

FAIR TRIALS INTERNATIONAL

The logo for Fair Trials International features the organization's name in a serif font, with 'FAIR TRIALS' on the top line and 'INTERNATIONAL' on the bottom line. A horizontal blue line with a small blue dot in the center is positioned below the text.

Report

**Detained without trial:
Fair Trials International's response to the
European Commission's Green Paper on detention**

October 2011

About Fair Trials International

Fair Trials International (“FTI”) is a UK-based non-governmental organisation that works for fair trials according to international standards of justice and defends the rights of those facing charges in a country other than their own. Our vision is a world where every person’s right to a fair trial is respected, whatever their nationality, wherever they are accused.

FTI pursues its mission by providing assistance to people arrested outside their own country through its expert casework practice. It also addresses the root causes of injustice through broader research and campaigning and builds local legal capacity through targeted training, mentoring and network activities.

Although FTI usually works on behalf of people facing criminal trials outside of their own country, we have a keen interest in criminal justice and fair trial rights issues more generally. We are active in the field of EU Criminal Justice policy and, through our expert casework practice, we are uniquely placed to provide evidence on how policy initiatives affect defendants throughout the EU.

www.fairtrials.net

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Executive Summary

1. Fair Trials International welcomes this opportunity to respond to the European Commission's Green Paper on detention.¹ Detention is a vast area and this report focuses solely on pre-trial detention.² The European Council has rightly noted that:

“Excessively long periods of pre-trial detention are detrimental for the individual, can prejudice judicial cooperation between the member states and do not represent the values for which the European Union stands.”³

2. We recognise that pre-trial detention offers important safeguards to ensure justice is served, evidence and witnesses are protected, and suspects do not escape prosecution. Yet depriving people of their liberty in the period before trial is supposed to be an exceptional measure, only to be used where absolutely necessary. Our cases, together with comparative research we have undertaken in collaboration with international law firm, Clifford Chance and FTI's Legal Experts Advisory Panel (“LEAP”), show there is a gulf between that legal theory and reality.

132,800

*Approximate number
of pre-trial detainees
in the EU*

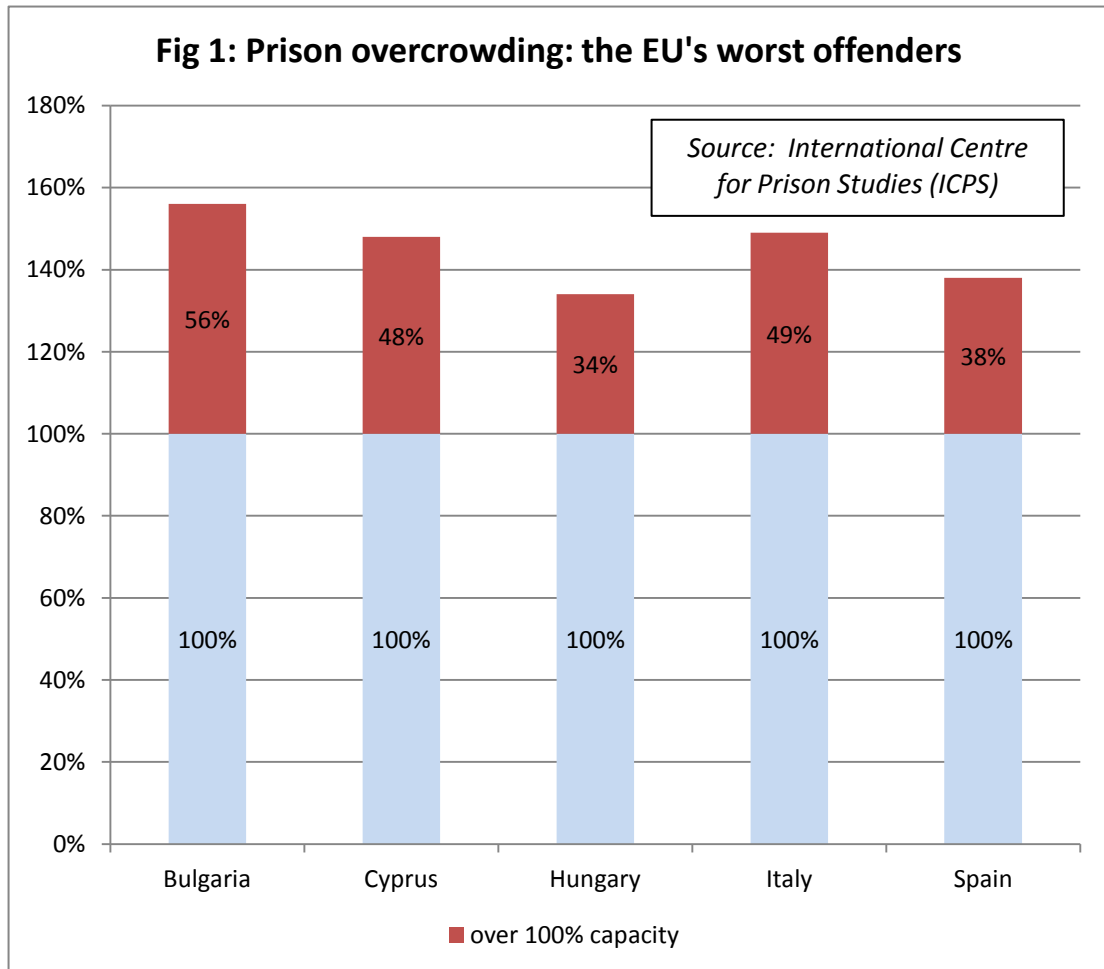
3. This report presents the case studies of 11 FTI clients whose rights (and whose families' rights) have been gravely infringed due to excessive and unjustified pre-trial detention. The report analyses the pre-trial detention regimes of 15 Member States: the Czech Republic, France, England and Wales, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Poland, Portugal, Romania, Slovakia, Spain and Sweden. Key statistical data are presented in Appendix 1.
4. Our report shows that:
 - across the EU, people who have not been convicted of any crime are being detained without good reason for months or even years, often in appalling conditions that make trial preparation impossible;
 - some countries' laws allow people to be detained for years before trial, others have no maximum period at all; few countries have an adequate review system;
 - non-nationals are far more likely than nationals to suffer the injustice of arbitrary and/or excessive pre-trial detention and be deprived of key fair trial protections;
 - growing numbers are being extradited under the European Arrest Warrant, only to be held for months in prison, hundreds of miles from home, waiting for trial;
 - Europe's over-use of pre-trial detention is ruining lives and costing EU countries billions every year; and

¹ Strengthening mutual trust in the European judicial area – A Green Paper on the application of EU criminal justice legislation in the field of detention, COM(2011) 327, Brussels 14 June 2011

² Pre-trial detention is defined differently across the EU; this report defines pre-trial detention as the time spent in detention between charge and sentencing

³ Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings, (2009/C 295/01), 30 November 2009

- many EU countries' justice systems are not ready to make full use of the potentially valuable European Supervision Order ("ESO"), which could save resources⁴ and ease the severe overcrowding that blights prisons in over half of all Member States (see Figure 1 below).



5. Given the serious effects of detention on proper trial preparation and on family life, we have reached the view that legislation at EU level is required. This would clarify the standards set by the European Convention on Human Rights ("ECHR") and the European Court of Human Rights ("ECtHR") and provide more effective protection against the use of pre-trial detention in contravention of fundamental rights. There is both an urgent need and a proper legal base for this legislation.
6. This report makes four recommendations:
 - 1) The EU should legislate⁵ to set minimum standards for the use of pre-trial detention in the EU;
 - 2) Member States should implement the ESO in a way that ensures it represents a real alternative to pre-trial detention and operates consistently and effectively across the EU;

⁴ See Framework Decision on the European supervision order in pre-trial procedures between Member States of the European Union – Impact Assessment, COM(2006) 468, 29 August 2006

⁵ The EU's legislative competency in this area under Article 82(2)(b) of the Treaty on the Functioning of the European Union is dealt with in Section C

- 3) Deferred issue of EAWs and negotiated deferred surrender should be used to avoid unnecessary pre-trial detention post-extradition; and
- 4) The EU should take steps towards establishing a one year maximum pre-trial detention limit. The first step should be targeted research by the European Commission, to establish why practices differ so widely across Member States, both as to the amount of time defendants spend in detention awaiting trial and as to the way in which detention decisions are taken and reviewed.

Introduction

7. Pre-trial detention, according to the Council of Europe's Commissioner for Human Rights, Thomas Hammarberg, has "harsh consequences for individuals". The Commissioner has called the overuse of pre-trial detention "systematic and poorly justified", stating:

*"It is surprising that governments have not done more to prevent these problems in spite of the fact that the prison system is both expensive and overburdened in many European countries. Too little use has been made of more humane and effective alternatives to pre-trial detention."*⁶

8. We share this concern. Our expertise in offering advice and assistance to those standing trial in a country other than their own puts us in a unique position to report on the pre-trial detention experiences of non-nationals and the impact that pre-trial detention has on fair trial rights in general.
9. Inappropriate and excessive pre-trial detention clearly impacts on the right to liberty and the right to be presumed innocent until proven guilty.⁷ It also has a detrimental effect on the rights of the suspect's family members under Article 8 ECHR. This is particularly so when the suspect is detained overseas, as visiting will be more costly and difficult. There is also a wider socioeconomic cost of pre-trial detention, as lengthy detention will usually result in the suspect losing his or her job. Where the pre-trial detainee is also the family's main breadwinner this has a severe financial impact on other family members. These knock-on effects further increase the costs of pre-trial detention to the State.
10. Many of the people who approach us for help complain that they have been denied release pending trial simply because they are non-nationals. Our clients describe appalling pre-trial detention conditions which they have to endure for lengthy

Andrew Symeou: Andrew was a 20 year old student when he was extradited to Greece. Despite family links in Greece and the fact that his father rented a flat for him to stay at, he was denied release pending trial on the basis that he was foreign and a "flight risk" and had not shown "remorse". He was held in a filthy, overcrowded cell for almost a year. Andrew was acquitted and is now trying to rebuild his life. Full case summary: page 14.

⁶ Human rights comment, 17 August 2011

⁷ As guaranteed by Article 5 and Article 6(2) ECHR, respectively

periods, often far from their home and loved ones. While in pre-trial detention our clients have reported being denied access to a lawyer and information about their case.

11. The reality of varying standards in pre-trial detention regimes across the EU is at odds with the idea that all Member States have criminal justice systems that respect fundamental rights and deliver justice. This theoretical equivalence supposedly engenders mutual trust, which in turn enables enhanced cooperation in criminal justice matters. This trust is given as the justification that one Member State can execute a judicial decision made in another Member State with minimal checks; thus forming the basis for the operation of instruments like the EAW and the soon to be implemented Framework Decision on the mutual recognition of custodial sentences.⁸ Inadequate systems for imposing pre-trial detention and poor pre-trial detention conditions undermine the trust needed for mutual recognition instruments to work effectively. As the Green Paper notes:

“It could be difficult to develop closer judicial cooperation between Member States unless further efforts are made to improve detention conditions and to promote alternatives to custody.”⁹

Section A: Pre-trial detention in today's EU

12. The total prison population of the EU is estimated to be 643,000.¹⁰ Overcrowding is severe with over half of the 27 Member States running prisons with occupancy levels above capacity and the average occupancy level for EU prisons at 108%.¹¹ Bulgaria's prisons are operating at 156% capacity, Italy's at 149% capacity and Spain's at 138%.¹² Overcrowding exacerbates poor prison conditions. There are approximately 132,800 pre-trial detainees in the EU, which represents approximately 21% of the total EU prison population.¹³ Figures from 2009 show that over a quarter of these pre-trial detainees are foreign nationals (approximately 35,649).¹⁴ Pre-trial detention has significant financial implications. According to figures from 2006 it costs €3,000 on average to keep a person in pre-

€4.8 billion

*Approximate annual cost
of pre-trial detention
in the EU*

⁸ Framework Decision on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union, 2008/909/JHA, 27 November 2008

⁹ Green Paper, p.4

¹⁰ Source: International Centre for Prison Studies (ICPS), based on figures for 2010/11 (retrieved July 2011), please note that two Member States (Bulgaria and Cyprus) did not provide data for 2010/11, figures for these countries are from 2009

¹¹ Ibid., please note that the data for six Member States is outside the 2010/11 range

¹² Ibid.

¹³ Ibid., please note that this figure is derived from the percentage figures contained in ICPS reports, data for Bulgaria, Cyprus, Malta and Ireland has been obtained from the 2009 Council of Europe Annual Penal Statistics – SPACE I

¹⁴ 2009 Council of Europe Annual Penal Statistics – SPACE I, please note that Austria, France, Greece, Malta and Sweden did not provide figures to the Council of Europe

trial detention for a month.¹⁵ This means that the current pre-trial prison population is costing almost €4.8 billion per year.¹⁶ There are therefore compelling financial, as well as fundamental rights-based, reasons for curbing unnecessary or excessively long pre-trial detention.

Standards in theory and problems in practice

13. A number of international instruments enshrine the right to liberty and the importance of avoiding arbitrary and unnecessary detention. Article 11 of the Universal Declaration of Human Rights, states: “Everyone charged with a penal offence has the right to be presumed innocent until proved guilty.” This is echoed in Article 48 of the Charter of Fundamental Rights, while Article 6 states: “Everyone has the right to liberty and security of person.” Article 9 of the International Covenant on Civil and Political Rights (“ICCPR”) states: “It shall not be the general rule that persons awaiting trial shall be detained in custody”. Article 5 of the ECHR protects the right to liberty and sets out when detention is acceptable and the safeguards which must accompany it.

Robert Hörchner: Robert, 59, was extradited from Holland to Poland and held for 10 months in appalling conditions. Sharing a filthy, overcrowded cell with convicted prisoners, he was offered early release if he signed a confession, but he insisted on a trial. With no information about the case and only limited access to a lawyer, his ability to prepare a defence was severely compromised. Full case summary: page 12.
14. The ECtHR’s jurisprudence on Article 5 and pre-trial detention sets out general principles, which can be summarised as follows:¹⁷
 - A person who is detained on the grounds that he is suspected of an offence must be brought promptly before a judicial authority.
 - There must be a presumption in favour of release.
 - The burden is on the state to show why release pending trial cannot be granted.
 - Reasons must be given for refusing release and the judicial authority must consider alternatives to pre-trial detention which would deal with any concerns it had regarding the defendant’s release.
 - Pre-trial detention cannot be imposed:
 - Simply because the defendant is suspected of committing an offence (no matter how serious or the strength of the evidence against him);
 - On the grounds that the defendant represents a flight risk where the only reason for this decision is the absence of a fixed residence or that the defendant faces a long term of imprisonment if convicted at trial;
 - On the basis that the defendant will reoffend if released, unless there is evidence of a definite risk of a particular offence (the defendant’s lack of a job or family ties is not sufficient to establish this risk).

¹⁵ Framework Decision on the European supervision order in pre-trial procedures between Member States of the European Union – Impact Assessment, COM(2006) 468, 29 August 2006, Table 3.4

¹⁶ 3,000 x 12 x 132,800 = 4,780,800,000

¹⁷ For more detail see Section C

- If a financial surety is fixed as a condition of release, the amount fixed must take into account the defendant's means.
- Continued detention must be subject to regular review, which can be initiated by the defendant, or by a body of judicial character.
- The review of detention must take the form of an adversarial oral hearing with the equality of arms of the parties ensured.
- The decision on detention must be taken speedily and reasons must be given for the need for continued detention (previous decisions should not simply be reproduced).
- In any event, a defendant in pre-trial detention is entitled to a trial within a reasonable time; there must be special diligence in the conduct of the prosecution case.

15. The Council of Europe has also set out basic standards of detention in various instruments. The European Prison Rules ("EPR")¹⁸ include a section on additional safeguards for pre-trial detainees which states: "The regime for untried prisoners may not be influenced by the possibility that they may be convicted of a criminal offence in the future".¹⁹ According to the EPR untried prisoners must be provided with all necessary facilities to assist with preparation of their defence and to meet with their lawyers.²⁰ Pre-trial detention is also dealt with in the Council of Europe's

Anthony Reynolds: Anthony was arrested in Spain in 2006 and held under the notorious "secreto de sumario" regime. Anthony and his lawyer were denied access to information regarding the charges and the evidence until just before trial. After spending four years in pre-trial detention Anthony was acquitted on all charges. Full case summary: page 16.

*Recommendation on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse.*²¹ This states that defendants must not be deemed a flight risk (and thus be subject to pre-trial detention) purely because they are non-national.²² Article 22[2] states that the length of pre-trial detention "shall not exceed, nor normally be disproportionate to, the penalty that may be imposed for the offence concerned".

16. These instruments are further bolstered by the reports of international bodies which conduct prison visits, such as the UN's Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment ("SPT")²³ and the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment ("CPT"). The CPT has utilised its experience to create a set of minimum detention standards. These include: adequate space and a lack of overcrowding; a satisfactory programme of recreation activities; ready access to proper toilet facilities; reasonably good contact with the outside world; the use of

¹⁸ Rec(2006)2, adopted by the Council of Europe Committee of Ministers to member states on 11 January 2006

¹⁹ Part VII, 95.1

²⁰ Part VII, 98.2

²¹ Rec(2006)13, adopted by the Council of Europe Committee of Ministers on 27 September 2006

²² Article 9[2]

²³ Established pursuant to the provisions of the Optional Protocol of the Convention against Torture ("OPCAT")

solitary confinement only when proportionate (recognising the harmful consequences it can have); and access to fresh air and natural light.²⁴

17. International legislation and guidelines based on best practice offer a valuable yardstick by which to measure pre-trial detention regimes in practice. Unfortunately, a comparison between law and practice reveals that many EU Member States are not meeting basic standards.

Non-national defendants

18. Non-national defendants are often at greater risk of suffering a miscarriage of justice, particularly if they do not speak the local language or are unfamiliar with the local legal system. This can have a significant impact on their ability to prepare for trial and this factor is further exacerbated if they are held in pre-trial detention.

19. A large proportion of the EU's pre-trial prison population is made up of non-national defendants.²⁵ Non-nationals are often at a disadvantage in obtaining release pending trial because they are seen as a greater flight risk than national defendants.

26%

Percentage of EU pre-trial detainees who were foreign nationals in 2009

This risk is often identified by courts despite factors indicating that the person will not abscond, such as stable employment and long-time residence in the country. The result is that non-national defendants are regularly denied release pending trial simply because they are foreigners.

20. The problems non-nationals face when applying for release pending trial may be eased by the introduction of the ESO,²⁶ which was adopted by the EU on 23 October 2009. The ESO lays down rules according to which one Member State must recognise a decision on supervision measures issued by another Member State as an alternative to pre-trial detention. The Framework Decision must be implemented by all Member States by 1 December 2012.

21. Effective implementation of the ESO would help ensure the elimination of discrimination against non-nationals in decisions on release pending trial. It would also save significant resources. Member States spend millions each year imprisoning foreign pre-trial detainees.²⁷ However, The European Commission has

²⁴ CPT Standards, revised 2010

²⁵ 26%, source: 2009 Council of Europe Annual Penal Statistics – SPACE I, please note that this does not include figures for Austria, Finland, France, Greece, Malta, Portugal and Sweden

²⁶ Framework Decision on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention, 2009/829/JHA, 23 October 2009

²⁷ The UK spends approximately €67,912,726 each year: €36,473 (average cost per pre-trial detainee per year, source: UK Prison Service Annual Report 2004/2005) x 1,862 (total number of foreigners in pre-trial detention, source: 2009 Council of Europe Annual Penal Statistics – SPACE I). Germany spends approximately €121,104,000 each year: €24,000 (average cost per pre-trial detainee per year, source: replies to 2003 questionnaire, *Revised analysis of questionnaire on the law and practice of the Member States regarding remand in custody*, Report by Jeremy McBride, Council of Europe, 2003, Strasbourg (PC-DP)) x 5,046 (total number of foreigners in pre-trial detention, source: 2009 Council of Europe Annual Penal Statistics – SPACE I). Italy spends approximately €595,066,176 each year: €44,256 (average cost per pre-trial detainee per year, source: 2009

estimated that up to 80% of the EU nationals in pre-trial detention in a Member State could be transferred to their “home” States prior to trial.²⁸

22. The success of the ESO depends crucially on its full and consistent implementation across all Member States. However, as our comparative analysis shows (Section B below and Appendix 2), some EU countries have a long way to go before they can benefit fully from this measure: training, resources and legislative reform are needed and the EU must work together to ensure consistent implementation, and effective use, of the ESO.

Pre-trial detention and preparation for trial

23. Pre-trial detention can have a devastating effect on a defendant’s ability to prepare for trial. Appalling prison conditions can mean that defendants concentrate on surviving their time on remand or considering plea bargains, rather than on preparing their defence. Access to a lawyer and to information about the case – vital components of effective trial preparation – are often much more limited if the defendant is detained. For non-national defendants these problems can be compounded by translation and interpretation issues.

Mohammed Abadi (not his real name): Mohammed was arrested in Spain and held incommunicado for long periods. Beaten by police, interrogated without a lawyer and denied any consular assistance or visits, he spent two years in detention before being released pending trial. Between release and trial he was not allowed either to work or to receive welfare, forcing him to sleep on the streets. He was acquitted for lack of evidence, the hearing lasting less than an hour. Full case summary: page 17.

24. Maximum pre-trial detention periods vary greatly across the EU. Some Member States, such as Spain, set maximum periods of four years.²⁹ Others, like Belgium, have no maximum limit.³⁰ Maximum legal lengths alone do not always provide an accurate picture of a country’s pre-trial detention regime as in practice average lengths may be quite short. However, the mere threat of an excessive period in pre-trial detention can lead defendants to enter inappropriate guilty pleas in a bid to expedite the trial process and their eventual release. Again, this can be exacerbated by a lack of effective legal advice. More generally, delay to the trial process (compounded by over-long pre-trial detention) compromises the fairness of the eventual trial due to the increased risk that vital evidence will be lost and witnesses will forget important details.

Council of Europe Annual Penal Statistics – SPACE I) x 13,446 (total number of foreigners in pre-trial detention, source: 2009 Council of Europe Annual Penal Statistics – SPACE I).

²⁸ Framework Decision on the European supervision order in pre-trial procedures between Member States of the European Union – Impact Assessment, COM(2006) 468, 29 August 2006

²⁹ Pre-trial Detention in the European Union: An Analysis of Minimum Standards in Pre-trial Detention and the Grounds for Regular Review in the Member States of the EU, Kalmthout et al, 2009, p.889

³⁰ Ibid. p.170

25. Many of the criminal defence practitioners FTI works with belong to LEAP, our Legal Experts Advisory Panel, which has met on three occasions to discuss issues surrounding pre-trial detention in the EU, most recently on 22 September 2011. The Panel consists of 76 defence practitioners and academics from 19 EU Member States. Several panel members have regularly confirmed to us that detention practices in their jurisdictions are not compliant with Article 5 ECHR and that lengthy periods of pre-trial detention are often permitted without the court providing any valid justification. Members have described how courts often accept at face value prosecution arguments that continued detention is necessary in the interests of successful prosecution. Panel members have also reported that the problem of excessively long pre-trial detention is exacerbated in some jurisdictions where the defendant is acquitted, yet remains in custody pending appeal by the prosecution.³¹

Oliver Grant (not his real name): *Oliver was extradited from the UK to the Netherlands in 2009 and has spent almost two years in pre-trial detention (longer than the period allowed under Dutch law). He was charged with several other defendants all of whom he believes are Dutch nationals and all of whom were granted release pending trial. In the prison where he is detained, tuberculosis is rife, the food is inedible and detainees are locked in their cells for 23 hours a day. He has not seen his two children during his detention. Full case summary: page 19.*

³¹ See LEAP Communiqué at Appendix 3

Fair Trials International's cases

26. Our cases regularly demonstrate the damaging impact of excessive pre-trial detention. Over half of the individuals approaching FTI for assistance have been arrested in an EU jurisdiction.³² In over 10% of these cases our clients complained about excessive time between charge and trial. By far the most complaints about this were received from clients who had been arrested in Spain. 40% of the clients who cited issues surrounding pre-trial detention complained that there was excess time between reviews, while 20% said that no reasons were given when they were refused release pending trial. Almost a third of our clients who have been arrested in the EU complained about being denied access to a lawyer at the pre-trial stage. FTI receives the most complaints about denial of access to a lawyer from clients in France, Greece and Spain. Below are some recent examples of our cases: more information can be found at www.fairtrials.net/cases.

Robert Hörchner – Poland

Robert's case highlights: the appalling pre-trial prison conditions in some Member States; the failure to allow detainees to prepare effectively for trial; and the discrimination against non-nationals which can take place in pre-trial detention.



27. Robert Hörchner, a 59 year old father of two from Holland, was arrested under an EAW issued by Poland in 2007 to face allegations of leasing a Polish property where cannabis was cultivated. Robert has consistently denied the allegations, claiming that key evidence in the case was forged.
28. Robert resisted extradition to Poland, arguing that if he was surrendered he would be subjected to prison conditions which would breach his human rights and he would not receive a fair trial. Nevertheless a Dutch court ordered his extradition in October 2007. Following his surrender to Poland, Robert was initially held in a detention centre at the airport where he was strip-searched in front of armed guards with dogs. He was kept in a cell for six days where he was denied access to shower facilities and was not allowed water.
29. Robert was eventually transferred to a Polish prison in Bydgoszcz. He was held on remand for 10 months, during which time he had to endure filthy, overcrowded conditions, sharing a 3.5 by 4.5 metre cell with up to nine other inmates. Robert was held in the same cell as convicted murderers and gang members, as well as people suffering from severe mental illness. One cellmate was blind and would regularly soil himself. Inmates were not allowed hot water and were given two buckets of cold

³² Since 2009 FTI has received over 600 requests for help and advice and over half were from people facing charges in EU States.

water each day, which they were expected to use both for washing and for their laundry. There were several suicides during Robert's 10 months in the prison and each night he was kept awake by the cries of other detainees.

30. Violence was widespread and Robert was repeatedly attacked. A system operated throughout the prison whereby cellmates would use violence and extortion for control of the cell, with weaker detainees treated like slaves by the others. On one occasion, fighting in Robert's cell was so fierce that the floor was coated with blood. Prison guards took no steps to stop this violence and were often responsible for meting out brutality. Any complaints were met with severe mistreatment by prison staff, including being placed in a sound-proofed punishment cell, where inmates were bound and beaten by prison guards.
31. While on remand, Robert was only allowed visits from a friend on two occasions, whereas Polish inmates were allowed visits every two weeks. Furthermore, Polish prisoners were allowed to receive packages of food from their families – something denied to Robert as the only non-national in the prison. Robert was provided with limited access to a lawyer and could not properly prepare for his trial. He was denied a Dutch-speaking interpreter though he spoke no Polish, and his choice of legal adviser was highly restricted, as were his contact with that adviser and his access to information about the case against him.
32. At one point a Dutch film crew, who were making a documentary about Robert's case, visited the prison to interview him. Robert recalls that the prison staff redecorated a cell and placed a ping pong table in a communal area so the interview could take place there. The film crew were not allowed access to the rest of the prison.



33. After enduring these nightmarish conditions for several months, Robert attended a first hearing in his trial and came under pressure to confess in exchange for an early release, which he resisted. After a grossly unfair trial six months later, at which he was convicted, he was released and allowed to return to the Netherlands pending an appeal. His case is still not resolved and procedural unfairness has continued at

every stage. His physical health had deteriorated to such an extent that, on his return to Holland, his own wife did not recognise him, due to his drastic weight loss (approximately three stone). His entire body was covered with scars and blemishes resulting from severe and untreated scabies and ringworm he caught while in prison. Dutch doctors told him that normally such diseases cleared up after a few days of medication but as he had been untreated for so long, Robert's skin would take many months to heal. He is still suffering the mental effects of his ordeal in pre-trial detention.

Andrew Symeou – Greece

Andrew's case highlights:

- *that human rights safeguards are often ineffective;*
- *standards must be raised across Europe in relation to pre-trial detention conditions and decisions on release pending trial; and*
- *that extraditions are being ordered too far in advance of trial.*



34. Andrew Symeou, then a 20-year-old student from the UK, was extradited to Greece under an EAW in July 2009 on manslaughter charges.
35. Following his surrender Andrew was denied release pending trial by a Greek court on the basis that he had not shown sufficient remorse for committing the crime which he was accused of – a clear violation of the presumption of innocence. Another “reason” Andrew was denied release pending trial was that he was a non-national and therefore was assumed to represent a flight risk. This was despite the fact that Andrew had met all his supervision conditions in the UK and his father had arranged to hire a flat for him to stay at during the run-up to the trial.
36. Following the decision of the court to impose pre-trial detention, Andrew spent a harrowing 11 months on remand in Greece. A university student with no previous criminal record who still lived with his parents, he spent his 21st birthday in the notoriously dangerous Korydallos prison. The prison conditions Andrew has described included: filthy and overcrowded cells (with up to six people in a single cell); sharing cells with prisoners convicted of rape and murder; violence among prisoners (one was beaten to death over a drug debt while Andrew was there); and violent rioting. The shower room floor was covered in excrement, there were cockroaches in the cells, fleas in the bedding, and the prison was infested with vermin.
37. This description conforms with information contained in numerous expert reports on Greek prison conditions placed before the English court prior to Andrew's extradition. Andrew argued that his extradition should be refused on the grounds

that he would be kept in prison conditions in Greece which would breach his human rights. The Committee for the Prevention of Torture had reported the previous year that persons deprived of their liberty in Greece “run a considerable risk of being ill-treated”. Amnesty International and other human rights NGOs had similarly criticised Greece’s prisons in the harshest terms. This evidence was held insufficient as a bar to extradition. The English court stated:

*[T]here is no sound evidence that the Appellant is at a real risk of being subjected to treatment which would breach article 3 ECHR, even if there is evidence that some police do sometimes inflict such treatment on those in detention. Regrettably, that is a sometime feature of police behaviour in all EU countries.*³³

38. It is difficult to know what more Andrew could have done to bring the risk he faced to the court’s attention and invoke his Article 3 rights before his extradition.

39. Following numerous delays due to prosecution errors, Andrew was finally released pending trial in June 2010. His four-year ordeal finally came to an end on 17 June 2011, when he was acquitted by a Greek court.

40. Andrew was extradited despite the fact that Greek prosecutors were not yet ready for trial: prosecution delays meant that he did not stand trial until almost two years after his extradition. This is time he could have spent under supervised release in the UK, continuing with his studies at university, rather than being held in appalling detention conditions in Greece. After his extradition, he was at no point questioned by Greek investigators. It is therefore difficult to see what purpose was served by his time in pre-trial detention.

146%

In 2009 the occupancy of Greek prisons amounted to 146% of the official capacity (see comparative research in Appendix 2)

Michael Shields – Bulgaria

Michael’s case highlights the appalling pre-trial detention conditions in some Member States.

41. When he was 18 Michael Shields travelled to Turkey to watch Liverpool Football Club play in the Champions League final in May 2005. While Michael was on a stopover in Bulgaria, a local man was attacked outside a café in an incident involving English football fans. Later that day, local police arrived at Michael’s hotel to arrest him. The only evidence against Michael was identification by witnesses obtained after a manipulated identification parade. Despite this he was charged and remanded in custody.

³³ *Symeou v Public Prosecutor’s Office at Court of Appeals, Patras, Greece* [2009] EWHC 897 (Admin) at para 65

42. While in pre-trial detention Michael was kept in overcrowded and unhygienic conditions – on one occasion he woke up covered in cockroaches. He was provided with inedible food and had to rely on food parcels from his family. Sometimes Michael would be kept awake at night by the screams of fellow inmates being beaten. Translation services provided to Michael were poor, and he attended court hearings on release pending trial where he did not understand what was going on.
43. After spending almost three months in pre-trial detention Michael was found guilty of attempted murder and sentenced to 15 years in prison despite evidence that he was asleep in his hotel room at the time of the incident. In fact, another man admitted to the crime and signed a confession but the Bulgarian courts refused to take this into account. In 2006, Michael Shields was transferred back to the UK to serve the remainder of his sentence. FTI continued to campaign for his release and in September 2009, Michael was granted a pardon by the UK government.

Anthony Reynolds – Spain

Anthony's case highlights: the excessive lengths of pre-trial detention which are legally permitted in some Member States; and the fundamental rights impact of Spain's "secreto de sumario" regime.

44. Anthony Reynolds, a British national who had moved with his family to Spain, was arrested in Tenerife in December 2006. Spanish police told Anthony that if he did not admit to drug charges, his wife would be put in prison and their one-year-old daughter taken into care. Anthony denies any involvement in drug offences and believes he was targeted for resisting local police extortion.
45. Anthony's case was dealt with under the notorious "secreto de sumario" regime. This means that a judge has imposed secrecy on the investigation: defendants and their lawyers are denied access to information regarding the charges or the evidence until just before trial. This results in defendants being denied effective legal assistance during detention, making it impossible to prepare a defence or argue effectively for release pending trial.
46. Anthony was eventually released after spending almost four years in pre-trial detention. Once he was freed, Anthony had to sleep rough as he was not allowed to work or receive benefits. He was acquitted at trial in June 2011. During his time in pre-trial detention he lost contact with his wife and daughter. He is now attempting to rebuild his life.

4 years

*Maximum length of pre-trial
detention in Spain (see comparative
research in Appendix 2)*

Michael Turner and Jason McGoldrick – Hungary

Michael and Jason's case highlights: how the misuse of the EAW for investigative purposes and how poor prison conditions in some Member States undermine faith in the "mutual recognition" concept.



47. Michael Turner (pictured), a 27-year-old British national from Dorset, and business partner Jason McGoldrick, 37, were wanted by Hungarian authorities following the failure of their business venture in Budapest. Michael and Jason were extradited to Hungary under an EAW in November 2009. They were held in a former KGB prison for four months, but questioned only once. They were held in separate parts of the prison and denied family contact.
48. Michael had to share a cell with three others and was only allowed out of the cell for one hour a day. Two weeks into his detention, Michael was wearing the same clothes in which he had been arrested and had not been allowed to shower or clean his teeth. Prison officers refused to let him open parcels from his family containing basic items like toothpaste. After failing to decide whether or not to pursue any criminal case against them, the Hungarian authorities eventually released Michael and Jason and allowed them to return home. Hungary's investigation is still ongoing, showing that extradition was premature and should have been deferred until the case was trial-ready.

Mohamed Abadi – Spain

Mohammed's case highlights: the human rights abuses that are perpetrated during pre-trial detention in some Member States and the detrimental impact on detainees of the refusal to allow access to a lawyer and consular staff.

49. Mohammed Abadi (not his real name), an Iraqi national with British refugee status, was arrested in Malaga, Spain in 2005 for alleged terrorist activities. Immediately after his arrest, Mohammed claims he was taken to a place which police officers referred to as a "medical facility", where he was stripped naked and humiliated. He was then driven in a car from Malaga to Madrid. During the journey he was interrogated without a lawyer present, subjected to verbal abuse from police officers and threatened with a gun.
50. Once in Madrid, Mohammed was told that he was not allowed access to a lawyer or any consular assistance. Over the course of five days he was kept in a freezing cold cell and subjected to sleep deprivation; his cell was lit with bright lights for 24 hours a day and if he fell asleep he was woken abruptly. He was refused water and all food except pork (which he cannot eat for religious reasons). He was interrogated during this period (again with no access to a lawyer) and was frequently beaten.

51. After five days in these conditions Mohammed was brought before a judge at a hearing where he was represented by a court-appointed lawyer. Mohammed was not allowed to speak to the lawyer before or after the proceedings. He was then moved to another prison where he spent two years in pre-trial detention. During this time he was again denied legal assistance.
52. Mohammed was kept in solitary confinement in a cell without air conditioning or heating, despite the fact that it snowed while Mohammed was in prison. On one occasion, a prison officer tore up a copy of the Quran in front of Mohammed. When he was finally granted release it was under stringent conditions, including the confiscation of his passport, weekly reporting at a police station in Madrid, and not being allowed to work. Trapped in Spain, unable to work and ineligible for benefits, Mohammed eventually became homeless and had to live on the street. When he did manage to find accommodation it was regularly searched by police officers and his belongings were taken away.
53. When Mohammed was finally brought to trial in summer of 2010, he was acquitted of all charges after a cursory hearing lasting minutes, apparently on the basis that there was no evidence against him. Since returning to the UK, Mohammed has been suffering from severe anxiety and depression as a result of his treatment when in pre-trial detention in Spain.

Marie Blake – France

Marie's case highlights the negative impact that pre-trial detention can have, even if the detention is only for a short period of time.

54. Marie Blake (not her real name), a 27 year old Polish mother of three who lives in the UK, was arrested under an EAW in France in February 2009. The EAW had been issued by Poland so that Marie could stand trial in relation to an alleged incident seven years earlier, in 2002, when Marie was just 18 years old.
55. Following a brief court hearing Marie was taken to a prison in Lille where she was forced to strip in front of male guards. She was then sprayed with cold water and doused in white powder. Marie was given inedible food, placed in a cell with a broken toilet which would not flush, and was not allowed to wash with hot water. After being held in these conditions for four days Marie was provisionally released by a French court. She was freed without being told where she was or how to get home. Instead, knowing that Marie could not speak French, the police gave her a piece of paper with two sentences on it in French: "please show me the way to Lille station" and "can I have a ticket for the Eurostar to London, please?" Marie eventually managed to use this to get home to her family.

24%

Percentage of pre-trial detainees in the French prison population (see comparative research in Appendix 2)

56. Marie has described her time in pre-trial detention in France as “the worst days of my life”. She is still suffering the psychological effects of her time in detention and has trouble sleeping.

Jock Palfreeman – Bulgaria

Jock’s case highlights: how some Member States’ use of lengthy pre-trial detention, including solitary confinement, violates the presumption of innocence.

57. While on holiday in Bulgaria in December 2007, Australian national and British Army recruit, Jock Palfreeman, was arrested and charged with murder following a fight which had broken out between Jock and 14 Bulgarian men. Jock claims that he had gone to the aid of two Roma men who were being attacked by the group. In the ensuing fight, a knife in Jock’s possession injured two of the Bulgarian men, one of whom died as a result of the injury. Jock maintains that he only used the knife to defend himself. Neutral witnesses have supported his version of events.
58. Jock was held in pre-trial detention for two years, during which time he spent a substantial period in solitary confinement. Almost completely without human contact, Jock was only allowed 90 minutes in the prison courtyard each day, without the company of other prisoners. In December 2009 Jock’s trial began. Incomplete initial investigations resulted in the failure to identify the two Roma men involved in the original altercation, as well as other key witnesses for the defence. Crucial CCTV footage of the incident was lost due to a delay in investigations. Despite this, Jock was found guilty and sentenced to 20 years’ imprisonment. He was also ordered to pay an excessively high amount in compensation – over €200,000.

Oliver Grant – the Netherlands

Oliver’s case highlights that non-nationals can face discrimination when it comes to decisions on release pending trial.

59. Oliver Grant (not his real name), a 46 year old father of two from the UK, was extradited to the Netherlands to face charges of cannabis dealing in 2009. Since his surrender he has spent almost two years in pre-trial detention and has made several applications for release pending trial, all of which have been refused. Oliver was charged with several other defendants all of whom he believes are Dutch nationals and all of whom were granted release pending trial. Oliver’s partner travelled to the Netherlands and leased an apartment for Oliver to live in if he was able to obtain release pending trial. Despite this the Dutch courts still refused to release him.
60. During his time on remand Oliver was held for five days in solitary confinement. In the prison where he is detained there are many non-Dutch national prisoners. Tuberculosis is rife and the food is of a very poor quality. Detainees are locked in

Wider grounds for imposing pre-trial detention apply to non-nationals who are not resident in the Netherlands (see comparative research in Appendix 2)

their cells for 23 hours a day. Detention review hearings are supposed to take place every 90 days, but Oliver's last hearing in April 2011 was cancelled due to lack of prison staff to accompany him to the hearing. His trial is now due to start in November 2011.

Corinna Reid – Spain

Corinna's case highlights: the poor prison conditions in some Member States and the devastating effect that lengthy pre-trial periods can have on individuals and families.

61. In January 2007 Corinna Reid and her partner Robert Cormack went on holiday to Tenerife with their children, including their 18-month-old son Aiden. During the holiday Aiden fell ill with bronchitis and, sadly, died in the early hours of 12 January. Corinna and Robert were devastated by the death of their child and returned to their home in Scotland for Aiden's funeral. In April 2008, the police in Spain released Aiden's toxicology results which showed that Aiden had a mixture of methadone and diazepam in his blood when he died. Robert had been prescribed methadone and diazepam to combat a drug problem.
62. The Spanish authorities issued a European Arrest Warrant in September 2008 and Corinna and Robert were arrested in Scotland. At this stage, Robert confessed that while in Tenerife he had been preparing to take his prescription drugs when Aiden, who was an exceptionally active child, spilt them all over himself. Not thinking that Aiden had swallowed any, Robert did not inform Corinna of the incident. Following the confession, Robert immediately told authorities that Corinna had nothing to do with the accident, and consented to extradition to Spain to face charges of murder/manslaughter. The Spanish authorities continued to demand Corinna's surrender. Despite the fact that she had a six-month-old daughter who was exclusively breastfeeding, her extradition was ordered in January 2009.
63. Once in Tenerife, Corinna spent a year on remand. During this time she was detained in a prison without any heating, despite the fact that it was located in a cold, mountainous area of Tenerife. Corinna has described how the cell she was kept in was so damp that mould would grow on the walls overnight. This environment had a severe impact on Corinna's pre-existing health conditions, which included muscular atrophy, arthritis and kidney damage. In March 2010, Corinna was finally granted provisional release, with the court pointing out that there was no evidence implicating Corinna in her son's death. However, she is not allowed to leave Spain and cannot care for her daughter who is still in the UK and now three. Corinna is struggling to find work and appropriate medical care.

52%

Percentage of pre-trial detainees in Spain who are foreign nationals (see comparative research in Appendix 2)

David Brown – Czech Republic

David's case highlights: the appalling pre-trial detention conditions in some Member States and the extent to which they undermine trust in "mutual recognition" instruments like the EAW.

64. David Brown (not his real name), a Czech citizen, was convicted in October 2003 of theft and robbery offences in the Czech Republic. David was sent to Valdice high security prison where, he says, two attempts were made on his life and he was raped by fellow prisoners. In December 2004 he was transferred to another prison where he was subjected to violent attacks by other inmates. His convictions were eventually quashed and he was released in April 2005.
65. David went to live in the UK but was shocked when, in 2010, he was arrested on a Czech European Arrest Warrant. He had no idea that his case had been retried in his absence following a prosecution appeal, resulting in a further term of imprisonment. David was worried that if he was returned to a Czech prison he would not receive adequate treatment for various medical conditions he now suffers from, including HIV and bipolar disorder. Despite this the UK ordered his extradition in April 2010. He appealed, but due to errors made by his previous lawyers his appeal was filed out of time and rejected. He was extradited in April 2011.

Detainees in English prison

66. In July 2011, FTI visited a mixed gender prison in England which holds both convicted and pre-trial detainees. FTI interviewed eight female non-national prisoners (all from EU countries) about their experiences on remand. A summary of the information they provided is set out below (anonymised). All were generally happy with the conditions of detention. However, many felt that they had been denied release pending trial simply because they were non-nationals.

12,266

Approximate number of pre-trial detainees in England and Wales (see comparative research in Appendix 2)

Ms A

- Spent one month in pre-trial detention.
- Denied release as she was deemed a flight risk despite the fact that she has lived in the UK for six years, has a large family (including four children) in the UK and, prior to pre-trial detention, was in employment.
- Pre-trial detention hearing took place via video-link and she could not understand the proceedings.

Ms B

- Spent four months in pre-trial detention; denied release on the basis that she would abscond.
- She was unhappy with the range of recreational activities available for detainees and spent a lot of time locked up in her cell.

- She was also unhappy about the fact that she has not been able to talk with her partner, who is a detainee in a different facility.
- Held with convicted prisoners.
- She does not have information about her case, has been visited by a lawyer twice, and has not had any information provided to her about her legal rights.

Ms C and Ms D

- Spent one month in pre-trial detention.
- Arrested and bailed in their home country before consenting to extradition to the UK, once surrendered held in pre-trial detention despite the fact that they did not resist extradition and met all supervision conditions in their home countries.
- Kept with convicted prisoners who have mental health and drug problems.
- They have met with a lawyer just once.

Ms E

- Held in pre-trial detention for one month.
- Denied release on the basis that she would abscond, although she has lived in England for four years.
- Has had limited access to a solicitor.
- She has problems with hearing and had difficulties understanding the pre-trial detention hearing.

Ms F

- Held in pre-trial detention for over one year in relation to a serious offence.
- Denied bail despite the fact that she has been in the UK for six years, had a house, a job and was caring for her one year old daughter.
- Held with convicted prisoners during pre-trial detention.
- Complained of poor translation facilities at pre-trial detention hearing.

66%

Percentage by which the English and Welsh prison population increased from 1995 to 2009 (see comparative research in Appendix 2)

Ms G

- Spent six months in pre-trial detention.
- Unhappy with lawyer whom she claims dropped her case once she was convicted.
- She wrote to her lawyer three times and only received a generic feedback form; this led to her appeal deadline being missed.

Ms H

- Denied bail on the basis that she was a flight risk, despite the fact that she has lived in the UK for two years with her family.
- Lost home, possessions and documentation while in pre-trial detention.
- Currently serving sentence for conspiracy to commit £2,000 fraud.

- Pleaded guilty on the advice of solicitor because she didn't want to spend longer in pre-trial detention, however she was given a three and half year sentence.

Section B: Comparative research

67. FTI has conducted detailed comparative research on the pre-trial detention regimes of 15 EU Member States: the Czech Republic, England and Wales, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Poland, Portugal, Romania, Slovakia, Spain and Sweden. These countries were selected as they provide a representative picture across several distinct regions and legal systems in the EU. This selection also includes the five EU countries with the largest overall prison populations.³⁴ The legal research was carried out with the generous assistance of Clifford Chance LLP.
68. FTI's professional network, the Legal Experts Advisory Panel, has members in virtually all of these countries, thus enabling us to gather information on the reality on the ground in these Member States. Unfortunately, this reality often contrasts markedly with what the law provides. Our 15 country studies focus on the legal basis for imposing pre-trial detention, the available alternatives to remanding defendants in custody, and fundamental rights concerns in practice. The full country studies can be found in Appendix 2. Set out below are common areas of concern and issues of particular importance in the countries we have researched.

Pre-trial detention comparative research: summary of main findings

69. Several countries have no maximum period of pre-trial detention laid down in their legal systems,³⁵ others allow extensions with no upper limit³⁶ and others have maximum periods which are, in FTI's view, too long (some, for example, extend to four years).³⁷
70. Overcrowding and other poor material prison conditions that seriously undermine effective trial preparation have been reported in over half of the countries examined.³⁸ Restrictions on the right to a regular and reasoned review of the decision to remand in custody, and the right to regular confidential contact with a lawyer, have similarly been reported in the majority of countries examined.³⁹ Perhaps unsurprisingly, the ECtHR has made recent findings of Article 5 violations against several of these Member States.⁴⁰ Many countries have inadequate compensation mechanisms or make awards of nugatory value where a person is found to have been detained contrary to Article 5.
71. Particular concerns, by country, are summarised below. (For sources, please consult footnotes in the full country reports, Appendix 2.)

³⁴ England and Wales, Poland, Spain, Germany and Italy, source: Commission Green Paper

³⁵ Romania, Spain, Ireland, Lithuania

³⁶ Poland, Germany

³⁷ Czech Republic: four years, France: four years, Slovakia four years, Spain four years (though these tend to apply to some offence categories and not others)

³⁸ Czech Republic, Greece, Ireland, Italy, Lithuania, Poland, Romania, Slovakia, Spain

³⁹ Czech Republic, Greece, Italy, Poland, Romania, Slovakia, Spain, Sweden

⁴⁰ Czech Republic, France, Germany, Greece, Poland, Romania, Slovakia, Spain

Czech Republic

The ECtHR has found the Czech Republic to have imposed excessive periods of pre-trial detention and failed to use special diligence in the conduct of proceedings. In one case the defendant was held for four years on the grounds that he represented a flight risk because he was a foreign national, had family abroad and was facing a lengthy sentence. The ECtHR held that these reasons could not justify the conclusion he would abscond. Overcrowding is a problem, with Czech prisons operating at 113% capacity. This has a severe effect on conditions: cells in remand sections of some prisons are dilapidated and access to legal advice is insufficient for pre-trial detainees, who are sometimes questioned by police without the presence of a lawyer.

England and Wales

England and Wales has the largest overall prison population in the EU. The maximum length of pre-trial detention is 182 days. This can be extended in exceptional cases. The pre-trial detention regime is rarely found to be in violation of the ECHR. Article 5 rulings against the UK stem from legislation that limits the possibility of release for defendants who have previously been convicted of serious offences such as murder, manslaughter and rape. Defence lawyers and non-national detainees complain of discrimination against non-nationals in pre-trial detention hearings. Prison overcrowding is a major problem. This has been exacerbated following the widespread riots in England in August 2011. Many suspected rioters were denied release pending trial: 70% of defendants were remanded in custody to await Crown Court trial, compared to a normal rate of 2%.

France

The maximum lengths of pre-trial detention in France depend on the penalty the defendant would face if convicted, and can range from four months to four years. In one case the ECtHR found France in breach of Article 5 when a person was held for six years. The law allows considerations of “ordre public” (public policy) to be taken into account in decisions on pre-trial detention: this is an unusual factor and of questionable status in light of ECtHR case law. Despite the recent introduction of a “Liberty and Security Judge” independent of the investigating judge and prosecutor, concerns persist about this judge’s genuine independence from the prosecution and about the lack of involvement of defence counsel.

Germany

Germany has the fourth largest overall prison population in the EU. There has been a steady decrease in the number of pre-trial detainees as well as the general prison population in Germany over the past decade and, in 2009, 44% of Germany’s pre-trial detainees were foreign nationals. Concerns have been raised by German defence lawyers that pre-trial detention is often used as a measure to “motivate” a

confession and speed the investigation process. There have also been reports that non-nationals are often remanded in custody in circumstances where German defendants would not.

Greece

In 2010 pre-trial detainees in Greek prisons made up 31% of the total prison population. In 2008 64% of pre-trial detainees were foreign nationals. Although Greek law states that pre-trial detention is an exceptional measure, it has in practice become the norm, although recent legal reforms could herald a change. The seriousness of the alleged offence is often the main reason for imposing and extending pre-trial detention. Many pre-trial detainees have complained that they have not been provided with interpreters or legal advice in prison. Overcrowding is a serious problem, with 2009 occupancy levels at 146% of official capacity. Korydallos high security prison was at 300% capacity. Conditions have been heavily criticised, leading to hunger strikes and Article 3 violation findings.

Ireland

There is no legal limit to the amount of time a defendant can spend in pre-trial detention in Ireland. Detainees can spend 12 months in custody without any intervening review of the grounds for detention. Non-nationals are more likely to be held in detention. 31% of pre-trial detainees were foreign nationals in 2009. Courts can take into account the nature and seriousness of the alleged offence. The law allows for electronic tagging but there is little use of this yet. Overcrowding is a growing problem.

Italy

Italy has the fifth largest overall prison population in the EU and pre-trial detainees make up 42% of the total prison population. In 2009, 44% of pre-trial detainees were foreign nationals. The decision to order detention is not one in which the defendant plays any part. It is not made in public and does not represent a thorough, reasoned process of review. Italy is frequently found in breach of the “reasonable time” requirement in Article 6(1) ECHR and systemic delays in releasing defendants from pre-trial detention have also led the ECtHR to find Italy in violation of Article 5(3). As at February 2011, Italy’s prisons were 49% above official capacity. A special regime applies to defendants accused of mafia and terrorist offences suspected of having links with criminal groups. They are not allowed to make calls to relatives for the first six months of detention and are subject to cell searches when absent, giving rise to concerns about the confidentiality of legal correspondence.

Luxembourg

There is no legal limit to the length of pre-trial detention in Luxembourg. However, in practice, detention ends when the time spent on remand equals the expected sentence. In 2009, 85% of pre-trial detainees were foreign nationals. A non-national

without the right of residence in Luxembourg can be placed in pre-trial detention if serious indications of his guilt exist and if the alleged offence can attract a sanction reserved for the most severe category of offences or imprisonment. It has been reported that female pre-trial detainees have been held in the prison with their young children, who were forced to endure overcrowded conditions and excessive periods locked in a cell. There have also been reports of violence, racism and criminality at the Schrassig detention centre. Luxembourg's prison authorities have been criticised for using solitary confinement as a disciplinary measure and holding suspects in cages prior to interrogation.

The Netherlands

In 2010 pre-trial detainees made up 36% of the total prison population. In 2009, 24% of pre-trial detainees were foreign nationals. The law differs in its treatment of nationals and non-resident non-nationals and the latter can be detained pre-trial on wider grounds than the former. Remand centres have been criticised for having harsher regimes than prisons for convicted persons.

Poland

Poland has the second largest prison population in the EU. Pre-trial detention can be imposed for up to three months, which can be extended by a further nine months. However, the Appellate Court can extend this even further. It has been reported that despite pre-trial detention safeguards under Polish law, prosecutors and courts impose pre-trial detention automatically, without providing adequate justification. Polish Ministry of Justice figures show that between 2001 and 2007, 90% of the prosecutor's applications for pre-trial detention were successful. The ECtHR regularly criticises Poland for breaching Article 5(3) and Article 6 by imposing excessive lengths of pre-trial detention and failing to provide adequate reasons for, or to consider alternatives to, pre-trial detention. FTI has been told that pre-trial detainees are subjected to appalling prison conditions. The right of access to a lawyer is rarely exercised, as there is no legal aid available. Access to the case file is also limited, preventing the lawyer from accessing information which could be used to challenge continued pre-trial detention.

Portugal

The law allows pre-trial detention of up to two years and six months where the case is particularly complex and involves serious crimes. In 2009, 36% of pre-trial detainees were foreign nationals. Although the average length of pre-trial detention is eight months, approximately 20% of pre-trial detainees spend more than one year in detention. It has been reported that these lengthy periods are a result of delayed investigations and judicial inefficiency. Concerns have also been raised about alleged ill-treatment of prisoners by custodial staff and the denial of access to a lawyer and a doctor for those in police custody.

Romania

Under Romanian law the maximum period of detention during the criminal investigation phase is 180 days. There is no specified maximum period for which the defendant can be held in detention during the trial phase. Romania's pre-trial detention population has dropped significantly from 10,831 in 1999 to 3,946 in 2009. However, the country has been criticised for the ill-treatment of detainees and the use of brutal mistreatment to extract evidence which has then been adduced in court. The ECtHR has found Romania in breach of the ECHR due to lengthy delays before judicial authorisation of detention, excessive lengths of pre-trial detention, and inhuman and degrading pre-trial detention conditions.

Slovakia

The maximum period of pre-trial detention is 4 years. Numerous violations of Article 5(1) and 5(4) have been found to have occurred as a result of excessive length of pre-trial detention and procedural shortcomings of review of pre-trial detention. The ECtHR has found Slovakia in violation of the Article 5(3) ECHR for imposing pre-trial detention for periods between two and three years without domestic courts displaying "special diligence" in the conduct of the proceedings. The court has also made Article 5 findings against Slovakia for imposing pre-trial detention without providing sufficient reasons.

Spain

The maximum period of pre-trial detention in Spain is four years. Practitioners report that decisions on pre-trial detention are generally taken without a full consideration of whether detention is proportionate. In 2009 52% of pre-trial detainees were foreign nationals. Defendants facing serious charges, such as terrorism, can be held in *incommunicado* detention. Under this regime, the defendant can be held for up to 13 days during which certain fundamental rights are severely curtailed: no visits or communication with the outside world; no right to notify family or friends of detention or whereabouts; no right to choose own lawyer or have meaningful communication with state-appointed lawyer during the *incommunicado* period. In 2008 the International Commission of Jurists noted that "Prolonged incommunicado detention can itself amount to torture or cruel, inhuman or degrading treatment." Another feature of Spanish pre-trial detention includes the use of secret legal proceedings, or "secreto de sumario", which severely restricts access to the details of the case, including the charges and evidence in the case until up to 10 days before the closing of the investigative phase.

Sweden

There is no maximum period of pre-trial detention in Sweden, but if no action towards conditional release has been taken within 14 days of detention, a new remand hearing is required. In 2010 the US State Department noted that although

prison conditions generally met international standards, pre-trial detainees were subject to extended isolation and severe restrictions on their activities. The court has no say over which restrictions should be imposed. Instead the prosecutor applies for general permission to impose restrictions it deems necessary. There are no means to appeal the decision to impose a specific restriction (e.g. isolation from family members). In 2005 the Swedish government set up a commission to propose new legislation on the treatment of persons remanded in custody. The commission reported in 2006, making proposals which included allowing defendants to appeal against restrictions in pre-trial detention. The proposals are still under consideration by the Ministry of Justice.

Section C: Pre-trial detention – general principles

72. The ECtHR has made a range of findings in relation to the pre-trial detention. These decisions represent a set of minimum standards which all Convention signatories should observe. Set out below are the general principles regarding pre-trial detention established by the ECtHR.
73. Article 5 ECHR states that “everyone has the right to liberty and security of the person”. An exception to this right to liberty is lawful pre-trial detention. Article 5(1)(c) states that a person’s arrest or detention may be “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”.
74. Article 5(3) contains a protection for pre-trial detainees, stating that anyone detained in accordance with Article 5(1)(c) must be “brought promptly⁴¹ before a judge or other officer authorised by law to exercise judicial power”. The ECtHR has stated that “such automatic expedited judicial scrutiny provides an important measure of protection against arbitrary behaviour, incommunicado detention and ill-treatment”.⁴² A pre-trial detainee “shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”⁴³
75. Anyone deprived of liberty under the exceptions set out in Article 5 “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” (Article 5(4)).
76. The ECtHR has stressed the “fundamental importance” of the guarantees contained in Article 5, which contains “a corpus of substantive rights intended to ensure that the act of deprivation of liberty is amenable to independent judicial scrutiny and secures the accountability of the authorities for that measure”.⁴⁴ We set out below a detailed analysis of the key decisions of the Court.

Release pending trial

77. During the pre-trial period there is a presumption in favour of release; continued detention “can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty laid down in Article 5 of the Convention”.⁴⁵ The Court has never set out a comprehensive list of factors justifying pre-trial detention.

⁴¹ The limit of acceptable preliminary detention has not been defined by the ECtHR, however in *Brogan and others v UK* [1988] ECHR 24, the court held that periods of preliminary detention ranging from four to six days violated Article 5(3)

⁴² *Medvedyev and others v France* [2010] ECHR 384, Para 118

⁴³ Article 5(3)

⁴⁴ *Bazorkina v Russia* [2006] ECHR 751, Para 146

⁴⁵ *McKay v UK* [2006] ECHR 820 Para 42

78. The burden is on the state to show why the defendant cannot be released: “Shifting the burden of proof to the detained person in such matters is tantamount to overturning the rule of Article 5 of the Convention.”⁴⁶
79. Suspicion that the defendant has committed an offence is not enough in itself to justify continuing detention, no matter how serious the offence and the strength of the evidence against him.⁴⁷ The Court has “repeatedly held that the gravity of the charges cannot by itself serve to justify long periods of detention on remand”.⁴⁸
80. Release pending trial is often refused by national courts on the grounds that there is a risk that the person will abscond prior to trial.⁴⁹ The ECtHR has found that “the mere absence of a fixed residence does not give rise to a danger of flight”.⁵⁰ Although such a danger may exist where the sentence faced is a long term of imprisonment, “the risk of absconding cannot be gauged solely on the basis of the severity of the sentence faced”.⁵¹ Where such a risk is deemed to exist, the authorities are under a duty to consider alternatives to detention which will ensure the defendant appears at trial.⁵²
81. When release pending trial is refused on the basis that the defendant may commit further offences prior to trial⁵³ the national court must be satisfied that the risk is substantiated. A reference to the defendant’s antecedents does not suffice to justify continued detention on the grounds that there is a danger he will reoffend.⁵⁴ Instead, there must be evidence of the propensity to reoffend. A danger of reoffending in no way suffices to make pre-trial detention lawful where “it is a matter solely of a theoretical and general danger and not of a definite risk of a particular offence”.⁵⁵ Furthermore, it cannot be concluded from “the lack of a job or a family that a person is inclined to commit new offences”.⁵⁶
82. When it comes to fixing a financial surety as a condition for release pending trial the national authorities must “take as much care in fixing appropriate bail as in deciding whether or not the accused’s continued detention is indispensable”.⁵⁷ The amount set must take into account the defendant’s means.⁵⁸

Review of pre-trial detention

83. As discussed above, Article 5(4) requires that the lawfulness of detention must be subject to review. The “court” referenced in Article 5(4) must be a body of “judicial character” offering “fundamental guarantees of procedure applied in matters of

⁴⁶ *Ilijkov v Bulgaria* [2001] ECHR 489, Para 85

⁴⁷ *Tomasi v France* [1992] ECHR 53, see also *Caballero v UK* [2000] ECHR 53

⁴⁸ *Ilijkov v Bulgaria* [2001] ECHR 489, Para 81

⁴⁹ Something specifically envisaged by Article 5(1)(c)

⁵⁰ *Sulaoja v Estonia* [2005] ECHR 104, Para 64

⁵¹ *Muller v France* [1997] ECHR 11, Para 43, see also *Barfuss v Czech Republic* [2000] ECHR 403

⁵² *Wemhoff v Germany* [1968] ECHR 2

⁵³ Again, a ground set out in Article 5(1)(c)

⁵⁴ *Muller v France* [1997] ECHR 11, Para 44

⁵⁵ *Matznetter v Austria* [1969] ECHR 1, concurring opinion of Judge Balladore Pallieri, Para 1

⁵⁶ *Sulaoja v Estonia* [2005] ECHR 104, Para 64

⁵⁷ *Mangouras v Spain* [2010] ECHR 1364, Para 79

⁵⁸ *Ibid.* Para 80

deprivation of liberty”.⁵⁹ This body must be “independent both of the executive and of the parties to the case”.⁶⁰ Furthermore, it must have the ability to order the defendant’s release if detention is deemed unlawful.⁶¹ The court must give reasons for its decision regarding the detention and must not use identical or “stereotyped” forms of words.⁶²

84. The review must be able to be initiated by the defendant,⁶³ and should “be wide enough to bear on those conditions which are essential for the ‘lawful’ detention of a person according to Article 5(1).”⁶⁴ It must be an adversarial oral hearing.⁶⁵ In “proceedings in which an appeal against a detention order is being examined, equality of arms between the parties, the prosecutor and the detained person must be ensured”.⁶⁶ In this context the opportunity of challenging prosecution arguments against release may, in certain instances, require that the defence be given access to the case file.⁶⁷

85. Article 5(4) requires that the lawfulness of detention shall be decided “speedily”. Whether this has been complied with is determined on the facts of each case. In straightforward cases, the Court has held that a three week period between initial detention and an application for release pending trial was too long.⁶⁸ Where the justification for detention is liable to vary over time, Article 5(4) enables the defendant to apply for review of the legality of detention at regular intervals.⁶⁹

Length of pre-trial detention

86. The right to trial within a reasonable time under Article 5(3) can only be invoked by those in pre-trial detention.⁷⁰ In determining whether a reasonable time has elapsed, national courts must consider whether the pre-trial period has “imposed a greater sacrifice than could, in the circumstances of the case, reasonably be expected of a person presumed to be innocent”.⁷¹

87. Article 5(3) “implies that there must be special diligence in the conduct of the prosecution” of pre-trial detainees’ cases.⁷² A detained person is entitled to have the case given priority and conducted with particular expedition.⁷³ The ECtHR has found periods of pre-trial detention lasting between two and a half years⁷⁴ and almost five years⁷⁵ to be excessive.

⁵⁹ *De Wilde, Ooms and Versyp v Belgium* [1971] ECHR 1, Para 76

⁶⁰ *Neumeister v Austria* [1968] ECHR 1, Para 24

⁶¹ *Singh v UK* [1996] ECHR 9

⁶² *Yagci and Sargin v Turkey* 1995 ECHR 20

⁶³ *Rakevich v Russia* [2003] ECHR 558

⁶⁴ *E v Norway* [1990] ECHR 17, Para 50

⁶⁵ *Assenov v Bulgaria* [1998] ECHR 98

⁶⁶ *Wloch v Poland* [2000] ECHR 504, Para 126

⁶⁷ *Ibid.* Para 127

⁶⁸ *Rehbock v Slovenia* (App. 29462/95) 28 November 2000

⁶⁹ *De Jong, Baljet and van der Brink v Netherlands* [1984] ECHR 5

⁷⁰ Once release pending trial is granted the situation is governed by Article 6(1)

⁷¹ *Wemhoff v Germany* [1968] ECHR 2, Para 5 of “As regards Article 5(3) of the Convention”

⁷² *Stogmuller v Austria* [1969] ECHR 25, Para 5 of “As to the law”

⁷³ *Wemhoff v Germany* [1968] ECHR 2

⁷⁴ *Punzelt v Czech Republic* [2000] ECHR 170

⁷⁵ *PB v France* (App. 38781/97) 1 August 2000

The need for legislation to set binding minimum standards

88. The ECtHR's jurisprudence on Article 5 and pre-trial detention sets out general principles⁷⁶ which we believe should now be enshrined in an EU Directive, for the four reasons set out below.

1. ECtHR decisions insufficient

89. All EU Member States, as signatories to the ECHR, must ensure that the principles espoused by the ECtHR in relation to pre-trial detention are observed in their domestic systems. Unfortunately, this is not happening in practice. As the European Commission noted in its latest report on the operation of the EAW, the fact that all EU States are subject to the standards set out in the ECHR as interpreted by the ECtHR "has not proved to be an effective means of ensuring that signatories comply with the Convention's standards".⁷⁷

90. EU Member States are consistently found to have breached Convention rights. For example, last year alone EU Member States were found to have violated Article 5 in 70 separate cases. Between 2007 and 2010 the ECtHR found that EU Member States violated Article 6 rights in 1,696 cases.⁷⁸ Given the narrow admissibility criteria, the need to exhaust domestic remedies and the sheer impossibility for the majority of claimants to resource litigation in the Strasbourg court, this is only the tip of the iceberg.

2. Competence: impact on mutual recognition

91. As the Commission notes in its Green Paper, detention issues "come within the purview of the European Union as [...] they are a relevant aspect of the rights that must be safeguarded in order to promote mutual trust."⁷⁹ Poor standards of protection for basic rights across the EU erode the trust necessary for mutual recognition and undermine confidence in existing⁸⁰ and forthcoming⁸¹ mutual recognition measures.

92. There is therefore a clear legal base for legislation in this area under Article 82(2)(b) of the Treaty on the Functioning of the European Union, as pre-trial detention (indeed, all detention in the criminal justice context) engages with "the rights of individuals in criminal procedure". To limit this legislation's application to cross-border cases would be discriminatory – affording non-national defendants more rights than national ones – and for this reason it must have general effect.

⁷⁶ See summary at Paragraph 14 above

⁷⁷ Report from the Commission to the European Parliament and the Council on the implementation since 2007 of the Council Framework Decision on the EAW, 11 April 2011, p.6

⁷⁸ European Court of Human Rights: statistical information

⁷⁹ Strengthening mutual trust in the European judicial area – A Green Paper on the application of EU criminal justice legislation in the field of detention, COM(2011) 327 final, 14 June 2011, p.3

⁸⁰ Such as the European Arrest Warrant (2002/584/JHA)

⁸¹ Such as the European Investigation Order

93. Varying standards in pre-trial detention across Europe not only weaken trust between Member States, they also undermine the EU's justice and home affairs policy mandate. Many of our cases at FTI illustrate the human impact of placing cooperation before defence rights. The EU's Roadmap for strengthening procedural rights⁸² has represented a significant step forward in this regard and progress with the remaining measures is essential. Legislation in the field of pre-trial detention is the natural continuation of this important work.

3. Benefits of EU legislation for individuals – making rights enforceable

94. Rather than the lengthy and costly process of exhausting domestic remedies before taking a case to the ECtHR, a Directive would ensure that basic rights are enshrined in domestic law and remedies available at national level if they are violated. The Commission would be able to take infringement proceedings against Member States who failed to implement or properly apply the Directive, and the legislation would enjoy precedence over conflicting domestic law due to the principle of direct effect.

4. Certainty and consolidation to aid training

95. A Directive would consolidate and clarify all the principles which at present can be found in disparate judgments. This would create the certainty necessary to form the basis of guidance and training for judges, prosecution authorities and defence lawyers. This would ensure respect for these basic principles in practice.

96. While legislation is not the only option, FTI believes that these principles are so fundamental that this is by far the most effective way to ensure that they are observed in practice. Set out below are our initial proposals on the key elements of a Directive on pre-trial detention.⁸³

Article A – Release pending trial

1. Member States shall ensure that once a person is detained on suspicion of having committed an offence he is brought promptly before a court so the lawfulness of his detention can be determined. For the purposes of this Article “promptly” shall mean no more than 24 hours after arrest except in exceptional circumstances.
2. The court must order the person's release unless it is satisfied, on the balance of probabilities, that there is a real risk that if released he will:

⁸² Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings, (2009/C 295/01), 30 November 2009

⁸³ Legislative suggestions in relation to detention conditions are beyond FTI's remit. However, regarding detention conditions, we recommend that all Member States which have not yet ratified the UN's Optional Protocol to the Convention against Torture (OPCAT), and implemented the necessary inspection regimes, do so as soon as possible

- a) Fail to appear at trial;
 - b) Interfere with evidence or witnesses in the case;
 - c) Commit an offence; or
 - d) Be at risk of suffering physical harm, either inflicted by himself or others.
3. The court must hold a presumption in favour of release which is to be rebutted by proper evidence only.
4. A court is to be defined as an independent body of judicial character which has the power to order the person's release and holds hearings in an open and transparent manner.

Article B – The decision-making process

1. The court must:
- a) Make its decision following an oral hearing at which the person has the opportunity to present arguments in favour of release (the person must, if he so wishes, have legal representation at this hearing, legally aided if necessary);
 - b) Consider all relevant alternatives to pre-trial detention, including the use of Council Framework Decision 2009/829/JHA and Council Framework Decision 2002/584/JHA;
 - c) Give reasons for refusing to release the person; and
 - d) Take into account the person's means when fixing any financial surety.
2. The court must not:
- a) Refuse release only on the basis of the seriousness of the alleged offence;
 - b) Find the person is at risk of failing to appear at trial only on the basis that he is a non-national or does not have a fixed residence; or
 - c) Find that the person is at risk of committing an offence on the basis of a theoretical or general risk.

Article C – Review of pre-trial detention

1. Member States shall ensure that a person held in pre-trial detention has the right to request a monthly review of whether his continued detention is necessary.
2. When this review takes place it must be a genuine reassessment of the need for detention and must be conducted in the same manner as set out in Articles A and B.
3. When determining whether continued detention is necessary the court must consider:

- a) The amount of time the person has already spent in pre-trial detention;
- b) The principle that a person who is detained on the basis of being accused of having committed an offence is entitled to a trial within a reasonable time; and
- c) The reasons for any delays in bringing the case to trial.

Article D – Pre-trial detention conditions and preparation for trial

1. Prosecution authorities must conduct the preparation of a case with special diligence where the accused is being held in pre-trial detention.
2. Every effort must be made to ensure that the person's pre-trial detention does not impair his ability to prepare for trial. To this end a person in pre-trial detention must have adequate access to a lawyer and information necessary to prepare his defence (including, for example, information about the case against him and about applicable procedural rights).

Article E – Remedies and compensation

1. Member States shall ensure that a person has an effective remedy in instances where his rights as set out in the Articles above have been breached.
2. Member States shall ensure that their domestic law provides a person with an enforceable right to compensation where he is detained in contravention of these Articles.

Article F – Non-regression

Nothing in this Directive shall be construed as limiting or derogating from any of the rights and procedural safeguards enshrined in the Charter of Fundamental Rights of the European Union, the European Convention of Human Rights and Fundamental Freedoms, other relevant provisions of international law or the laws of any Member State that provides a higher level of protection.

Concluding recommendations

97. Pre-trial detention provides an important way to ensure defendants attend trial, to protect the evidence and witnesses in a case, and prevent reoffending behaviour. However, pre-trial detention should only ever be used as a last resort, in a non-discriminatory manner and when all other alternatives have been considered and deemed inappropriate. In cases where remand in custody is absolutely necessary, steps should be taken to ensure that the trial preparation is conducted in a speedy manner and in a way that safeguards equality of arms.
98. Fair Trials International therefore makes the following recommendations:

1) The EU should legislate to set minimum standards for the use of pre-trial detention in the EU and for effective and regular judicial review.

The ECtHR, interpreting the ECHR, sets out minimum standards with which all Member States have agreed to comply. In practice, however, EU Member States are failing to meet these obligations, in particular in relation to pre-trial detention. This failure has a significant human and financial impact, both to the individuals concerned and their families, and also to wider society in terms of the costs of detaining suspects unnecessarily and the cost of supporting individuals and families when the main breadwinner is detained. Unlawful detention also jeopardises the good faith that exists between EU Member States and that is the foundation of mutual recognition. It is incumbent on the EU to take decisive legislative action in order to protect individuals and preserve the principle of mutual cooperation based on mutual trust. FTI's suggestions for legislation in this area are outlined above.

2) Member States should implement the European Supervision Order in a way which means it represents a real and practical alternative to pre-trial detention.

To be effective the ESO system must be seen by judges across the EU as a viable alternative to pre-trial detention. Mutual trust is central to the ESO's successful operation. However, there is a danger that the instrument will not be used consistently across all Member States, but only between those countries where mutual trust already exists. There is a further risk that the ESO will be used to return people to Member States that have more advanced supervision mechanisms and better-resourced police forces. Meanwhile, accused persons from countries deemed (by prosecuting States) to be less able to enforce supervision measures will remain in pre-trial detention. This would lead to inequality in the way defendants benefit from the ESO.

To ensure the proper functioning of the ESO, Member States, aided by the EU, must:

- Provide training for judges, prosecutors and lawyers on how the ESO can be used;
- Improve domestic mechanisms for monitoring conditional release if currently inadequate; and

- Facilitate easy access to details about other countries' arrangements for monitoring supervision measures so that judges can make informed decisions at review hearings about whether, and in what terms, to issue an ESO.

3) Deferred surrender under the EAW should be used, in appropriate cases, to avoid unnecessary pre-trial detention post-extradition.

Many people who approach FTI for assistance are facing imminent extradition under the EAW. Too often we see this fast-track system being used automatically, without prosecution authorities considering alternatives to immediate extradition. Defendants are often surrendered to a Member State where the fact they are non-national can mean they are denied release pending trial. As a result, they have to spend lengthy periods in pre-trial detention. This is unjust to the individuals involved and is a waste of resources. The ESO should remedy some of these problems.

However, the comprehensive use of the ESO must be accompanied by a “smarter” approach to extradition. The EAW was designed to achieve speedy surrender and therefore it should not be used if prosecuting authorities in the issuing State are nowhere near ready for trial. Deferred issue and negotiated deferred surrender should be used to ensure defendants are not surrendered speedily when there is no prospect of a speedy trial. This will clearly not be possible in all cases; however, as a general rule defendants able to meet supervision conditions in their home country should be allowed to do so until the case is ready for trial. This will reduce the personal and financial impact of extradition (and detention) – benefiting both individuals and the state.

4) The EU should examine the viability of establishing a flexible one year maximum pre-trial detention limit.

Article 6(1) ECHR states: “in the determination [...] of any criminal charge against him, everyone is entitled to a fair and public hearing in a reasonable time.” This is a right which is repeated in the pre-trial detention context in Article 5(3) ECHR. It is FTI’s position that it is inherently unreasonable to imprison someone who has not been found guilty of any offence for more than a year, unless there are exceptional prevailing circumstances (for example, the highly complex nature of the case). A 12 month limit, containing the requisite flexibility, is an ideal for which all democratic societies should strive.

FTI therefore believes that a debate is needed on why some countries regularly permit defendants to spend excessively long periods awaiting trial in custody and what the EU’s role should be in establishing constraints, including potentially setting a reasonable EU-wide limit. Our suggested legislation offers a starting point for achieving the goal of a 12 month limit, as it would create a context in which ECHR standards on pre-trial detention (standards which Member States are already obliged to meet) are observed in practice.

In our view, a useful first step in this process could be targeted research by the European Commission to understand the underlying reasons for the wide disparity

between EU countries' use of pre-trial detention and its varying lengths. The Commission must attempt to establish why some Member States can deal with complex cross-border cases in a matter of months and others take years. A programme of information-sharing and exchange of best practice between Member States' judicial and prosecutorial authorities could then be implemented, taking into account the Commission's research.

99. Action at EU level as recommended in this report would illustrate the EU's ability to add value to the ECHR and stop excessive periods of pre-trial detention in some Member States – a scandalous violation of the presumption of innocence and the right to liberty – as well as help promote efficient trial processes, which will benefit the overall interests of justice, including the interests of victims of crime. As we have explained, significant financial savings could also be made.

100. The EU's Roadmap for strengthening procedural rights sets out vital safeguards which will help ensure fundamental rights do not continue to be sidelined in the push for ever-increasing cooperation between Member States. The Commission's Green Paper signals an important first step in raising the standards of pre-trial detention decisions and conditions. It must be followed by concrete and concerted action to ensure that the presumption of innocence, a principle at the heart of any justice system with integrity, is respected in practice across the EU's detention regimes.

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