued that the Rules are 'ineffective', **not least because police officers are not bound by them**, which in turn makes it possible for the police to feed incriminating information to the press. It has been suggested that placing the same restrictions on police that are placed on lawyers would help break what is being perceived as the ubiquitous 'cycle of adverse pre-trial publicity' and thus ensure that defendants are granted a fair trial.

The College of Policing is the professional body for everyone that works for the police service in England and Wales.[79] The College's purpose is to provide those working in policing with the skills and knowledge necessary to prevent crime, protect the public and secure public trust.

Authorised Professional Practice developed and owned by the College of Policing is the official source of professional practice on policing.[80] Police officers and staff are expected to have regard to the *Authorised Professional Practice* in discharging their responsibilities. There may, however, be circumstances when it is perfectly legitimate to deviate from the *Authorised Professional Practice*, provided there is clear rationale for doing so.

The principles of Management of Police Information as defined in the *Authorised Professional Practice* provide a way of balancing proportionality and necessity that are at the heart of effective police information management. They also highlight the issues that need to be considered in order to comply with the law and manage risk associated with police information. The Management of

[79] Information about the College of Policing is available at www.college.police.uk/About/Pages/default.aspx

[80] On Authorised Professional Practice, see www.app.college.police.uk/about-app/

Police Information section of the *Authorised Professional Practice* is the detailed guidance referred to in Home Office's *Code of Practice on Management of Police Information*.[81] It supersedes the 2010 Association of Chief Police Officers' *Guidance on Management of Police Information*.[82]

Authorised Professional Practice on information sharing has been produced to assist forces with the statutory duty to comply with the *Data Protection Act 1998* and the *Human Rights Act 1998* when sharing personal information. This *Authorised Professional Practice*:

- relates to sharing personal data, which is defined by the *Data Protection Act 1998* as data relating to a living individual who can be identified from that data;
- only applies to sharing personal information – sharing non-personal information will be governed by national and local force policy;
- aims to achieve a consistent approach across the police service to sharing personal information with external partners or agencies and provides professional guidance.[83]

Information sharing can mean disclosing information from one or more organisations to a third-party organisation(s) or sharing information between different parts of an organisation. It may include processing information either on a one-off or an ongoing basis between partners for the purpose of achieving a common aim. Sharing police information must be linked to a policing purpose including:

- protecting life and property;
- preserving order;
- preventing and detecting offences;
- bringing offenders to justice;
- any duty or responsibility arising from common or statute law.[84]

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[81] National Centre for Policing Excellence, *Code of Practice on the Management of Police Information,* July 2005, available at http://library.college.police.uk/docs/APPref/Management-of-Police-Information.pdf

[82] Association of Chief Police Officers, Communication Advisory Group, *Guidance on the Management of Police Information,* November 2010, available at https://news.npcc.police.uk/Clients/NPCC/ACPO%20CAG%20guidance.pdf

[83] For further information, see the sub-section on *Information Sharing* of the *Authorised Professional Practice on the Management of Police Information*, available at www.app.college.police.uk/app-content/information-management/sharing-police-information/

[84] For further information, see the sub-section on *Information Sharing* of the *Authorised Professional Practice on the Management of Police Information*, available at www.app.college.police.uk/app-content/information-management/sharing-police-information/

The section Engagement and Communication of the *Authorised Professional Practice* sets the principles for engaging and maintaining relations with the media.[85] It updates the College of Policing's 2013 *Guidance on Relationships with the Media*.[86] To supplement the *Authorised Professional Practice*, in 2014 the College of Policing published the first *Code of Ethics* for policing in England and Wales which sets out principles to guide the conduct of those working in policing, recognising the importance of high professional and ethical standards.[87]

Part 4 of sub-section *Media Relations* addresses arrests, charges, and judicial outcomes. According to the *Authorised Professional Practice*, police will not name those arrested, or suspected of a crime, save in exceptional circumstances where there is a legitimate policing purpose to do so. A legitimate policing purpose may include circumstances such as a threat to life, the prevention or detection of crime, or where police have made a public warning about a wanted individual.

When someone is arrested, police can proactively release the person's gender, age, where they live (i.e. the town or city), the nature, date and general location of the alleged offence, the date of the arrest, whether they are in custody or have been bailed, and the subsequent bail date, or if they were released without bail or with no further action being taken. This should not apply in cases where, although not directly naming an arrested person, this information would nevertheless have the effect of confirming their identity.

The rationale for naming an arrested person before they are charged should be authorised by a chief officer. The authorising officer should also ensure the Crown Prosecution Service is consulted about the release of the name. This approach recognises that, in cases where the police name those who are arrested, there is a risk of unfair damage to the reputations of those persons, particularly if they are never charged. It cannot and does not seek to prevent the media relying on information from sources outside the police in order to confirm identities.[88]

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[85] Further information is available at www.app.college.police.uk/app-content/engagement-and-communication/media-relations/

[86] College of Policing, *Guidance on Relationships with the Media*, May 2013, available at www.npcc.police.uk/documents/reports/2013/201305-cop-media-rels.pdf

[87] On the College of Policing's *Code of Ethics*, see www.college.police.uk/What-we-do/Ethics/Pages/archive_DO_NOT_DELETE/Code-of-Ethics.aspx

[88] Further information is available at www.app.college.police.uk/app-content/engagement-and-communication/media-relations/#arrests-charges-and-judicial-outcomes

If a name or names are put to the police with a request for confirmation of an arrest the response should be 'we neither confirm nor deny'. No guidance should be given. Police should not respond by supplying other information that, although not directly naming an arrested person, would nevertheless have the effect of confirming the person's identity.

Those charged with an offence should be named unless there is an exceptional and legitimate policing purpose for not doing so or reporting restrictions apply. This information can be given at the point of charge. A decision not to name an individual who has been charged should be taken in consultation with the Crown Prosecution Service.

Identities of people dealt with by cautions, speeding fines and other fixed penalties – out-of-court disposals – should not be released or confirmed. Forces should say that 'a man' or 'a woman' has been dealt with and only release general details of the offence.[89]

4.2. National legal practices

Belgium

Under Belgian law (*Criminal Procedure Code*), the secrecy of the instruction (pre-trial investigation phase) is imposed on any person called upon to lend their professional assistance to the instruction. Anyone who violates this secret is punished by the penalties provided for in Art. 458 of the Belgian *Penal Code*. The violation of the secrecy of the instruction is punishable with an imprisonment of eight days to six months and a fine of 100 to 500 euros. This measure may apply to judges, prosecutors, investigators, court clerks, and all persons employed by them. Neither the defendant nor third parties (including civil parties) nor journalists are bound by the secrecy of the investigation. Art. 148 of the Belgian *Constitution* states that court hearings are public.[90]

The accused (and their lawyer) are in no way bound by the secrecy of the investigation. The accused is therefore utterly free to disclose to third parties the information that they have known at the discretion of the investigation. The

[89] Further information is available at www.app.college.police.uk/app-content/engagement-and-communication/media-relations/#arrests-charges-and-judicial-outcomes

[90] This right is also guaranteed by Art. 6 of the *European Convention on Human Rights* and by Art. 14 of the *International Covenant on Civil and Political Rights*.

only restrictions to these disclosures are those imposed by the Act of 12 March 1998 pertaining to access to the file, in the sense that the accused can make use of the information obtained by consulting the file only for the purpose of defence and provided that they respect the presumption of innocence and the right of defence of third parties.

The secrecy of the investigation is in no way binding on the press, whose mission is neither to carry out a police investigation with a view to finding the culprits, nor to bring them to trial. Moreover, in Belgium, there is no legal framework requiring the respect of the presumption of innocence by journalists. There is only one relevant legal prohibition related to the disclosure of the identity of a minor involved in a court file. In other words, to be presumed innocent is a right that the defendant can assert with respect to the judiciary, not to the media. Journalists are held to it only by virtue of their ethical obligation to present accurate facts.[91]

In accordance with *Ministerial Directive C-2005/09521 of 01/07/2005*,[92] the dissemination of wanted or "red" notices to the public is a task reserved for the Wanted Notice Service of the Federal Judicial Police (Central Directorate of Judicial Police Operations).

The Federal Police has partnership agreements with RTBF and VRT (French-speaking and Flemish-speaking Public Broadcasting Services), as well as with private TV stations such as RTL-TVI (crime clips) and VTM (Faroek broadcasts). Wanted notices are made available to other media via the Belgian press agency. These broadcasters are therefore free to publish and disseminate these notices, which is often the case.

With regard to the dissemination of wanted notices on the Internet, the media are required to relay these exclusively via the Fedpol Belgium YouTube channel, in order to guarantee that the information contained therein is valid and up-to-date.

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[91] Martine Simonis, 'La lettre de l'AJP' n°97, October 2008. According to the case law, the fact that a journalist publishes a judicial document communicated to them by a person bound by the secrecy of the investigation (police officer, magistrate, etc.) does not make them thereby a co-perpetrator or an accomplice of the breach of professional secrecy. On the other hand, if the information that the press reveals on this occasion subsequently appears to be incorrect, it may be held liable for slander or defamation, provided that the sanction does not constitute an excessive limitation in the exercise of freedom of expression. According to the European Court of Human Rights, only restrictions that meet a 'pressing social need' are admissible.

[92] *Directive ministérielle concernant la diffusion d'avis de recherche judiciaires dans les médias et sur internet*, 1 July 2005, available at www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2005070130&table_name=loi

Bulgaria

Persons in police detention have the right to make **one phone call** to notify someone about their arrest (Art. 74 of the Bulgarian *Ministry of the Interior Act*). The **police** are also obliged to **inform immediately one person**, pointed out by the detainee (Art. 72 of the Bulgarian *Ministry of the Interior Act*; Art. 15 of *Instruction No 8121з-78*).

The legal rules governing the disclosure of information about the proceedings differ substantially at the pre-trial stage and during the trial. As rule, the **pre-trial stage** is considered confidential and information about the investigation can be disclosed only with the permission of the prosecutor in charge of the case.

There are special provisions governing the **disclosure of information** when the accused person is **detained in custody**. According to the *Criminal Procedure Code*, the competent authority **must inform immediately** the family, the employer (unless the accused declares they do not wish their employer to be informed) and the Ministry of Foreign Affairs (when the accused person is another country national) (Art. 63 of the Bulgarian *Criminal Procedure Code*).[93] If the detained person is a **juvenile** (a person between 14 and 18 years of age), a **notification** about their detention must be immediately sent to their **parents or guardians** and, if the person is a student, to the **headmaster** of the respective school (Art. 386 of the Bulgarian *Criminal Procedure Code*).

During the **trial**, the disclosure of information is **less restricted**. As a rule, **trials are public** and everyone, including the media, can attend the court hearings. Publicity of hearings can be restricted only in special cases.[94]

Procedural legislation does not envisage any specific rules on the **disclosure of information** about the accused person **to the general public or the media**. However, such rules are provided for in the Judiciary Act and the section on confidentiality of the **ethics code** of judges and prosecutors. The ethics code

[93] The *Execution of Penalties and Detention in Custody Act*, however, offers a different set of rules. According to this law, all detainees have the right to immediately inform their family or close ones, but they are free not to do so. In the latter case, the detainee must sign a declaration and, when such a declaration is signed, the administration of the detention facility is not allowed to inform anyone about the detention. According to the same law, other country nationals are entitled to notify the embassy or consulate of their country (Art. 243 of the *Execution of Penalties and Detention in Custody Act*).

[94] For example, when this is necessary for protecting a state secret, safeguarding morality, preventing the disclosure of facts about the intimate life of citizens, or when a child witness (a witness under 18 years of age) is questioned (Art. 263 of the *Criminal Procedure Code*).

of the Ministry of the Interior obliges police officers not to disclose any official information unless such disclosure is explicitly provided for in a law (Art. 71 of the *Ethics Code of the Public Officials of the Ministry of the Interior*).[95]

Guidelines for disclosing information are included in the manual on the interaction of judicial bodies with media, published in 2015. Similar guidelines, particularly for making pictures or audio or video recordings during court hearings, are included in the **media strategy of the judiciary**, adopted in 2016.[96]

Greece

The protection of personal data of accused and suspects is guaranteed under the Greek *Data Protection Law*.

However, according to Art. 3, Par. 2b of *Law 2472/1997*:[97]

> *In particular, as regards criminal charges or convictions, these can be published by the Public Prosecutor's Office for the offences referred to in item b, paragraph 2 of Article 3 following an order by the competent Public Prosecutor of the Court of First Instance or the chief Public Prosecutor if the case is pending before the Court of Appeal. The publication of criminal charges or convictions aims at the protection of the community, of minors and of vulnerable or disadvantaged groups, as well as at the facilitation of the punishment of those offences by the State.*

Another important principle of Greek *Criminal Procedure Law* is that it prohibits any affront to the personality of the accused by the media (*απαγόρευση της προσβολής της προσωπικότητας από τα μέσα ενημέρωσης*). As a rule, media reports have to be presented in an objective manner that respects factual accuracy without implying guilt at a pre-trial and trial stage so as to uphold the presumption of innocence: 'The accused is brought before court to be tried fairly, to be acquitted or convicted, but not to be publicly shamed'.[98]

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[95] Ministry of the Interior, *Code of Ethics of the Public Officials of the Ministry of the Interior*, 2014, available at www.mvr.bg/docs/default-source/structura/96de0a6d-etichen_kodeks-pdf.pdf

[96] Supreme Judicial Council, *Media Strategy of the Judiciary, Annex 1: Communication Channels and Instruments for Working with the Media*, 2016, pp. 13-15, available at www.vss.justice.bg/root/f/upload/8/medien_naracnik.pdf

[97] *Law 2472/1997 on the protection of individuals from the processing of personal data (Προστασία του ατόμου από την επεξεργασία δεδομένων προσωπικού χαρακτήρα.)* (O.G.A 50/10-04-1997).

[98] In the original Greek text: *'Ο κατηγορούμενος οδηγείται στο δικαστήριο για να δικαστεί σε μια δίκαιη δίκη, να αθωωθεί ή να καταδικαστεί, να τιμωρηθεί, αλλά όχι να διαπομπευθεί'*, N. Androulakis, Fundamental principles of the criminal trial, (*Ν. Ανδρουλάκης, Θεμελιώδεις έννοιες της ποινικής δίκης*), 2007, p. 227.

The obligation to respect the presumption of innocence is also ensured in Art. 3, Par. 3 of *Law 1730/1987 on the Hellenic Radio-Television*, which outlines a framework of general principles for regulating the operation of radio-television broadcasts. The law further stipulates that in relation to events connected to criminal actions, radio-television broadcasts have not only to respect the principle of 'innocent until proven guilty' but also have to refrain from 'passing judgment' on the individuals who appear to be responsible or suspected of carrying out these actions.[99]

As per Art. 3 Par. 1 of *Law 2328/1995 on the Legal Status of Private Television and Local Radio Stations*, this obligation is not only limited to public television or radio broadcasts, but extends to private broadcastings as a necessary pre-requisite for their licensing.[100] The obligation derives from the Greek *Constitution* itself[101] as well as secondary EU law.[102]

The presumption of innocence is also enshrined in the initial *Reporters' Code of Ethics*, adopted in 1991 by the Greek Radio and Television Council.[103] The *Code of Ethics for News, Journalistic and Political Broadcastings (P.D. 77/2003)*[104] contains similar provisions. The Greek Radio and Television Council has emphasised through its recommendations the need for maintaining basic principles for upholding the presumption of innocence which should govern information broadcasting by the media.[105] And in 2016, the Greek National Council for Human Rights published its recommendations on the application of the presumption of innocence and how it should be addressed in light of the freedom of press.[106]

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[99] *Law 1730/1987 on the Hellenic Radio and Television (Ελληνική Ραδιοφωνία και Τηλεόραση Α.Ε.)* (O.G. A145/18-8-1987).

[100] *Law 2328/1995 Legal Status of Private Television and Local Radio Stations, Regulation of Radio Television Market and Other Provisions ('Νομικό καθεστώς της ιδιωτικής τηλεόρασης και της τοπικής ραδιοφωνίας, ρύθμιση θεμάτων της ραδιοτηλεοπτικής αγοράς και άλλες διατάξεις')* (O.G. A 159/3-8-1995).

[101] See Art. 15, Par. 2 of the Greek *Constitution*.

[102] *Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities* (L 298/17-10-1989, p. 23-30).

[103] Art. 10, Par. 1 of *Regulation n. 1/1991 of the Radio and Television Council (ESR) Concerning Journalist's Ethics in Radio Television (Κανονισμούυπ' αρ. 1/1991 του ΕΣΡ περί δημοσιογραφικής δεοντολογίας στη ραδιοτηλεόραση)* (O.G. B' 421/21-6-1991).

[104] *P.D. 77/2003 Code of Ethics for News, Journalistic and Political Broadcastings (Κώδικας Δεοντολογίας ειδησεογραφικών-δημοσιογραφικών-πολιτικών εκπομπών)* (O.G. A' 75/28-3-2003).

[105] ESR, Recommendation no. 2/5-8-2008, Directive 1/28-2-2003, Recommendation no. 1/18-9-2002.

[106] GNCHR, Recommendations on the Freedom of Information and the Presumption of Innocence: In search of a balance, (*Ελευθερία Πληροφορίας και Τεκμήριο Αθωότητας: η Αναζήτηση της Αναγκαίας Ισορροπίας*), 1-6-2016, available in Greek at: http://nchr.gr/images/pdf/apofaseis/dikaih_dikh/EEDA_2016_Tekmirio%20Athwotitas.pdf, last accessed on 05-02-2018.

As for the trial phase, according to Art. 93, Par. 2 and 3 of the Greek *Constitution*, **court hearings are public** and every court decision is delivered through a public hearing. People under the age of 17 however, may – by virtue of a decision of the presiding judge – be prohibited from attending public hearings (Art. 329, Par. 1 of the Greek *Criminal Procedure Code*).

Italy

According to Art. 329 of the Italian *Criminal Procedure Code*, the investigative acts carried out by the public prosecutor and the judicial police are subject to rules of non-disclosure before the end of the preliminary investigations, in order to ensure unbiased evidence gathering. Restrictions on data sharing are imposed to all parties who are involved or otherwise aware of the act of investigation (Art. 415 bis of the Italian *Criminal Procedure Code*). If necessary for the continuation of the investigation, the public prosecutor may allow the publication of individual acts or parts thereof through a motivated decree. In this case, any published documents are filed with the secretariat of the Public Prosecutor.

Art. 114 of the Italian *Criminal Procedure Code* prohibits the publication, whether partial or in full of documents or contents thereof if those are subject to the rules of non-disclosure; the publication, whether partial or in full of acts that have been subject to the rules of non-disclosure before the end of the preliminary investigation and the preliminary hearing; and the publication, whether partial or in full of documents related to the criminal proceedings during the course of the trial.

The freedom of the press is defined in Art. 21 of the Italian *Constitution*, which states that: 'Everyone has the right to freely express their thoughts verbally, in writing, and/or by any other means of communication'. The press cannot be subject to authorisations or complaints. Press requisition can be allowed only by a motivated act of the judicial authority in the case of crimes, for which the law explicitly authorises it, or in the case of violation of the rules that the law prescribes for the indication of those responsible. Art. 21 of the Italian *Constitution* also prohibits the publication of material which offends the public decency and contains provisions for confiscating any such published material (Art. 528 of the Italian *Criminal Procedure Code*). The freedom of the press has certain limits in order to avoid abuses.[107]

[107] For example, it is prohibited to publish material that incites civil disobedience (Art. 266, 272, and 303 of the *Penal Code*), hate along religious lines (Art. 402-403 of the *Penal Code*), and criminal activity (Art. 414-415 of the *Penal Code*).

The right to report is linked to the obligation of journalists to respect professional confidentiality, i.e. the principle of non-disclosure of the information source (*Law n. 69 of 1963*). Journalistic practice has to be in line with the right of privacy of the individuals involved in the events that are being reported and only information that is in the public interest has to be reported. Defamation – the communication of a false statement that harms the reputation of an individual person, business, product, group, government, religion, or nation – is a crime (Art. 595 of the Italian *Criminal Procedure Code*) and can be punished with a sentence of up to two years of imprisonment and a fine of up to 2,065 Euro.

According to the *Charter of Duties of Journalists* adopted by the National Federation of the Italian Press and National Council Order of Journalists in Rome on 8 July 1993, journalists have the duty to uphold the presumption of innocence:

> *In all the process and investigations, a journalist has always to remember that every person charged of an offence is innocent until the final judgement. He must not spread news in order to introduce him as guilty person when he has not been judged guilty in such a process.*
>
> *A journalist must not publish images that present deliberately or artificially as offenders people that have not been judged as guilty persons in a process.*[108]

Images and personal details of perpetrators and victims are treated differently. In general, the images of perpetrators can be used by journalists for high-profile cases provided that their dissemination is in the public interest. By contrast, the images of victims can be published only under certain circumstances when the goal is to protect their dignity.

The *Code of Conduct for Journalists* that was approved by the National Council Order of Journalists on 27 January 2016 contains additional provisions in this regard.[109] Incompliance with the Code is subject to administrative and procedural penalties.

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[108] National Federation of the Italian Press and National Council Order of Journalists, *Charter of Duties of Journalists*, 8 July 1993, Rome, available at https://accountablejournalism.org/ethics-codes/italy-national-federation-of-the-italian-press-and-national-council-order-o

[109] Ordine dei giornalisti, *Testo unico dei doveri del giornalista,* 27 January 2016, available at www.odg.it/content/testo-unico-dei-doveri-del-giornalista

5. LEGAL AND PRACTICAL IMPACT OF PROCEEDINGS ON SUSPECTS AND ACCUSED

This section looks into the legal and practical implications of criminal proceedings for suspects and accused. Following a literature review on the impact of pre-trial detention, the section examines the scope of consequences deriving from the national legal practices in Belgium, Bulgaria, Greece, and Italy.

5.1. Effects of pre-trial detention

One aspect that has been subject to extensive research is the multifaceted impact of pre-trial detention. Several studies examine the socio-economic, health, personal, and legal implications of the use of pre-trial detention.[110] A

[110] Open Society Justice Initiative, *The Socioeconomic Impact of Pretrial Detention,* Open Society Foundations, 2011, available at www.opensocietyfoundations.org/reports/socioeconomic-impact-pretrial-detention; Pilar Domingo and Lisa Denney, *The Political Economy of Pre-Trial Detention,* Open Society Foundation, February 2013, available at www.odi.org/publications/7286-political-economy-pre-trial-detention; Shima Baradaran Baughman, 'Costs of Pre-Trial Detention', *Boston University Law Review,* vol.97:1, 2017, pp. 1-30, available at www.bu.edu/bulawreview/files/2017/03/BAUGHMAN.pdf; Will Dobbie et al., *The Effects of Pre-Trial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges,* Working Paper No.22511, National Bureau of Economic Research, August 2016, available at www.nber.org/papers/w22511; Oliver Robertson, *The Impact of Parental Imprisonment on Children,* April 2007, Quaker United Nations Office, available at www.quno.org/resource/2007/4/impact-parental-imprisonment-children; Christopher T. Lowenkamp et al., *The Hidden Costs of Pre-Trial Detention,* LJAF Paper, November 2013, available at www.arnoldfoundation.org/research-report-hidden-costs-pretrial-detention/; Ana Aguilar-García, 'Presumption of Safety and Public Safety: A Possible Dialogue', *International Journal of Security and Development* vol. 3:1, 2014, pp. 1-12, available at www.stabilityjournal.org/articles/10.5334/sta.en/; Open Society Justice Initiative, *Fact Sheet: Pre-Trial Detention and Corruption,* February 2013, available at www.opensocietyfoundations.org/fact-sheets/fact-sheet-pretrial-detention-and-corruption; Open Society Justice Initiative, *Pre-Trial Detention and Health: Unintended Consequence, Deadly Results: Literature Review and Recommendations for Health Professionals,* Open Society Foundation, 2011, available at www.opensocietyfoundations.org/reports/pretrial-detention-and-health-unintended-consequences-deadly-results; Open Society Justice Initiative, *Pre-Trial Detention and Torture: Why Pre-Trial Detainees Face the Greatest Risk,* Open Society Justice Initiative, 2011, available at www.opensocietyfoundations.org/reports/pretrial-detention-and-torture-why-pretrial-detainees-face-greatest-risk; Roger Bowels and Mark Cohen, *Pre-Trial Detention: A Cost-Benefit Approach,* DFID London and OSJI, New York, 2008, available at http://biblioteca.cejamericas.org/handle/2015/3090; Penal Reform International and Association for the Prevention of Torture, *Detention Monitoring Tool Factsheet: Addressing Risk Factors to Prevent Torture and Ill-Treatment,* 2013, available at www.apt.ch/en/resources/detention-monitoring-tool-addressing-risk-factors-to-prevent-torture-and-ill-treatment/; Open Society Justice Initiative, *Justice Initiatives: Pre-Trial Detention*, Spring 2008, available at www.opensocietyfoundations.org/publications/justice-initiatives-pretrial-detention; Commonwealth Human Rights Initiative

sample analysis of the European Court of Human Rights case law on damages claimed as a result of pre-trial detention is presented in Table 7. Annex I contains a summary of the respective cases.

According to a report published under the Open Society Justice Initiative, if a defendant is ordered to be held in custody, or if money bail is set at an amount the defendant cannot meet, several significant consequences may result.[111] Defendants detained prior to trial are more likely to be sentenced to prison than are defendants who are released prior to trial. That is, the experience of pre-trial detention is known to undermine – through loss of employment, accommodation, family and other community ties – defendants' capacities to present themselves in a light favourable to receiving a noncustodial sentence. A defendant's appearance and demeanour in court may not inspire confidence if they have spent weeks or months in a prison cell; the detained defendant is less likely to have character witnesses to use in mitigation of sentence than the defendant released awaiting trial; and a detained defendant may have lost their job or home and consequently may not be considered as suitable for a suspended sentence, probation, or a fine. Persons detained awaiting trial cannot work or earn income while detained, and frequently lose their jobs – often after only a short period away from their work. If the period of detention is lengthy, detainees' future earning potential is also undermined.[112] Those who are self-employed are at risk of bankruptcy. Entering pre-trial detention not only limits one's income and earning potential – it actually costs money. Wealthier detainees may have to absorb the cost of private defence counsel. In some countries, authorities

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Africa Office, *The Socioeconomic Impact of Pretrial Detention in Ghana,* Open Society Foundation, 2013, available at www.opensocietyfoundations.org/publications/socioeconomic-impact-pretrial-detention-ghana; Ella Baker Center for Human Rights et al *Who Pays: The True Cost of Incarceration on Families,* September 2015, available at http://whopaysreport.org/; Chicago Community Bond Fund, *Punishment is not a "Service": The Injustice of Pretrial Conditions in Cook Country,* 24 October 2017, available at www.chicagobond.org/site/pretrial/index.html; Open Society Justice Initiative, *Presumption of Guilt: The Global Overuse of Pretrial Detention,* Open Society Foundations, 2014, available at www.opensocietyfoundations.org/publications/presumption-guilt-global-overuse-pretrial-detention; International Centre for Prison Studies, *Pre-Trial Detention,* Guidance Note 5, 2004, available at www.prisonstudies.org/sites/default/files/resources/downloads/gn5_8_0.pdf; Kyle Scherr and Stephanie Madon, 'You Have the Right to Understand: The Deleterious Effect of Stress on Suspects' Ability to Comprehend *Miranda*', *Law and Human Behaviour,* vol. 36:4, 2012, pp. 275-282.

[111] Open Society Justice Initiative, *The Socioeconomic Impact of Pretrial Detention,* Open Society Foundations, 2011, available at www.opensocietyfoundations.org/reports/socioeconomic-impact-pretrial-detention

[112] See also Amanda Agan and Sonja Starr, *Ban the Box, Criminal Records, and Statistical Discrimination: A Field Experiment*, University of Michigan Law and Economics Research Papers Series, No. 16-012, June 2016, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2795795

Table 7. Damage claims as per the cause of damage

TOTAL CLAIMS ON DIFFERENT ARGUMENTS	98		100.00%
Lost profit		25	25.51%
Loss of earnings	17		17.35%
Loss of opportunities	8		8.16%
Consequential damages		73	74.49%
Loss of liberty (itself)	7		7.14%
Direct suffering of the detainee		45	45.92%
Physical suffering		11	11.22%
While being detained	1		1.02%
Derived from time in prison	10		10.20%
Mental suffering	24	24	24.49%
Colateral suffering/Damages		31	31.63%
Family suffering		17	17.35%
Physical/Mental	5		5.10%
Due to the separation from detainee's children	4		4.08%
Due to separation from detainee's partner	1		1.02%
Economic damage	1		1.02%
Bad publicity/Loss of reputation (honor)	6		6.12%
Expenses		9	9.18%
To meet the neccessities of the confinement	7		7.14%
Legal expenses	1		1.02%
Others	1		1.02%
Breach of other Human Rights		5	5.10%
Right to respect home	1		1.02%
Right to private life and correspondence	2		2.04%
Discrimination on religious grounds	1		1.02%
Other discriminations	1		1.02%

Source: Center for the Study of Democracy based on the case law of the European Court of Human Rights.

may fail to provide basic necessities, so detainees must pay for food, water, clothing, and bedding.[113]

For juveniles, pre-trial detention interrupts their education and/or job training, making it more difficult for some to return to school and find employment and thus limiting their lifetime earning potential. Indeed, 'economists have shown that the process of incarcerating youth will reduce their future earnings and their ability to remain in the workforce, and could change formerly detained youth into less stable employees'.[114]

Those who spend substantial time in pre-trial detention may be acquitted at trial, yet recent studies show that longer periods of pre-trial detention increase the risk that detainees will offend after their release, or re-offend, and the effect does not depend on conviction.[115] Detaining low- and moderate-risk defendants, even just for a few days, is strongly correlated with higher rates of new criminal activity both during the pre-trial period and years after case disposition.[116] One possible explanation for this trend is the fact that in many jurisdictions pre-trial detainees are not confined separately from sentenced convicts. Consequently, defendants – typically young men charged with relatively minor offenses – live together with serious and hardened convicted criminals. Such mixing heightens the risk of abuse – especially where juveniles are also mixed with adults, or women with men – and has a criminogenic effect.[117]

In some cases, young people and children are detained when adults are put into pre-trial detention. This is particularly true when women are placed in pre-trial detention.[118] With a focus on pre-trial detention, the Quaker United

[113] Open Society Justice Initiative, *The Socioeconomic Impact of Pretrial Detention,* Open Society Foundations, 2011, available at www.opensocietyfoundations.org/reports/socioeconomic-impact-pretrial-detention

[114] Laurel Townhead, *Pre-Trial Detention of Women and Its Impact on Their Children,* February 2007, Quaker United Nations Office, available at www.quno.org/resource/2007/2/pre-trial-detention-women-and-its-impact-their-children

[115] Open Society Justice Initiative, *Strengthening Pre-Trial Justice: A Guide to the Effective Use of Indicators,* Open Society Foundations, 2015, available at www.opensocietyfoundations.org/publications/strengthening-pretrial-justice-guide-effective-use-indicators-0

[116] Christopher T. Lowenkamp et al., *The Hidden Costs of Pre-Trial Detention,* LJAF Paper, November 2013, available at www.arnoldfoundation.org/research-report-hidden-costs-pretrial-detention/

[117] Open Society Justice Initiative, *Strengthening Pre-Trial Justice: A Guide to the Effective Use of Indicators,* Open Society Foundations, 2015, available at www.opensocietyfoundations.org/publications/strengthening-pretrial-justice-guide-effective-use-indicators-0

[118] Laurel Townhead, *Pre-Trial Detention of Women and Its Impact on Their Children,* February 2007, Quaker United Nations Office, available at www.quno.org/resource/2007/2/pre-trial-detention-women-and-its-impact-their-children

Nations Office reports that globally 'most female offenders are the sole or main carer of minor children and this should be taken into consideration in decisions about pre-trial detention. Caring responsibilities may serve as evidence of being less likely to abscond. At the same time, the negative impact on children of their mother being detained should be taken into account and be an added incentive to use non-custodial alternatives to pre-trial detention'.[119]

Problems for children relating to pre-trial detention involving a parent may include:

- Difficulties in continuing normal life – having food cooked for them, being taken to school etc.
- Slow court procedures and a large backlog of cases meaning that parents spend months or even years awaiting trial, resulting in families suffering the effects of prolonged parental deprivation without any resolution to the case or the parent having been convicted of a crime.
- Children worrying about what will happen to their parent and whether they will be convicted.
- Parents placed in pre-trial detention losing their jobs, which places financial pressures on the family which may persist even if they are acquitted.
- Difficulties in retaining contact. Some of the problems in this area are the same as for contacting convicted prisoners, but others are specific to pre-trial detainees. Ongoing investigations may prevent detainees from contacting certain named individuals. This can directly affect children of detainees (if the ruling states that there is to be no contact between the detainee and their child) or indirectly affect them (for example, by ruling that certain family members cannot have contact with the detainee, which may mean that no appropriate family member is available to take children to visit).
- Linked to this, there have been cases of children being denied access to certain services because it may affect their role as a witness in the trial.[120]

There is a body of research – focused primarily on sentenced prisoners – linking the imprisonment of parents to negative outcomes for their children, including an increased propensity for violence and other antisocial behaviours, increased likelihood of suffering anxiety and depression, and decreased school

[119] Laurel Townhead, *Pre-Trial Detention of Women and Its Impact on Their Children,* February 2007, Quaker United Nations Office, available at www.quno.org/resource/2007/2/pre-trial-detention-women-and-its-impact-their-children

[120] Oliver Robertson, *The Impact of Parental Imprisonment on Children,* April 2007, Quaker United Nations Office, available at www.quno.org/resource/2007/4/impact-parental-imprisonment-children

attendance.[121] Although it is not clear that a parent's incarceration is by itself responsible for increased likelihood of criminality in the child, it is clear that children of imprisoned parents are more likely to one day be imprisoned themselves.[122]

The excessive and arbitrary use of pre-trial detention critically undermines socioeconomic development – and is especially harmful to the poor.[123] Pre-trial detention disproportionately affects individuals and families living in poverty: they are more likely to come into conflict with the criminal justice system, more likely to be detained awaiting trial, and less able to make bail or pay bribes for their release. Those living in – or at the edge of – poverty have the fewest resources to handle the socioeconomic shocks of pre-trial detention and they are more easily plunged into (or further into) destitution, including hunger and homelessness.

Crowded detention centres with deteriorating conditions become dangerous breeding grounds of future criminality and corruption, and also put detainees at risk for a range of health problems.[124] Corruption and excessive pre-trial detention are mutually reinforcing: a criminal justice system that overuses pre-trial detention is susceptible to corruption, and an environment marked by corruption will likely lead to over-reliance on pre-trial detention. Both corruption and excessive pre-trial detention flourish under the same circumstances. The two form a vicious cycle: a dysfunctional justice system leads to corruption, and that corruption further twists the justice system.[125]

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[121] See Joseph Murray et al. 'Effects of Parental Imprisonment on Child Anti-Social Behaviour and Mental Health: A Systematic Review', *Campbell Systematic Reviews,* vol. 4 (2009), available at www.campbellcollaboration.org/media/k2/attachments/Murray_Parental_Imprisonment_Review.pdf; Shima Baradaran Baughman, 'Costs of Pre-Trial Detention', *Boston University Law Review,* vol. 97:1 (2017), pp. 1-30, available at www.bu.edu/bulawreview/files/2017/03/BAUGHMAN.pdf

[122] Open Society Justice Initiative, *The Socioeconomic Impact of Pretrial Detention,* Open Society Foundations, 2011, available at www.opensocietyfoundations.org/reports/socioeconomic-impact-pretrial-detention

[123] Open Society Justice Initiative, *The Socioeconomic Impact of Pretrial Detention,* Open Society Foundations, 2011, available at www.opensocietyfoundations.org/reports/socioeconomic-impact-pretrial-detention

[124] Open Society Justice Initiative, *Strengthening Pre-Trial Justice: A Guide to the Effective Use of Indicators,* Open Society Foundations, 2015, available at www.opensocietyfoundations.org/publications/strengthening-pretrial-justice-guide-effective-use-indicators-0; Open Society Justice Initiative, *Fact Sheet: Pre-Trial Detention and Corruption,* February 2013, available at www.opensocietyfoundations.org/fact-sheets/fact-sheet-pretrial-detention-and-corruption; Open Society Justice Initiative, *Pre-Trial Detention and Health: Unintended Consequence, Deadly Results: Literature Review and Recommendations for Health Professionals,* Open Society Foundation, 2011, available at www.opensocietyfoundations.org/reports/pretrial-detention-and-health-unintended-consequences-deadly-results

[125] Open Society Justice Initiative, *Fact Sheet: Pre-Trial Detention and Corruption,* February 2013, available at www.opensocietyfoundations.org/fact-sheets/fact-sheet-pretrial-detention-and-corruption

Excessive pre-trial detention is costly and restricts states' ability to invest in other areas of social life.[126] Traditionally, the cost of pre-trial detention (as publicly reported by governments) is calculated solely by adding together the state's direct expenses accrued in accommodating, feeding, and caring for pre-trial detainees. No effort is made to calculate the larger, indirect costs to society and the state of lost productivity, reduced tax payments, or diseases transmitted from prison to the community when detainees are eventually released, to name just a few examples. As noted by the Open Society Justice Initiative, this traditional approach to calculating the costs of pre-trial detention is both short-sighted and misleading. The actual cost of pre-trial detention is often hidden. Assessing the true costs of pre-trial detention requires considering the full impact of excessive pre-trial detention on not just the detainees, but their families and communities.[127]

Proponents of pre-trial release *vis-à-vis* pre-trial detention argue that the former could help improve case outcomes by strengthening a defendant's bargaining position during plea negotiations.[128] For example, it is possible that pre-trial release decreases a defendant's incentive to plead guilty to obtain a faster release from jail. Along the same lines, it is also possible that pre-trial release affects a defendant's ability to prepare an adequate defence or negotiate a settlement with prosecutors. Released suspects can be in touch with a lawyer relatively easily and can assist in developing a defence to specific charges.[129] They can also take steps to reduce the severity of a sentence if they ultimately are found guilty by, for example, getting or keeping a job, maintaining or re-establishing family ties, and developing a record of complying with conditions of release.

Released suspects are more likely to continue working, paying taxes, and supporting their families.[130] As one study illustrates, there is suggestive evidence

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[126] Open Society Justice Initiative, *The Socioeconomic Impact of Pretrial Detention,* Open Society Foundations, 2011, available at www.opensocietyfoundations.org/reports/socioeconomic-impact-pretrial-detention

[127] Open Society Justice Initiative, *The Socioeconomic Impact of Pretrial Detention,* Open Society Foundations, 2011, available at available at www.opensocietyfoundations.org/reports/socioeconomic-impact-pretrial-detention

[128] Will Dobbie et al., *The Effects of Pre-Trial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges,* Working Paper No. 22511, National Bureau of Economic Research, August 2016, available at www.nber.org/papers/w22511

[129] Open Society Justice Initiative, *The Socioeconomic Impact of Pretrial Detention,* Open Society Foundations, 2011, Open Society Foundations, 2011, available at available at www.opensocietyfoundations.org/reports/socioeconomic-impact-pretrial-detention

[130] Open Society Justice Initiative, *The Socioeconomic Impact of Pretrial Detention,* Open Society Foundations, 2011, Open Society Foundations, 2011, available at available at www.opensocietyfoundations.org/reports/socioeconomic-impact-pretrial-detention

that pre-trial release increases formal sector attachment both through an increase in formal sector employment and the receipt of tax- and employment-related government benefits.[131]

5.2. National legal practices and their effects

Belgium

The Royal Decree of 4 April 2003 amending the existing prison regulations[132] created both the Central Prisons Supervisory Council and a local supervisory commission in every prison. The Royal Decree of 29 September 2005 has sought to make these bodies more independent, transparent and professional (Dupont Act, Art. 26-27, 29-31). The Central Prisons Supervisory Council exercises independent control over the treatment of detainees and supervises the adherence to the regulations in force. The Dupont Act recognises the right of detainees to maintain contact with the outside world and receive visits (Art. 53 and Art. 58-63). In line with the *International Convention on the Rights of the Child*,[133] the Dupont Act[134] recognises the maintenance of the family relationship with the detained parent as a fundamental right of the child (except when maintaining such contact is contrary to their own interest). Provisions of the Dupont Act (Art. 147-166) also established a right for prisoners to file complaints. The complaints boards responsible for dealing with such complaints are expected to assist in resolving relevant prison management issues. However, these provisions have not entered into force to date. As a general rule, the penitentiary administration is required to ensure a regular medical monitoring of prisoners. The law specifies that any person entering prison must be presented to a doctor within twenty-four hours of their arrival. During the course of their detention, the inmate may also ask for a medical examination with a general practitioner or a specialist, by submitting a written request to the

[131] Will Dobbie et al., *The Effects of Pre-Trial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges,* Working Paper No. 22511, National Bureau of Economic Research, August 2016, available at www.nber.org/papers/w22511

[132] *Arrêté Royal du 4 avril, 2003 modifiant l'arrêté royal du 21 mai 1965 portant règlement général des établissements pénitentiaires*, available at www.ejustice.just.fgov.be/doc/rech_n.htm

[133] Art. 9 of the *International Convention on the Rights of the Child*, 1989, states the right for a child to grow up with family and to maintain personal relationships with his/her parents. See www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx

[134] See Art. 53: 'Le détenu a le droit d'avoir des contacts avec le monde extérieur dans les limites fixées par ou en vertu de la loi.' and Art. 60 'Le chef d'établissement veille à ce que la visite puisse se dérouler dans des conditions qui préservent ou renforcent les liens avec le milieu affectif, en particulier lorsqu'il s'agit d'une visite de mineurs à leur parent.'.

prison supervisors. Box 2 summarises the procedural aspects related to the practice of pre-trial detention.

Box 2. Procedural and legal aspects of pre-trial detention in Belgium

Employment status

Under Art. 28 (5) of the *Employment Contracts Act of 3 July 1978*, the performance of a contract is automatically suspended during the period in which the employee is subject to a pre-trial detention. The defendant should present to their employer a certificate of detention. A failure to do so might lead to their dismissal for unjustified absence from work. Suspension of the employment contract means that during the period of pre-trial detention the detained employee is not entitled to job remuneration.

Health care and social security

Pre-trial detainees who are unemployed and thus entitled to unemployment benefits (such as the Minimum livelihood allowance – Minimex) cannot receive those whilst serving detention unless they have dependent(s). Sickness and disability allowances are also suspended in case of pre-trial detention. Pension allowances are being paid during the first year of proceedings after which they are suspended until the end of the detention. Convicted detainees retain their right to family allowances.[135] However, if the defendant in pre-trial detention is a student, their parents or the student themselves cannot benefit from family allowances during the period of detention.

Family status and relationships

Despite the provisions of the Dupont Act concerning the right of detainees to maintain contact with their family and children, it has been reported that one out of two children never visit the detained parent.[136]

By contrast, persons under electronic monitoring (as a way of execution of pre-trial detention, as well as other types of remand), generally encounter little obstacle to the collection of unemployment benefits, as well as all other social

[135] For more information, see www.socialsecurity.be/citizen/fr/famille/allocations-familiales-specifiques/allocations-familiales-pour-detenus

[136] Croix Rouge de Belgique, *Rapport d'activité du projet Itinérances 2016*, 2017.

allowances previously mentioned. The only exception applies to the minimal living allowance (*leefloon*). They are not entitled to receive such benefits, which free citizens without income normally receive. Instead, they are entitled to a 'financial allowance'[137] but this does not equate to the minimal living allowance.

Electronic monitoring at the pre-trial stage appears to be a form of '24-hour home detention'. Suspects held in pre-trial detention 'at home' under electronic monitoring are confined to their house at all times. They are not allowed to leave the assigned place of residence except for a limited number of movements explicitly permitted by the investigating judge and for specific reasons (e.g. medical reasons, hearings by judicial authorities and police interrogations). As a result, it is not possible for persons placed under such measure to keep their work or to be enrolled in an educational programme. The investigating judge may also impose additional prohibitions on the accused placed under electronic surveillance. The judge may prohibit the accused from being visited by certain persons or prohibit any correspondence or telephone or electronic contact with certain persons or institutions.

For several decades now, as many other European countries and despite the measures taken by the government, Belgium has faced serious problems of **chronic prison overcrowding**, due to an almost constantly rising prison population (Table 8). In 2013, the Belgian average daily prison population was 11,645 with a maximum capacity of only 9,255 persons.[138]

Crucially, it should be noted that the significant and alarming growth experienced by Belgium in its incarceration numbers over the last decades does not only concern convicted offenders but also prisoners in remand custody (untried prisoners and not-definitively sentenced prisoners). The average daily number of pre-trial detainees evolved from nearly 1,500 in 1980 to 3,553 in 2016, an increase of 140 % (Table 9).

Considering the yearly number of entries (*écrous*) in Belgian penitentiary facilities, in 2016, the number of entries for pre-trial detainees amounted to 10,508 out of a total of 17,648 (including 6,564 convicted persons) (Table 10).

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[137] 'L' allocation entretien détenu' may be requested to the Centre for Electronic Monitoring, in the relevant Community (Brussels-Wallonia Federation or Flemish Community).

[138] The information is taken from the website of the Federal Directorate General Statistics and Economic Information (DGSEI) (http://statbel.fgov.be/fr/statistiques/chiffres/population/autres/detenu/). The data show that the overall overcrowding increased from 111 % in 1997 to almost 127 % in March 2013.

Table 8. Average daily prison population in Belgium (2012 – 2016)

Average daily prison population[139]	
2012	11,330.2
2013	11,644.6
2014	11,578.3
2015	11,040.7
2016	10,618.8

Source: Directorate General of Penitentiary Institutions.

Table 9. Average daily number of pre-trial detainees in Belgium (2012 – 2016)

Average daily number of pre-trial detainees[140]	
2012	3,599.8
2013	3,651.9
2014	3,610.6
2015	3,498.8
2016	3,552.5

Source: Directorate General of Penitentiary Institutions.

The effects of systemic overcrowding in old and dilapidated facilities are detrimental to the welfare of prisoners and the proper functioning of the prison system. Such a situation is a cause for concern, as the detention conditions, which are not uncommonly described as 'inhuman', hamper the practical application of the provisions of the *2005 Prison*

[139] Direction générale des Etablissements Pénitentiaires, *Rapport annuel 2016*, SPF Justice 2017, p. 38.
[140] Direction générale des Etablissements Pénitentiaires, *Rapport annuel 2016*, SPF Justice 2017, p. 43.

Table 10. Number of persons subject to pre-trial detention per year in Belgium (2012 – 2016)

Number of persons subject to pre-trial detention per year (entries or 'écrous')[141]	
2012	11,484
2013	11,615
2014	11,660
2015	11,085
2016	10,508

Source: Directorate General of Penitentiary Institutions.

Act.[142] A lack of prison infrastructure that is sufficiently adapted to current needs and problems of overcrowding have many negative effects: a degrading moral climate within the institution and difficulties with respect to order and security, classification, hygiene and comfort, as well as the supply of enough prison labour and food and organisation of family visits, etc. In this respect, there is a serious risk of violation of Art. 13, & 2 of the *2005 Prison Act* which – similar to past prison regime regulations[143] – clearly states that as far as possible remand prisoners should be granted all regime facilities that are compatible with imperatives of good order and security within prison. With regard to remand prisoners it is, in particular, the principle of the presumption of innocence that often has been used as a justification for maximum efforts to prevent the potentially detrimental effects of imprisonment.

Suspects who experience either unlawful (i.e. pre-trial detention in violation of the legal rules) or ineffective/inappropriate pre-trial detention ('*détention*

[141] Direction générale des Etablissements Pénitentiaires, *Rapport annuel 2016*, SPF Justice, p. 46.

[142] *Law on principles/Prison Act of 12 January 2005 concerning the administration of the prison system and the legal position of detainees*, 1 February 2005, Official Journal (Moniteur belge/Belgisch Staatsblad).

[143] Art. 165 of the *General Regulations on Remand Prisons (Règlement général des maisons de sûreté et d'arrêt)* of 6 November 1855, for example, already stated that all communication and other mitigations of prison regime that are compatible with good order and security in prison, are granted to suspects and accused prisoners within the limits of the prison rules, *('[t]outes les communications et les autres adoucissements compatibles avec le bon ordre et la sécurité de la prison, sont accordés aux prévenus et aux accusés dans les limites du règlement'*); Recueil des circulaires, instructions et autres actes émanés du Ministère de la Justice ou relatifs à ce département [1855-57] 177ff.

inopérante' in French or '*onwerkdadige hechtenis*' in Dutch; i.e. because the person is innocent or because the time spent in pre-trial detention exceeds the length of the prison term to which they are sentenced) can claim damages or full compensation under certain conditions (*Act of 13 March 1973 on Ineffective Pre-trial Detention*). This right also finds support in the *European Convention of Human Rights*.[144] According to Art. 28 of the Act of 1973, one such condition is that a person has been held in pre-trial detention for more than eight days without this detention being attributable to their personal behaviour.

The amount of the compensation is determined on the basis of incurred personal damages (such as pharmaceutical and medical costs, financial resources, the effects of incarceration, etc.) and public expenses (such as the characteristics and specific needs of the investigation etc.). It does not aim at full compensation for the incurred damages.

Table 11 shows the number of compensation claims for inappropriate pre-trial detention that have been submitted and approved in 2008 – 2014, as well as the total amount paid by the Belgian State.[145]

Table 11. Number of submitted and approved compensation claims in Belgium (2008 – 2014)

Year	Number of requests	Approved	Total amount paid (euros)
2008	94	66	488,731.62
2009	102	72	484,433.93
2010	103	62	347,501.48
2011	101	63	376,988.13

[144] Art. 5 (5) of the European Convention of Human Rights.

[145] *Depuis 2012, 763,000 euros d'indemnités pour 'détention préventive inopérante'*, Belga/La Libre Belgique, 15 April 2015, available at www.lalibre.be/actu/belgique/depuis-2012-763-000-euros-d-indemnites-pour-detention-preventive-inoperante-552e7a573570fde9b2b62601; *Question écrite n° 5-7832 de Hassan Bousetta (PS) du 21 janvier 2013 à la ministre de la Justice*, available at www.senate.be/www/?MIval=/Vragen/SchriftelijkeVraag&LEG=5&NR=7832&LANG=fr; *Question écrite n° 0255 de Sophie De Wit (NVA) du 13/03/2015 à la ministre de la Justice*, available at www.lachambre.be/kvvcr/showpage.cfm?section=qrva&language=fr&cfm=qrvaXml.cfm?legislat=54&dossierID=54-B019-866-0255-2014201502115.xml

Table 11. Number of submitted and approved compensation claims in Belgium (2008 – 2014) (continued)

Year	Number of requests	Approved	Total amount paid (euros)
2012	99	54	271,284.93
2013	88	39	314,336.05
2014	97	33	177,901.11

Source: Directorate General of Penitentiary Institutions.

Bulgaria

Criminal proceedings can have an impact on the accused person's **employment and family status,** particularly when the accused is placed in detention. A person accused of committing a crime cannot perform private security activities. If an accused person applies for a private security license, their application will be rejected. Persons, who have already obtained a license, must have their license revoked if a criminal procedure is opened against them.

There are **no special rules governing the employment contracts of suspects and accused**. At the same time, some of the measures, imposed on the accused person, can have an impact on the employment contract of the accused. Such a measure is, for example, temporary **suspension from work**. This measure can be imposed only when the person has been charged with a serious intentional crime, committed in relation with their job, when there are sufficient grounds to believe that their position would hamper the performance of a full, objective and comprehensive investigation (Article 69 of the Bulgarian *Criminal Procedure Code*).

Custodial measures also can have an impact on the accused person's employment status. Although the law does not explicitly allow employers to dismiss their employees due to the fact that there is a criminal investigation against them, **detention can lead to dismissal**.

In Bulgaria, persons accused of committing a crime, who are not found guilty can claim compensation for the damages they suffered during the proceedings under the *State Liability for Damages Act*. The same right is granted to persons,

who have been detained in custody or placed under home arrest, when the measure has been subsequently repealed by the court.

Each year, there is a **significant number of cases**, in which **accused persons are awarded compensation for being prosecuted and not found guilty** (Table 12).

Table 12. Compensations awarded to accused persons who were not found guilty in Bulgaria (2012 – 2016)

Outcome of proceedings	2012	2013	2014	2015	2016
Number of compensation cases due to acquittal	154	102	241	210	209
Number of compensation cases due to suspension of proceedings	63	86	46	83	68
Number of compensation cases due to unlawful detention	0	29	11	3	4
Number of compensation cases due to execution of penalty beyond the duration specified by the court	4	0	3	1	2
Number of compensation cases due to violation of the right to hearing within reasonable time	-	-	5	5	2
Number of compensation cases due to unlawful use of surveillance	-	-	0	0	0
Total number of compensation cases	221	217	306	302	285
Total amount of awarded compensations (BGN)	2,888,460.00	2,060,197.10	3,651,867.50	2,495,245.07	2,479,721.32

Source: Public Prosecution Office.

The law allows applicants to claim compensation for both pecuniary (e.g. expenses for hiring a lawyer, other case-related expenses or loss of income) and non-pecuniary damages.

Loss of income is most often the result of the accused person being **permanently or temporarily dismissed from work** or having to take **unpaid leave** to participate in investigative actions, court hearings or other formalities related to the proceedings (Box 3). **Missed opportunities for getting a job** are also among the reasons for claiming compensation. In such cases, accused persons claimed compensation because they had not accepted profitable job offers, sometimes in another city or abroad, due to the fact that they had to regularly participate in investigative actions or court hearings.

Box 3. Exemplary case of dismissal from work of an accused public official due to the publication of information about the investigation in the media

On 29 May 2017, a registration judge from the Registry Agency of the Ministry of Justice was arrested and accused of corruption and money laundering. The person was offered money to speed up the registration of a real estate deal and was arrested immediately after taking the money. After the arrest, the police searched the person's home and found about BGN 35,000 hidden in enveloped behind a painting. On the same day, the public prosecution service gave a special press conference on the case, revealing detailed information about the accused person, the criminal activity he was accused of, and the operation for his arrest. Pictures and videos from the accused person's arrest and from the search of his house were also made public.

In the framework of the same police operation, other employees of the Registry Agency were also arrested, but were later released. Information about their identity was not publicly revealed.

As a result of the increased publicity of the case, on the next day, the Minister of Justice also gave a press conference to announce that the arrested registration judge was permanently dismissed from work.

Source: Dnevnik Daily, Bulgarian National Radio, Trud Daily.

In some cases, the proceedings have had a negative impact on the accused person's **business operations** and **ability to practice their profession**. An

example in this respect is the case of an accused taxi driver, who was deprived of their taxi license. As result, the person lost their regular income, but continued to pay for the car, which was bought on credit. Accused persons, who had their own business, have claimed compensation for pecuniary damages related to the loss of clients, loss of professional reputation (especially in cases, in which information was published in the media), restrictions in terms of eligibility for participating in public procurement procedures and even closing of the entire business.

Compensation cases also reveal the negative impact of proceedings on the **relations between the accused person and their family**. Estrangement between spouses, divorce and broken families are among the cited examples (Box 4). In one case, the accused person, who was under pre-trial investigation for 13 years, claimed that her partner refused to marry her while the case was pending, because he was afraid that, if they were married and she was convicted, he, as her husband, would have some of his own property confiscated.

Box 4. Impact of proceedings on family links

'The applicant argues that they have suffered non-pecuniary damage as a result of their unlawful accusations, including damaging their reputation in the society, among their friends, relatives and colleagues. The relatives, who have loaned them money, have been interrogated many times, including in a court hearing. They felt extremely uncomfortable with them. Part of the investigative actions and the inquiry performed by the Regional Prosecutor's Office in Varna were carried out by police officers in the town of Dimitrovgrad and thus became known to the residents of the town. D.M. grew up and graduated with honours in this town and her reputation was severely damaged. R.R. was also seriously calumniated in the society. The latter was caring, in the town of Dimitrovgrad, for the child R.M. till the age of 13 years. They restricted their social contacts, experiencing insult and shame, and they were condemned as criminals and people who committed an immoral and unacceptable act for society. Their feeling of freedom and honour was also greatly impacted when they had to endure the police (forensic) registration that seriously disturbed and upset them. The summoning to the police and the court in Varna was always for the three of them. For that reason, when traveling to Varna, they had to take the child with them. Once cheerful, the child became introverted and ashamed of their classmates. Their authority as parents

Box 4. Impact of proceedings on family links (continued)

was severely impaired. They decided to leave all together for Germany and live there. During all these years, they could not go on holiday, as all their annual leaves were related to trips back to Bulgaria for questionings at the police or in court. The criminal charges and the trial have also reflected on their family life. Relationships in their family have exacerbated and worsened. R.R. have not received support on the part of her husband, which led to an irreversible rift in their relationship. Her husband did not withstand the tension and negative emotions, left their family home and they got divorced. The criminal prosecution, which lasted for almost years, has placed them in a condition of constant stress, worry and anxiety.'

Source: Regional Court of Varna, Decision No. 5222 of 13 December 2017 on civil case No. 10824/2017.

Many accused persons have claimed compensation for non-pecuniary damages related to the negative impact of proceedings on their **community links and social life** (Box 5). A curious example in this regard is the case of an accused person, whose gun license was revoked during the investigation, which led to the revocation of their hunting ticket and the inability to sustain social contacts with other hunters.

Box 5. Impact of proceedings on private and social life

'During all these years, as a result of the criminal proceedings, the applicant went through numerous humiliations and sufferings. The actions of the prosecutor's office have caused him non-pecuniary damages, consisting of highly negative psychic experiences. Although he knew that he had not committed a crime, he was treated as a criminal and was subjected to criminal prosecution, having been charged with committing the crime. From the day when he was charged until the day of his acquittal, he suffered from extremely severe stress, which affected not only him, but also his relations with his closest people. He drastically lost weight of more than 10 kg, and became rude, gloomy, irritable and startling. He was horrified that he might not be acquitted, even though he was innocent, and might leave his wife alone to take care of their daughter,

Box 5. Impact of proceedings on private and social life (continued)

a student in the R.R. high school in the city of S., because his criminal record would state 'convicted', which was unacceptable for starting a new job. His former colleagues from T. Ltd, as well as the manager of the company and his father, were all gossiping that he was a thief and had appropriated money from the company, which affected his reputation in society, many friends began to doubt that he was really a criminal and to avoid him, not wanting to communicate with him. He began to live in worry of these proceedings, and felt fear, anxiety, depression and shame. He became introverted, unsocial, showing irritability, which disrupted the normal communication with his close persons and his family. He started avoiding his friends and acquaintances, since he did not want to give explanations; he felt insulted and humiliated. Although he was acquitted, these unjustified accusations, brought and sustained against him by the prosecutor's office, inevitably reflected on his personal dignity and his authority and he lost faith in the prosecution. Those years, in which criminal proceedings were pending against him, his involvement as an accused and his bringing to court were the worst years in his life. Moreover, during all these years he could not leave the territory of the Republic of Bulgaria, due to the mandatory reporting imposed on him by the prosecutor's office, he could not leave the town without obtaining permission in advance, which further led him to feels embarrassed and ashamed, and for all these years he never left the city."

Source: District Court of Stara Zagora, Decision No. 406 of 7 December 2017 on civil case No. 1398/2017.

In a number of cases, accused persons claimed compensation for different **health problems** including **stress**, **physical health problems** (e.g. high blood pressure, diabetes, significant loss of weight) and **emotional and mental health issues** (e.g. insomnia, irritability and anxiety) caused by the proceedings against them.

Greece

As demonstrated earlier, Greek *Criminal Procedure Law* embodies the notion that every accused is presumed innocent until proven guilty. The prosecution, arrest or detention of an individual does not constitute a precondition of guilt nor does it constitute proof thereof. Thus, in principle criminal proceedings

should not have any legal effects on the accused or suspects. However, there are exceptions to this rule.

By and large, criminal proceedings do not affect the accused or suspect's **employment status** at all. Most people who have not had restrictive measures imposed against them or who have to adhere to more lenient restrictive measures (such as periodical appearance at the police station or bail) can carry on with their life until their trial. Given that the criminal proceedings are governed by the principle of non-disclosure (secrecy), they can even conceal the fact that they are pending trial from their employers.

However, there are cases when the crime has been reported by employees or where the employer has been made aware of the charges. Moreover, restrictive measures, such as travel bans or prohibition on meeting or socialising with certain individuals might hinder the accused or suspect's ability to carry out their professional duties. This, inevitably will impact on the professional life of suspects and accused. The impact on the employment status of the accused or suspects depends on the type of crime, the type of employment status, and whether pre-trial detention has been imposed.

Under the Greek *Labour Law*, employers may terminate employment contracts (dismiss) when their employee is being accused of committing a crime. If the accused or suspect is in an open-term employment agreement (*σχέση εργασίας αορίστου χρόνου*), the employer may terminate the agreement (*καταγγελία σύμβασης*) without compensation under the following circumstances:

- If the crime has been committed while carrying out their work.
- If the employee has been charged for a misdemeanour (Art. 5, Par. 1 of Law 2112/1920 and Art. 6 of Royal Decree 16/18 July 1920 together with Art. 7, Par. 1 of Law 3198/1955). It is generally accepted that a misdemeanour committed outside the work relationship can provide grounds for termination of the agreement when it affects the continuation of the cooperation between employer and employee (for example, when a kindergarten teacher is accused of domestic violence).

In the latter case, if the accused or suspects are later acquitted of the charges issued against them, the termination of the agreement cannot be annulled. There might be exceptions according to the contract which may render the termination unlawful and therefore, the employee should be rehired. The same applies when the employer has submitted a criminal complaint (*μήνυση*) on false grounds with the purpose of terminating the contract. In such cases, the employer is obliged to pay compensation.

Greek case-law has reflected the view that employees who have been dismissed from work because they have been suspected or accused of committing a crime but have then been acquitted of all charges through a court or council decision should be compensated or even re-hired if they wish so by their former employer.

If the accused or suspect has a fixed-term employment contract, the employer may terminate the employment agreement by invoking serious reasons (*σπουδαίος λόγος*), such as the violation of trust or the inability of the employee to carry out their duties due to legal reasons, or even due to events in the personal life of the employee which affect their employment status. In such cases compensation may be applicable.

Compensation due to a pre-mature termination of work contracts can be sought through the civil courts and labour procedures (*εργασιακές διαφορές*). The Civil Courts are responsible for examining the legality of the termination of contract and the amount of compensation which should be awarded and whether the individual should be re-hired (Art. 621-622 of the Greek *Civil Procedure Code*).

Greek law does not include any provisions which allow for the suspension or expulsion of a student because they are suspected or accused of a crime. **Education status** is not affected unless restrictive measures are in place.

Family status can be affected when the parent is placed in pre-trial detention and there is no other relative to take charge of their children. In such cases, children are subject to a placement in protected custody and a social worker is appointed. Art. 1598 of the Greek *Civil Code* on guardianship applies.

Greek law does not include any provisions which allow for the **removal of social security status** when a person is suspected or accused of committing a crime. However, since social security is linked to employment status, it could be indirectly affected by the termination of contract as described above.

One of most common grounds for complain cited by Greek suspects and accused is the **overly long duration of proceedings**.[146] Greece has been criticised by the European Court of Human Rights for the excessive duration

[146] This information was shared by practitioners, i.e. defence lawyers or lawyers specialising in labour law.

of criminal proceedings and two pilot judgments have been passed in this regard:[147] *Michelioudakis v. Greece*[148] and *Glykantzi v. Greece*[149] (Judgements of 3 April 2012 and 30 October 2012, respectively).

Following these two pilot judgments, the Greek authorities introduced a compensatory remedy, under Law 4239/2014,[150] with the aim of providing appropriate and sufficient redress in cases where criminal and civil proceedings, or proceedings before the Audit Court, exceeded a reasonable time. In a judgment of 9 October 2014 (*Xynos v. Greece,* App. No. 30226/09), the Court found that the new remedy could be regarded as effective and accessible.

In December 2015, the Centre for European Constitutional Law published a research report on the practice of pre-trial detention in Greece with the following findings:[151]

- Although no specific groups are *a priori* connected to pre-trial detention, the personal and social circumstances of third-country nationals, especially the lack of permanent or known residence and the danger of fleeing made them more vulnerable to detention. The aim of pre-trial detention to ensure the presence of the accused during trials appears to have a negative impact on people who do not have permanent residence (mostly immigrants, foreigners).
- While access to a lawyer, understanding the proceedings and access to the case file are guaranteed in the law, challenges are identified in regard to the representation of foreign nationals and their understanding of the proceedings (through the availability of interpretation and translation).
- Decision making on pre-trial detention is not facilitated by bureaucratic procedures, organisational shortcomings, backlog and lack of human resources and infrastructure.

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[147] European Court of Human Rights, Press Unit, Factsheet-Pilot Judgments, November 2017, p. 10, available at www.echr.coe.int/Documents/FS_Pilot_judgments_ENG.pdf

[148] European Court of Human Rights, *Michelioudakis v. Greece*, App. 54447/10, Judgment 3-4-2012.

[149] European Court of Human Rights, *Glykantzi v. Greece*, App. 40150/09, Judgment 30-10-2012.

[150] *Law 4239/2014 on Just Satisfaction for Exceeding the Reasonable Time of Trial at the Civil Courts, the Criminal Courts and the Court of Auditors and Other Provisions (Δίκαιη ικανοποίηση λόγω υπέρβασης της εύλογης διάρκειας της δίκης, στα πολιτικά και ποινικά δικαστήρια και στο Ελεγκτικό Συνέδριο και άλλες διατάξεις.)* (O.G. 43 A/20-02-2014).

[151] Centre for European Constitutional Law, *The Practice of pre-trial detention in Greece, Research Report*, December 2015, available at www.fairtrials.org/the-practice-of-pre-trial-detention-in-greece-research-report/

On the other hand, there are reports that those held in pre-trial detention in Greece, also have to face the impact detention may have on their mental health.[152]

Greece has also been criticised by the European Court of Human Rights for excessive duration of pre-trial detention and inhuman conditions of detention, especially in relation to migrants (Box 6).[153]

Box 6. Examples of cases pertaining to pre-trial detention

The case of *Stergiopoulos v. Greece* (App. No. 29049/12)[154]

On 23 November 2011, Mr Stergiopoulos was arrested and held in Korydallos Prison. On 28 November 2011, the inquiry officer ordered his detention after questioning him. On 2 December 2011, Mr Stergiopoulos appealed against the order for his pre-trial detention before the Judicial Council of the Athens Criminal Court. He requested that his appeal be examined 'speedily'. On 19 December 2011, the public prosecutor at the Athens Criminal Court proposed that the applicant's request be rejected. On 5 January 2012, the Judicial Council rejected the request and ruled that the applicant should continue to be held in pre-trial detention. It observed in particular that there was strong evidence that the applicant was guilty, that he had previously been convicted of fraud and theft and that the health problems he referred to could be treated in detention. On 3 February 2012, Mr Stergiopoulos filed an application for the detention order to be lifted subject to certain conditions. On 3 April 2012, the Judicial Council of Appeals allowed the application and the applicant was subsequently released. Relying on Art. 5 (4) (right to speedy review of the

[152] For more information see Council of Europe, Committee on the Prevention of Torture, *Report to the Government of Greece on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)*, CPT/Inf(2014)26, available at https://rm.coe.int/1680696620; E. Lambropoulou, *Pre-trial detention in Greece: the Achilles Heel of the prison system*, in van Kempen (Ed.), *Pre-trial detention, human rights criminal procedure law and penitentiary law, comparative law*, International Penal and Penitentiary Foundation, Vol. 44, 2012, pp. 415-462.

[153] Examples of cases where a violation of Art. 5 (1) of the *European Convention of Human Rights* include: *Housein v Greece*, Decided 24-01-2014, App No. 71825/11; *Barjamaj v Greece*, Decided 02-08-2013, App No. 36657/11; *Ahmade v Greece*, Decided 25-12-2012, App No. 50520/09; *Lica v Greece*, Decided 17-10-2012, App No. 74279/10.

[154] European Court of Human Rights, *Stergiopoulos v. Greece*, App. no. 29049/12, Judgement 08-03-2016.

Box 6. Examples of cases pertaining to pre-trial detention (continued)

lawfulness of detention), Mr Stergiopoulos alleged in particular that the Judicial Council had not examined his appeal against the detention order 'speedily' and that he had been unable to appear before the Indictment Division (Judicial Council). The European Court of Human Rights found that there had been a violation of Art. 5 (4) – concerning the obligation to rule 'speedily' – and of Art. 5 (4) – concerning the obligation to have Mr Stergiopoulos appear before the Indictment Division.

The case of *Dimitrios Dimopoulos v. Greece* (App. No 49658/09, Judgment from 09/10/2012)

In the case of *Dimitrios Dimopoulos v. Greece* (App. No 49658/09, Judgment from 09/10/2012) concerning inhuman and degrading conditions of detention (Art. 3 of the *European Convention of Human Rights*) and a non-speedy decision on the application challenging provisional detention, the European Court of Human Rights found that there was a violation of Art. 3 of the Convention and Art. 5 (4) as regards the applicant's absence from the appeal hearing and the lack of a speedy review of the applicant's appeal.

The case of *Christodoulou and Others v. Greece* (App. No. 80452/12)

In *Christodoulou and Others v. Greece* (App. No. 80452/12) Mr Christodoulou was detained on remand in Salonika prison.[155] The case concerned the conditions of his detention (registered as 90 % disabled and suffers from numerous medical conditions) and the fact that the judicial council did not examine speedily his appeal against his detention order. Mr Christodoulou was remanded in custody on 2 October 2012 and placed in Salonika prison, charged with a number of offences related to white-collar crime. On 5 October 2012, he lodged an appeal against the detention order, arguing that his 90 % disability and his four haemodialysis sessions every week ruled out any risk of his absconding. The judicial council deliberated in his absence on 16 November 2012 then dismissed his appeal, without referring to his request to appear in person. He was released on 4 February 2013 by a decision of the Court of Appeal.

[155] European Court of Human Rights, *Christodoulou and Others v. Greece*, App. no. 80452/12, Judgement 05-06-2014.

Box 6. Examples of cases pertaining to pre-trial detention (continued)

On 4 March 2013, Mr Christodoulou was sentenced to an eight-year imprisonment for tax fraud with a stay of execution of the sentence subject to a surety payment of 200,000 euro. Mr Christodoulou fled and went into hiding to avoid arrest. He claimed that he could not afford to pay the sum requested and that his family was living on benefits. Relying in particular on Art. 5 (4) (right to a speedy decision on the lawfulness of one's detention), Mr Christodoulou complained that the judicial council had failed to rule speedily on his detention order, and that he had not been allowed to appear in person before the judicial council or to familiarise himself with the public prosecutor's submission. The Court observed that the authorities' decision was taken more than a hundred days after the proceedings had been lodged and it considered that there has been a violation of Art. 5 (4) of the Convention because of the failure of national authorities to decide on the lawfulness of the applicant's detention 'speedily'.

The case of *Vafiadis v. Greece* (App. No. 24981/07)

In the case *Vafiadis v. Greece*[156] (App. No. 24981/07), the Court noted that the evidence that led to the release of Vafiadis in 2007 was known to the court when decisions to prolong detention were made (known residence, clear penal record, participation in rehabilitation programme). Even if the authorities were afraid of reoffending, the Court noted that the judicial council did not assess the impact of this information on alternative measures. The Court also noted that Vafiadis suffered from a neurologic condition and was a drug addict and had provided medical evidence certifying that the detention would endanger his health. Neither the prosecutor nor the judicial council made any reference to these arguments. The court accepted that there was a violation of Art. 5 (3) of the Convention. However, it rejected that the practice of judicial councils to examine briefly the applications for release without going into the details of each case made applications for release *ab initio* doomed to fail.

The criminal proceedings may affect **the personal life of suspects and accused**, even though the principle of secrecy implies that such proceedings are kept private. In some communities where it is impossible to keep the identity of

[156] European Court of Human Rights, *Vafiadis v. Greece*, App. No. 24981/07, Judgment 02-07-2009.

those involved private or due to an extensive media coverage, there have been cases where neighbours demand that such persons must leave the neighbourhood, or that such persons' children must be moved to another school. One such case, for example, concerns the Roma community in the town of Menidi and the shooting of a little boy. In brief, the members of the Roma settlement were holding celebrations and firing guns in the air, when one of the bullets ricocheted and killed a young boy playing in the near-by school yard.[157] The local community held violent protests and demanded the entire removal of the settlement.[158]

Italy

One of the characteristics of the Italian penitentiary system is the constant presence of prisoners without a definitive sentence. From the early 1990s, these prisoners constituted over a half of the prison population. After a decline of up to 35 % in the years 2004-2005, the amnesty of 2006, resulted in the annulment of a significant number of sentences, and in a new rise of the percentage of pre-trial detainees and remand prisoners (58 % in 2007). In recent years, as a consequence of the laws that set limits to the use of preventive detention, the percentage of pre-trial detainees and remand prisoners has dropped to 34 %.[159]

According to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, **prisoners without a definitive sentence** are often held in dilapidated and overcrowded cells and are frequently subject to poor conditions. In a number of visit reports, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has noted that the detention conditions of remand prisoners were totally unacceptable and could easily be considered inhuman and degrading. Moreover, remand prisoners are frequently subject to various types of restrictions (in particular as regards contacts with the outside world), and, in some instances are held in solitary confinement by court order (sometimes for prolonged periods).

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[157] ProtoThema, *Police detain 23-year-old Roma suspect over death of 11-year-old school boy*, 11 June 2017, available in English at http://en.protothema.gr/police-arrest-23-yea-old-roma-suspect-over-death-of-11-year-old-school-boy-photos/

[158] New Greek TV, *Tension between Menidi residents and Roma*, 12 June 2018, available in English at www.newgreektv.com/english-news/item/22700-tension-between-menidi-residents-and-roma

[159] Michela Scacchioli, *'Dietro le sbarre: nelle carceri italiane 54mila detenuti. Ma i posti letto ancora non bastano'*, La Repubblica, 10 November 2016, available at www.repubblica.it/speciali/politica/data-journalism/2016/11/10/news/carceri_prigioni_detenuti_sistema_penitenziario_sovraffollamento_reinserimento_sociale-150785318/?refresh_ce

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has also stressed that detention and remand can have **psychological effects** on the individuals, something evident in the fact that suicide rates among remand prisoners tend to be several times higher than among sentenced prisoners (in total 48 suicides in 2017).[160] Other possible negative consequences may include a break-up of family ties, loss of employment, or accommodation.

A central aspect of the application of precautionary custodial measures system is the fact that not all persons awaiting trial (suspects or accused) can have access to alternative measures due to the lack of a stable and verifiable domicile. This occurs even if all other necessary legal conditions for the person to benefit from such measures are met. For a large share of the category 'people awaiting trial' (mainly foreigners) the failure to fulfil this requirement is an element of serious inequality, because it prevents them from having access to such measures. It is then necessary to promote the use of facilities meant for this purpose with the collaboration of the local authorities and organisations of the civil society sector. There are some relevant initiatives in this field, one of which is carried out by APG23[161] and it is called *Convicts Educational Community Project* (CEC Project).[162]

The project is based on the implementation of the following elements: 1. *community's contribution; 2. mutual help and cooperation; 3. work; 4. religion; 5. legal aid; 6. medical and psychological care; 7. human development; 8. family; 9. the volunteers; 10. the Centre for Social Reinstatement (CRS); 11. merit; 12. Freedom Day with Christ.*

Custodial measures, including pre-trial detention, can also have a considerable economic impact, particularly as far as the **employment status** of suspects and accused is concerned. With regard to employees in the private sector, Law No. 604/1966 provides that a lay-off needs to meet the criteria for a 'justified dismissal', i.e. it has to be justifiable and reasonable. The law further stipulates that the detention or the arrest of an employee does not represent

[160] Centro studi di Ristretti Orizzonti (www.ristretti.org).

[161] APG23 (www.apg23.org) is the acronym of Associazione Comunità Papa Giovanni XXIII (Pope John XXIII Community Association). It is an international association of the faithful of pontifical right. Since its foundation in 1968 by Father Oreste Benzi, it has embraced a practical and constant commitment to fight marginalization and poverty. Nowadays the Association is present in 41 countries across five continents; its 2000 members, of different ages and states of life, share their lives directly with the poorest people and the underprivileged, taking care everyday of about 41,000 people.

[162] More information on CEC project is available at www.apg23.org/en/prisons/. A brief description of the project can be downloaded from https://drive.google.com/file/d/1la7wsQs27470HeDA5Hp4SGfB1iZeZP6X/view?usp=sharing

a breach of a contractual obligation leading to a justified dismissal. However, the imposition of such measures could provide for a justified dismissal if it impacts on the overall job performance of the employee taking into account the duration of pre-trial detention and the respective job absence period.[163] In such cases, **unpaid leave** of up to 6 months can be requested even if the employer is not under an obligation to grant permission to the request. At the same time, Art. 24 of *Law No. 332 of 1995* states that *'anyone who has been subject to custody in accordance with Art. 285 of the Criminal Procedure Code or to house arrest in accordance with Art. 284 of the Criminal Procedure Code and has been dismissed from their job as a result, in case of an acquittal has the right to be reinstated in the post that they used to occupy prior to the start of criminal proceedings'*.

With regard to the status of employees in the public sector, Art. 91 of *Presidential Decree (Decreto del Presidente della Repubblica) No. 3/1957* provides for the suspension of public sector employees if the latter are subject to custodial measures. General practice shows that the suspension of work continues until the court's final judgement. Art. 97 of the Decree establishes that in case of an acquittal, the precautionary suspension must be revoked and the full amount of the respective wages must be paid.

Table 13 shows the main elements needed to avoid negative consequences and the risk of isolation of suspects or accused according to the main findings of the *Country Report on the Factors Affecting the Social Status of Suspects and Accused: Italy*

Table 13. Elements needed to avoid negative consequences and the risk of isolation of suspects or accused

Element	Explanation
Alternative measures to precautionary measures	To give the opportunity to await the sentence in healthy places for persons not yet found guilty. With an economic and social support from the State, it is possible to activate and reinforce (thanks to the existing experiences and best practices) alternatives to pre-cautionary measures through psychological support and an educational work program jointly carried out by trained personnel and civil society volunteers.

[163] Court of Appeal sentences n. Cass. civ. 4.05.90 n° 3690; Cass. 9.06.93 n° 6403; Cass. 30.03.94 n° 311; Cass. 28.07.94 n° 7048.

Table 13. Elements needed to avoid negative consequences and the risk of isolation of suspects or accused (continued)

Element	Explanation
Families and community involvement	To avoid the risk of stigmatization of the accused through the involvement of the family and civil society in the applied alternative measures. The program, with the participation of the family and the civil society volunteers leads to perceive the person as a human being and not for his actions. This involvement promotes a positive development of the 'accused's journey' and it avoids the risk of being abandoned, isolated, excluded and thought as a 'waste of humanity'.
Coordination to guarantee the presumption of innocence	Through a clear and transparent communication of the news on criminal trials, it is possible to avoid that the accused feels guilty because the external community considers it so. It is necessary a collaboration between judicial authorities, external communities and public information media because suspects and accused persons are not listed as guilty before the final sentence.
Protection of foreigners and homelessness	To include foreigners and homeless in facilities where they can be subjected to measures other than preventive imprisonment until they have a final sentence (such as house arrest). In fact, they are often subject to the measure of preventive prison for the lack of a domicile. This is necessary to avoid further social isolation, already victims of societal exclusion.

Source: Pope John XXIII Community Association.[164]

[164] Pope John XXIII Community Association, *Country Report on the Factors Affecting the Social Status of Suspects and Accused: Italy*, 2018, available at http://arisa-project.eu/publications/publication/factors-affecting-the-social-status-of-suspects-and-accused-in-italy/

6. ASSESSMENT OF THE IMPACT OF PROCEEDINGS BY COMPETENT AUTHORITIES

This section looks into the extent to which the impact of criminal proceedings is assessed by the relevant competent authorities when decisions about the measures to be imposed on suspects and accused are made. In addition, a methodology for the evaluation of the performance of the justice system is outlined.

6.1. National legal practices

Belgium

Before deciding on the measure to take concerning a suspect, the investigating judge may ask a probation officer (*assistant de justice*) to conduct a **preliminary enquiry** (brief information report or social enquiry) into the need for pre-trial detention or the suitability of an alternative measure such as release under conditions.[165] The judge may also request such enquiry about somebody who is already in prison and whom they hesitate to release. This investigation option is used less frequently, however.

In a **brief information report**, the justice assistant assesses the attainability of a certain alternative measure to pre-trial detention. For example, if the defendant is able to perform such a measure considering their professional situation, family situation or state of health.

A **social inquiry** is a more general investigative work aimed at situating the alleged offence in a larger psycho-social context. In collaboration with the defendant and their family and social environment, the justice assistant can thus propose an individualized, restorative and future-oriented measure as well as evaluate the potential impact of the relevant proceedings on the defendant's life.

Such optional procedure allows the judicial authorities, with the assistance of the probation services (*maisons de justice*), to envisage the measure to be decided

[165] Art. 35, Par. 1 of the *Act on Pre-Trial Detention*.

in light of the specific personal context of the defendant as well as its potential social and economic consequences on the life of the accused. However, this option is scarcely used (and its use has even decreased over the years) in case of alternative measures to pre-trial detention (Tables 14 and 15).

Table 14. Evolution of the number of social enquiries and brief information reports (new entries) by sector: Houses of Justice in Wallonia-Brussels federation (2010 – 2015)[166]

Social enquiries and brief information reports	2010	2011	2012	2013	2014	2015
Alternatives to pre-trial detention	202	184	162	145	119	62
Probation	638	514	462	431	380	304
Work penalty	1,579	1,239	1,137	800	835	540
Prison[167]	1,826	1,728	1,772	1,959	1,781	1,943
Electronic monitoring	2,438	2,260	1,914	502	413	397
TOTAL	**6,683**	**5,925**	**5,447**	**3,837**	**3,528**	**3,246**

Source: General Administration of the Houses of Justice.

Considering that the average daily population in pre-trial detention has not decreased significantly despite the popularity and enhanced rate of implementation of alternative measures, it seems that these alternatives supplement, rather than replace, classic pre-trial detention and contribute to a net-widening effect.[168]

[166] Administration Générale des Maisons de Justice, *Rapport Annuel 2016*, SPF Justice 2017.

[167] Social enquiries of brief information reports requested in view of a possible release under conditions from prison.

[168] It was also clearly demonstrated in a recent NICC research (Burssens, Tange & Maes, 2015) that alternatives to pre-trial detention do not seem to replace incarcerations under remand custody (imprisonment). When a suspect is presented before the investigating judge (first hearing), alternatives are mainly applied in place of a release (maintain in liberty) without any imposed conditions. Not only is there more frequent use of pre-trial detention (remand custody) in cases where a suspect is presented before the investigating judge, but there are also fewer cases of simple releases without conditions among applied modalities of non-detention. A similar tendency is observable when it comes to terminating a period of remand custody: although the alternative

Table 15. Evolution of the number of social enquiries and brief information reports (new entries) by sector: all Belgian Houses of justice (2010 – 2014)[169]

Social enquiries and brief information reports	2010	2011	2012	2013	2014
Alternatives to pre-trial detention	316	243	224	232	202
Probation	1,852	1,640	1,550	1,812	1,651
Work penalty	2,438	2,145	1,691	1,477	1,389
Prison[170]	3,541	3,377	3,443	3,661	3,374
Electronic monitoring	5,237	4,999	3,964	774	556
TOTAL	**13,384**	**12,404**	**10,872**	**7,956**	**7,172**

Source: Houses of Justice.

Taking into account all the numbers of people placed under one or another form of judicial control in the pre-trial stage at a certain point of time of the year (pre-trial detention in prison or under electronic monitoring, release under supervised conditions), gives a clear image of the impressive growth over time in the use of coercive, custodial or non-custodial measures before final conviction.

Bulgaria

Bulgarian legislation contains no general provision obliging the authorities to collect, review and assess specific information about the suspects and accused before making a decision that might affect them. However, such provisions exist in relation to the **imposition of remand measures**, whereby the accused person's health condition, profession, age and other relevant data (Art. 56 of the Bulgarian *Criminal Procedure Code*) are to be taken into account.

of release under conditions has a certain success, its main objective does not seem to have been reached (Dieter Burssens, Carrol Tange and Eric Maes, *Op Zoek Naar Determinanten van de Toepassing En de Duur van de Voorlopige Hechtenis/A La Recherche de Determinants Du Recours. La Detention Preventive et de Sa Duree*, NICC, Operationele Directie Criminologie, 2015).

[169] *Justitiehuizen Jaarverslag 2014*, FO Justitie 2015, pp. 67-74.

[170] Social enquiries of brief information reports requested in view of a possible release under conditions from prison.

As a rule, Bulgarian courts always assess the **health condition** of the accused person before deciding which remand measure is most appropriate in the particular case or whether the initially imposed measure should be replaced with a more lenient one. In most cases, however, the court discussed the health condition of the accused only to conclude that it was not an obstacle for imposing the chosen measure. As a result, even serious diseases like cancer or transmittable diseases like AIDS and Hepatitis B and C were not found a good reason for not placing the accused person in detention. By way of exception, there are also cases where the court considered the health condition of the accused as a relevant factor justifying the substitution of the remand measure with a more lenient one (Box 7).

Box 7. Assessment of health condition when replacing home arrest with bail in Bulgaria

'In the present case, it is established that the accused has a scheduled date for examination by the Labour Expert Medical Commission and that he has been going to medical examinations, for which he has been issued ambulatory documents. The court, taking into account the illness and necessity of treatment as well as the good procedural behaviour demonstrated by the lack of violations of the imposed remand measure, finds that the home arrest measure prevents the accused from being treated and the right to health is a fundamental human right, which is subjective, constitutional and internationally recognised. In addition, the necessity to seek permission from the pre-trial authorities every time he leaves his home disconnects them from the working process. In view of the above, the measure should be changed to a lighter one, namely a bail of BGN 200, which is appropriate in view of the fact that the accused receives work benefits and has income.'

Source: Regional Court of Kula, Ruling No. 6 of 7 April 2017 on criminal case No. 70/2017.

The **employment status** of the accused is often discussed by the court, but is rarely taken into account as a decisive factor. On the one hand, the fact that the accused person is unemployed is often assessed as a negative factor increasing the risk of the accused person to either abscond or re-offend. On the other hand, employment is rarely considered as a strong positive factor for justifying the imposition of non-custodial instead of custodial measure. However, there are also cases where the employment of the accused person played a decisive role in the selection of the remand measure (Box 8).

Box 8. Assessment of employment when replacing detention with bail in Bulgaria

'Indeed, the accused person's criminal record reveals that he was repeatedly convicted, indicating a higher degree of public danger. Nonetheless, from the testimony of witness B. it becomes clear that the witness is the owner of a restaurant in Pomorie and is pleased with the work of the accused in the preparation of the establishment for the summer season and only the detention of the latter prevented the witness from concluding a contract with him for the summer season. The witness points out that, if possible, he would hire the accused M. to work at his establishment, as the accused has demonstrated good labour skills and a willingness to work. The court finds that, despite the overwhelming criminal record of the accused M., the latter, in the very real opportunity to earn money from a job he wants during the summer season, would refrain from criminal activity and his employment could have a positive impact on the formation of long-term working habits.'

Source: Regional Court of Pomorie, Ruling No. 115 of 3 July 2017 on criminal case No. 246/2017.

Other relevant information, collected and assessed by the courts, include data about the family status of the accused and about the presence of small children or other family members (parents, grandparents, spouse), for whom the accused person takes care. The fact that the accused person has children is interpreted differently by the courts. In some cases, this circumstance was found irrelevant, in other cases it was assessed as a rather negative factor in the sense that the accused was viewed as a bad example for their children (Box 9).

Box 9. Assessment of the family status and children when determining the amount of the bail in Bulgaria

'The fact that the accused person takes care of three young children under 14 years of age has been taken into account, assessed and compared with the [other facts of the case] described above. The cost of raising and educating the three children of the accused is parental care and duty, but, as the accused points out, it is not only his responsibility, but also his wife's, although it is mentioned that she does not receive regular income. The court also considers that the accused should have taken into

Box 9. Assessment of the family status and children when determining the amount of the bail in Bulgaria (continued)

account the fact that he was the father of three children before becoming involved in the act under investigation. It is true that children need their father's care, but his actions and social danger characterise him not as a caring parent, but, on the contrary, as one giving a very negative example that could affect his children in the future.'

Source: Regional Court of Pazardzhik, Ruling No. 94 of 15 February 2018 on criminal case No. 242/2018.

Still, there are also cases where children were considered as a decisive factor for not placing the accused in detention (Box 10).

Box 10. Assessment of the family status and children when replacing detention with mandatory reporting in Bulgaria

'From the evidence thus produced, it can be concluded that there is a change in the circumstances relating to the family status of the accused, namely a new fact was established which was not known at the time of the initial imposition of the measure – that the accused has a small child being raised currently by the mother, who has difficulties in caring for the child alone, and there is a need for the accused to assist the mother in raising the child. It is also established that the pre-trial proceedings are now over and there is no danger that the accused may impede the gathering of evidence. In this case, the court finds that the circumstances established in connection with the paternity of the accused and the completion of the pre-trial proceedings should be considered as new circumstances justifying the substitution of the detention in custody imposed on the accused with a more lenient measure. The court finds that in the present case, in order to achieve the purpose of the remand measures provided for in Art. 57 of the *Criminal Procedure Code*, and taking into account the circumstances under Art. 56, Par. 3 of the *Criminal Procedure Code* concerning the family status of the accused, the appropriate measure would be mandatory reporting; it will sufficiently ensure the participation of the accused in the criminal proceedings and,

Box 10. Assessment of the family status and children when replacing detention with mandatory reporting in Bulgaria (continued)

on the other hand, will guarantee the provision of the necessary care to the child, while the need to look after his child is also a factor that will influence the accused in a positive direction and motivate him not to abscond or commit another crime.'

Source: Regional Court of Pomorie, Ruling No. 43 of 2 March 2017 on criminal case No. 84/2017.

Overall, the review of court decisions clearly shows that, when deciding on the imposition or substitution of remand measures, Bulgarian courts focus mainly on assessing the dangerousness of the accused person and the risk of hiding or re-offending. Much less attention is paid to the personal condition or the social status of the accused and, even when such factors are considered, they are most often disregarded as irrelevant when making the final decision. However, there are also individual cases, in which such factors like health condition, family status or employment have been duly examined by the court and have had an impact on the final decision.

Greece

There are no available reports on the assessment of impact of the proceedings on the accused by the competent authorities and their practices. Interviews with practitioners indicate that police authorities responsible for investigations will examine any given case according to the strict instructions of the prosecutor handling the file. Thus, the manner in which the authorities will address the accused and treat him/her, depends on the instructions of the prosecutor. There are of course cases where the police authorities might overstep their boundaries and suffer the disapproval of the prosecutor (*επίπληξη*).

If the accused is a minor, a special investigation into their health, moral or intellectual status, their prior life, family conditions and overall environment is carried out.[171]

[171] A. Karras, *Criminal Procedure Law,* p. 368.

Italy

There are no available reports on the assessment of impact of the proceedings on the accused by the competent authorities and their practices. According Art. 279 of the Italian *Criminal Procedure Code*, the decision on the application, withdrawal or modification of pre-trial measures pertains to the judge in charge of the corresponding stage of the trial (e.g. during the investigation, the Judge for the Preliminary Investigations). This strictly follows the Italian *Constitution*, which states in Art. 13, Par. 2 that restrictions on personal freedom are lawful only as a result of a 'justified decision by the court'. With regard to the selection of measures, the judge has to follow the criteria set out in Art. 275 of the Italian *Criminal Procedure Code*: the measure must be appropriate, proportionate and the least depriving. Concerning the existing programmes related to education, work, psychological and social well-being and other important aspects of the suspects/sentenced persons, the *Circular of the Ministry of Justice dated 4 August 2011*[172] appears very relevant. Its subject concerns the *Guidelines on a Transnational and Interregional Project on Social and Labour Inclusion of Sentenced Persons*. In order to maintain the rights of detainees, which by law should be guaranteed by the penitentiary administration and with the supervision of the supervising magistrates, several regions or municipalities have established a guarantor of prisoners' rights with a function to appeal to the penitentiary administration. Guarantors have been then recognised by law allowing them to visit prisons and to meet detainees. The *Law Decree of 23 December 2013 n. 146*[173] has established the National Authority for the Rights of Detained Persons or the Deprived of Personal Freedom (*Garante Nazionale diritti delle Persone Detenute o Private della Libertà Personale*),[174] a body with effective control powers on detention, including the indication of the local guarantors. Meanwhile an effective judicial proceeding is also set up before the competent magistrate for the assessment and remedy for any abuse.

6.2. Evaluating the performance of the justice system

Published in 2015 the Open Society Justice Initiative's *Strengthening Pre-Trial Justice: A Guide to the Effective Use of Indicators* proposes a methodical approach whereby empirically based indicators are developed, refined, and deployed to identify

[172] Ministry of Justice, *Guidelines about a Transnational and Interregional Project on Social and Labour Inclusion of Sentenced Persons*, 4 August 2011, available at www.giustizia.it/giustizia/it/mg_1_8_1.page;jsessionid=xNL1t+Tbkq+VJY1pTqgsS5Ss?facetNode_1=3_1_6&facetNode_2=1_1(2011)&facetNode_3=1_1(201108)&contentId=SDC680560&previsiousPage=mg_1_8

[173] For more information, see www.gazzettaufficiale.it/eli/id/2013/12/23/13G00190/sg

[174] For more information, see www.giustizia.it/giustizia/it/mg_2_21_2.page

exemplary and problematic practices.[175] The Guide specifically aims to empower policymakers and justice system managers to promote the former and improve the latter – and measure changes in performance over time and between places.

The Guide proposes a **basket of five categories of indicators** with which to measure and track the performance of the justice system at the pre-trial stage (Table 16). It then goes on to explore the strengths, weaknesses, and ancillary uses of each of the five indicators. The Guide clearly states that each indicator needs to be contextualised and if required, adapted to meet the needs of the local jurisdiction in which it is used. Far from being a prescriptive document, the Guide seeks to help elucidate the performance of criminal justice institutions affecting pre-trial justice processes and how these, in turn, affect the functioning of the justice system as a whole. The indicators are therefore a tool for building constructive inter-agency dialogue to improve the overall performance of the criminal justice system. Moreover, pre-trial justice indicators, properly analysed and disseminated, empower citizens in their understanding of the justice system's performance. This, in turn, should heighten public confidence and trust in the state and its criminal justice agencies.[176]

Table 16. Basket of indicators by category and individual indicator[177]

Category	Indicator
Risk to liberty – the likelihood of someone being arrested or detained	Number of people arrested by the police per 100,000 of a jurisdiction's population Number of defendants subjected to pre-trial detention
Duration of pre-trial detention	Average duration of pre-trial detention Number or proportion of defendants in pre-trial detention in excess of a defined period

[175] Open Society Justice Initiative, *Strengthening Pre-Trial Justice: A Guide to the Effective Use of Indicators,* Open Society Foundations, 2015, available at www.opensocietyfoundations.org/publications/strengthening-pretrial-justice-guide-effective-use-indicators-0

[176] Open Society Justice Initiative, *Strengthening Pre-Trial Justice: A Guide to the Effective Use of Indicators,* Open Society Foundations, 2015, available at www.opensocietyfoundations.org/publications/strengthening-pretrial-justice-guide-effective-use-indicators-0

[177] Open Society Justice Initiative, *Strengthening Pre-Trial Justice: A Guide to the Effective Use of Indicators,* Open Society Foundations, 2015, available at www.opensocietyfoundations.org/publications/strengthening-pretrial-justice-guide-effective-use-indicators-0

Table 16. Basket of indicators by category and individual indicator (continued)

Category	Indicator
Frequency (and exceptionality) of the use of pre-trial detention	Number or rate of pre-trial detention requests by the prosecution Number of pre-trial detentions ordered by judicial officers
Defendants' compliance with the conditions of pre-trial release	Number or proportion of defendants complying with judicial officers' pre-trial measures
Legitimacy – or smooth functioning – of the criminal justice system	Number or proportion of acquitted pre-trial detainees Number or proportion of pre-trial detainees who receive a non-custodial sentence

Source: Open Society Foundations.

ANNEX: CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS ON DAMAGES CAUSED BY PRE-TRIAL DETENTION

Breakdown of the ECHR cases classified by damage claims

LOST PROFITS:

1. **Loss of earnings (income/cessation of business/social benefits…):**
   Musial v. Poland, *Megyeri v. Germany*, *Labita v. Italy* (incl. Confiscation of immovable property), *Özcelik v. The Netherlands* (social income), *Khachatryan and others v. Armenia* (income), *Michalak v. Slovakia* (wages), *Dbouba v. Turkey*, *Crabtree v. Czech Republic* (income, rent of an apartment paid in advance, personal effects stolen at the time when the applicant was detained), *Beet and Others v. The UK* (dismissed from work, unable to find another in 10 months after freedom), *Mitev v. Bulgaria*, *S.B.C. v. The UK* (business losses as a direct result of his detention), *Rasul Jafarov v. Azerbaijan* (lost earnings from three projects funded by grants, received just before his arrest), *Popoviciu v. Romania, Qing v. Portugal, Delijorgji v. Albania*, *Kolakovic v. Malta* (online business loss of equity in the family home), *Hadade v. Romania*.

2. **Loss of opportunities (possibility of finding employment/promotion…):**
   Musial v. Poland, Megyeri v. Germany, Pavletic v. Slovakia (loss of profit of the company the applicant owned), *Tchankotadze v. Georgia* (been forced to resign as chairperson of the CAA after the institution of unfair criminal proceedings against him), *Segal v. Cyprus* (loss of various contracts he had entered in for renovation of properties, his work), *Mefaalani v. Cyprus* (loans 125.000 before arrested turned into 500.000 afterwards facing bankruptcy as the business went downhill when he was detained), *Yegorov v. Slovakia* (being prevented from running his business), *Stettner v. Poland* (inability to work 6 months after the detention).

CONSEQUENTIAL DAMAGES:

1. **Loss of liberty (itself):**
   A. and others v. The United Kingdom, *I.N v. Ukraine*, *Dbouba v. Turkey* (claims arts. 3 and 5), Beet *and Others v. The UK*, *Sakik and Others v. Turkey*, *J.N. v. The UK*, *Qing v. Portugal*.

2. Direct Suffering from the detainee:

a. Physical suffering:
   - While being detained: *Rasul Jafarov v. Azerbaijan* (injuries)
   - Derived from time in prison:
     Labita v. Italy, I.N v. Ukraine (incl. non-pecuniary damage caused by his involuntary hospitalisation, the administering of unknown medication by means of injection, poor nutrition, fear for his life, unsanitary conditions), *Dzhabarov v. Bulgaria* (caused her stress and humiliation and had aggravated her health), *Crabtree v. Czech Republic, Kolani v. The UK* (considerable weight gain), *Tiba v. Romania, Buzadji v. The Republic of Moldova, Stettner v. Poland, L.M. v. Slovenia* (physical damage due to forced administration medication), *Contoloru v. Romania*.

b. Mental suffering:
   Luberti v. Italy, A.and others v. The United Kingdom(incl. Mental illness), *Labita v. Italy, Dzhabarov v. Bulgaria* (trauma), *Velinov v. FYROM* (emotional suffering and anxiety), *Crabtree v. Czech Republic, Bochev v. Bulgaria* (desperation, trauma, distress), *Svetoslav Dimitrov v. Bulgaria* (desperation + submission of analysis to undergird his argument), *Kolanis v. The UK, Blackstock v. The UK, Beet and Others v. The UK* (depression worsened after leaving prison, extreme suffering and distress, suicide attempt), *Mitev v. Bulgaria, Pavletic v. Slovakia, D.G. v. Ireland, S.B.C. v. The UK, Tiba v. Romania, Buzadji v. The Republic of Moldova, Tchankotadze v. Georgia, Rasul Jafarov v. Azerbaijan, Khoury v. Germany* (incl. Post-traumatic stress disorder and moderate depression), *Delijorgji v. Albania, Stettner v. Poland, L.M. v. Slovenia* (stigma of a mental illness make her fear from society's reaction, humiliated and helpless), *Contoloru v. Romania*.

3. Collateral suffering/damages:

a. Family suffering:
   - Physical/Mental suffering: *A. and others v. The United Kingdom, Michalko v. Slovakia, Sakik and Others v. Turkey* ("private capacity"), *Delijorgji v. Albania, Stettner v. Poland*
   - Separation from children: *Nolan and K. v. Russia, Kolani v. The UK* (her nephew died while she was in prison, so she was not able to assist the funeral/relatives), Beet *and others v. The UK, Pavletic v. Slovakia*.
   - Separation from partner (wife) Legal e: *Mefaalani v. Cyprus*.
   - Economic damage: *Kolakovic v. Malta* (loss of equity in the family home, which the applicant lost to the mortgage provider once his family became unable to continue with the repayments in the absence of the income provided by the business).

b. Bad publicity/Loss of reputation (which also can translate into lost profit): *A. and others v. The United Kingdom, Velinov v. FYROM, Dobrev v. Bulgaria* (problems with apartment owner), *Sakik and Others v. Turkey* (they were public figures, members of the parliament), *Buzadji v. The Republic of Moldova* (CEO of Gas Company), *Popoviciu v. Romania*.

4. Expenses:

a. To meet the necessities of the confinement:
Luberti v. Italy, Khachatryan and others v. Armenia (travel, food and medical treatment expenses which they and their relatives had incurred as a result of their unlawful detention), *Urazov v. Russia* (relatives sent food parcels and money transfers to the applicant in order to maintain his health), *Rasul Jafarov v. Azerbaijan* (food parcels), *Mefaalani v. Cyprus* (medical expenses which would have been free in Syria, his country + wife flights to visit him from Syria), *Yagublu v. Azerbaijan* (food, family visited and attended every court hearing + accident coming from one resulted with his wife needing several surgical operations), *Hadade v. Romania* (he had had to sell his home and land at an undervalue, had to pay for parcels that had been sent to him during his time in prison, had been unable to lodge a request for the return of his land under the domestic restitution laws).

b. Legal expenses:
Lolova.Karadhov v. Bulgaria (45h of legal work).

c. Others:
J.N. v. The UK (representing phone cards purchased during both periods of detention).

5. Breach of other Human Rights

a. Right to respect home: *I.N v. Ukraine, Khalikova v. Azerbaijan* (belongings disappeared/got damaged during the eviction from the flat).
b. Right to private life and correspondence: *Michalak v. Slovakia*.
c. Discrimination on religious grounds: *Nolan v. Russia*.
d. Other discriminations: *Qing v. Portugal*.

Summary table of ECHR cases			
Reference	**Country**	**Damages claimed**	**Court decision**
MUSIAL v. POLAND judgement of 25 March 1999, http://hudoc.echr.coe.int/eng?i=001-58225	Poland	Mr Musiał sought the sum of 1,500,000 US dollars in respect of pecuniary and non-pecuniary damage corresponding to the loss of income sustained as a result of the closing down of his business and the loss of opportunities following his arrest in 1986 and his subsequent committal to a psychiatric hospital.	The Court observed that there is no causal link between the facts in respect of which it has found a breach of the Convention and the pecuniary damage for which the applicant seeks compensation. However, the Court acknowledged that the applicant suffered damage of a non-pecuniary nature as a result of the length of the proceedings by which he sought termination of his confinement. Having regard to the circumstances of the case and making its assessment on an equitable basis, the Court awarded the applicant 15 000 zlotys as compensation for non-pecuniary damage.
CASE OF LUBERTI v. ITALY judgement of 23 February 1984, http://hudoc.echr.coe.int/eng?i=001-72567	Italy	The applicant claimed 20,000,000 Lire as compensation for pecuniary and non-pecuniary damage. He considered this to be justified by a year's suffering in a psychiatric hospital and by the expenses he had incurred "to meet the necessities" of his confinement. He also sought 1,000,000 Lire, together with value added tax at 18 per cent, for legal expenses before the Rome Supervision Division and the Rome Court of Appeal.	As for the violation of paragraph 4, it is not established that Mr. Luberti would have been released at an earlier date if the requirement that a decision be given "speedily" had been complied with. Any allegation of pecuniary loss must therefore be rejected on account of the absence of any causal link. On the other hand, as the Commission rightly found and as was not contested by the Government, the applicant must have suffered some prejudice of a non-pecuniary nature by reason of the length of the proceedings which he instituted to seek termination of his confinement. Accordingly, the Court awards to Mr. Luberti under this head 1,000,000 Lire, together with any value added tax that may be due.

Summary table of ECHR cases			
Reference	**Country**	**Damages claimed**	**Court decision**
CASE OF MEGYERI v. GERMANY judgement of 12 May 1992, http://hudoc.echr.coe.int/eng?i=001-57785	Germany	**Pecuniary damage** On behalf of the applicant his guardian first claimed compensation, in an amount to be assessed by the Court, for pecuniary damage in the shape of loss of earnings, since Mr Megyeri might have been released earlier and then found employment if he had received legal assistance in the proceedings in question. **Non-pecuniary damage** The guardian also sought compensation for non-pecuniary damage quantified at 25,000 German marks, which figure also took account of the length of the proceedings. Whilst recognising that the applicant might have found himself in an unpleasant situation because of the absence of a lawyer (…).	**Pecuniary damage** Bearing in mind that subsequent reviews of the applicant's detention, in which he was represented by counsel, did not lead to his release (see paragraph 13 above), the Court cannot assume that the outcome of the July 1986 review would have been more favourable to him if a lawyer had been assigned to him on that occasion. It thus agrees with the Government that no causal link has been established between the violation of Article 5 para. 4 (art. 5-4) and the alleged pecuniary damage. By the same token, the Court does not consider that Mr Megyeri can be regarded as having suffered a real loss of opportunities on account of the breach. The claim under this head must therefore be dismissed. **Non-pecuniary damage** The applicant must have been left with a certain feeling of isolation and helplessness by reason of the fact that he was not assisted by counsel in the 1986 review of his detention. Making an assessment on an equitable basis, as is required by Article 50 (art. 50), the Court awards him 5,000 German marks under this head.

Summary table of ECHR cases			
Reference	**Country**	**Damages claimed**	**Court decision**
CASE OF A. AND OTHERS v. THE UNITED KINGDOM judgement of 19 February 2009, http://hudoc.echr.coe.int/eng?i=001-91403	UK	Almost all of the applicants (11) claimed compensation for the loss of liberty, suffering from mental illness, missed opportunities and earnings, distress caused to wife and children and travel costs of family members. **Example:** The first applicant claimed compensation for his loss of liberty between 19 December 2001 and 11 March 2005, a period of three years and eighty-three days, and the consequent mental suffering, including mental illness. He submitted that the award should in addition take account of the suffering experienced by his wife and family as a result of the separation and the negative publicity.	It follows that it cannot make any award in respect of mental suffering, including mental illness, allegedly arising from the conditions of detention or the open-ended nature of the detention scheme in Part 4 of the 2001 Act. The decision whether to award monetary compensation in this case and, if so, the amount of any such award, must take into account a number of factors. The applicants were detained for long periods, in breach of Article 5 § 1, and the Court has, in the past, awarded large sums in just satisfaction in respect of unlawful detention. The present case is, however, very different. In the aftermath of the al-Qaeda attacks on the United States of America of 11 September 2001, in a situation which the domestic courts and this Court have accepted was a public emergency threatening the life of the nation, the Government were under an obligation to protect the population of the United Kingdom from terrorist violence. The Court finds that the circumstances justify the making of an award substantially lower than that which it has had occasion to make in other cases of unlawful detention. It awards 3,900 euros (EUR) to the first, third and sixth applicants; EUR 3,400 to the fifth and ninth applicants; EUR 3,800 to the seventh applicant; EUR 2,800 to the eighth applicant; EUR 2,500 to the tenth applicant; and EUR 1,700 to the eleventh applicant, together with any tax that may be chargeable.

Summary table of ECHR cases			
Reference	**Country**	**Damages claimed**	**Court decision**
CASE OF LABITA v. ITALY judgement of 6 April 2000, http://hudoc.echr.coe.int/eng?i=001-58559	Italy	The applicant claimed 2,000,000,000 Italian lire (ITL) for physical and mental injury. He also claimed ITL 1,000,000,000 for pecuniary damage suffered as a result of the confiscation of some of his immovable property and the closing down of his discotheque during the trial until 1995 and the attachment of his shareholding in a company.	The Government contended that there was no causal link between the alleged pecuniary damage and the alleged violations and emphasised that the applicant had not complained before the Convention institutions about the confiscation and attachment. As regards the length of detention, the Government said that the applicant had already obtained sufficient reparation before the domestic courts. The Court nevertheless considers that having regard to the seriousness and number of violations found in the instant case the applicant should be awarded compensation for non-pecuniary damage. The Court decides to award ITL 75,000,000.
CASE OF ÖZÇELİK v. THE NETHERLANDS judgement of 28 June 2016, http://hudoc.echr.coe.int/eng?i=001-164434	The Netherlands	The applicant claimed 12,720 euros (EUR) in respect of pecuniary and non-pecuniary damage combined. He based this claim on the rates paid in the Netherlands for detention of excessive length and on the premise that he would have been entitled to social benefits upon his release.	The Court does not find it established that applicant suffered any pecuniary damage; it therefore rejects this claim. On the other hand, it awards the applicant the applicant EUR 1,500 in respect of non-pecuniary damage.
CASE OF I.N. v. UKRAINE judgement of 23 June 2016, http://hudoc.echr.coe.int/eng?i=001-163914	Ukraine	On 19 March 2000 Ma., with the assistance of the police, had the applicant unlawfully committed to a psychoneurological department, where he stayed for two days. On 21 March 2000 the applicant was transferred to the Lugansk Hospital without his consent; he stayed there until 7 September 2000. He was then transferred	The court awarded the applicant UAH 2,000 to be paid by the Svatove Hospital (approximately 286 euros (EUR) at the material time) in compensation for non-pecuniary damage.

Summary table of ECHR cases			
Reference	**Country**	**Damages claimed**	**Court decision**
in conjuction with http://hudoc.echr.coe.int/eng?i=001-139884		to the Svatove Hospital, where he stayed until 4 December 2000. The applicant claimed that Ma. had acted unlawfully, had breached the applicant's right to respect for his home, had examined the applicant against his will and had deprived him of his liberty. The applicant further complained that he had been unlawfully confined in all three hospitals, and that the principals of those institutions had failed to respond to his requests for information. The applicant claimed 100,000 Ukrainian hryvnas (UAH) in compensation for non-pecuniary damage. The applicant stated that he had sustained non-pecuniary damage caused by his involuntary hospitalisation, the administering of unknown medication by means of injection, poor nutrition, fear for his life, unsanitary conditions and a breach of his right to respect for his home.	
CASE OF DZHABAROV AND OTHERS v. BULGARIA judgement of 31 March 2016, http://hudoc.echr.coe.int/eng?i=001-161740	Bulgaria	Mr Dzhabarov alleged, *inter alia*, that his detention had been unlawful and had caused him psychological trauma. He sought BGN 2,000 (EUR 1,023) in non-pecuniary damages (…). He argued, *inter alia*, that it was logical to presume that a person who had been unlawfully detained had endured mental suffering on account of that, and that he was entitled to compensation because his detention had been in breach of his fundamental rights.	The Burgas Administrative Court dismissed the claim. It held that Mr Dzhabarov had failed to prove that he had suffered non-pecuniary damage – such as negative emotions, stress or discomfort – as a result of his detention. In a judgment of 15 June 2010 the Supreme Administrative Court upheld the lower court's judgment.

Summary table of ECHR cases			
Reference	**Country**	**Damages claimed**	**Court decision**
		Ms Nikolova alleged that the deprivation of liberty and the pressure to which she had been subjected by the police had caused her stress and humiliation and had aggravated her health, and sought BGN 10,000 (EUR 5,113) in non-pecuniary damages.	The Blagoevgrad Administrative Court dismissed the claim of Ms Nikolova. Ms Nikolova had not categorically shown that she had suffered non-pecuniary damage as a result of her arrest and detention.
CASE OF KHACHATRYAN AND OTHERS v. ARMENIA judgement of 27 November 2012, http://hudoc.echr.coe.int/eng?i=001-114785	Armenia	The nineteen applicants claimed amounts between EUR 1000 and EUR 22000 in respect of pecuniary and non-pecuniary damage. The pecuniary damages claimed included the alleged travel, food and medical treatment expenses which they and their relatives had incurred as a result of their unlawful detention, as well as the alleged lost income.	The Court notes that the applicants' claims for pecuniary damage are not supported by any evidence. It therefore rejects these claims. On the other hand, it considers that the applicants must have undoubtedly suffered non-pecuniary damage as a result of the violations found and decides to award each of the applicants EUR 6,000 in respect of non-pecuniary damage.
CASE OF MICHALAK v. SLOVAKIA judgement of 8 February 2011, http://hudoc.echr.coe.int/eng?i=001-103251	Slovakia	The applicant claimed SKK 326,913.50 in respect of lost wages during detention and 50,000 euros (EUR) in respect of non-pecuniary damage. He alleged, that his pre-trial detention had been unlawful, arbitrary, unjustified and excessively lengthy. The applicant complained that the monitoring of his telephone calls had been unlawful and arbitrary, that it had violated his right to respect for his private life and correspondence, and that he had had no effective remedy in that respect.	The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 8,000 in respect of non-pecuniary damage.

Summary table of ECHR cases			
Reference	**Country**	**Damages claimed**	**Court decision**
CASE OF VELINOV v. "THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA" judgement of 19 September 2013, http://hudoc.echr.coe.int/eng?i=001-126360	FYROM	The applicant claimed the equivalent to approximately 9,900 euros (EUR) together with interest in respect of non-pecuniary damage for the emotional suffering, anxiety and loss of reputation which he had suffered due to the deprivation of his liberty and the length of the compensation proceedings.	The Court considers that the applicant must have sustained non-pecuniary damage, which cannot be compensated solely by the finding of a violation of the Convention. Making its assessment on an equitable basis, the Court awards the applicant EUR 1,500 under this head, plus any tax that may be chargeable.
CASE OF LOLOVA-KARADZHOVA v. BULGARIA of 27 March 2012, http://hudoc.echr.coe.int/eng?i=001-109909	Bulgaria	The applicant claimed a total of 15,000 euros (EUR) in respect of non-pecuniary damage suffered as a result of her deprivation of liberty and the alleged poor conditions of detention. She also sought the reimbursement of EUR 3,600 for forty-five hours of legal work by her lawyers in the proceedings before the Court, at an hourly rate of EUR 80. In support of this claim she presented a contract and a time sheet.	The Court considers that the applicant's detention for almost thirty hours in breach of Article 5 § 1 of the Convention must have caused her distress which would not be adequately compensated by the finding of a violation alone. It awards the applicant EUR 1,000 in respect of non-pecuniary damage. For costs and expenses: the Court finds it reasonable to award the sum of EUR 2,000 to the applicant, plus any tax that may be chargeable to her.
CASE OF MICHALKO v. SLOVAKIA judgement of 21 December 2012, http://hudoc.echr.coe.int/eng?i=001-102473	Slovakia	The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage, emphasising the repercussions that his (pre-)detention had had on his private, family and social life.	The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 7,000 under that head.

Summary table of ECHR cases			
Reference	**Country**	**Damages claimed**	**Court decision**
CASE OF DBOUBA v. TURKEY judgement of 13 July 2012, http://hudoc.echr.coe.int/eng?i=001-99905	Turkey	The applicant claimed 12,500 euros (EUR) in respect of pecuniary damage for loss of income during the time spent in detention. He further claimed a total of EUR 235,000 in respect of non-pecuniary damage he had suffered as a result of violations of his rights under Articles 3 and 5 of the Convention.	The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim. However, it considers that the applicant must have suffered non-pecuniary damage which cannot be compensated solely by the finding of violations. Having regard to the gravity of the violations and to equitable considerations, it awards the applicant EUR 11,000 for non-pecuniary damage.
CASE OF CRABTREE v. THE CZECH REPUBLIC judgement of 25 February 2012, http://hudoc.echr.coe.int/eng?i=001-97498	Czech Republic	The applicant claimed 60,830 euros (EUR) in compensation for pecuniary damage. In his letter of 25 February 2005 he modified his claim asking to be paid 60,200 euros (EUR) in this respect. Those sums comprised loss of income, rent for an apartment paid in advance, personal effects stolen at the time when the applicant was detained and charges for his detention. He further claimed EUR 2,000,000 in compensation for non-pecuniary damage caused by mental and physical suffering during his detention. That sum also comprised punitive damages against the Czech Republic to prevent it from breaking its laws.	As regards the applicant's claim for pecuniary damage, the Court considers that there is no causal link between the violations found, that is unlawfulness of the applicant's detention and the lack of an enforceable right to compensation, and the pecuniary damage claimed. The Court therefore dismisses that claim. In the present case, however, the Court has found a violation of the applicant's right to liberty. Having regard to the fundamental importance of that right, the Court finds it appropriate to award the applicant 2,000 euros (EUR) as compensation for non-pecuniary damage.
CASE OF NOLAN AND K. v. RUSSIA judgement of 12 February 2009, http://hudoc.echr.coe.int/eng?i=001-91302	Russia	The applicant claimed 20,000 euros (EUR) in respect of the non-pecuniary damage caused by his expulsion and overnight detention at the airport, the discriminatory treatment he had suffered on account of his religious beliefs, his exclusion from his home of eight years and his forced separation from his infant child K.	They pointed out that, by virtue of their profession, missionaries often changed their place of residence. The Court accepts that the applicant has suffered non-pecuniary damage, such as distress and frustration resulting from the measure compelling his departure from Russia which was

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			not accompanied by any procedural guarantees, his lengthy separation from his son K., and his overnight detention at the airport without any clear legal basis or any possibility of claiming compensation. The Court awards the applicant EUR 7,000 under this head.
CASE OF BOCHEV v. BULGARIA judgement of 13 November 2008, http://hudoc.echr.coe.int/eng?i=001-89607	Bulgaria	The applicant claimed 50,000 euros (EUR) in respect of the non-pecuniary damage suffered as a result of the breach of Article 5 § 3. He submitted that the extraordinary amount of time which he had spent in pre-trial detention, often in appalling conditions, and the national courts' formalistic approach to this matter caused him to feel desperate and helpless. He further claimed EUR 30,000 in respect of the non-pecuniary damage flowing from the breach of Article 5 § 4. He said that the formalistic and unfair manner in which the courts reviewed his numerous requests for release had caused him despair and distress. (…), he claimed EUR 10,000 in respect of the breach of Article 8, saying that the systematic interception of his letters, which had been his principal means of communication with the outside world and his lawyers, had caused him emotional trauma.	The Court considers that the violations of the Convention found in the present case have undoubtedly caused the applicant non-pecuniary damage in the form of stress, despair and frustration arising from the lack of sufficient justification for his pre-trial detention, the deficient examination of his requests for release, and the monitoring of his correspondence. (…) it awards him EUR 6,000, plus any tax that may be chargeable.

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CASE OF SVETOSLAV DIMITROV v. BULGARIA judgement of 7 February 2008, http://hudoc.echr.coe.int/eng?i=001-84970	Bulgaria	The applicant claimed 3,000 euros (EUR) in respect of the pecuniary damage and EUR 5,000 for the non-pecuniary damage suffered as a result of the violation of Article 5 § 1 of the Convention. He also claimed EUR 6,000 in respect of the non-pecuniary damage suffered as a result of the violation of Article 5 § 4 of the Convention, arguing that his inability to challenge the lawfulness of his detention had filled him with a sense of despair and hopelessness. In respect of the amounts claimed, the applicant invited the Court to take into account the positive economic changes in Bulgaria and the improved living standards of Bulgarian citizens. He submitted analysis and statistics in order to undergird his argument.	No award is made in respect of the pecuniary damage claimed in respect of violation of Article 5 § 1. In respect of the claims for non-pecuniary damage, the Court notes that the violations it found related to the applicant unlawfully having been detained for a period of almost nine months, that he could not challenge the lawfulness of his detention before a court of law and that he did not have an enforceable right to compensation for his deprivation of liberty. (…) the Court awards EUR 5,000 under this head. Found positive change of economic indicators relevant to the assessment of the award.
CASE OF DOBREV v. BULGARIA judgement of 10 August 2006, http://hudoc.echr.coe.int/eng?i=001-76684	Bulgaria	The applicant claimed 7,000 euros (EUR) in non-pecuniary damages for each of the alleged violations of his rights under the Convention. He argued that he had felt anguish and despair having been deprived of his liberty, in conditions which were inhuman and degrading, for a considerable length of time pending the criminal proceedings against him and without the possibility to have the grounds of his continued detention effectively examined by a court. In respect of the search of his home, he contended that the unlawful actions of the authorities damaged his reputation in the community and with the owner of the apartment, which made his reintegration into society difficult.	The Court considers that the applicant has undoubtedly suffered non-pecuniary damage as a result of his detention for at least nine months in conditions which were inhuman and degrading and, also, as a consequence of the violation of his rights under Articles 5 § 1 and 8 of the Convention. Having regard to the specific circumstances of the present case, the Court awards EUR 3,000 under this head.

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CASE OF KOLANIS v. THE UNITED KINGDOM judgement of 21 June 2005, http://hudoc.echr.coe.int/eng?i=001-69424	UK	The applicant claimed that she had been unlawfully detained for more than sixteen months. (…) She claimed GBP 25,000, referring to her anxiety and distress at the confinement, loss of self-respect, general effects of loss of liberty, uncertainty, depression, loneliness, considerable weight gain, close proximity to mental illness and distress caused by other patients and the death of a nephew during this period, when she was unable to be with her relatives.	The Court notes that it has found a procedural breach of Article 5 § 4 of the Convention above and that there has been no finding of substantive unlawfulness. It cannot be excluded on the facts of this case, however, that the applicant would have been released earlier if the procedures had conformed with Article 5 § 4 and therefore she may claim to have suffered, in that respect, a real loss of opportunity. Furthermore, it considers that the applicant must have suffered feelings of frustration, uncertainty and anxiety from the situation which cannot be compensated solely by the finding of violation. Having regard to awards made in similar cases, the Court awards, on an equitable basis, 6,000 euros (EUR).
CASE OF BLACKSTOCK v. THE UNITED KINGDOM judgement of 21 June 2005, http://hudoc.echr.coe.int/eng?i=001-69418	UK	The applicant sought compensation of 5,000 pounds sterling (GBP) for non-pecuniary damage arising from the delay in the period between reviews. The delay had a clear impact on his future release as shown by the fact that once he was transferred to open conditions release followed. This 10 month delay had severe effects, causing frustration, disappointment and fears that he might not be released.	The Court does not find that any loss of liberty may be regarded as flowing from the finding of a breach of Article 5 § 4 (…). However, the applicant must have suffered feelings of frustration, uncertainty and anxiety flowing from the delays in review which cannot be compensated solely by the finding of violation. Making an assessment on an equitable basis, it awards 1,460 euros (EUR) <GBP 1,000> for non-pecuniary damage.

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CASE OF BEET AND OTHERS v. THE UNITED KINGDOM judgement of 1 March 2005, http://hudoc.echr.coe.int/eng?i=001-68421	UK	*Beet*: the applicant, a mother of two children, was committed without warning and spent two days in prison at a time that she was taking medication for depression which worsened after leaving prison: she claimed GBP 4,000 for loss of liberty and GBP 1,500 for suffering caused by separation from her children and worsening of her mental health; *Fogg*: the applicant, a mother of five children, was committed to prison for two days for non-payment of only GBP 20: she claimed GBP 4,000 for loss of liberty and GBP 1,000 for separation from her children; *Telfer*: the applicant, under 21 at the time, spent seven days in prison and shared a cell with a prisoner who made a suicide attempt, which was a traumatic experience for the applicant: he claimed GBP 6,750 for loss of liberty and GBP 3,000 for extreme suffering and distress resulting from the circumstances of his detention; He also claimed pecuniary damage as he was dismissed from his job at the Department of Social Services, earning GBP 27,500 per annum, when he was committed to prison and absent without explanation. Following his release, he was unable to find employment for ten months. He claimed GBP 20,000 for loss of earnings.	As concerns the breach of Article 5 found in respect of *Beet*, the Court recalls that it found that the detention was unlawful in that the magistrates did not have jurisdiction to make the order of committal due to a failure properly to inquire into the applicant's means. In the present case, making an assessment on an equitable basis, therefore, the Court considers it appropriate to make an award to this applicant. Having regard to the circumstances, including the lack of substantiation or supporting documents, the Court awards EUR 5,000. Accordingly, it considers that the finding of a violation of Article 6 §§ 1 and 3 (c) of the Convention constitutes, in itself, sufficient just satisfaction for any non-pecuniary damage sustained by these four applicants. **Pecuniary damage of Telfer** The Court recalls that, as regards claims for pecuniary loss, its case-law establishes that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention and that this may, in the appropriate case, include compensation in respect of loss of earnings. Applying that approach to the present case, the Court finds that there has not been shown to be any causal link between the violation found and the damage claimed. No award is made.

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		Moore: the applicant, partially blind, was the main carer for his wife who suffered from rheumatoid arthritis and spent three days in prison, following which he suffered severe depression and took an overdose in a suicide attempt: he claimed GBP 4,500 for loss of liberty and GBP 2,000 for severe distress caused by that imprisonment; *Rigby*: the applicant was the mother of two very young children (aged six months and two years) and was caused severe anxiety by having to leave them during one day's imprisonment, suffering from depression for a short while on her release: she claims GBP 3,400 for loss of liberty and GBP 1,500 for severe distress resulting from the separation from her children and the effect on her mental health.	
CASE OF LLOYD AND OTHERS v. THE UNITED KINGDOM judgement of 1 March 2005, http://hudoc.echr.coe.int/eng?i=001-68423	UK	Too many claimed damages from too many parties (26), but very interested due to elaborate explanations of suffering: include suffering from mental illness, being separated from children and consequences of this, losing the job, disowned by the family, suicidal tendencies, homelessness after release, etc.	In the present case, making an assessment on an equitable basis, the Court considers it appropriate to make an award to the twenty six applicants for the breaches of Article 5 § 1 which occurred. It awarded EUR 5000-9000.

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CASE OF MITEV v. BULGARIA judgement of 22 December 2004, http://hudoc.echr.coe.int/eng?i=001-67897	Bulgaria	**Pecuniary damage** The applicant claimed EUR 3,306 in lost income. That figure was calculated on the basis of the minimum wage applicable in Bulgaria for the period 5 August 1994 – 23 October 1997, when the applicant was deprived of his liberty. **Non-pecuniary damage** The applicant claimed EUR 10,000 under this head, on account of all violations of the Convention in his case. He stated that the lengthy proceedings and his unlawful and unjustified detention in very poor conditions had caused him anxiety and suffering.	**Pecuniary damage** (…) In particular, he has not shown that he worked before or after his detention or that he would have done so had his detention been shorter. The claims for pecuniary damages are therefore dismissed. **Non-pecuniary damage** The Court considers that the applicant must have endured anxiety and suffering because of his lengthy detention, the delay in his release, the excessive length of the criminal proceedings and the other violations of his Convention rights found in the present case. (…) the Court awards EUR 4,000 in respect of non-pecuniary damage.
CASE OF PAVLETIC v. SLOVAKIA judgement of 22 June 2004, http://hudoc.echr.coe.int/eng?i=001-61835	Slovakia	The applicant claimed 94,000 euros (EUR) in compensation for pecuniary damage. That sum corresponded to the loss of profit of the company which the applicant had owned in Slovakia and to loss of income relating to an employment contract which the applicant had concluded in 1994. The applicant further claimed EUR 200,100 in respect of non-pecuniary damage. He submitted that the violations of the Convention complained of had caused him suffering and distress, that he had been separated from his family for more than two years and that he had not received appropriate dental treatment during his detention.	The Court notes that the length of the applicant's detention pending trial was deducted from his sentence. In these circumstances, and even assuming that there is a causal link between the violations of Article 5 of the Convention found and the alleged loss of income of the applicant, the claim relating to pecuniary damage is to be dismissed. In view of the circumstances of the case the Court further considers that the above finding of a violation of Article 5 §§ 3, 4 and 5 of the Convention constitutes, for the purpose of Article 41 of the Convention, sufficient satisfaction for any prejudice which the applicant may have suffered.

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CASE OF D.G. v. IRELAND judgement of 16 May 2002, http://hudoc.echr.coe.int/eng?i=001-60457	Ireland	The applicant argued that, as a result of his unlawful imprisonment, he suffered humiliation, loss, pain, upset, distress and suffering. He maintained that he was entitled to significant compensation given his age (17), his special needs, the fact that the authorities failed to provide for him as required (…). He claimed 63,500 euros (EUR) in non-pecuniary damage.	Accordingly, the Government submitted that any personal distress caused to the applicant was not such as would give rise to a claim for compensation of any non-pecuniary damage. (…) the Court noted that his detention was not punitive but rather protective in nature given the danger the applicant posed to himself and to others; that St Patrick's was a detention centre adapted to juvenile detainees, with a broad range of educational and recreational facilities available to all inmates; (…) the Court awards, on an equitable basis, EUR 5,000 to the applicant in compensation for non-pecuniary damage.
CASE OF S.B.C. v. THE UNITED KINGDOM judgement of 19 June 2001, http://hudoc.echr.coe.int/eng?i=001-59521	UK	As regards the alleged pecuniary loss, the applicant submitted that he had sustained significant business losses as a direct result of his pre-trial detention, including a salary loss of at least 129,000 pounds sterling (GBP). He also claimed, in respect of the non-pecuniary damage alleged, that he suffered considerable anxiety, distress and humiliation by reason of his pre-trial detention and he submitted, inter alia, a description of the events surrounding his arrest and detention (…)	The Court recalls that just satisfaction can be awarded only in respect of damage resulting from a deprivation of liberty that an applicant would not have suffered if he had had the benefit of the guarantees of Article 5. However, the Court cannot speculate on whether or not the applicant would have been released on bail (…). In sum, the Court dismisses the present applicant's claim for compensation for pecuniary loss and considers its finding of a violation sufficient as regards any non-pecuniary loss suffered by him.

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CASE OF SAKIK AND OTHERS v. TURKEY judgement of 26 November 1997, http://hudoc.echr.coe.int/eng?i=001-58117	Turkey	The applicants claimed compensation for the non-pecuniary damage resulting from the deprivation of their liberty, which, they asserted, had been aggravated by the damage to their "reputations as members of parliament". They each claimed 600,000 French francs (FRF) for prejudice suffered in their "private capacity" and the same amount for "damage to their reputations as members of parliament".	The government argued that the applicants' claims were based on concepts which had nothing to do with the Court's case-law and were neither justified nor founded, since there was no proof of any causal connection between the length of their detention in police custody and the non-pecuniary damage they had alleged. The Court notes that the applicants were detained in police custody for twelve days (Mr Sakık, Mr Türk, Mr Alınak and Mrs Zana) or fourteen days (Mr Dicle and Mr Doğan) without judicial intervention. It is in no doubt that the circumstances in which they were deprived of their liberty must have caused them non-pecuniary damage for which the domestic courts have not awarded them any compensation. The Court awards FRF 25,000 each to Mr Sakık, Mr Türk, Mr Alınak and Mrs Zana and FRF 30,000 each to Mr Dicle and Mr Doğan.
CASE OF TIBA v. ROMANIA judgement of 13 December 2016, http://hudoc.echr.coe.int/eng?i=001-169479	Romania	The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage on account of the physical and psychological suffering to which he had been subjected.	The Court considers that the applicant must have suffered distress as a result of the treatment he was subjected to by the authorities on 12 December 2008 prior to his placement in police custody. Consequently, making an assessment on an equitable basis, the Court awards the applicant EUR 5,000 in respect of non-pecuniary damage.

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CASE OF BUZADJI v. THE REPUBLIC OF MOLDOVA judgement of 5 July 2016, http://hudoc.echr.coe.int/eng?i=001-164928	Moldova	The applicant claimed EUR 50,000 in respect of non-pecuniary damage. He submitted that he had suffered considerable stress and that his reputation (CEO of a liquefied gas supply company) had been considerably damaged as a result of his unjustified detention. He also argued that the detention had adversely affected his health.	The Government did not submit any comment regarding the non-pecuniary damage claimed by the applicant. The Court considers that the applicant must have been caused a certain amount of stress and anxiety as a result of the violation of his rights under Article 5 § 3 of the Convention. Deciding on an equitable basis, it awards the applicant EUR 3,000.
CASE OF TCHANKOTADZE v. GEORGIA judgement of 21 June 2016, http://hudoc.echr.coe.int/eng?i=001-163799	Georgia	The applicant claimed GEL 142,600 (some EUR 120,000) in respect of pecuniary damage. He explained that that amount would provide compensation for his monthly salary, which was GEL 2,300 (some EUR 1,100) at the material time and which he would have received if he had not been forced to resign as chairperson of the CAA after the institution of unfair criminal proceedings against him. The applicant also claimed EUR 500,000 in respect of non-pecuniary damage. He submitted that he had suffered severe stress, which had had a negative impact on his health, on account of the violations of his rights under Article 5 § 1 and Article 6 § 1 of the Convention.	The Court does not discern any causal link between the violation it has found and the alleged pecuniary damage. Indeed, it cannot speculate on whether and for how long the applicant would have retained his job if there had been no criminal proceedings against him. On the other hand, the Court has no doubt that the applicant suffered distress and frustration on account of the violations of his rights under Article 5 § 1 and Article 6 § 1 of the Convention. The resulting non-pecuniary damage would not be adequately compensated for by the mere finding of those breaches. Having regard to the particular circumstances of the case, the Court, making its assessment on an equitable basis, finds it appropriate to award the applicant EUR 20,000 under this head.

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CASE OF URAZOV v. RUSSIA judgement of 14 June 2016, http://hudoc.echr.coe.int/eng?i=001-163656	Russia	The applicant claimed 8,500 euros (EUR) in respect of pecuniary damage, which represents the approximate amount spent by the applicant's relatives for sending food parcels and money transfers to the applicant in order to maintain his health while he was detained in the remand prison. He further claimed EUR 1,370,250 in respect of non-pecuniary damage.	The Court considers that there is no causal link between the violations found and the pecuniary damage claimed. Consequently, it finds no reason to award the applicant any sum under this head. As to the non-pecuniary damage, the Court notes that it has found a combination of serious violations in the present case. (…) The Court awards the applicant EUR 3,575 in respect of non-pecuniary damage.
CASE OF J.N. v. THE UNITED KINGDOM judgement of 19 May 2016, http://hudoc.echr.coe.int/eng?i=001-162855	UK	The applicant claimed seventy-five thousand pounds (75,000 GBP) in respect of non-pecuniary damage (to reflect his loss of liberty and the resulting deterioration of his mental health) and two thousand two hundred and forty pounds in respect of pecuniary damage (representing phone cards purchased during both periods of detention, property lost upon re-detention, attending medical appointments and telephone calls to his solicitor).	Taking note of the awards made in similar cases, and the fact that during the relevant period the applicant contributed to his continued detention by persistently refusing to cooperate with the authorities in their attempts to effect a voluntary return, the Court awards him EUR 7,500 in respect of non-pecuniary damage. The Court notes that the applicant has not submitted any documents which would corroborate his claims for pecuniary damage; it therefore rejects these claims.
CASE OF SEAGAL v. CYPRUS judgement of 26 April 2016, http://hudoc.echr.coe.int/eng?i=001-162212	Cyprus	The applicant, without invoking a specific sum, claimed both pecuniary and non-pecuniary damage. He submitted in this respect that the police had seized his passport and that during his detention his belongings and money were taken from his apartments and that he lost contracts he had entered into for the renovation of various properties (his work). He also emphasised that he had been arbitrarily arrested and detained	The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, having regard to the violations found under Article 3 and 5 § 1 of the Convention (see paragraphs 122 and 161 above), it awards the applicant EUR 12,700 in respect of non-pecuniary damage.

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		for a very long period of time and had suffered injuries while in detention.	
CASE OF RASUL JAFAROV v. AZERBAIJAN judgement of 17 March 2016, http://hudoc.echr.coe.int/eng?i=001-161416	Azerbaijan	The applicant claimed 10,000 euros (EUR) in respect of lost earnings from three projects funded by grants received just before his arrest, and AZN 2,274.61 for expenses borne by his family to buy food parcels for him while in detention. The applicant further claimed EUR 20,000 in respect of non-pecuniary damage caused by serious mental suffering attributable to the arbitrary and unlawful conduct of the domestic authorities.	As to the part of the claim concerning expenses relating to the food parcels, the Court does not discern any causal link between the violations found and the damage alleged; it therefore rejects this part of the claim. As to the part of the claim concerning the loss of earnings, the Court notes that the applicant submitted a number of documents in support of this part of the claim. However, the information and material submitted are not sufficient for precise calculation of the various components of the alleged damage. Nevertheless, based on that material, the Court accepts that the applicant did suffer, on account of his unjustified detention, a loss of opportunities, which justifies an award of just satisfaction in the present case. (…) It awards the applicant the global sum of EUR 25,000 in respect of both pecuniary and non-pecuniary damage.
CASE OF POPOVICIU v. ROMANIA judgement of 1 March 2016, http://hudoc.echr.coe.int/eng?i=001-160997	Romania	The applicant claimed 100,000 euros (EUR) in respect of pecuniary damage, representing revenue lost as a consequence of the prohibition on his leaving the country. He also claimed EUR 1,000,000 in respect of non-pecuniary damage, on account of the prejudice to his public image by the media coverage of his criminal case.	The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 4,500 in respect of non-pecuniary damage.

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CASE OF MEFAALANI v. CYPRUS judgement of 23 February 2016, http://hudoc.echr.coe.int/eng?i=001-160851	Cyprus	**Pecuniary damage** The applicant claimed that, prior to his arrest, he had loans totalling some EUR 125,000 in 2010 (now over EUR 500,000) which he had been servicing from a thriving business. Following his arrest, his business went downhill and he now faces bankruptcy. Furthermore, despite telling the authorities that he wished to return voluntarily to Syria on 16 December 2010, he remained in detention until 29 January 2011 and, in that intervening period, he had incurred further medical expenses of EUR 2,555. He would not have incurred those expenses if he had been deported and received the same treatment in Syria. Finally, his wife flew from Syria every weekend to visit him, although he was unable to produce the receipts for her tickets. **Non-pecuniary damage** The applicant submitted claims in respect of non-pecuniary damage. He stated that he suffered non-pecuniary damage as a result of his detention, principally because of his separation from his wife. He also stated that, after his deportation, he was arrested and imprisoned for three months in Syria for having served in the Cypriot National Guard, and he sought non-pecuniary damage for this three months' imprisonment.	**Pecuniary damage** There is no causal relation between the absence of a speedy review of the applicant's detention and any of the pecuniary losses he claims to have incurred. Accordingly, the applicant's claim for pecuniary damages falls to be dismissed in its entirety. **Non-pecuniary damage** The Court considers that the applicant's claim based on his three months' imprisonment is not causally linked to the violation of Article 5 § 4 it has found and must be dismissed. It does however accept that the applicant has suffered non-pecuniary damage as a result of the lack of a speedy review of his detention in Cyprus and, ruling on an equitable basis, awards him EUR 6,500.

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CASE OF QING v. PORTUGAL judgement of 5 November 2015, http://hudoc.echr.coe.int/eng?i=001-158504	Portugal	The applicant claimed 50,000 euros (EUR) in respect of pecuniary damage, which included the loss of salary she would have earned during her employment had she been released. The applicant claimed a further EUR 50,000 in respect of non-pecuniary damage suffered as a result of her unlawful preventive detention and the discrimination against her.	The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, having regard to its above findings, it considers that the applicant must have suffered distress as a result of the pre-trial detention. Making its assessment on an equitable basis, it awards her EUR 2,200 in respect of non-pecuniary damage, plus any tax that may be chargeable.
CASE OF YAGUBLU v. AZERBAIJAN judgement of 5 November 2015, http://hudoc.echr.coe.int/eng?i=001-158506	Azerbaijan	The applicant claimed 8,500 euros (EUR) in respect of pecuniary damage, noting that his family had spent that sum on sending food to him in prison. Moreover, his family had regularly visited him in prison and attended all the court hearings. Lastly, he noted that returning from a court hearing held in Shaki his family had had a road accident as a result of which his wife had undergone numerous surgical operations.	The Court does not find any causal link between the damage claimed and the violations found. Accordingly, it rejects the applicant's claims in respect of pecuniary damage.
CASE OF KHALIKOVA v. AZERBAIJAN judgement of 22 October 2015, http://hudoc.echr.coe.int/eng?i=001-157964	Azerbaijan	The applicant claimed a total of AZN 210,000 in respect of pecuniary damage. In this connection, relying on an expert report from a private company delivered on 29 December 2010, she submitted that in 2010 the market price of her flat had been AZN 71,000 namely AZN 2,500 per sq. m. She also submitted that the price of flats situated in the area where her flat was located had increased by about 30-33 % since 2010. She further claimed AZN 8,038 for her	As regards the part of the applicant's claim for the damage to and the disappearance of her belongings following her eviction from the flat, even assuming that there is a causal link between the damage claimed and the violations found, the Court observes that the applicant did not submit any evidence supporting this claim. For the above reasons, the Court rejects this part of the applicant's claim in respect of pecuniary damage.

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		belongings that had been damaged or had disappeared during her eviction from the flat and estimated their current value as AZN 10,000.	In view of the above findings, (…) that the awarded amount should also take into consideration the effects of inflation, the Court awards the applicant the sum of EUR 45,000 under this head, plus any tax that may be chargeable on this amount.
CASE OF EL KHOURY v. GERMANY judgement of 9 July 2015, http://hudoc.echr.coe.int/eng?i=001-155821	Germany	Regarding the alleged violation of Article 6 §§ 1 and 3 (d), the applicant claimed EUR 60,000 for non-pecuniary damage. He further sought a sum of EUR 44,120 in respect of non-pecuniary damage with regard to the alleged violation of Article 5 § 3 and Article 6 § 1 of the Convention. He stressed the emotional distress he had suffered due to the prolonged detention on remand. As a result he had suffered from post-traumatic stress disorder and an accompanying period of moderate depression.	In the present case, the Court considers it reasonable to assume that the applicant suffered distress and frustration exacerbated by the prolonged detention on remand. Deciding on an equitable basis, the Court awards the applicant EUR 6,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.
CASE OF YEGOROV v. SLOVAKIA judgement of 2 June 2015, http://hudoc.echr.coe.int/eng?i=001-155006	Slovakia	The applicant claimed 100,000 euros (EUR) in respect of pecuniary damage and EUR 150,000 in respect of non-pecuniary damage. As regards the former claim, he submitted in particular that during the excessively long period of his detention he had been prevented from running his business, that documents relevant to the substantiation of his claim had been lost or destroyed, (…).	However, the Court observes that the applicant's claim in respect of pecuniary damage has not been substantiated by any evidence and must therefore be rejected. Nevertheless, ruling on an equitable basis, the Court awards the applicant EUR 26,000, plus any tax that may be chargeable, in respect of non-pecuniary damage.

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Reference	**Country**	**Damages claimed**	**Court decision**
CASE OF DELIJORGJI v. ALBANIA judgement of 28 April 2015, http://hudoc.echr.coe.int/eng?i=001-153924	Albania	The applicant claimed 150,000 euros (EUR) in respect of pecuniary and non-pecuniary damage. This included the loss of salary he would have gained during his employment, had he been released as well as the feeling of distress sustained by the applicant and his family member for over one year.	The Government submitted that the applicant was sentenced to imprisonment by a final court decision. As a result, the period served in pre-trial detention was counted as imprisonment in accordance with the domestic law. On this account, the applicant could not claim pecuniary damage. The Court observes that it has found a violation of Article 5 § 1 on account of the applicant's unlawful detention between 24 November 2010 and 12 March 2012 as well as a violation of Article 5 § 4 of the Convention. The applicant must have suffered some anguish and distress on account of those infringements of his rights, which cannot be compensated by a mere finding of a violation or by the possibility of lodging a claim for compensation. It awards the applicant EUR 15,600 in respect of non-pecuniary damage.
CASE OF STETTNER v. POLAND judgement of 24 March 2015, http://hudoc.echr.coe.int/eng?i=001-153019	Poland	The applicant claimed 24,000 euros (EUR) in respect of pecuniary damage; this sum corresponded to his average income of EUR 2,000 per month over the period of twelve months. Relying on a number of medical certificates, he maintained that his detention led to a significant deterioration of his health and to a loss of the ability to work in the six months following his release. The applicant also claimed EUR 6,000 in respect of non-pecuniary damage on account of six months of unnecessary detention, the conditions of his detention and the effect of the	The court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it accepts that the applicant suffered non-pecuniary damage – such as distress and frustration – which is not sufficiently compensated by the finding of a violation of Article 5 § 4 of the Convention. Having regard to the nature of the breach and making its assessment on an equitable basis, the Court awards the applicant EUR 2,000, plus any tax that may be chargeable, in respect of non-pecuniary damage.

Summary table of ECHR cases			
Reference	**Country**	**Damages claimed**	**Court decision**
		detention on him and his family. These led to a considerable physical and mental suffering.	
CASE OF KOLAKOVIC v. MALTA judgement of 19 March 2015, http://hudoc.echr.coe.int/eng?i=001-152892	Malta	The applicant claimed pecuniary damage as follows: EUR 24,000 for loss of income from his online shoe business (1,300 pounds sterling (GBP) per month according to the documents submitted) while he was in detention; EUR 420,000 for the loss of equity in the family home, which the applicant lost to the mortgage provider once his family became unable to continue with the repayments in the absence of the income provided by the business; EUR 200 in telephone calls and EUR 2,100 for the rental of a bail address (acquired on the advice of his lawyer) which remained unused, given the authorities' failure to release him; EUR 2,050 attributable to travel expenses incurred by his wife for the purposes of giving evidence in Malta; and EUR 2,178 for dental treatment while in detention. He also claimed EUR 8,000 in non-pecuniary damage, and tax and interest on the above sums.	The Court notes that the documents submitted by the applicant demonstrate only that some business was being carried out in the months prior to his detention. They do not provide substantiation for any established or regular income, and neither did the applicant submit tax forms showing what income he had in fact made in the period immediately prior to his arrest. This being so, the claims connected to the loss of income from his online shoe business are hypothetical and unsubstantiated and must be rejected, as must his claim concerning the loss of the house, which was dependent on the alleged income. The Court further rejects the applicant's claim concerning the rented apartment, in so far as the six-month contract submitted to the Court is dated 17 January 2011 and therefore refers to a period prior to the applicant's detention pursuant to the violation of Article 5 § 3 found by this Court, which occurred just after that period. Furthermore, the Court does not discern any causal link between the violation found and the claims for pecuniary damage referring to the applicant's wife's travel expenses and phone calls, nor his dental treatment, and it therefore rejects those claims. On the other hand, it awards the applicant EUR 1,200 in respect of non-pecuniary damage.

Summary table of ECHR cases			
Reference	**Country**	**Damages claimed**	**Court decision**
CASE OF BUZADJI v. THE REPUBLIC OF MOLDOVA judgement of 16 December 2014, http://hudoc.echr.coe.int/eng?i=001-148659	Moldova	The applicant claimed 50,000 euros (EUR) in compensation for non-pecuniary damage caused to him. He noted that he was a well-known individual in the Gagauzia region of Moldova and that his arrest, widely reported in the media, had caused him considerable stress and loss of reputation. Moreover, his state of health had deteriorated during his detention and he had required medical treatment.	The Court considers that the applicant must have been caused a certain amount of stress and anxiety as a result of the violation of his rights under Article 5 § 3 of the Convention. Deciding on an equitable basis, it awards the applicant EUR 3,000.
CASE OF L.M. v. SLOVENIA judgement of 12 June 2014, http://hudoc.echr.coe.int/eng?i=001-144672	Slovenia	The applicant claimed EUR 200,000 in respect of non-pecuniary damage incurred as a result of the unlawful deprivation of her liberty in the Idrija and Ljubljana Psychiatric Hospitals, the lack of any effective remedies in this respect and the medical treatment she had received while confined. She claimed to still bear the physical and emotional scars incurred as a result of her loss of liberty and the forced administration of medication; she still had certain physical symptoms developed in the course of her medical treatment, she was severely affected by the stigma of a mental illness, in addition to which she was fearful of society, as her appearance and status of a mental patient were sufficient to result in her being hospitalised repeatedly. Moreover, the applicant felt deeply humiliated and helpless because she was unable to obtain any review of her confinement, and also had no hope of successfully claiming compensation in this regard.	(…) Referring to its findings above, the Court notes that the applicant was twice involuntarily confined without a decision of the competent authority, and that she did not have any effective remedies available to obtain a decision on the lawfulness of her confinement. Furthermore, while involuntarily confined, the applicant was treated against her will and without a decision of the competent authority. In this regard she was also deprived of any effective procedural possibility of having her treatment reviewed by an independent authority. The Court considers that the lack of such a possibility to secure her release from the hospital and to have her forced medical treatment discontinued must have caused the applicant a considerable degree of suffering and a profound feeling of helplessness. Therefore, ruling on an equitable basis, the Court awards the applicant EUR 10,000 in compensation for non-pecuniary damage.

Summary table of ECHR cases			
Reference	**Country**	**Damages claimed**	**Court decision**
CASE OF CONTOLORU v. ROMANIA judgement of 25 March 2014, http://hudoc.echr.coe.int/eng?i=001-141914	Romania	(…) He also claimed EUR 1,500,000 in compensation for non-pecuniary damage in connection with the suffering caused by the physical and mental hardship he had sustained due to his excessively prolonged pre-trial detention and having in mind his state of health.	With respect to the non-pecuniary damages requested, the Court notes that it has found in the current case a violation of Article 5 § 3 of the Convention. It considers that the excessive prolongation of the applicant's pre-trial detention, given his state of health, must have caused the applicant feelings of distress and anxiety. Making its assessment on an equitable basis, the Court awards the applicant EUR 1,500 in compensation for non-pecuniary damage.
CASE OF HADADE v. ROMANIA judgement of 29 September 2013, http://hudoc.echr.coe.int/eng?i=001-126436	Romania	The applicant did not claim an exact amount in respect of pecuniary damage. He argued that he had suffered financial losses of between EUR 150,330 and 550,330 because he had had to sell his home and land at an undervalue, had to pay for parcels that had been sent to him during his time in prison, had been unable to lodge a request for the return of his land under the domestic restitution laws, and had had his car returned to him by the authorities in poor condition. The applicant also claimed EUR 50,000 in respect of non-pecuniary damage.	The Court shares the Government's view that there is no causal link between the violations found and the pecuniary damage claimed by the applicant. Consequently, it finds no reason to award the applicant any sum under this head. (…) Consequently, regard being had to the seriousness of the violations of the Convention of which the applicant was a victim and ruling on an equitable basis, the Court awards EUR 10,000 to him in respect of non-pecuniary damage, plus any amount that may be chargeable in tax.

This report aims to examine the factors that affect the social status of suspects and accused drawing upon the prevalent legal practices in four European Union Member States: Belgium, Bulgaria, Greece, and Italy. Each of the four national case studies is structured along the following key aspects: legal status of suspects and accused, custodial and non-custodial measures during proceedings, disclosure of information, legal and practical impact of proceedings on suspects and accused, and assessment of the impact of proceedings by competent authorities. The report has been developed within the framework of the project *Assessing the Risk of Isolation of Suspects and Accused – ARISA* (https://arisa-project.eu/), funded by the European Union's Justice Programme (2014 – 2020).

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