COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Website of the Conference
http://www.coe.int/prosecutors/

Strasbourg, 27 June 2006 CPGE (2006) 02

CONFERENCE OF PROSECUTORS GENERAL OF EUROPE
(CPGE)

7TH SESSION

organised by the Council of Europe
in co-operation with the Office of the Prosecutor General of the Russian Federation

Moscow, 5 – 6 July 2006

Hotel President
24 Bolshaya Yakimanka street

THE DUTIES OF THE PUBLIC PROSECUTOR TOWARDS PERSONS DEPRIVED OF THEIR LIBERTY

REPLIES TO THE QUESTIONNAIRE

TABLE OF CONTENTS

THE DUTIES OF THE PUBLIC PROSECUTOR TOWARDS PERSONS DEPRIVED OF THEIR LIBERTY

QUESTIONNAIRE

1) What kinds of decisions on deprivation of liberty exist in your country?
(Please describe the legal basis for them and list the authorities empowered to take them.)

2) Which decisions are subject to review/supervision by the public prosecutor?

3) Is the public prosecutor empowered to enter places of detention? What kind of places or institutions, how often, and with or without the permission of other authorities?

4) a. What kind of measures could be taken by the public prosecutor in case of unlawful deprivation of liberty or in case of torture or inhuman or degrading treatment or punishment?

   b. Is the public prosecutor empowered to take an immediate decision in these cases?

5) Is it possible for a person deprived of his/her liberty to meet the public prosecutor personally without any control by a third party?

   Can that person maintain contact with the public prosecutor without any control by a third party (and vice versa)?

6) Please describe the procedure for complaints against prison staff.

7) a. Does the public prosecutor have authority to control and react to the conditions of deprivation of liberty?

   b. How should the public prosecutor react?

   c. Does domestic law in your country prescribe any special provisions for such situations?

8) What is the role of the public prosecutor in the execution of sentences relating to persons deprived of their liberty?

ANDORRA

1. Deprivation of liberty may result from four kinds of decision, depending on the stage reached in the proceedings:

a) policy custody
b) provisional detention
c) custodial sentences
d) preventive measures.

a) Police custody

In accordance with the provisions of Article 27 of the Code of Criminal Procedure, police officers are under an obligation to take into custody: 1) anyone who attempts to commit an offence; 2) offenders caught in the act; 3) persons who have escaped from prison; 4) persons presumed to have taken part in the commission of an offence or who are likely not to appear when summoned to appear before a court.

But the public prosecutor's department, which, under Article 3 of the Law on Public Prosecution, has jurisdiction to direct policy activity during the preliminary investigation, may review the expediency and duration of policy custody and issue relevant instructions to the director of the police.

Similarly, the public prosecutor's department may order the police to take into custody persons whose extradition has been requested.

b) Provisional detention

In accordance with the provisions of Article 109 of the Code of Criminal Procedure, the batlle (first instance judge) may order the exceptional measure of provisional detention in one of its three forms, in the order commencing proceedings or in a subsequent order, while specifying the grounds, in addition to the grounds for the charge against the defendant.

The batlle may do so in the following cases: 1) when the defendant's release would pose a danger to public safety or when the offence has caused disturbance in the community; 2) if there are grounds, having regard to the circumstances of the case and the seriousness of the offence and the penalty applicable, for fearing that the offender might attempt to evade justice; 3) if the offence has caused damage to a third party or if insufficient bail or security has been given; 4) if detention is necessary to protect the accused or to prevent him or her from reoffending; 5) if the accused fails to comply with the order to appear before the court; 6) if the continued liberty of the accused may harm the normal conduct of the pre-trial proceedings.

In addition, in accordance with the provisions of Article 102 of the Code of Criminal Procedure, when a person against whom there is reasonable suspicion of criminal activity is on the run or fails to appear, the batlle may issue a detention order enforceable throughout the territory of the Principality, whose enforcement may also be requested outside that territory, in accordance with the law.

c) Custodial sentences

Custodial sentences are long and short terms of imprisonment, in accordance with the general list set out in Articles 35 et seq of the Criminal Code, and it is for the trial courts to impose them.

The maximum sentences which the courts may hand down are: 25 years for serious crimes, subject to the rules on concurrent sentences and the sentences laid down for genocide and crimes against humanity; and two years for minor offences.

Under Articles 39 et seq of the Criminal Code, short prison sentences may be served in three ways:

1. – continuous periods of 36 to 48 hours a week served at weekends or on public holidays, depending on the court's choice. The sentence is served in a special penal institution or in separate premises.

2. – part-time sentences served in a special penal institution or in separate premises, for two hours a day at times set by the court.

3. – house arrest served at the sentenced person's home or at the home determined by the court with its owner's consent, continuously for the period specified in the judgment. If the sentenced person does not have a home in the Principality, the sentence is served in a special penal institution or in separate premises.

d) Preventive measures

Under the provisions of Article 72 of the Criminal Code, the court may apply preventive custodial measures, which may take the form of confinement in a psychiatric institution, in a detoxification centre or in a special educational or rehabilitation institution, after seeking any expert opinions which it deems necessary, to persons declared exempt from criminal responsibility, or should a person be found partially responsible, where the following conditions are met:

1. – if the judgment holds that the person concerned has committed an offence;

2. – if the facts or the individual's personal circumstances point to the likelihood of future behaviour that will result in the commission of further offences.

In the event of concurrence of a sentence and preventive measures, where both are custodial, the court must first order the execution of the period of preventive detention that exceeds the length of the sentence. The maximum period for which the sentence may run concurrently with the preventive measure must be stipulated in the judgment and may not exceed the length of the sentence which could have been imposed if there had been no mitigation of responsibility.

Once the period of preventive detention has been completed, the court orders the execution of the part of the sentence still to be served. In exceptional cases, where execution of the remainder of the sentence would be likely to damage the effects achieved through execution of the preventive measure, the court, after hearing the parties, may, by reasoned decision, replace the sentence with one or more non-custodial measures, or even, if the part of the sentence remaining to be served is less than one third of the total sentence, dispense the individual from serving it.

2. As explained in the reply to the first question in this questionnaire, the public prosecutor's department has jurisdiction to review the expediency and duration of police custody.

Furthermore, in the judicial stage of criminal proceedings, any decision involving the adoption or modification of custodial measures in respect of the persons implicated must be preceded by submissions from the public prosecutor's department. The latter may also decide to appeal against decisions which are not in keeping with its submissions.

3. Article 4 of the Law on Public Prosecution provides that, in the performance of its duties, the public prosecutor's department may visit penal institutions at any time, check prisoners' personal situation and files and obtain any information it deems necessary with regard to the persons detained, without prejudice to the mandatory frequency of visits laid down in Article 211 of the Code of Criminal Procedure, which requires the public prosecutor's department to visit prisons at least once a quarter to ascertain the situation of the persons held there and take all the necessary measures to remedy any abuses or shortcomings observed.

The rules also require the prison director to send the public prosecutor every day a list of the persons imprisoned at the centre, with details of any admissions and releases. In addition, Article 3-4 of the Law on Public Prosecution requires the police and prison authorities to report to it every day on their activities, any incidents that have occurred and the situation of the persons detained.

4a The Criminal Code currently in force specifies in Articles 110 et seq all the forms of behaviour that constitute torture and violations of moral integrity, together with abuses of authority, including acts of commission and omission (failure to prevent or report torture, degrading treatment and unlawful detention). In such cases, the public prosecutor's department has jurisdiction to bring criminal proceedings before the courts.

In addition, Articles 9 and 41 of the Constitution refer expressly to the law for the establishment of procedures that will enable any person deprived of his or her liberty to apply to a court to give a ruling on the lawfulness of his or her detention and the restoration of his or her fundamental rights that have been violated.

In this connection, the Special Law on the Justice System introduces in Article 6 the "habeas corpus" procedure, the details of which are regulated by Articles 5 et seq of the Transitional Law on Judicial Proceedings. Under these provisions, the following are considered as being unlawfully detained: a) a person detained by an authority, official, civil servant or private individual in cases other than those provided for by law and, even in the cases provided for by law, where the detention has taken place without the statutory formalities and conditions being complied with; b) a person who is confined unlawfully in any institution or place in Andorra; c) a person who is detained for longer than is provided for by law; d) a person whose rights secured by the Constitution and the law to all detained persons are not respected, although that person has been lawfully deprived of his or her liberty.

Under the Transitional Law on Judicial Proceedings and Article 3-11 of its Statute, the public prosecutor's department has jurisdiction to initiate these proceedings, in which it intervenes in all cases.

b. In the case of police custody, the public prosecutor's department has jurisdiction to review the expediency and duration of the measure and to initiate criminal proceedings before the courts to bring unlawful detention to an end, as explained in the previous paragraph.

5. Yes.

6. Complaints against prison staff are investigated by the investigative division of the batllie (court of first instance). Which court has jurisdiction to hear the case depends on the nature of the offence committed. Disciplinary liability issues are the responsibility of the general administration.

The rules governing prison officers are currently the only legal provisions in this area.

Work is in progress on a Law on Prison Staff and a Prisons Law, both of which are at the preliminary draft stage. Together, these two texts will provide a complete set of legal rules governing this area.

The preliminary draft of the Law on Prison Staff defines the status of members of the prison staff and lays down their rights and duties out of a concern to establish a policy of qualitative and quantitative management of prison staff's workplaces and competences, with due regard to the specific nature of their duties.

It also effectively introduces an ethical code incorporating all the national and international legal provisions applicable to persons working in prisons, regulates the

granting of distinctions, rewards and bonuses, and lays down disciplinary rules, which are directly related to the rules of conduct.

These disciplinary rules, contained in Part IV of the preliminary draft, differentiate offences committed by members of the prison staff in the performance of their duties according to their seriousness and specifies the penalty applicable to each type of offence and the procedure to be adopted, which is divided into two stages: the investigation and the decision, the latter being the responsibility of the prison director in the case of minor offences, the Minister of the Interior in the case of serious offences, and the government in the case of very serious offences. An appeal may be lodged against the decision under the conditions provided for in the Administrative Code.

7. Yes.

b and c Questions 7b and 7c were answered in the replies to questions 2, 3 and 4 of this questionnaire.

8. The modes of execution of custodial sentences and the role of the public prosecutor's department in that regard are provided for in Articles 207 et seq of the Code of Criminal Procedure.

Generally speaking, the public prosecutor's department is responsible for promoting before the courts the execution of sentences in accordance with the principle of legality. It monitors all incidents concerning persons deprived of their liberty and all advantages that may be granted to them.

AUSTRIA

1) What kinds of decisions on deprivation of liberty exist in your country?

A suspect can be arrested on the basis of a written warrant (Haftbefehl) issued by a judge. The issuing court is to be informed immediately of any arrest. The suspect must be brought before the court right away, and definitely within 48 hours of arrest (Section 176 Code of Criminal Procedure).

In cases where a suspect is arrested by the police without a judicial warrant, the public prosecutor has to be contacted, if continued custody (longer than 48 hours) is deemed necessary. The public prosecutor must declare whether he intends to apply for detention before the court. If so, the suspect has to be brought to the competent court (jail) within 48 hours of arrest (section 177 Code of Criminal Procedure, Art. 4 of the Constitutional Act on the Protection of Personal Freedom). Otherwise, the detainee has to be released immediately.

After the suspect has been brought before a court jail, he/she has to be heard without delay by an investigating judge. At the end of this hearing, the judge must declare immediately whether the suspect is to be placed under detention. In any event, this decision must not be taken later than 48 hours upon committal to the court jail (96 hours from the time of arrest); a written copy of the decision has to be handed to the detainee within a further 24 hours (Section 179 Code of Criminal Procedure).

2) Which decisions are subject to review/supervision by the public prosecutor?

If detention is deemed necessary, the public prosecutor has to apply for detention before the court (section 180 Code of Criminal Procedure). If the public prosecutor withdraws his request for remand in custody or does not apply for the initial order of detention or its prolongation, the detainee must be released. Pursuant to section 179 para. 5 Code of Criminal Procedure the public prosecutor has a right to appeal to the Higher Regional Court *(Oberlandesgericht)* against the initial detention order (*Beschluss auf Verhängung der Untersuchungshaft*), against any ensuing decision on its extension (*Beschluss auf Fortsetzung der Untersuchungshaft*) and against releasing the suspect from detention.

3) Is the public prosecutor empowered to enter places of detention? What kind of places or institutions, how often, and with or without the permission of other authorities?

At present, the public prosecutor is not allowed to interrogate a suspect or meet with him- or her, he/she can merely be present at an interrogation conducted by the police (which virtually never happens) or by the investigating judge (which is only possible in the case of a cross-examination of a witness by the investigating judge).

According to the StPRG, the public prosecutor has the possibility of conducting an interrogation (of a suspect or a witness) him- or herself. The protocol of such an interrogation by the public prosecutor will be accepted as evidence in the main trial, provided that there is no other, more direct evidence available (for example in the case of the death of the witness).

4) a. What kind of measures could be taken by the public prosecutor in case of unlawful deprivation of liberty or in case of torture or inhuman or degrading treatment or punishment?

The public prosecutor may apply for custody or for prolongation of remand in custody to the court. If he refrains from doing so or requests release, the detainee must be released. Irrespective of the rules on ex officio review, the detainee is entitled to submit a request for release any time. If this move is not endorsed by the public prosecutor, a hearing on the further justification of detention (*Haftverhandlung*) must promptly be held by the court, at the end of which the investigating judge takes a formal decision (Section 193 para. 5 Code of Criminal Procedure).

If an accusation of torture or inhuman or degrading treatment is raised against a member of prison staff, the prosecutors have to request an investigation by a court without delay, in the same way as they are obliged under the strict principle of mandatory prosecution (*Legalitätsprinzip*) to prosecute any action of the police in violation of criminal law.

b. Is the public prosecutor empowered to take an immediate decision in these cases?

See the answers to part a.

5) Is it possible for a person deprived of his/her liberty to meet the public prosecutor personally without any control by a third party? Can that person maintain contact with the public prosecutor without any control by a third party (and vice versa)?

Please see reply to Question 3.

6) Please describe the procedure for complaints against the prison staff.

Pursuant to section 120 Penal Law *(Strafvollzugsgesetz),* prisoners may complain against directions or the behaviour of prison staff that they feel violate their rights. Except in cases where it is dangerous to make delays, normally it is possible to raise complaints at the earliest on the first day, at the latest on the 14th day after knowing the reason for complaint. The complaints have to be taken by competent prison staff. Every day oral complaints can be raised at the period fixed by the head of the institution. The head of the institution then decides how to act on these complaints (section 121 para 1 Penal Law).

7) a. Does the public prosecutor have authority to control and react to the conditions of deprivation of liberty?

In this context, regard should generally be had to the replies to Question 4a and 6.

Only the head of the institution has the authority to control and react to the conditions of deprivation of liberty. Detainees are entitled to apply for review of his decisions by an independent tribunal.

Once a year the commission of execution *["die Vollzugskommission"],* consisting of judges and lay persons, reviews prisons by contacting prisoners and prison staff.

The public prosecutor has no authority to control and react to the conditions of deprivation of liberty.

b. How should the public prosecutor react?

Not applicable.

c. Does domestic law in your country prescribe any special provisions for such situations?

There are no special provisions.

8) What is the role of the public prosecutor in the execution of sentences relating to persons deprived of their liberty?

There are no special duties or rights for the public prosecutor in the execution of sentences relating to persons deprived of their liberty. But in general the public prosecutor can act as a supervisory body, so that he is empowered to take a motion for the enforcement of sentences without delay. He is also entitled to be heard at petitions for conditional release and to appeal against such judicial decisions.

AZERBAIJAN

1

In the Republic of Azerbaijan, the criminal justice system is administered by authorised courts, which compose the judiciary system. Nobody may be considered guilty of committing a crime or imprisoned without a decision of court.

According to the existing legislation, in the Republic of Azerbaijan, only courts may impose a criminal penalty, mitigate it or free a person from a penalty on behalf of the state. Under *section 109* of the *Constitution* of the Republic of Azerbaijan, the President of the Republic of Azerbaijan may in his competence mitigate a penalty imposed on a person on behalf of the state or free him/her from the penalty by granting a pardon.

Thus, a penalty is imposed on a person, who has committed a crime, on behalf of the state only by means of a decision of court.

Under the *Criminal Code* of the Republic of Azerbaijan, which has been in force since the 1st September 2000, the penalties that are imposed on people, who have committed a crime, include "restriction of freedom", "imprisonment for a certain period of time", "life imprisonment".

"Restriction of freedom" means isolation of convicts, who reached the age of 18 prior to being sentenced, from the society and keeping them in special institutions under supervision. With regard to the people, who were not sentenced to the same penalty, they are imprisoned for a period of from 1 year to 3 years if they were convicted due to intentionally committing a crime and from 1 year to 5 years if they were convicted due to negligently committing it.

This penalty may not be imposed on the first and second group disabled people, pregnant women, women who have children of age of under 8, men and women who have reached the age of retirement as well as military servants who are in the temporary military service.

"Imprisonment for a certain period of time" means isolation of convicts from the society by placing them in station-styled, common, strict and special, penalty-serving institutions or prisons.

People, who have been sentenced to imprisonment but have not reached the age of 18 prior to being sentenced, are placed in common or strict treatment institutions.
"Imprisonment" is imposed for a period of from 3 months to 15 years.

"Life imprisonment" is imposed only for especially grave crimes committed against peace and humanity, a person, social security, social order and state authority, related to war crimes.

Life imprisonment is not imposed on women, people, who have not reached the age of 18 at the time of committing a crime, and men, who have reached the age of 65 prior to being sentenced.

If a convict, who had been sentenced to a life imprisonment, has actually served at least 25 years of the imprisonment, a court may mitigate the penalty of a life imprisonment with the penalty of an imprisonment for a certain period of time. The court may do so as long as it decides that there is no need any more for the convict to serve the sentence and taking into account the fact that he/she did not intentionally commit any crime while serving the sentence.

Moreover, a court may mitigate the penalty of a life imprisonment with the penalty of an imprisonment for a period of up to 15 years in the above-specified way.

2

In the Republic of Azerbaijan, the criminal justice system is carried out on the basis of an argument between a defence side and a prosecutor. Each side has equal rights and opportunities to defend its position in a court.

According to the *Constitution* and the *Prosecutor's Office Act*, apart from other fields of activity and in the circumstances and in the way provided for by the legislation, the Prosecutor's Office participates in criminal court hearings as a party, supports state incrimination, appeals against decisions of court.

The Prosecutor's Office files a criminal case and holds an investigation in the circumstances and in the way provided for by the legislation. For the purpose of carrying out the criminal pursuit, the Prosecutor's Office procedurally leads an initial investigation, exercises control over fulfillment and application of laws, exercises control over fulfillment and application of laws by investigation bodies. It also registers petitions and information received by the inquiry bodies in relation to crimes and other unlawful actions; studies these petitions and information and takes appropriate measures in the way specified by the legislation; exercises control over the inquiry bodies with regard to taking actions provided for by the legislations of the Republic of Azerbaijan and lawfulness of their decisions taken in the process of this activity; exercises control over lawfulness of operation-search activity carried out by operation-search bodies and their decisions taken with the purpose of ensuring obedience of these bodies to the laws related to the operation-search activity.

Strictly obeying to the principles of independence of courts and subordination of courts only to law, prosecutors participate as a party in Courts of First Instance, Courts of Appeal and Courts of Cassation in respect of criminal cases, defend a state incrimination, appeal against decisions of courts in the way and circumstances provided for by the criminal-procedural legislation. A prosecutor, who holds an initial investigation and procedurally leads the initial investigation, may not defend a state incrimination in a court.

The burden of proof in carrying out criminal justice is on a prosecutor. A prosecutor does not have the power to exercise a court control.

3
The fields of activity of the Prosecutor's Office, which have been specified by the *Prosecutor's Office Act*, do not include exercising control over activity of penalty-serving institutions fulfilling penalties imposed by courts.

Regulations and conditions of fulfillment and serving of penalties imposed by courts are administered by the *Fulfillment of Penalties Code* and other normative legal Acts. Under *section 22* of the Code, in performing their duties, inquirers or investigators, prosecutors procedurally leading an inquiry or initial investigation as well as judges carrying out a function of court control, who hold investigation and take other procedural actions in respect of criminal cases, may visit institutions fulfilling penalties of imprisonment for a certain period of time or life imprisonment. Under *section 15.10* of the Code, the mechanism of carrying out the regulations on fulfillment and serving of penalties by people, who have been sentenced to restriction of freedom, imprisonment for a certain period of time and life imprisonment, is determined by the Internal Discipline Regulations adopted by the Ministry of Justice in accordance with peculiarities of these forms of penalties.

4a
As it has been mentioned above, a prosecutor participates in the criminal justice system by supporting a state incrimination. In case of disagreement with decisions of a court, a prosecutor has a right to appeal to a court of a higher instance in a way specified by the legislation.

b
In case of receiving a petition or information about torture and brutal, embarrassing treatment or unlawful imposition of a penalty, a prosecutor makes inquiries in accordance with the procedural legislation and, if necessary, files a criminal case and holds an investigation.

5
Due to the fact that a prosecutor is not empowered by the legislation to exercise control over application of laws in prisons, the legislation does not provide for the prosecutor to hold meetings with people deprived of their liberty or convicts.

6
Under *section 14* of the *Fulfillment of Penalties Code*, convicts have a right to address by means of making a recommendation, filing a petition or a complaint. A body or an official, which/who a convict sends his/her petitions and complaints to in respect of decisions and actions of officials of an institution or body fulfilling penalties, shall deal with them and inform him/her within a period of time specified by the legislation.

Moreover, officials of an institution or body fulfilling penalties hold meetings with

convicts on days and at hours specified and announced beforehand.

7a and b
As it has been mentioned above, since the legislation does not provide for a prosecutor to exercise control over application of laws in prisons, he/she does not have the power to exercise the concerned control.

c
It is penitentiaries (special institutions and penalty-serving institutions), which depend on the Ministry of Justice, that carry out fulfillment of penalties of restriction of freedom, imprisonment for a certain period of time and life imprisonment. The Ministry of Justice exercises control over institutions or bodies that fulfill such penalties. The Regulations on fulfillment of this control are laid down by legal normative acts of the Ministry of Justice. Petitions and complaints addressed to bodies exercising control over prisons or to the Human Rights Commissioner of the Republic of Azerbaijan (Ombudsman) are not subject to censorship and are sent to the addressee not later than within a day (with an exception of week-ends and public holidays).

The Human Rights Commissioner of the Republic of Azerbaijan (Ombudsman) is empowered to enter prisons without any obstacle or a preliminary notification, hold a meeting with convicts, talk to them privately and familiarize himself/herself with documents verifying lawfulness of keeping them there.

Courts deal with complaints received in connection with activity of the institutions or bodies fulfilling penalties and take appropriate decisions.

8
Under the *Fulfillment of Penalties Code* and the *Criminal-Procedural Code*, participation of the Prosecutor's Office in fulfillment of a penalty imposed by a decision of courts is administered by the criminal-procedural legislation.

After a decision of a court is taken, a convict has a right to appeal to the court in respect of the following issues until the decision is executed:

- postponement of serving a penalty;
- release from a penalty due to illness or expiry of the period of serving the penalty;
- release on parole;
- mitigation of the sentence that has not been served yet;
- change of type of penalty-serving or training institution;
- non-application or wrong application of amnesty;
- inclusion of time spent in treatment institution into the period of serving the penalty;
- removal of conviction prior to its expiry.

Appeals in respect of these issues are dealt with by the court not later than 10 days after receiving them. A convict and his/her lawyer or legal representative, a representative of the institution or body which was commissioned to fulfill the decision or other final

ruling of court, and a prosecutor take part in the court hearings. In his/her final speech during the court hearings, the prosecutor recommends to allow or reject the appeal. A judge takes a decision to allow or reject the appeal in accordance with the criminal, criminal-procedural legislation and other laws of the Republic of Azerbaijan and reads it to the participants.

The prosecutor may make an appeal or cassation in relation to the decision of the court in the way specified by the legislation.

CROATIA

1) What kinds of decisions on deprivation of liberty exist in your country? (Please describe the legal basis for them and list the authorities empowered to take them.)

a. Under the Criminal Procedure Act the police can arrest a person found in the act of committing a criminal offence or if justifiable reasons exist for taking him/her into custody. The arrest is not accompanied by any formal decision and the police are required to bring the arrested person before the investigating judge immediately, or within 24 hours at the latest, or else release him/her.

b. Regarding the legal basis for decisions on deprivation of liberty, there are two types of such formal decisions. One is detention, the other is custody.

At the proposal of the police or the public prosecutor, the investigating judge can rule through a written and elaborated decision that the arrested person brought before him is to be detained up to 24 hours in case of a reasonable suspicion that the person has committed an offence and if reasons exist for imposing custody. Detention is normally ruled in order to determine identity, check alibis, collect evidence, etc. Detention may last 48 hours and if within that time the public prosecutor fails to initiate proceedings, the detained person must be freed. (Article101 of the Criminal Procedure Act).

Custody can be ruled in case of a reasonable suspicion that the person has committed a criminal offence. In other words, a greater amount of certainty must exist that an offence has been committed. Custody is typically decided upon if criminal proceedings have been initiated. Article 105 of the Criminal Procedure Act lays down grounds for ordering custody.

These are:

- a danger that he/she may escape.
- a reasonable suspicion that he/she may destroy or fake evidence or clues or obstruct the proceedings by influencing witnesses.
- special circumstances which give rise to justified concern that he/she may repeat the offence or bring it to completion or that he/she may commit an act that he/she is threatening to commit.
- point 4, paragraph 1 of the said article specifies acts of felony (murder, robbery, etc.), as well as any offences which are punishable by imprisonment of 12 years or more, or more serious offences involving particularly grave circumstances associated with the offence.

Custody is ruled by the investigating judge and in the investigative stage may last 6 months, whereas the total duration of custody depends on how serious an offence is; it

may last three years for the most serious criminal acts liable for long-term prison sentences.

2) Which decisions are subject to review/supervision by the public prosecutor?

No decision on custody is subject to review/supervision by the public prosecutor. But in certain cases the public prosecutor has the right of appeal.

3) Is the public prosecutor empowered to enter places of detention? What kind of places or institutions, how often, and with or without the permission of other authorities?

The public prosecutor is empowered to enter places of detention only with the permission of the investigating judge. Normally, it is the case that prisons where prisoners are under investigating are held are visited, and this requires the permission of an investigating judge or the judge.

4) a. What kind of measures could be taken by the public prosecutor in case of unlawful deprivation of liberty or in case of torture or inhuman or degrading treatment or punishment?

b. Is the public prosecutor empowered to take an immediate decision in these cases?

In such cases the public prosecutor can immediately bring charges against and demand custody for the person who treats the arrestee in a way as described under 4.a) above.

5) Is it possible for a person deprived of his/her liberty to meet the public prosecutor personally without any control by a third party?

Can that person maintain contact with the public prosecutor without any control by a third party (and vice versa)?

At the personal request of a person deprived of liberty the public prosecutor may, subject to receiving the permission of the investigating judge, meet the person without the presence of a third party. The public prosecutor, however, cannot discuss with that person the offence he/she has committed, because in that case the presence of his/her defence counsel is required. The person in custody may communicate with the public prosecutor via the investigating judge who will normally abstain from checking the notes being forwarded to the public prosecutor.

6) Please describe the procedure for complaints against prison staff.

Article 123, paragraph 2 of the Criminal Procedure Act stipulates that the presiding judge or a judge designated by him/her should at least once a week visit the detainees and, if need be, without the presence of a court police officer gather information about how the

detainee is treated. The judge may visit the detainees any time he/she chooses and hear their complaints. The public prosecutor has no such right.

7) a. Does the public prosecutor have authority to control and react to the conditions of deprivation of liberty?

As mentioned above, the right to control and react to the conditions of deprivation of liberty is vested in the presiding judge or a judge designated by him/her.

b. How should the public prosecutor react?

The public prosecutor, when violations of the rights of a detained person are brought to his/her attention, can only inform the presiding judge or a judge supervising the enforcement of a custody ruling. If such violations constitute an offence, the public prosecutor may bring charges and go ahead with criminal proceedings.

c. Does domestic law in your country prescribe any special provisions for such situations?

Articles 116 – 124 of the Criminal Procedure Act prescribe the rights and duties of persons deprived of their liberty, and the respective Chapter of this Act is entitled: Enforcement of custody and treatment of detainees.

8) What is the role of the public prosecutor in the execution of sentences relating to persons deprived of their liberty?

The public prosecutor has no special role in this regard, because the execution of sentences is in the judge's realm.

CZECH REPUBLIC

1) What kinds of decisions on deprivation of liberty exist in your country?
(Please describe the legal basis for them and list the authorities empowered to take them.)

Charter of Fundamental Rights and Freedoms

Chapter Two
Human Rights and Fundamental Freedoms

Division One
Fundamental Human Rights and Freedoms

Article 8

1) Personal freedom is guaranteed.

2) No one may be prosecuted or deprived of his or her freedom except on grounds and in a manner specified by law. No one may be deprived of his or her freedom merely because of his or her inability to meet a contractual obligation.

3) Any person accused or suspected of having committed a criminal offence may be detained only in cases specified by law. Such detained person shall be informed without delay of the reasons for the detention, questioned, and within forty-eight hours either released or brought before a court. Within 24 hours of this, the judge must question the detainee and decide whether or not to place them in custody or to release them.

4) A person accused of a criminal act may only be arrested on the basis of a written warrant, issued by a judge, which includes the grounds for its issue. The arrested person shall be turned over to a court within twenty-four hours. A judge shall question the arrested person within twenty-four hours and decide whether to place in custody or to release the person.

5) No one may be placed in custody except for reasons specified by law and on the basis of a judicial decision.

6) The law shall determine in what cases a person may be admitted to or kept in a medical institution without his or her consent. Such move shall be reported within twenty-four hours to a court which shall then rule on the detention within seven days.

Commentary:

According to Article 8 of the Charter of Rights and Freedoms, the right to personal freedom is connected with the right to personal security and to being brought to the court if detained – referred to as habeas corpus ad subiciendum. Personal freedom is

guaranteed both by the Criminal and Civil Procedure as well as by the Law of Government.

A suspicious person that has been caught in the act of carrying out a crime or immediately thereafter may be deprived of his/her liberty by anyone provided that this is necessary to establish that person's identity, to prevent him/her from fleeing or to secure evidence. The person carrying out the citizen's arrest is obliged to accompany the person immediately to the police or inform them of the arrest (Section 76, Paragraph 2 of the Criminal Procedure Code).

In cases of an emergency, the police may detain a person suspected of committing a crime with the prior approval of the public prosecutor, provided that a reason for remanding the person in custody exists. Without such an approval, such a person may only be detained if speed is a necessity and prior consent cannot be obtained (Section 76, Paragraph 1 of the Criminal Procedure Code).

The police may detain an accused person if a reason for remanding them in custody exists and, if it is urgent, even if no prior decision on detention can be obtained (Section 75 of the Criminal Procedure Code).

Within 48 hours, a detainee must be brought before a court or released. A detainee has a right to retain counsel and consult with them during detention; and to require that this person is present during his/her interrogation. A suspect must be instructed of their rights and be provided with every opportunity to exercise them (Section 76, Paragraph 6 of the Criminal Procedure Code).

If a detainee is brought before a court, the judge must examine him/her and, within 24 hours from receiving a motion, decide whether such a person should be released or detained on remand. Failure to do so within 24 hours constitutes a reason for releasing the accused person (Section 77 of the Criminal Procedure Code) in every case.

During pre-trial proceedings, if a reason for detention exists and the accused person cannot be summoned, or brought for interrogation, the public prosecutor can suggest to the judge that the accused person should be arrested. During the trail, the presiding judge orders that. The police must bring the arrested person to court. The judge must immediately question the accused, decide whether to continue to remand him in custody and notify him/her of such a decision within 24 hours from receipt (Section 69 of the Criminal Procedure Code).

Under Section 67 of the Criminal Procedure Code, an accused person may only be taken into custody if concrete facts exist to indicate that the accused person:

a) will escape or will be hiding to avoid prosecution or punishment, especially if his/her identity cannot be established immediately, if he/she has no permanent residence, or if he/she faces a serious or long sentence (referred to as escape custody),

b) will be trying to influence witnesses not yet questioned or co-accused or, in some other way, hindering the clarification of facts important to the prosecution (referred to as collusive remand in custody), or
c) will continue his/her criminal activity for which he/she has been prosecuted, accomplish the crime which he/she has attempted, or commit a crime that he has premeditated or with which he/she has threatened (referred to as advance remand in custody).

The current Czech Criminal Procedure does not recognize what is referred to as obligatory custody. Only be a person who is criminally prosecuted may be remanded into custody. The remand into custody is decided by the court and, in a preparatory procedure, by the judge following a proposal by the public prosecutor (Section 68 of the Criminal Procedure Code).

An appeal may be lodged against the decision to remand into custody and its extension (Section 74 of the Criminal Procedure Code).

Remand into custody may be replaced by a guarantee in the form of a written pledge by a civic association or a trustworthy person of the accused, by supervision of a probation officer and by posting bail (juvenile persons must also be placed into the care of a trustworthy person). Collusion remand in custody cannot be replaced.

Custody may be extended by the decision of the court or the public prosecutor during the pre-trial hearing, when the public prosecutor decides to release the accused from custody even without the presence of a request. The public prosecutor may also decide to release a suspect by replacing custody with a guarantee, pledge, supervision by a probation officer, and bail. After an indictment has been submitted, the relevant decisions are taken by the court.

Under Section 23, Paragraph 4 of Act no. 20/1966 Coll., on national healthcare, it is possible to examine and treat a person suffering from an illness without his/her consent and, if the nature of the illness requires this, to put them for in-patient treatment:
a) if the illness is one for which obligatory treatment may be ordered,
b) if a person shows signs of mental disturbance or intoxication and poses a risk to persons in his/her vicinity, or
c) if it is not possible, due to the person's state of health, to obtain their consent and treatment is necessary to save their health or life,
d) he/she has an infectious disease.

Under Section 24 of Act no. 20/1966 Coll., on national healthcare, a medical establishment is obliged, within 24 hours, to notify the competent court of its having been obliged to take an ill person into its care with/ without their written consent. Under Section 35 of the Rules of Civil Procedure, the public prosecutor is empowered to enter into the proceedings regarding the placing/keeping a person into the care of an institution as an in-patient. The next obligation is of the court to notify the public prosecutor on initiating proceedings on declaring the admissibility of putting a person into or keeping a

person in the care of an institution as an in-patient (by an amendment to the Rules of Civil Procedure in force since 1st January 2006).

A (civil) court may, even without a motion, initiate proceedings to declare the admissibility of putting a natural person into or keeping a person in the care of an institution as an in-patient (Section 81 of the Rules of Civil Procedure).

Within 7 days, the court must decide whether the putting into the care of an establishment of a person without that person's consent has been legal. After that, the court must pass a judgement within 3 months as to whether that person's detention is admissible and for what time period. The judgement will expire after one year. If the detention in a health care institution is to be extended beyond that period, the court must decide again on this matter (Section 191b to 191e of the Rules of Civil Procedure).

If it is necessary to examine the mental state of an accused person, a forensic expert in psychiatry is always invited. If the mental health cannot be determined otherwise, the court, and in a pre-trial hearing, the judge, following a proposal by the public prosecutor, may order that the accused person should be put under observation in a health-treatment establishment or, if he/she is still in custody, in a special ward of the correctional facility. The mental health observation should not last longer than two months. The court may extend this period by one month.

During proceedings to determine legal capacity, the court may, following a proposal by an expert, order that the person under examination should be examined while detained in a health-treatment establishment for a maximum of six weeks if this is necessary to examine that person's health (Section 187 of the Rules of Civil Procedure).

Constitution of the Czech Republic
Constitutional Act No. 1/1993 Coll. of the Czech National Council of 16th December 1992 as amended by Acts No. 347/1997 Coll., 300/2000 Coll., 448/2001 Coll., 395/2001 Coll. and 515/2002 Coll.

Article 90

The courts shall first and foremost act in a manner defined by law protection of rights. The court alone shall decide about guilt for criminal offences and what form punishment should take.

In criminal proceedings, the courts decide about guilt, impose punishments allowed under the law or other (protective) measures. In this regard, decisions about depriving people of their most important human rights and liberties are also entrusted to the court. These are decisions that may deprive a person of his/her liberty and bring about encroachments in connection with committing a crime, the disclosure of secret documents and communications.

The court's authority to rule in criminal proceedings about the guilt, punishment, and, in some cases, on damages follows directly from the Constitution of the Czech Republic (Article 90). No other state body can rule in relation to crimes, punishments and protective measures.

2) Which decisions are subject to review/supervision by the public prosecutor?

The Constitution of the Czech Republic (article 80, par. 1) characterises the public prosecutor's office as an organ representing public prosecution during criminal proceedings; it also performs other tasks the law sets forth. Act no. 283/1993 Coll., on the Public Prosecutor's Office, in effect since 1st January 1994, the public prosecutor's office has been organised as a system of public offices assigned to represent the state in cases according to law.

The tasks of the public prosecutor's office as laid out by the Constitution of the Czech Republic, and further augmented by Act no. 283/1993 Coll., regarding the public prosecutor's office , as amended primarily by important legislation conveyed by Act no. 14/2002 Coll.

According to Act on the Public Prosecutor's Office the public prosecutor's office (§ 4):

- Is the organ of public prosecution during criminal proceedings;
- Fulfils other tasks that originate from criminal regulations (particularly supervision over preserving legality in pre-trial hearings);
- Within the scope, and under the conditions, and according to the method established by law, conducts supervision of the legal regulations in places where arrests, imprisonment, deterrent treatment, deterrent or institutional training are performed and in other places where, in accordance with legal authority, personal freedom is restricted (law on oversight of places where arrests, imprisonment, deterrent and institutional training are carried out);
- to share in crime prevention and to provide assistance to the victims of criminal acts;

The following petitions are submitted by the supreme public prosecutor)[1]:

- Acts in non-criminal proceedings (after frequent legislation changes, this involves very extensive capabilities, for example, proposals for initiating criminal proceedings, possible involvement in ongoing proceedings, petitioning for refusing paternity within the necessary time period, if it has been deemed to be in

[1] Act on the Public Prosecutor's Office:
Section 5
1) The public prosecutor's office is authorized to file a motion for opening civil proceedings or enter civil proceedings already opened only in cases stipulated by law.
2) The Civil Procedure Code regulates the procedural status, powers and duties of the public prosecutor's office that has filed a motion for opening civil proceedings or entered such proceedings.

the public's interest, or petition before a panel of judges, if the public interest has been affected in a serious way

Overseeing and supervising places of custody, imprisonment, protective treatment, protective or institutional education, and seeing that they are run in accordance with the law.

The Public Prosecutor's Office also supervises whether the generally binding regulations relating to remand in custody and imprisonment are adhered to. The suitability and/or the purposefulness of the procedures employed by the Prison Service is not overseen, other than that they conform to the legal regulations. Neither does the subject of supervision include the concept of remand in custody or imprisonment, or the correctness or purposefulness of the acts performed by the Prison Service that are only of organisational, managerial or business nature.

The public prosecutor should pay special attention to persons not being remanded in custody or imprisoned illegally (Section 78 of Act no. 169/1999 Coll., on imprisonment as amended; Section 29 of Act no. 293/1993 Coll., on remand in custody as amended). The authority of the public prosecutor has been extended by Act no. 109/2002 Coll., on institutional education or protective education in school establishments. Here, too, the public prosecutor supervises the adherence to legal regulations during the execution of institutional and protective education (Section 39).

3) Is the public prosecutor empowered to enter places of detention?
What kind of places or institutions, how often, and with or without the permission of other authorities?

When supervising the compliance with legal regulations in places of imprisonment and custody, the public prosecutor is authorised to visit places of custody and imprisonment at any time. The same applies when supervising the compliance in places of institutional and protective education.

According to the General Instruction no. 14/2001 issued by the General Prosecutor (as amended), the public prosecutor, checks compliance with legal regulations in places of custody or imprisonment once in two months. The public prosecutor may perform a check at his own discretion.

A check may also be made if this is initiated by a natural person or a legal entity, or on another basis. The initiation means a request from a natural person or a legal entity has been made to perform supervision. The request should be based on facts that indicate non- compliance with legal regulations that govern remand in custody or imprisonment. Other means of initiating a check can be on the basis of the public prosecutor's own activity, from the public prosecutor's other areas of activity, from documents submitted by another government body, and from mass media.

The General Instruction no. 4/2002 issued by the public prosecutor as amended, stipulates as methods of supervision checks the compliance with legal regulations in institutional and protective education, investigations made at an initiation of supervision and investigations made on another basis.

4) a. What kind of measures could be taken by the public prosecutor in case of unlawful deprivation of liberty or in case of torture or inhuman or degrading treatment or punishment?

The public prosecutor is authorised to order the release of a person serving a term of imprisonment (custody) unlawfully to be released immediately. The Prison Service is obliged to execute the public prosecutor's order immediately.

When supervising institutions for institutional or protective education, the public prosecutor is authorised to order that a child detained unlawfully should be released immediately after the production of a report to the social and legal child protection authority. The establishment is obliged to execute the order of the public prosecutor immediately.

If, when supervising, the public prosecutor finds out that the reasons for the execution of mandatory institutional or protective education have ceased to exist, he/she should move for the immediate cancellation of such education.

If it is established by the Prison Service staff that the right of a convicted person to protection from unlawful violence, humiliating his/her dignity is in danger or if the convicted person reports this to a member of staff, then they are obliged to take necessary steps immediately to stop such acts and report this to the Prison Director.

The Prison Director is obliged to verify the information relating to the violation of the convicted person's rights immediately and take rigorous action to prevent the future or continued violations.

b. Is the public prosecutor empowered to take an immediate decision in these cases?

The public prosecutor who supervises places of custody, imprisonment, and protective and institutional education is not empowered to take immediate decisions. This follows from the conception of this supervision with the public prosecutor only being able – as already mentioned under 4.a. – to order the release of a person detained unlawfully in a prison or other institution. Supervision consists of checking compliance with legal regulations by different bodies in charge of the custody, imprisonment, protective, and institutional education.

5) Is it possible for a person deprived of his/her liberty to meet the public prosecutor personally without any control by a third party?
Can that person maintain contact with the public prosecutor without any control by a third party (and vice versa)?

The public prosecutor is empowered to talk to the sentenced person without the presence of third parties when supervising remand in custody and the serving of sentences. When visiting prisons, the public prosecutor must be notified of prisoners' requests for private meetings immediately.

The staff of the Prison Service are obliged to immediately notify the Prison Director, the public prosecutor, judge or the official performing an inspection of the prison of the request by a convicted or accused person for a private meeting and, when instructed to do so, to organise such a meeting in the prison. A convicted person is entitled to legal advice from a lawyer. The lawyer has the right to correspond with or talk to the convicted person without the presence of a third person.

When supervising the establishments for institutional or protective education, the public prosecutor is empowered to talk to children without the presence of a third person.

Children placed in establishments for institutional or protective education are entitled to talk in private with an employee from the authority in charge of the social and legal protection of children a member of the Czech School Inspection staff, of the Ministry or of a Regional Authority, without the presence of a third person.

When dealing with a complaint or request submitted by a child, the public prosecutor must respect the rights of the minor and act in a manner fitting with the child's age and stage of development.

6) Please describe the procedure for complaints against prison staff ?

The Prison Service's own bodies investigate criminal activity of its staff. Compliance with legal and in-house regulations governing Prison Service staff and its civil employees when dealing with the accused and convicted persons is overseen by the Ministry of Justice (Act no. 555/1992 Coll., on the Prison Service and Judicial Security Guards in the Czech Republic). The public prosecutors supervise the compliance externally.

Convicted and accused persons may file complaints and requests to exercise their rights. A complaint or request addressed to a body must be sent to that body immediately. To exercise his/her rights and/or assert his/her justified interests, a convicted person may also address his/her complaints and requests to international bodies and organizations that are authorised to make an inquiry following complaints about violation of human rights.

Children in institutions for institutional or protective education have a right to address their complaints, requests, and proposals to the director of the establishment concerned, as well as the pedagogic staff of the establishment concerned.

Such complaints, requests, and proposals, if addressed to the relevant public administration bodies, local self-government bodies, natural persons, and legal entities,

should be posted immediately without being censored provided that they are in charge of the social and legal protection of children.

7) a. Does the public prosecutor have authority to control and react to the conditions of deprivation of liberty?

Under Section 78 of Act no. 169/1999 Coll., on serving a prison sentence, the public prosecutor is authorised when supervising the serving of a prison sentence:

a) at any time, to visit places where prison sentences are served,
b) inspect the documents on the basis of which the convicted persons have been deprived of their liberty, talk to such persons without the presence of a third person,
c) to check whether the orders and decisions of the Prison Service in the prison related to the serving of a sentence comply with the law and other legal regulations,
d) to require from the Prison Service staff in the prison the necessary explanations, files, documents, orders and decisions related to the serving of a sentence,
e) to issue orders requesting compliance with the regulations in force governing the serving of a sentence,
f) to order that a person serving a sentence unlawfully should be released immediately.

The Prison Service is obliged to execute the public prosecutor's orders immediately.

Under Section 29 of Act no. 293/1993 Coll., on detention on remand, when carrying out supervising, the public prosecutor is authorised to:

a) at any time, to visit places of detention,
b) inspect the documents on the basis of which the accused persons have been detained, talk to such persons without the presence of a third person,
c) to check whether the orders and decisions of the Prison Service in the prison related to detention serving comply with the law and other legal regulations,
d) to require from the Prison Service staff in the prison the necessary explanations, files, documents, orders and decisions related to the detention,
e) to issue orders requesting adherence to the regulations in force governing the detention serving,
f) to order that a person detained against a decision of investigative, prosecuting and adjudicating bodies or without such a decision should be released immediately.

The Prison Service is obliged to carry out the public prosecutor’s orders immediately.

Under Section 39 of Act no. 109/2002 Coll., the public prosecutor, when supervising establishments for institutional and protective education, is empowered

a) to enter the establishment at any time,
b) to inspect the mandatory documentation on file at the establishment,
c) to talk with the children without the presence of third persons,

d) to require that the establishment staff and other persons involved in the care of children should give the explanations necessary,
e) move the court to cancel the institutional or protective education ordered or move the court to order protection education for a child placed in an establishment for mandatory institutional education,
f) to check whether the decisions taken and procedures employed by the director of an establishment are in conformity with the law and other legal regulations,
g) to issue orders for actions to be taken to remove facts not conforming with legal regulations,
h) To order that a minor detained illegally in an establishment should be released immediately after this is reported to the authority in charge of the social and legal protection of minors.

The establishment is obliged to carry out the orders of the public prosecutor under Paragraph 2 immediately.

b. How should the public prosecutor react?

The legal instrument that can be used by the public prosecutor to enforce the law is to order that the regulations in force for the detention or a sentence serving, institutional or protective education should be adhered to. As a rule, this order is issued in writing. In emergency cases, the public prosecutor may issue a verbal order.

If the public prosecutor finds out that a person has been remanded in custody against the decision of investigative, prosecuting and adjudicating bodies or without such a decision or that such a person has been imprisoned illegally, he/she must order that such a person be released immediately.

If the public prosecutor, when performing supervision, finds out that the reasons for the execution of institutional or protective education have expired, he must move the court immediately to cancel such education. If the public prosecutor finds out that a child has been detained in an establishment illegally, he must order that the child be released immediately after reporting this to the authority in charge of the social and legal protection.

c. Does domestic law in your country prescribe any special provisions for such situations?

Currently, there are no such provisions prescribed under domestic law. An amendment is being prepared to govern the execution of security detention as a protective measure, under which the perpetrator of a serious crime may be detained, as well as an amendment to regulate the inspection of cells in which detained soldiers are held. Both amendments should come into force early in 2007. As yet, there are no regulations to govern the supervision of public prosecutors over establishments for protective treatment and detention of persons other than soldiers (on soldiers – see above).

8) What is the role of the public prosecutor in the execution of sentences relating to persons deprived of their liberty?

According to Act on the Public Prosecutor's Office the public prosecutor’s office (§ 4):

- Within the scope, under the conditions, and by the method established by law, conducts supervision over maintaining legal regulations in places where arrests, imprisonment, deterrent treatment, deterrent or institutional training are performed and in other places where, in accordance with legal authority, personal freedom is restricted (special laws currently amending the supervision over places where arrests, imprisonment, deterrent and institutional training are performed).

The subject of supervision is the strict adherence to the generally binding legal regulations governing the remand in custody and sentence serving and the execution of institutional and protective education.

DENMARK

1) Deprivation of liberty takes place **either** within the framework of criminal proceedings (arrest, detention and the serving of sentences) and then in accordance with the provisions of the AJA **or** in accordance with specific laws **outside** the criminal field. All decisions to deprive a person of his or her liberty can be brought before and controlled by the courts. I refrain from giving a list of examples of deprivations of liberty outside the criminal field, but the more important ones concern mentally-ill persons, immigration legislation and certain short-term police detentions to prevent danger and disturbance.

Public prosecutors´ powers are generally restricted to criminal proceedings and prosecutors can therefore primarily act with regard to deprivation of liberty in criminal cases. Because of the specific structure of the Danish police and prosecution service prosecutors working in police districts carry out some supervision functions with regard to police actions outside the criminal field.

2) Mostly and always decisions within criminal proceedings, which again are generally decided by or at least can be controlled by the courts. The person deprived of liberty is always represented by a legal counsel in such cases. There is a specific need for control by prosecutors when it comes to police arrests, which can only take place up till 24 hours. Outside the criminal field local prosecutors have a duty to supervise and exercise legality control when it comes to powers exercised by the police and in cases where a mentally-ill person is deprived of his or her liberty.

3) Danish prosecutors have general police authority and can therefore use these powers to visit places of detention. It is in Denmark of no practical relevance to visit such places.

4) a. A criminal investigation will be started immediately. If an unlawful deprivation of liberty is due to a mistake disciplinary action can prove to be sufficient.

b. Yes

5) In theory yes, put it hardly ever takes place in daily practice. All contacts with a person deprived of his or her liberty will in criminal cases take place through the defense counsel. Furthermore in criminal cases and in other cases there will be court control and control carried out by the Ombudsmand and different specialized bodies.

6) Complaints are generally dealt with by the prison administration itself. Certain questions can be tried by a court. If there are allegations of criminal behavior or actions by prison staff the police and prosecution service will be involved.

7) a. As stated under 5 there are many specialized procedures and court control in place outside the criminal field. The Public prosecutor will mainly act within the criminal field, where prosecutors are fully competent.

b. Mainly applying criminal procedural law and criminal law trying to correct mistakes.

c. No, not apart from what follows from the AJA.

8) Both the prosecutor and the courts have a very general duty to supervise the execution of sentences in accordance with the AJA. From a practical point of view all daily administration will be a matter for the prison service.

ESTONIA

1) What kinds of decisions on deprivation of liberty exist in your country? (Please describe the legal basis for them and list the authorities empowered to take them.)

Constitution of the Republic of Estonia (§ 20) stipulates the following:

No one shall be deprived of his or her liberty except in the cases and pursuant to procedure provided by law:

1) To execute a conviction or detention ordered by a court;
2) In the case of non-compliance with a direction of the court or to ensure the fulfillment of a duty provided by law;
3) To combat a criminal or administrative offence, to bring a person who is reasonably suspected of such an offence before a competent state authority, or to prevent his or her escape;
4) To place a minor under disciplinary supervision or to bring him or her before a competent state authority to determine whether to impose such supervision;
5) to detain a person suffering from an infectious disease, a person of unsound mind, an alcoholic or a drug addict, if such person is dangerous to himself or herself or to others;
6) To prevent illegal settlement in Estonia and to expel a person from Estonia or to extradite a person to a foreign state.

No one shall be deprived of his or her liberty merely on the ground of inability to fulfill a contractual obligation.

According to section 130 of the Code of Criminal Procedure (CCP) arrest is a preventive measure which is applied with regard to a suspect, accused or convicted offender and which means deprivation of a person of his or her liberty on the basis of a court ruling. A suspect or accused may be arrested at the request of a Prosecutor's Office and on the basis of an order of a preliminary investigation judge or on the basis of a court ruling if he or she is likely to abscond from the criminal proceeding or continue to commit criminal offences. In pre-trial procedure, a suspect or accused shall not be kept under arrest for more than six months. In the case of particular complexity or extent of a criminal matter or in exceptional cases arising from international cooperation in a criminal proceeding, a preliminary investigation judge may extend the term for keeping under arrest for more than six months at the request of the Prosecutor General.

2) Which decisions are subject to review/supervision by the public prosecutor?

According to **subsection 1 of section 30 of the CCP** a Prosecutor's Office shall ensure the legality and efficiency of pre-trial proceedings and represent public prosecution in court. This means that prosecutors are responsible for carrying out and supervising the

pre-trial procedure with the task to ensure its cost-effective, effective and rapid implementation.

Prosecutors decide:

- whether the preliminary investigation authority must start criminal proceedings or to initiate these proceedings himself/herself;
- in what manner and how much evidence must be gathered;
- whether to apply any sanctions;
- whether to close a criminal case or send it to the court;
- In which form the criminal case must be processed in the court.

Prosecutors are competent to:

1) Perform procedural acts when necessary;
2) Be present at the performance of procedural acts and intervene in the course thereof;
3) terminate criminal proceedings;
4) demand that the materials of a criminal file and other materials be submitted for examination and verification;
5) Issue orders to investigative bodies;
6) Annul and amend orders of investigative bodies;
7) remove an official of an investigative body from a criminal proceeding;
8) alter the investigative jurisdiction over a criminal matter;
9) declare a pre-trial proceeding completed;
10) demand that an official of an investigative body submit oral or written explanations concerning the circumstances relating to a proceeding;
11) assign the head of the probation supervision department with the duty to appoint a probation officer;
12) Perform other duties arising from this Code in pre-trial proceedings.

Evidence may be collected by surveillance activities in a criminal proceeding if collection of the evidence by other procedural acts is precluded or especially complicated (CCP §110). According to Law the permission of a preliminary investigation judge is necessary to covert examination of postal or telegraphic items; to wire tapping or covert observation of information transmitted through technical communication channels or other information; and to stage of criminal offence. **The permission of a prosecutor who directs the proceedings is necessary** to covert surveillance and covert examination and replacement of object; and to collect the information concerning messages transmitted through commonly used technical communication channels.

3) Is the public prosecutor empowered to enter places of detention? What kind of places or institutions, how often, and with or without the permission of other authorities?

Prosecutor does not need a permission to enter places of detention, but he or she has to follow the internal rules of detention house.

4) a. What kind of measures could be taken by the public prosecutor in case of unlawful deprivation of liberty or in case of torture or inhuman or degrading treatment or punishment?

According to subsection 3 of section 9 of the CCP investigative bodies, Prosecutors' Offices and courts shall treat the participants in a proceeding without defamation or degradation of their dignity. No one shall be subjected to torture or other cruel or inhuman treatment. Prosecutor has the right to release the suspect immediately in case of unlawful deprivation and he or she will commence criminal proceedings in case of torture or inhuman or degrading treatment or punishment.

b. Is the public prosecutor empowered to take an immediate decision in these cases?

Yes. Look previous answer.

5) Is it possible for a person deprived of his/her liberty to meet the public prosecutor personally without any control by a third party?

Yes, it is possible.

Can that person maintain contact with the public prosecutor without any control by a third party (and vice versa)?

Yes, he or she can maintain contact with the prosecutor.

6) Please describe the procedure for complaints against prison staff.

If the complaint includes information indicating that a criminal offence has taken place, prosecutor shall commence criminal proceedings. In other cases the complaint will be sent to the Prisons Department of the Ministry of Justice.

7) a. Does the public prosecutor have authority to control and react to the conditions of deprivation of liberty?

That is not the responsibility of the Prosecutors Office in Estonia.

b. How should the public prosecutor react?

Look previous answer.

c. Does domestic law in your country prescribe any special provisions for such situations?

Look previous answer.

8) What is the role of the public prosecutor in the execution of sentences relating to persons deprived of their liberty?

A judge in charge of execution of court judgments shall settle the premature release of convicted offender from service of punishment due to illness; the release on parole and the issues relating to the deprivation of the liberty of a convicted offender in his or her presence. The prosecutor and, at the request of the convicted offender, his or her counsel shall be summoned before the judge and their opinions shall be heard. The health care professional who has rendered an opinion concerning the premature release of a convicted offender from punishment due to his or her illness is required to participate in the settling of the corresponding issue.

FINLAND

1. Decisions on deprivation of liberty and the legal basis for them, authorities empowered to take them:

Apprehension
Legal basis: Criminal Investigation Act (Esitutkintalaki), Coercive Measures Act (Pakkokeinolaki), Customs Act (Tullilaki), Border Guard Act (Laki rajavartiolaitoksesta), Military Discipline Act (Sotilaskurinpitolaki).
Competent authorities: Police, Customs, Border Guard Service, Military Police, General right for any citizen to make another citizens arrest (Coercive Measures Act 1 §).

Order to bring a person to investigation hearings or before the Court (Nouto)
Legal basis: Criminal Investigation Act, Criminal Procedure Act (Laki oikeudenkäynnistä rikosasioissa).
Competent authorities: Police Commander, Border Guard Commander, Military Investigation Officer, Court.

Arrest (Pidättäminen)
Legal basis: Coercive Measures Act, Military Discipline Act, Customs Act.
Competent authorities: Police Commander, Prosecutor, Customs Commander, Border Guard Commander, Military Commander.

Detention (Vangitseminen)
Legal basis: Law Enforcement Act, Constitution (Perustuslaki)
Competent authorities: Court

Travel ban (Matkustuskielto)
Legal basis: Law Enforcement Act
Competent authorities: Police Commander, Prosecutor, Court

2) The Public Prosecutor supervises and reviews cases of detention and travel ban decisions.

3) The public prosecutor does not have any specific and legally defined empowerment to visit places of detention. However, if the prosecutor would request to visit any detention facility and could justify his request, he would probably be granted such a right. The request would be granted either by the prison governor in question or the Criminal Sanctions Agency *(Rikosseuraamusvirasto),* which both administratively fall under the Ministry of Justice.

4) a) The public prosecutor does not have any specific and legally defined role in such a case. He would though have an obligation to report such a case, either to the Criminal Sanctions Agency in the case of a minor offence, or in the case of a serious offence/crime to the police authorities and ask the police to conduct a criminal investigation. Ref. also point 6).

4. b) The Public Prosecutor is not empowered to take immediate decisions in such cases.

5) If the prosecutor would have a justifiable reason for meeting the detainee without the control by prison/detention authorities, he would certainly be granted such a request.

6) Complaints against prison staff are made either to the Criminal Sanctions Agency or the Parliamentary Ombudsman *(Eduskunnan oikeusasiamies)*. In cases of serious offences or crimes, cases are referred to police authorities for criminal investigation.

7) a. – c. The prosecutor does not have any specific and legally defined authority to react to such situations.

8) The prosecutor does not have any role in the execution of sentences.

FRANCE

1. The possibilities are:
- taking a suspect into custody (on the responsibility of a police officer);
- placing a defendant in detention pending trial (by decision of the "liberties and detention judge");
- imprisonment (on the decision of the trial court).

Each of these situations is very precisely regulated by the legislation in force (custody: Art. 63 of the CCP; pre-trial detention: Art. 137-1 of the CCP; imprisonment: Art. 132-24 of the Criminal Code).

2. Only normal custody (48 hours maximum) is subject to supervision by the public prosecutor.

3. Yes, the public prosecutor is empowered to visit places of detention. He or she is in fact required to do so at regular intervals laid down in the legislation; this applies to both places where suspects are held in custody and prisons (Art. 41 of the CCP – Art. 727 of the CCP – D.178 CCP). He or she can or must do so without special authorisation.

4. a. The public prosecutor is empowered to initiate proceedings for unlawful arrest, arbitrary imprisonment and torture. He or she may also make representations to the relevant prison authorities in the event of inhuman of degrading treatment.

b. Yes, under his or her recognised powers (cf a. above). He or she must order the release of a person who is being unlawfully detained and initiate proceedings against the perpetrators of such offences or of offences of torture.

5. Yes, on an ad hoc basis following a request for an interview in the visiting room of the prison or even in the prisoner's cell. A prisoner may always subsequently write to the public prosecutor, in which case the letter is subject to special confidentiality rules (the reverse is also true).

6. If a complaint is made against a member of the prison staff, it is referred to the public prosecutor who will open an investigation during which the complainant, the person complained about and any witnesses will be interviewed. The public prosecutor will then decide what is to be done.

7.a. Yes.

b. By making representations to the prison authorities.

c. Yes, where violence or ill-treatment are reported there may be an investigation and, if necessary, criminal proceedings. In other cases, the prison authorities may be requested to put an end to abnormal conditions of deprivation of liberty (solitary confinement

without medical supervision or for a period that exceeds what is provided for in the regulations, for example).

8. It is the public prosecution service which is responsible for enforcing sentences handed down by the courts and sees that they are carried out (Art. 32 of the CCP – Art. 707 of the CCP).

GERMANY

1) There are two groups of measures involving deprivation of liberty: detention on remand, which may be imposed to secure criminal investigation proceedings, and other measures, which may range from the enforcement of sentences involving terms of imprisonment, to correction and prevention measures, to measures taken in cases of endangerment to self or others, in accordance with police law provisions.

Any interference with the right to liberty is subject to the requirements of the Basic Law (Grundgesetz). Article 2 para. 2 of the Basic Law reads as follows:

"Every person shall have the right to life and physical integrity. Freedom of the person shall be inviolable. These rights may be interfered with only pursuant to a law."

Article 104 para. 1 of the Basic Law strengthens the fundamental right established in Article 2 para. 2, second sentence, of the Basic Law by imposing formal and procedural requirements upon all restrictions on liberty:

"Freedom of the person may be restricted only pursuant to a formal law and only in compliance with the procedures described therein. Persons in custody may not be subjected to mental or physical mistreatment."

Article 104 para. 2 to 4 of the Basic Law contain additional procedural requirements for the specific case of deprivation of liberty and thus also for detention on remand:

(para. 2) "Only a judge may rule upon the permissibility or continuation of any deprivation of liberty. If such a deprivation is not based on a judicial order, a judicial decision shall be obtained without delay. The police may hold no one in custody on their own authority beyond the end of the day following the arrest. Details shall be regulated by a law."

(para. 3) "Any person provisionally detained on suspicion of having committed an offence shall be brought before a judge no later than the day following his arrest; the judge shall inform him of the reasons for the arrest, examine him, and give him an opportunity to raise objections. The judge shall, without delay, either issue a written arrest warrant setting forth the reasons or order his release."

(para. 4) "A relative or a person enjoying the confidence of the person in custody shall be notified without delay of any judicial decision imposing or continuing a deprivation of freedom."

Remand detention may be ordered against an individual if he is strongly suspected of having committed an offence and if there are grounds for arrest (sections 112 et seqq. of the Code of Criminal Procedure [CCP]).

2) Under German law, the role of the public prosecution office is limited to detention on remand and, as the executing authority, to enforcement of prison sentences. Other authorities are responsible for the execution of prison sentences and other measures involving deprivation of liberty.

The ordering of remand detention.

An accused who has been provisionally detained and has not been released, or who has been apprehended due to an arrest warrant, must be brought before a judge without delay, at the latest on the day after his provisional arrest or apprehension. The judge has to examine the accused without delay and has to decide whether to issue a written warrant of arrest, to suspend the warrant of arrest subject to conditions and instructions, or to release the accused. At this stage of the proceedings, it is the task of the **public prosecution office** to undertake an independent examination as to whether there are reasons justifying the remand detention of the arrested person or whether an arrest warrant has already been issued. If this is the case, the public prosecutor's office will make a request to the competent court for an arrest warrant to be issued, or order that the arrested person be brought immediately before the competent judge in order to be informed about the existing warrant of arrest.

In this respect, the Guidelines for Criminal Proceedings and Proceedings to Impose a Regulatory Fine (RiStBV), which contain rules of conduct for the public prosecution offices implementing the provisions of the Code of Criminal Procedure, provide as follows:

No. 46: Justification of applications in detention matters

(1) The public prosecution office must provide reasons for all applications and statements relating to the imposition, continuation and lifting of detention on remand, thereby stating the facts on which

(a) the strong suspicion of commission of the offence
(b) the ground for arrest

are based.

(2) If section 112 (1), second sentence, CCP may appear to be applicable, the public prosecutor has to explain why he considers remand detention to be appropriate despite adherence to the principle of proportionality.

(3) To the extent that national security is endangered by disclosing such facts, this risk shall be specifically pointed out (section 114 [2] no. 4 CCP).

(4) If in the cases under sections 112 (3) and 112 a (1) CCP a ground for arrest under section 112 (1) CCP also exists, the relevant facts shall be included in the record.

The execution of remand detention.

Arrest warrants are enforced by the public prosecutor's office (section 26 [2] CCP), whereas the measures concerning its execution are, as a general rule, ordered by the judge (section 119 [6] CCP). The law on the execution of remand detention is the subject of a bill drafted by the Federal Government, which is currently being revised. Until this Act regarding the execution of detention on remand enters into force, the execution of remand detention is governed by section 119 CCP as well as by the Remand Detention Execution Rules (RDER).

Both section 119 CCP and the RDER lay down minimum standards for the execution of remand detention. The provisions regulating remand detention take into account the presumption of innocence. Hence the only restrictions that may be imposed on arrested persons in remand detention as are required by the purpose of remand detention or by the need for order in the prison (section 119 [3] CCP, no. 1 para. 2 RDER).

3-6 No Answers.

7) Restrictions due to the danger of prejudicing the course of justice may be imposed on arrested persons in remand detention only pursuant to a court order (no. 60 [1] RDER) Special security measures must be ordered by the court; in urgent cases, they may be ordered by the public prosecution service, which must then obtain subsequent approval from the court (section 119 [6] CCP, no. 62 [3], 63, 64 RDER). Persons in remand detention may be shackled only if there is a risk that they will use force against persons or property or if they offer resistance; if there is an increased risk that they will flee or if there is a risk of suicide or self-inflicted injury; and if other, less incisive measures cannot be applied (section 119 [5] CCP, no. 64 RDER).

While the execution of remand detention is subject to judicial control, the public prosecution office has the responsibility of supervising its course, ensuring in particular that the duration of remand detention is not disproportionate. The court and the public prosecution office work together in that regard. The Guidelines for Criminal Proceedings and Proceedings to Impose a Regulatory Fine (RiStBV) provide as follows:

b) ***No. 54 Supervision, review of remand detention***

(1) Throughout the proceedings, the public prosecutor shall examine whether

(a) the reasons justifying remand detention still exist and whether the continuation of remand detention is not disproportionate to the significance of the case or to the measure of reform and prevention likely to be imposed (section 120 CCP).
(b) the purpose of remand detention could not be achieved by less incisive measures (section 116 [1 to 3] CCP).

If appropriate, he shall make the relevant applications.

(2) Before expiry of the time limit referred to in section 117 [4] CCP, the public prosecutor shall examine whether an application to appoint defence counsel for the duration of remand detention is to be made. When the accused is advised of his rights as required by section 117 [4], second sentence, CCP, it is advisable to ascertain whether he desires to appoint a defence counsel of his own choice. He shall inform the judge competent pursuant to section 126 CCP of the appointment of defence counsel (section 141 [4] CCP]. If the accused has no defence counsel, the public prosecutor shall submit the files to the court in good time before expiry of the time limit referred to in section 117 (4, 5) CCP.

(3) The review of remand detention should not hinder the ongoing investigations. In many cases, it will therefore be useful to keep subsidiary files (cf. no. 12).

No. 55: Ordering the release of the detained person

(1) If the court revokes the warrant of arrest, the court shall simultaneously order the release of the person in remand detention.

(2) If the warrant of arrest is revoked during the main hearing, the accused shall be released immediately if no additional confinement has been noted. However, it might be appropriate to point out to him that it would be useful to return to prison in order to comply with the formalities of release.

(3) When the warrant of arrest has been revoked, the public prosecutor shall ensure that the detainee is released. If he applies for the revocation of the arrest warrant before public charges have been preferred, he shall simultaneously order the release of the accused (section 120 [3], second sentence, CCP].

No. 56: Detention exceeding six months

(1) If it is necessary to prolong remand detention beyond six months and if the special conditions provided for in section 121 (1) CCP apply, the public prosecutor shall submit the files to the competent court (sections 122, 125, 126 CCP) in good time, so that the court may submit them, via the public prosecution office, to the Higher Regional Court, or, in the cases governed by section 120 of the Courts Constutution Act (GVG), to the Federal Court of Justice. If the files have already been sent to the competent court, the public prosecutor shall ensure that they are submitted in a timely manner. He shall set out the reasons which in his view justify the continuation of remand detention beyond six months. If necessary, he shall simultaneously apply for the corresponding supplementation or other modification of the arrest warrant.

(2) The files shall be specially labelled. They shall be given priority and transmitted expeditiously.

(3) No. 54 (3) shall apply by analogy.

(4) If the Higher Regional Court or, in the cases referred to in section 120 of the Courts Constitution Act, the Federal Court of Justice, has ordered the continuation of remand detention, the public prosecutor shall ensure that the following judicial decisions, which may become necessary pursuant to sections 112 (3 and 4) and 112 a CCP, are also made in a timely manner.

(5) If a decision by the Higher Regional Court of the Federal Court of Justice is not effected, the public prosecutor shall ensure that the warrant of arrest is revoked or suspended upon expiry of the six month time limit (sections 121 [2], 120 [3] CCP).

By analogy, these rules apply to the provisional committal to a psychiatric hospital pursuant to section 126 a CCP, which may be ordered if the accused has committed an unlawful act while lacking criminal responsibility (no. 59 RiStBV).

8) The public prosecutor's office is the authority responsible for the enforcement of sentences (section 451 CCP), and thus also for the enforcement of prison sentences (sections 454 b to 456 a CCP). It is authorized to issue an order for the convicted person to be brought before it or issue an arrest warrant (section 457 CCP) if the convicted person, after being summoned to commence his sentence, has not appeared or is suspected of having absconded. The same applies if the prisoner has escaped or otherwise evaded imprisonment.

The public prosecutor's office also calculates the length of imprisonment so that the type and duration of the prison sentence is in accordance with the decision to be enforced. More detailed provisions on the tasks of the enforcement authorities are contained in the Rules for the Execution of Sentences (StVollstrO). In cases where doubts arise, a court decision shall be obtained (section 458 [1] CCP). Under German law, appeals against the execution of prison sentences or against specific measures of execution are decided upon by the Regional Court, sitting as an execution of sentence chamber (sections 78 a and 78 b of the Courts Constitution Act).

ICELAND

It should be noted that the prosecution in Iceland does not have a legally prescribed role in supervising the execution of prison sentences or institutialisation of the mentally ill/disabled. Therefore the answer to this questionnaire will be limited to the duties of prosecutors towards arrested persons and persons held in custody during investigation/court proceedings.

1. Within the field of criminal justice decisions on deprivation of liberty include arrest orders, custody orders and sentences of imprisonment. Decision to arrest may be taken by the police. However according to the CCP and a provision of the Constitution, the arrested person must be brought before the court "without delay". According to the case law "without delay" means upto 24 hours. Custody orders are made by the court. The court decides the length of the custody confinement.

2. Decisions to review custody orders are made by the court. However the prosecutor has the duty to supervise the conditions of the custody.

3. Yes. Permission from other authorities would not be needed.

4. a. The Director of Public Prosecutions could order investigation in cases where such criminal conduct would be suspected and prosecute such offences.

b. Yes.

5. There is no legal impediment to this. Also under the CCP a detained person shall always have the right to consult in privacy with his/her legal representative.

6. The detained person may file a complaint with the Prison Administration, the Ministry of Justice, the Ombudsmand of the Parliament and the police. Investigation of cases of suspected criminal conduct by prison staff would be handled under the CCP.

7. Condiditons of the custody, including solitary confinement, is made by the investigating police. However, the detained person can bring decisions of the police to the courts. Legal representation is provided in order to secure these rights.
Procedures are stipulated in the CCP.

8. The prosecution does not have a specific role in relation to the execution of sentences. This would fall under the auspices of the prison authorities.

IRELAND

1. What kinds of decisions on deprivation of liberty exist in your country? (Please describe the legal basis for them and list the authorities empowered to take them.)

The Irish Constitution (Bunreacht na hÉireann) states at Article 40.4:

"1° No citizen shall be deprived of his personal liberty save in accordance with law.

2° Upon complaint being made by or on behalf of any person to the High Court or any judge thereof alleging that such person is being unlawfully detained, the High Court and any and every judge thereof to whom such a complaint is made shall forthwith enquire into the said complaint and may order the person in whose custody such person is detained to produce the body of such person before the High Court on a named day and to certify in writing the grounds of his detention, and the High Court shall, upon the body of such person being produced before that court and after giving the person in whose custody he is detained an opportunity of justifying the detention, order the release of such person from such detention unless satisfied that he is being detained in accordance with the law."

The Irish courts have determined:

(i) "any detention… must be in accordance with the provisions of the Constitution and must have regard to the rights of arrested persons as citizens and as human beings" and

(ii) persons who are detained in consequence of conviction and sentence are *prima facie* detained according to law in the absence of exceptional circumstances.

The detention of a person, though initially lawful, may become unlawful because of the way the prisoner is treated, if during the course of the detention the prisoner's rights are infringed. For example assault while in custody may render the detention illegal.

An Garda Síochána (the Police) have a number of statutory powers to arrest and detain members of the public. These include section 4 of the Criminal Justice Act 1984, section 30 of the Offences Against the State Act 1939, and section 2 of the Criminal Justice (Drug Trafficking) Act 1996.

Under the 1984 Act the member in charge of a Garda station may order the detention of an arrested person suspected of having committed an offence (punishable by imprisonment for a term of 5 years or more) where there are reasonable grounds for believing that such detention is necessary for the proper investigation of the offence. The initial period of detention is six hours, and this period can be extended for a further six hours on the authorisation of a member of An Garda Síochána not below the rank of superintendent.

The 1939 Act allows a Garda to arrest any person who he suspects of having committed, or being about to commit, or having been concerned with the commission of an offence to which the Act applies. These are firearms, explosives and other mainly terrorist related offences. Such a person may be detained for up to 24 hours, and for a further period of 24 hours on the authorisation of a Chief Superintendent.

The 1996 Act provides for the detention of persons suspected of drug trafficking initially for up to 6 hours, and for a further period not exceeding 18 hours on the authorisation of a Garda Chief Superintendent where the officer has reasonable grounds for believing that the detention is necessary for the proper investigation of the offence. Where such a direction has been issued a direction may be made by a Garda Chief Superintendent to detain the person for a further 24 hours. There is further provision under the legislation whereby a court, on application, may authorise the continued detention of the suspect for 2 further consecutive periods of 72 and 48 hours.

The Irish courts have consistently held that a valid arrest is a pre-requisite for the lawful detention of an individual in police custody. The nature and the extent of the power to detain an individual can vary with the power of arrest used. Some arrest powers only enable An Garda Síochána to arrest a person for the purpose of immediately charging the person with a criminal offence and taking him before a judicial authority as soon as practicable, while others provide for the possibility of detaining him for a specified maximum period for the proper investigation of an offence before charge or release.

Irish legislation and decisions of the Irish Courts provide that a person charged with a criminal offence may be detained in custody or admitted to bail pending trial. The Irish Courts will generally grant bail unless satisfied by evidence that there is a real risk of the accused not attending his trial, interfering with the course of justice or witnesses, or refusal of bail is reasonably considered necessary to prevent the commission of a serious offence by that person. The Irish Courts have held that the right to bail is a recognition that a person presumed to be innocent shall not have his liberty interfered with unnecessarily pending his trial on a criminal charge.

There is also provision for the restriction of liberty under the Mental Treatment Act 1945, as amended by s 9 of the Mental Treatment Act 1961, which authorises the detention in a mental hospital of persons of ‘unsound mind’ who are deemed to be a danger to themselves or others. The constitutionality of the procedure was upheld by the Irish Courts as ‘designed for the protection of the citizen and for the promotion of the common good.’

Statutory provision also exists for;

(i) the removal by a member of An Garda Síochána (the Police) and delivery into the custody of a Health Board of minors who are at immediate and serious risk (Child Care Act 1991);

(ii) detention prior to deportation so as to secure implementation of a deportation order (Immigration Act 1999). The Constitutionality of preventative detention was upheld in the deportation context in *Re Article 26 and ss 5 and 10 of the Illegal Immigrants (Trafficking) Bill 1999*, where the Supreme Court held that the constitutional prohibition on preventative detention operated only in the criminal context, where preventative detention offends against the constitutional presumption of innocence.

2. Which decisions are subject to review / supervision by the public prosecutor?

The decision to detain a person on conviction and sentence rests with the judiciary, and is not subject to review or supervision by the public prosecutor (Director of Public Prosecutions).

The decision to detain a person suspected of a criminal offence by An Garda Síochána (the police) is one for An Garda Síochána as the body with responsibility for investigation of offences, and is not subject to review or supervision by the Director of Public Prosecutions. Rather the courts supervise detention in Garda custody through a number of Constitutional and statutory provisions which require the Garda Síochána (police) to bring the detained person before the courts to satisfy the courts that the person's continued detention is lawful.

However, it is the duty of the prosecutor to ensure that evidence put before the court has been lawfully obtained. There is, therefore, an indirect control where the prosecutor refuses to use evidence obtained in breach of statutory or constitutional rights.

The Director is the respondent in bail applications. While the decision whether to consent to or oppose a bail application will be based on the evidence of An Garda Síochána as to the likelihood of the accused absconding, interfering with witnesses or committing other offences the decision is for the prosecutor to make.

3. Is the public prosecutor empowered to enter places of detention? What kind of places or institutions, how often, and with or without the permission of other authorities?

The public prosecutor (Director of Public Prosecutions) does not enter places of detention. The function of inspecting places of detention is performed by the Prison Visiting Committee and the Irish Prisons Inspectorate.

4. a. What kind of measures could be taken by the public prosecutor in cases of unlawful deprivation of liberty or in case of torture or inhuman or degrading treatment or punishment?

The public prosecutor (Director of Public Prosecutions) does not have an express statutorily defined supervisory role in this regard. The courts supervise detention in

Garda custody through a number of Constitutional and statutory provisions which require the Garda Síochána (police) to bring the detained person before the courts to satisfy the courts that the person's detention is lawful and as to his treatment.

The guarantee of personal rights in Article 40 of the Constitution has been interpreted as including the right not to be tortured or ill-treated. The Irish Courts have recognised the right to bodily integrity as such a constitutionally protected right. The Irish government has also ratified the European Convention on Human Rights and the International Covenant on Civil and Political Rights, both of which expressly prohibit such punishments, and the former is now part of domestic law.

The question of whether there may have been a breach of a suspect's constitutionally protected rights to bodily integrity or personal liberty would be a relevant matter to be taken into account by the Director of Public Prosecutions in deciding whether or not to prosecute that person and/or to prosecute the person responsible for such breach in the event that a criminal offence is disclosed. As earlier indicated, it is the duty of the prosecutor to ensure that evidence put before the court has been lawfully obtained. It would also be a matter for a court in considering whether to prohibit the trial of any person whose rights were breached.

b. Is the public prosecutor empowered to take an immediate decision in these cases?

Please see the reply to (a) above. While the public prosecutor (Director of Public Prosecutions) can direct a prosecution once satisfied that there is a prima facie case against a suspect, generally such cases would be initially investigated by An Garda Síochána (the police) before a decision could be taken by him.

5. Is it possible for a person deprived of his/her liberty to meet the public prosecutor personally without any control by a third party?

It is not the practice of the Director of Public Prosecutions to meet persons deprived of their liberty, though there is no prohibition on such meetings.

Can that person maintain contact with the public prosecutor without any control by a third party (and vice versa)?

While convicted prisoners have a right to communicate and to be communicated with, the courts have stated that a prisoner's right to communicate can be restricted in the interests of prison security, and consequently a prison rule which authorised the reading of prisoners' letters to persons (other than his legal advisors) was found not to be unconstitutional.

However it is not envisaged that this would prevent or restrict lawful communication by a detained person with his legal advisors or with the Office of the Director of Public Prosecutions. Neither could any third party prevent or restrict communication by the Office of the Director of Public Prosecutions with a detained person.

6. Please describe the procedure for complaints against prison staff.

Complaints by inmates may be addressed to the Visiting Committee, the governor of the prison, or the Department of Justice, Equality and Law Reform. Section 3 (1)(a) of the Prisons (Visiting Committees) Act, 1925 provides that one of the duties of such committees is:

"from time to time and at frequent intervals to visit the prison in respect of which they are appointed and to hear any complaints which may be made to them by any prisoner confined in such prison and, if so requested by the prisoner, to hear such complaint in private."

The committee is required "to report to the Minister any abuses observed or found by them in such prison." Rule 144 of the 1947 Prison Rules also provides that:

1. The Governor shall hear the applications of prisoners every day at such hour as may be most convenient.

2. The Governor shall take care that every prisoner having a complaint to make or a request to prefer to him shall have ample facilities for doing so, and he shall redress any grievance, or take such steps as may seem necessary, recording the same in the prescribed manner.

3. The Governor shall inform the Visiting Committee of the desire of any prisoner to see them. He shall also inform the Minister for Justice, Equality and Law Reform of any prisoner who wants to see a Member of the Minister's Department.

7. a. Does the public prosecutor have authority to control and react to the conditions of deprivation of liberty?

b. How should the public prosecutor react?

(a) and (b). Matters concerning conditions of deprivation of liberty are outside the remit of the public prosecutor. Please, however, also see the reply to question number 4 (a) above.

c. Does domestic law in your country prescribe any special provisions for such situations?

Irish law provides for a *habeas corpus* procedure as outlined in the reply to question 1 above. The public prosecutor is generally not a participant in such proceedings unless a criminal prosecution is still pending and the prisoner has not been sentenced. The prisoner appears in court as applicant, with the Governor of the prison or other detaining authority concerned appearing as respondents.

8. What is the role of the public prosecutor in the execution of sentences relating to persons deprived of their liberty?

The public prosecutor (Director of Public Prosecutions) has no role in the execution of sentences. Sentencing is a matter for the judiciary, guided by the penalties defined statutorily or by Common Law for each offence. Implementation of those sentences is a matter for the Irish Prison Service, which is answerable to the Minister for Justice, Equality and Law Reform.

The public prosecutor (Director of Public Prosecutions) has the power to appeal or seek review of certain decisions of a trial court. For example the Director of Public Prosecutions may apply to the Court of Criminal Appeal to seek a review of a sentence imposed by a court on conviction of a person following trial by indictment where it appears to the Director of Public Prosecutions that the sentence was unduly lenient (s 2 of the Criminal Justice Act, 1993).

ITALY

1.
Preventive custody of the defendant can be ordered by the judge. Requirements: probable cause and a precautionary necessity (i.e. danger that the defendant commits new crimes, or takes flight, or tries to falsify some piece of evidence).

Imprisonment on suspicion can be ordered, in case of urgency, by the public prosecutor or by the police. Requirements: probable cause and danger that the defendant takes flight.

The police can (and sometimes must) arrest who is caught in the act of committing a crime.

2
The public prosecutor must submit to the judge, for confirmation, any arrest as well as any imprisonment on suspicion.

Before submitting to the judge any arrest by the police, the public prosecutor must verify the legality of it and release the arrested person in case of illegal arrest.

3
Yes. According to the general competencies given by the law, the public prosecutor is empowered to enter any place for reasons connected to his/her duties.

The law does not provide for any exception concerning the places of detention. No permission by other authorities is needed.

4a
As already said in answer No. 2, in case of unlawful deprivation of liberty the public prosecutor issues a warrant and the prisoner is immediately released in pursuance of it. If it deals with an error, the only possible consequences of an illegal arrest can be of a disciplinary type.

The public prosecutor must prosecute all cases of torture and of inhuman or degrading treatment or punishment, which are crimes.

4b
Yes.

5
Yes.
As a rule and in the concrete practice, the interviews between the public prosecutor and an arrested person take place without the presence of any official of the prison administration.

Obviously, the law provides that the right of defence is always safeguarded. The counsel for the defence can always take part in those contacts.

6
Complaints can be filed by any prisoner to the prison governor, to other officials, to a specialised jurisdiction (so-called "magistratura di sorveglianza") and to other judicial authorities.

The prisoner can complain to the judicial authorities for any act that he/she thinks detrimental to his/her rights.

The decisions of the specialised judges and courts can be appealed to the Supreme Court.

7a
No. The authority belongs to a specialised judge ("magistrato di sorveglianza"), who supervises the correct carrying out of the rehabilitation treatment of the convicted person.

7b
See No. 7a

7c
See No. 7a

8
In the Italian system the public prosecutor is competent to order the enforcement of any final judgement of conviction.

The public prosecutor – through a so-called "enforcement order" ("ordine di esecuzione") – commands the imprisonment of the sentenced person.

LATVIA

1. According to the criminal procedure of the Latvian Republic, a suspect or an accused person may be deprived of liberty solely by decision of the Investigating Judge through applying one of the following measures:

- imprisonment,
- house arrest,
- placing a minor in a social correction educational establishment.

By decision of an Investigating Judge a person may be placed in a medical care establishment for a health expert-examination, which is not considered a safety measure.

A State police official, an official of an Investigation Office or a Prosecutor may detain a person who may have committed a criminal offence for a period of 48 hours. In order to deliver a person to the Investigating Judge for resolving the matter of applying deprivation of liberty, an Investigator or a Prosecutor may detain a person for 12 hours prior to the imprisonment. In both cases no special procedural decision needs to be taken.

The judgement on depriving liberty is a Court judgement pronouncing criminal punishment by deprivation of liberty or arrest.

2. The Supervising Prosecutor during the investigation stage supervises the actions and the decisions taken by the Prosecutor, i.e. the investigator, including the basis for detention and its legitimacy.

The decisions of the Investigating Judge are not subject to the Prosecutor's examination or supervision.

3. The Prosecutor has unlimited access to the place of deprivation in order to conduct all activities prescribed by the criminal procedure involving the prisoner ; the visits have to be co-ordinated with the administration of the prison institution. The Prosecutor does not need any other special authorizations issued by other institutions.

In the Republic of Latvia a Specialised Prosecution Office has been established; one of the duties of the Prosecutor of this Office is to supervise that the rights of the persons detained in pre-trial detention institutions or in prisons for sentenced prisoners are observed.

4. a. According to Section 15 of the Law on the Prosecution Office, a Prosecutor has the duty to, without delay, take a decision and release from places of deprivation or restriction of liberty persons held there illegally. In cases of torture, inhuman attitude or humiliation, the Prosecutor has the duty of initiating criminal procedures against the persons who have committed such offences.

b. Yes, the Prosecutor has this right.

5. Yes, the imprisoned person has the right to see the Prosecutor personally without any surveillance of a third party. The correspondence of the imprisoned person with the Prosecutor, the Court and other law enforcement authorities is not inspected.

6. The imprisoned person may lodge a complaint on the prison staff to the Prison Governor.

The imprisoned person may lodge a complaint with the appropriate institutions of the UN, the Parliamentary Commission for Human Rights and Public Matters, the State Human Rights Agency, the Prosecution Office, the Court or with his defender -a sworn lawyer. The correspondence of the prisoner with the abovementioned institutions is indefeasible and is not inspected.

7. a. Yes, the Prosecutor is authorised to inspect the conditions of imprisonment and to respond to them. As has been previously stated (see response to quest. 3), a Specialised Office of the Prosecutor has been established in the Republic of Latvia, where one of the functions of the Prosecutor is to supervise the lawfulness of the activities of the staff of liberty depriving institutions. The provisions of the Law on Prosecution Office also provide for other rights of Prosecutors to respond to violations of the rights of prisoners, including when prison conditions are found not to be in compliance with the appropriate legislation.

b. When the Prosecutor concludes that the prison conditions do not comply with the appropriate legislation, he draws up a Prosecutor's submission which is subsequently handed in to the Prison Governor. If the requirements expressed in a submission are not complied with, the Prosecutor is entitled to submit an application to a parent body to have his requirements met and to apply for the subjection of the person who has failed to comply with the Prosecutor's lawful demands to liability prescribed by the law. The Prosecutor also has the right to submit an application to the Court, if the requirements expressed in his submission are not complied with.

c. The national law of the Latvian Republic grants sufficient legal means to the Prosecutor to respond within the framework of the general procedure; special measures are not necessary.

8. The Prosecutor General and the Prosecutors subordinate to him shall, in accordance with Section 15 of the Law on Prosecution Office, supervise the execution of sentences of deprivation of liberty and the precise and uniform application of the legislation of the Republic of Latvia in the places of deprivation of liberty.

Administrative Commissions have been established in the places of deprivation of liberty; their duty includes the promotion of a progressive system of execution of the sentence and of appropriate placement of the sentenced persons in places of

imprisonment in correspondence with the principles provided for the classification of persons sentenced by the court. The Administrative Commission of the institution of deprivation of liberty takes decisions to extenuate or to reinforce the conditions of serving the sentence in the same prison or to realocate the prisoner to a place of detention of another type. The Administrative Commission also submits proposals to the Court on conditional release of the prisoners on probation. The Prosecutor's presence in the sittings of the Administrative Commission is mandatory. The Prosecutor's presence is mandatory also in the Court hearings where issues on releasing prisoners on probation are decided.

LIECHTENSTEIN

1. What kinds of decisions on deprivation of liberty exist in your country?
(Please describe the legal basis for them and list the authorities empowered to take them.)

A suspect can only be arrested upon a written warrant (Haftbefehl) issued by a judge. The issuing court is to be informed immediately by the police about an arrest, based on such a warrant. The suspect must be handed over to the court within 48 hours upon arrest.

In exceptional cases the suspect can also be arrested by the police without a judicial warrant. In these cases the suspect must immediately be interrogated on the facts of the case and the preconditions for detention and either be released immediately thereafter or handed over to the court within 48 hours.

After the suspect is handed over to the court he/she has to be heard by the investigating judge within 48 hours. At the end of this hearing the judge must decide whether the suspect is freed or put in detention.

2. Which decisions are subject to review/supervision by the public prosecutor?

If the prosecutor deems detention necessary he has to apply for detention with the court. If the public prosecutor withdraws his request for detention the detainee has to be released. The public prosecutor has a right to appeal to the higher court (Obergericht) against the decision of the judge to detain or to release a suspect.

3. Is the public prosecutor empowered to enter places of detention? What kind of places or institutions, how often, and with or without the permission of other authorities?

At present the public prosecutor has no direct contact with a suspect or witness. Interrogations are done by the investigating judge or by the police. Hence the prosecutor has no powers to enter places of detention.

4.
a. What kind of measures could be taken by the public prosecutor in case of unlawful deprivation of liberty or in case of torture or inhuman or degrading treatment or punishment?

The public prosecutor can apply with the investigating judge to release the suspect from detention. In case of unlawful deprivation of liberty or in case of torture or inhuman or degrading treatment or punishment the public prosecutor can and will prosecute the officers responsible. In these cases the prosecutors will initiate a pre-trial investigation by the investigating judge without delay.

b. Is the public prosecutor empowered to take an immediate decision in these cases?

The immediate decision for release must be taken by the investigating judge upon application by the public prosecutor.

5. Is it possible for a person deprived of his/her liberty to meet the public prosecutor personally without any control by a third party? Can that person maintain contact with the public prosecutor without any control by a third party (and vice versa)?

Please refer to replies to question 3.

6. Please describe the procedure for complaints against prison staff.

Pursuant to Article 42 of the Penal Law (Strafvollzugsgesetz) the prisoner may file complaints against all decisions and directions concerning his/her rights and any actions by the prison staff. The complaint is investigated by the Head of Police (Polizeichef) who is responsible for the prison. Liechtenstein has only one small prison. The Head of Police will take the necessary measures, e.g. disciplinary measures against the prison staff or a report to the public prosecutor. The prisoner can also file a formal complaint with the government and appeal against the decision of the government to the Supreme Governmental Court (Verwaltungsgerichtshof).

7.
a. Does the public prosecutor have authority to control and react to the conditions of deprivation of liberty?

No. Persuant to Article 137 Code of Criminal Procedure the President of the Princely Court has to visit the prison and check if everything is in order. These visits must take part at least once every 3 months and without notice. The President of the Court speaks to the prisoners and takes action if he notices any shortcomings.

b. How should the public prosecutor react?

See above.

c. Does domestic law in your country prescribe any special provisions for such situations?

No.

8. What is the role of the public prosecutor in the execution of sentences relating to persons deprived of their liberty?

The presiding judge of the court which passed a sentence depriving persons of their liberty is competent for the enforcement of this decision. The prosecutor may file motions for sentences to be enforced without delay. He is also entitled to be heard before the

judge decides on petitions of sentenced persons to delay the execution of the sentence. He may also appeal against judicial decisions in these matters.

LITHUANIA

1) What kinds of decisions on deprivation of liberty exist in your country? (Please describe the legal basis for them and list the authorities empowered to take them.)

Provisional detention is regulated by Art. 140 of the Code of Criminal Procedure of the Republic of Lithuania (hereinafter CCP). A pre-trial investigation officer or a prosecutor may detain a person caught in the act of committing an offence *(in flagrante delicto)* or immediately thereafter, when there are reasonable grounds for assuming that such person may escape, or when it is impossible to establish his identity immediately, and in other cases when grounds and conditions for imposing arrest exist. Provisional detention may not last longer than for 48 hours. Within these 48 hours a person must be brought before the judge who then decides whether arrest is to be ordered. A report of provisional detention is drawn up as well.

Grounds and conditions for imposing arrest are regulated by Art. 122 and 123 of CCP of the Republic of Lithuania, respectively.

Art. 122 (Grounds and Conditions for Imposing Arrest)

1. Ground for imposing arrest is a reasoned assumption that a suspect:

1) might escape or go into hiding from pre-trial investigation officers, prosecutor or the court;
2) might obstruct the course of the proceedings;
3) might commit new offences indicated in Paragraph 4 of this Article.

2. When there are reasonable grounds for assuming that a suspect might escape/go into hiding from pre-trial investigation officers, prosecutor or the court, arrest may be imposed on such person, taking due account of his marital status, permanent place of residence, job relations, health condition, prior convictions, his ties abroad and any other other circumstances.

3. When there are reasonable grounds for assuming that a suspect might obstruct the course of the proceedings, arrest may be imposed on him if there is evidence that a suspect (himself or through other persons) might make an attempt:

1) to exert influence on victims, witnesses, experts, other suspects, accused or convicted persons;
2) to destroy, conceal or forge tangible objects and documents that are important for the investigation of criminal case and judicial proceedings thereof.

4. When there are reasonable grounds for assuming that a suspect will commit new offences, arrest may be imposed on him if there is evidence that a person who is

suspected of having committed one or several grave or major crimes or medium crimes specified under Paragraph 2 of Art. 178, Paragraph 1 of Art. 180, Paragraph 1 of Art. 181, Paragraph 2 of Art. 187 of the Criminal Code of the Republic of Lithuania, may, before the delivery of the judgement, commit new grave, major or the above-mentioned medium crimes, or when there is evidence that a person who is suspected of making threats to commit a crime or attempting to commit a crime, while being at large, may actually commit the offence.

5. In addition, grounds for imposing arrest shall be: request for the extradition of a person to a foreign state, or request for surrendering him to the International Criminal Court or in accordance with European Arrest Warrant, also, a request for provisional arrest of the requested person submitted by a foreign state until the request for extradition or European Arrest Warrant in respect of this person will be sent.

6. When imposing arrest, grounds and motives for imposing arrest must be specified.

7. Arrest may be imposed only in cases where purposes provided for in Article 119 of this Code cannot be achieved by applying less severe constraint measures.

8. Arrest may be imposed only in cases involving investigation and judicial proceedings of criminal offences which, in accordance with the criminal statute, are punishable by custodial sentence exceeding 1 year.

Art. 123 (Arrest Procedure)

1. Arrest may be imposed on the suspect who is not kept in custody, or on the suspect who has been detained in accordance with the procedure prescribed by Art. 140 of this Code.

2. If the prosecutor is of the opinion that the suspect who is not kept in custody must be arrested, he then must file an application to the pre-trial judge of the district court of the place where investigation is being carried out. The prosecutor’s application must contain the details specified in Paragraph 2 of Art. 125 of this Code. The judge, upon making a decision to grant the prosecutor’s application, makes the ruling to impose arrest; if the judge declines to grant the application, he then makes the ruling to refuse to impose arrest.

3. The person who has been arrested on the basis of the ruling specified in Paragraph 2 of this Article, must, no later than within 48 hours after the moment of arrest, be brought by the prosecutor before the pre-trial judge; if there is no possibility to bring him before the pre-trial judge, he then must be brought before the pre-trial judge of another district court of the place where investigation is being carried out. The judge must question the person brought to him, so as to ascertain whether there are grounds for his arrest. The defence counsel and the prosecutor may be present during the questioning of the arrested person. After the questioning, the judge makes one of the following decisions: the ruling to uphold the decision whereby arrest was imposed on the person (in this particular case the

judge sets a particular term of arrest), or the ruling to change or cancel this measure of constraint.

4. The person who has been detained in accordance with the procedure prescribed by Art. 140 of this Code, in respect of whom arrest should be employed, must, no later than within 48 hours after the moment of detention, be brought by the prosecutor before the pre-trial judge of the district court of the place where investigation is being carried out (the prosecutor must also submit the application for imposing arrest). The judge must question the person brought to him, so as to ascertain whether there are grounds for his arrest. The defence counsel and the prosecutor may be present during the questioning of the detained person. After the questioning, the judge grants the application of the prosecutor and makes the ruling to impose arrest, setting a particular term of arrest therein, or refuses to grant the application and makes the ruling to refuse to impose arrest.

5. The judge, when making the ruling to impose arrest or upholding this type of ruling, may entrust the prosecutor with the task of collecting additional material within a prescribed term. Upon receiving the requested material, the judge may then uphold the ruling to impose arrest and to set a new term of arrest, or to make the ruling to change or cancel this measure of constraint.

6. When the case has been brought before the court, the court who has jurisdiction over this case may impose arrest, uphold, prolong or cancel arrest, or to change it into another measure of constraint, pursuant to the requirements set out in Art. 122 of this Code.

7. During the court hearing where the judge deals with the issue of imposing arrest, the minutes of such hearing shall be taken. The minutes shall contain the explanations provided by the person brought before the judge, statements and comments of the prosecutor and the defence counsel.

By a judgement of conviction the accused is found guilty of the criminal offence provided for by the criminal statute and a penalty is imposed on him. Types of penalties involving deprivation of liberty are specified under Article 42 of the Criminal Code of the Republic of Lithuania, namely: detention, term of imprisonment, and life imprisonment.

Art. 49 (Detention)

1. Detention is imposed by the court in the cases specified in the Special Part of this Code.

2. Detention is an imprisonment for a short period of time, which is spent in the detention ward. The term of detention is calculated by days.

3. Detention is imposed for a period of 15 to 90 days for a crime and 10 to 45 days for a misdemeanour.

4. The time to be spent in detention for a criminal act is not specified in the sanction of the relevant article of the criminal statute. This time is set by the court when determining the penalty.

5. If detention is imposed for a period of 45 days or less, the court may rule that it shall be served during the rest days. If the person violates this procedure for serving the sentence of detention, the court may decide that the procedure be changed to the regular manner of serving the sentence of detention.

6. Detention shall not be applicable to pregnant women and may not be applicable to persons rearing children up to the age of 3 year, taking due account of the interests of the child.

Art. 50 (Term of Imprisonment)

1. A sentence of imprisonment for a certain term is imposed by the court in cases specified in the Special Part of this Code. The term of the penalty is calculated by years, months and days.

2. The term of imprisonment may be set from 3 months to 20 years. When the sentence is imposed pursuant to Article 64 of this Code, in case another crime is committed before serving prior sentence, a sentence of up to 25 years of imprisonment may be imposed on the person.

3. Convicted persons serve their sentences of imprisonment in open (unrestricted) correctional colonies, correctional houses and prisons. The place where sentence shall be served is determined by the court, with a view to the personality of the perpetrator, the nature and gravity of the committed crime. The procedure and conditions for serving the sentence of imprisonment are established by the Code on the Execution of Criminal Sentences.

Art. 51 (Life Imprisonment)

1. A sentence of life imprisonment is imposed by the court in cases specified in the Special Part of this Code.

2. If the criminal statute provides for commutation of sentence for a crime punishable by life imprisonment, the sentence may be commuted to a term of not less than 25 years.

3. Convicted persons serve their sentences of life imprisonment in prisons. Having served the first ten years of their life sentence, the convicted persons may, in cases prescribed by law and in accordance with the procedure established therein, be moved to correctional houses. The procedure and conditions for serving life sentence are established by the Code on the Execution of Criminal Sentences.

2) Which decisions are subject to review/supervision by the public prosecutor?

The Prosecutor supervises the execution of all decisions involving deprivation of liberty. Accordingly to Paragraph 2 of Art. 139 of the Code of Criminal Procedure of the Republic of Lithuania, if, in the course of pre-trial investigation, the grounds for imposing arrest and conditions necessary for imposing arrest disappear, the prosecutor must immediately take the decision to release the arrested person. The transcript of such decision shall be forwarded to the judge.

3) Is the public prosecutor empowered to enter places of detention? What kinds of places or institutions, how often, and with or without the permission of other authorities?

The procedure for entering places of detention is established by the Order No. 122 of the Minister of Justice of the Republic of Lithuania of 23rd April 2003 'On the Approval of Procedure for Entering and Exiting the Correctional Institutions'. The prosecutor must present his/her ID card to the officer of Control and Admission Post. The officer then matches the presented ID card against a sample ID card, establishes the identity of the person accordingly to the photo on the ID card, verifies the authenticity of the stamp certifying the said ID card. The ID card is given back to the prosecutor when he/she exits the correctional institution.

The arrested persons are kept in detention wards or remand prisons. Sentence of detention is served in detention wards, whereas custodial sentence is served in correctional houses, prisons and open (unrestricted) correctional colonies.

4) a. What kind of measures could be taken by the public prosecutor in case of unlawful deprivation of liberty or in case of torture or inhuman or degrading treatment or punishment?

Having disclosed such cases, the prosecutor may initiate pre-trial investigation.

b. Is the public prosecutor empowered to take an immediate decision in these cases?

Yes, he is.

5) Is it possible for a person deprived of his/her liberty to meet the public prosecutor personally without any control by a third party?

Yes, it is.

Can that person maintain contact with the public prosecutor without any control by a third party (and vice versa)?

Yes, he can.

6) Please describe the procedure for complaints against prison staff.

This procedure is established by the Order No. I-56 of the Prosecutor General of the Republic of Lithuania of 9th April 2004 'On the Approval of Regulations on the Procedure for Dealing With Persons' Requests and Complaints'. Complaint serves as a means of addressing the prosecutor's office and notifying it of the infringement of person's rights or lawful interests, with a request to protect them. Only written requests and complaints which have been orderly and legibly drawn up in the official language (Lithuanian), signed by the applicant, containing the name, surname of the applicant, his/her exact address at which the reply should be sent, and the telephone number (if there is one), shall be accepted. Request or complaint must be forwarded to competent authorities or dealt with no later than within 30 days from its receipt by the prosecutor's office or from the date of its translation into Lithuanian. If an applicant refuses to accept the decision which has been made in respect of his complaint, he/she is entitled to lodge an appeal to the Administrative Court.

7) a. Does the public prosecutor have authority to control and react to the conditions of deprivation of liberty?

Yes, he does. For this purpose, the Prison Department was established at the Ministry of Justice of the Republic of Lithuania.

b. How should the public prosecutor react?

The prosecutor may forward the complaints relating to the conditions, under which persons deprived of their liberty are kept, directly to the Prison Department.

c. Does domestic law in your country prescribe any special provisions for such situations?

In case a person complains about the conditions of deprivation of liberty, the prosecutor, upon receiving such a complaint, forwards it to the competent authority – Prison Department. Special provisions applied in these cases are the following: Order No. 194 of the Minister of Justice of the Republic of Lithuania of 2nd July 2003 'On the Approval of Internal Rules of Correctional Institutions' and Order No. 182 of the Minister of Justice of the Republic of Lithuania of 18th June 2003 'On the Approval of Internal Rules of Detention Wards'.

8) What is the role of the public prosecutor in the execution of sentences relating to persons deprived of their liberty?

According to Paragraph 3 of Art. 346 of the Code of Criminal Procedure of the Republic of Lithuania, the prosecutor controls the submission of the judgement for execution and execution thereof.

Art. 75 of the Criminal Code of the Republic of Lithuania (hereinafter CC of RL) provides for the possibility to suspend the execution of the custodial sentenced imposed

on the person. It should be noted that CC of RL determines dual execution of the custodial sentence (term of imprisonment only). The person in respect of whom a prison sentence has been imposed may serve his sentence without losing his liberty or by losing it. This issue is settled by the court, although the role of the prosecutor is also very important here, because the prosecutor, when presenting his closing arguments and talking about the execution of the requested custodial sentence, may ask to suspend (if the accused meets the conditions stipulated in Art. 75 of CC of RL) the execution of the sentence for a certain period of time. In accordance with the provisions of Art. 75 of CC of RL, **the prosecutor participates and has certain rights and duties** when decisions on other issues relating to the execution of suspended custodial sentence are being made:

1. he participates in the court hearing when it is being decided whether or not to release the sentenced person from the penalty of a term of suspended sentence once the term has expired;
2. he participates in the court hearing when deciding the issue of extending the term of sentence suspension for one year;
3. he participates in the court hearing when the authority supervising the conduct of the sentenced **person is proposing to warn** the sentenced person that the suspension of the execution of sentence may be revoked, who failed to comply with the court injunctions without any reasonable cause, or violated public order, abused alcoholic beverages or commited other violations of the law, for which administrative penalties or disciplinary sanctions have been imposed on him no less than twice;
4. he participates in the court hearing when considering the issue of revoking the suspension of the custodial sentence imposed on the sentenced person (if the sentenced person, even after being warned by the court, continues breaching court injunctions or committing violations of the law) and sending him to serve the custodial sentence imposed on him.

Procedural aspects of these issues are regulated by Art. 358 of the Code of Criminal Procedure of the Republic of Lithuania (hereinafter CCP of RL), where the procedure for releasing the sentenced person from the penalty, or for revoking the suspension of the execution of the sentence, or for extending the term of suspension of the execution of the sentence, is established. The sentenced person in respect of whom the execution of sentence has been suspended on the grounds provided for in Article 75 of CC of RL, shall be released from penalty, or the term of suspension of sentence imposed on him shall be extended, or the suspension of the sentence shall be revoked and the sentenced person shall be sent to serve the imposed sentence by the district court of the place of residence of the sentenced person upon the proposal of the authority which supervises the conduct of the sentenced person. These issues are considered by the court in the court hearing. **In this court hearing, the prosecutor** and the representative of the authority supervising the conduct of the sentenced person **shall also be present**.

Art. 76 of CC of RL provides for the possibility to release a person from custodial sentence due to illness. As we are concerned only with the powers of the prosecutor in the execution of judgements relating to deprivation of liberty, we will mainly focus on

the cases when issues concerning the persons, who become ill with serious incurable disease or with mental disease which renders them unable to understand the nature of their actions or to control them after the judgement has been delivered, are dealth with. As a matter of fact, these issues are decided by the court, taking due account of the conditions set out in the Code. Besides, there is also a possibility to take complusory medical treatment measures in respect of such persons. The prosecutor is present when all these issues are dealt with in the court of law.

Procedural aspect of releasing sentenced person from penalty due to illness is regulated by Art. 359 of CCP of RL. The proposal for releasing the sentenced person from the penalty due to illness is considered in the court hearing, **in the presence of the prosecutor.**

Accordingly to Art. 402 of the CCP of RL, if the person has become mentaly ill after the imposition of the sentence, before the judgement's coming into force and before the execution of the judgement, the case shall be reviewed by the court which delivered the judgement. If the person has become mentally ill when the execution of the judgement was commenced, the case shall then be reviewed by the court of the place where the sentenced person is serving his sentence. The issue of taking compulsory medical treatment measures in respect of this person is considered by the court in the court hearing. **The prosecutor** and the defence counsel **must participate** in this hearing as well.

Art. 77 of CC of RL introduces another institution with respective powers of the prosecutor, that is, conditional release from custodial sentence before the fixed term and change of the remainder of the custodial sentence into a less severe penalty. In all cases, these issues are decided by the court; **the presence of the prosecutor is compulsory.** The prosecutor participates not only when persons are conditionally released from custodial sentence and when the remainder of the custodial sentence is changed into a less severe penalty, but also when other issues concerning this legal institution are being dealt with, namely:

1. when the sentenced person who has been conditionally released is warned by the court, if such person fails to comply with the court injunctions without any reasonable cause, or violates public order, abuses alcoholic beverages or commits other violations of the law, for which administrative penalties or disciplinary sanctions have been imposed on him no less than twice;
2. when the conditional release from custodial sentence before the fixed term is revoked and the sentenced person is sent to serve the remainder of the sentence;

The prosecutor may exercise the same powers when issues relating to conditional release of juveniles from custodial sentence before the fixed term and the change of the remainder of custodial sentence imposed on a juvenile into a less severe penalty (Art. 94 of CC of RL).

Similar institution is provided for in the Code of the Execution of Criminal Sentences of the Republic of Lithuania (hereinafter CECS of RL). Art. 157 of CECS of RL sets out the conditions under which persons may be conditionally released from correctional institutions. The prosecutor participates when both the issue of conditional release of the convicted person and that of sending the convicted person back to serve the remainder of the custodial sentence, as a result of violations committed by the convicted person, are dealt with.

Art. 361 of CCP of RL establishes the procedure for removing doubts and ambiguities arising in the course of execution of the judgement. In the course of execution of the judgement, the court is authorized to resolve the doubts arising because of the judgement, provided that the resolution of these doubts will not affect the substance of the judgement. The court hearing is attended by **the prosecutor** as well. In cases of necessity, the sentenced person may be summoned to appear before the court, however, his failure to appear in the court hearing does not impede the consideration of this issue.

Art. 362^1 of CCP of RL deals with the procedure for applying the law which decriminalizes certain act, or provides for milder penalty, or in any other way ensures a more favourable legal status of the person who committed the criminal act. The law which decriminalizes certain act, or provides for milder penalty, or in any other way ensures a more favourable legal status of the person who committed the criminal act, shall be applied by the court, pursuant to the requests of the sentenced person, his defence counsel, the proposals of **the prosecutor** or the authority which executes the sentence.

Art. 364 of CCP of RL establishes that the appeals against the rulings of district courts relating to the execution of the judgement shall be considered by regional courts, whereas appeals against the rulings of regional courts, respectively, shall be considered by the Court of Appeals of Lithuania. **The prosecutor may appeal** against the rulings.

In addition, powers of the prosecutor are provided for in Art. 365 of CCP of RL, which deals with the execution of judgements delivered by the courts of foreign states and the decisions of the International Criminal Court. The judgements delivered by the courts of foreign states and the decisions of the International Criminal Court are executed in the Republic of Lithuania accordingly to the rules laid down in Part Seven of CCP of RL. In cases provided for in the international treaty of the Republic of Lithuania, the penalty imposed by the judgement of the court of a foreign state is harmonized with the requirements of criminal and penitentiary laws of the Republic of Lithuania by the district court of the place where the sentence is being served upon the proposal of the authority in charge of the execution of the sentence and in accordance with the procedure established in Art. 362 of CCP of RL.

Part Seven of CCP of RL regulates the execution of judgements and rulings. This chapter also provides for other rights and duties of the prosecutor who is obliged by the law to control the submission of the judgements for execution and execution thereof.

Art. 338 of CCP of RL regulates the suspension of the execution of the judgement by which a custodial sentence is imposed on the person. The execution of such judgement is suspended in the following cases:

1) when the convicted person is suffering from a serious disease which prevents him from serving the sentence - until he recovers;
2) when the convicted woman is pregnant at the moment of the commencement of the execution of the judgement - for a period not exceeding one year;
3) when the convicted woman, who has not been deprived of maternal rights, has young children - until the youngest of them reaches the age of three years;
4) where immediate serving of sentence may result in exceptionally grave consequences for the sentenced person or his family due to a natural disaster, serious illness or death of the only family member who is capable of working, or any other exceptional circumstances - for a term established by the court, which, however, must not exceed three months.

The issue of suspension of the execution of the judgement shall be settled by the reasoned ruling of the court which has delivered the judgement, on the request of the convicted person, his defence counsel, family members or close relatives. **The prosecutor shall attend** the court hearing where this issue is dealt with.

Art. 104 of CECS of RL provides for the possibility for convicted persons to go on a short trip home. **The prosecutor** and the police commisariat of the place which is the destination of the trip are **notified of the convict's trip.**

Art. 105 of CECS of RL provides for the right of convicted persons to go on a short trip outside the correctional institution. **The prosecutor** and the police commisariat of the place which is the destination of the trip are **notified of the convict's trip** outside the correctional institution.

In addition, the role of the prosecutor with respect to the application of amnesty laws has to be considered here as well, since the prosecutor participates in the sessions of the Amnesty Commission and **submits written conclusions on granting amnesty to the convicted person**. Appeals against the decisions of the Amnesty Commissions, by which amnesty is granted or not to the convicted persons, may be lodged to the district court of the place where the sentence is being served. Right to appeal may be exercised by the convicted person, (upon his request) defence counsel, and by **the prosecutor**.

MOLDOVA

1) The following decisions on deprivation of liberty that exists in Republic of Moldova:

- article 31 of Administrative Contraventions' Code of the Republic of Moldova – administrative arrest, disposed by the court for minor offences (contraventions), which are not foreseen by the Criminal code. This kind of measure on deprivation of liberty is one of exceptional punishment measure, applied only for certain categories of contraventions. The maximum term of administrative arrest is 30 days.
- An other measure on deprivation of liberty is provided in the Criminal Procedure Code (Title V "Procedural Coercive Measures", Chapter I, articles 165-174) – Apprehension. According to the art. 165 of above mentioned Code, apprehension constitutes a deprivation of a person of liberty for a short period of time not exceeding 72 hours in places and under the terms established by law. The following persons may be subjects to apprehension:

  a) persons suspected of committing a criminal offence for the commission of which the law prescribes a sanction of deprivation of liberty over 1 year
  b) the indicted and the defendant who does not comply with the restrictions imposed by non-custodial preventive measures, imposed on them, if the indicted criminal offence is punishable with deprivation of liberty
  c) the convicted persons regarding which decisions were adopted for quashing the conviction with conditional suspension of the punishment enforcement or annulling the conditional release from punishment before the end of their sentence

The apprehension of a person may be performed relying on:

  a) verbatim record, in the event sound reasons arise suspect that the person has committed the criminal offence
  b) ordinance of the criminal pursuit body (or prosecutorial ordinance)
  c) decision of the court regarding the apprehension of the person until settlement of the issue on the annulment of the conviction with suspension of the punishment enforcement or annulling the conditional release of punishment is decided upon, or, if the case on the apprehension of the person for the criminal offence committed in court hearings

- The preventive measure of the pre-trial arrest is another measure of deprivation of liberty.

According to the article 185 of Criminal Procedure Code, the pre-trial arrest means detaining the suspect, the indicted and the defendant under remand in places and conditions provided by law. The motivated decision on the application of the pre-trial arrest under the suspect, the indicted or defendant is adopted only by instruction judge (if the criminal case is under criminal prosecution) or by the court (in court hearings). The term for holding a person under pre-trial arrest starts from the moment of depriving a

person of liberty at his/her apprehension, and in case the person was not held in custody – from the moment of executing the court order imposing the preventive measure. The term of pre-trial arrest includes the time in which the person has been apprehended and under remand, has been under home arrest, was placed in a medical institution at the decision of the instruction judge or of the court for an expert examination in stationary conditions as well as for treatment, as a result of applying coercive medical measures.

Holding under remand a person during penal pursuit until sending the case to the court will not exceed 30 days, with the exception of cases provided by the present Code. Counting the term of pre-trial arrest during the penal pursuit ends at the moment when the prosecutor sends the case to the court, the pre-trial arrest or the house arrest is annulled or replaced with another non-custodial preventive measure. In exceptional cases, depending on the complexity of the criminal case, on the seriousness of the crime and in the event of the imminent disappearance of the indicted or of risk of exercising by him the pressure upon witnesses or to destroy or alter evidence, the term for the pre-trial arrest can be prolonged:

a) up to 6 months, if the person is indicted of committing a crime for which the criminal legislation provides as maximum punishment of 15 years of imprisonment;
b) up to 12 months, if the person is indicted of committing a crime for which the criminal legislation provides as maximum punishment of 25 years of imprisonment or detention for life.

For indicted minors the preventive measure can be prolonged for no more than 4 months. Each prolongation of the term of the pre-trial arrest cannot exceed 30 days. Prolonging the term of pre-trial arrest for up to 6 months, is decided by the instruction judge based on the request of the prosecutor of the sector in which territorial jurisdiction the penal pursuit is performed and in case of necessity to prolong the pre-trial arrest exceeding this term – based on the request of the same prosecutor with the consent of the Prosecutor General or of his deputies.

The court ordinance on prolonging the term of the pre-trial arrest can be contested in recourse in the hierarchically superior court.

The home arrest is one of preventive measure on deprivation of the liberty of the persons and consists in isolation of the suspect, indicted or defendant from the society in his/her domicile or residence with some restrictions. The decision on the application of this form of preventive measure is adopted only by the instruction judge or by the court.

- Criminal Code of the Republic of Moldova provides 3 criminal punishments on deprivation of liberty: the arrest (article 68), detention (article 70) and detention for life (article 71). All of them are disposed in conviction sentence by the court.

The arrest means depriving a person of liberty for a term between 3 and 6 months.

Detention means depriving an individual guilty for having committed a crime of liberty

through isolation imposed on him from his normal life environment and through his placement, on the court's sentence basis, for a certain term into a penitentiary institution. Detention can be established for a term between 6 months and 25 years. In establishing the punishment for a person who, at the moment when he committed the crime was under 18 years old, the detention term cannot be over 15 years. In establishing the final punishment in case of a plurality of crimes, the detention punishment cannot be higher than 30 years, and in case of a plurality of sentences, it cannot be higher than 35 years.

Detention for life means depriving the convict of liberty for the rest of his life. Detention for life can be established only for heinous crimes. Detention for life cannot be applied on women and on minors.

- In the art. 100 of the Criminal Code of the Republic of Moldova are provided the hospitalization into a mental institution – security measure with deprivation of liberty. Hospitalization into a mental institution under ordinary surveillance can be applied by the court on a mentally ill person who, because of his mental state and of the harmful nature of the committed act, needs medical care and compulsory treatment under ordinary surveillance. Hospitalization into a mental institution under severe surveillance can be applied by the court on a mentally ill person who, because of his mental state and of the harmful nature of the committed act is a serious danger for the society and needs hospitalization and treatment under severe surveillance.

2) According to the Moldovan domestic law, the public prosecutor has the enforcement to contest in hierarchically superior courts all the above mentioned decisions on deprivation of liberty.

3) In accordance with the art. 12 of the Law on Public Prosecutor's Service no. 118/14.03.2003 and the art. 174 of Execution of Judgment Code of the Republic of Moldova, the public prosecutors are empowered to supervise all the places of detention (penitentiary institutions, pre-trial arrest depriving places, mental institutions etc.). According to the art. 178 of Execution of Judgment Code of the Republic of Moldova, the Prosecutor General and the commissioned public prosecutors, who ensure the monitoring of the criminal punishment execution.

4) In case of unlawful deprivation of liberty, the public prosecutor is obliged by the Law to release immediately the illegally detained person. In above situations, the prosecutor decides the releasing of the illegally detained person through the prosecutorial ordinance. In case of torture or inhuman or degrading treatment or punishment the public prosecutor is empower to start criminal prosecution for those offences. Torture, constitutes an offence according to the art. 309^1 of the Criminal Code, i.e. "Torture" or an offence, provided by the art. 137 of Criminal Code, i.e. "Inhuman treatment".

5) According to the domestic law provisions, the person deprived of his/her liberty has the right to meet a public prosecutor, personally and without the control, every time he/she considers it opportune.

6) It is not provided a specific procedure for complaints against prison staff. It is public prosecutor's competence to solve all the complaints against prison staff.

7) The public prosecutor has the authority to control and react to the conditions of deprivation of liberty (see above point no 3).

8) Moldovan domestic law provides that the public prosecutor is the official person who ensures the monitoring of the execution of sentences relating to persons deprived of their liberty.

MONACO

1. Decisions on deprivation of liberty may be taken by:

- the police:

The police may detain persons in police stations on the decision of a senior police officer. It should be noted that such police officers are auxiliaries of the Principal State Prosecutor's Office. Custody is for a non-renewable period of 24 hours. The person concerned must be brought before a judge within this 24-hour period. These rules comply with Article 19 paragraph 2, of the Constitution, which stipulates that, "*Except where a person is caught in the act of committing an offence, a person may be arrested only by virtue of an order issued by a judge, which must be served at the time of arrest or, at the latest, within twenty-four hours. Any detention must be preceded by questioning*".

- the judicial authorities:

Pursuant to Article 162 of the Code of Criminal Procedure, "*the arrest warrant shall be the order by virtue of which the investigating judge, the relevant court or the Principal State Prosecutor, the latter in cases of serious crime or where a person is caught in the act of committing an offence, has the accused taken into custody by the police in order to be detained in the remand prison.*"

Under Articles 162 and 399 of the Code of Criminal Procedure, the Principal State Prosecutor may issue an arrest warrant in the event of a serious crime or where a person is caught in the act of committing an offence. Article 399 provides that "*anyone caught in the act of committing an offence shall immediately or at the latest within twenty-four hours be brought before the Principal State Prosecutor who shall question him or her and, if necessary, have him or her brought before the criminal court (...).*

The Principal State Prosecutor may issue an arrest warrant concerning the person sent before the court in this way." Under the procedure applicable to persons caught in the act of committing an offence or perpetrators of serious crimes, the Principal Public Prosecutor is also empowered to order the arrest of persons concerning whom there is strong circumstantial evidence or issue a warrant to have them immediately brought before him or her.

Article 162 of the CCP also enables the investigating judge to issue an arrest warrant in which he or she sets the time from which pre-trial detention runs. Such a warrant is renewable every two months.

The criminal court may also issue an arrest warrant. This must state grounds and can be issued only where the person concerned has been given a prison sentence of at least one year (Article 395 of the CCP). It should be noted that this court may pass sentences of up to twenty years' imprisonment for certain types of offence (e.g., drug trafficking).

The district judge, who presides over the police court, may order detention for up to five days.

The criminal court may pass sentences of as much as life imprisonment.

An appeal lodged by the public prosecutor following a decision made by a criminal court is suspensive (24 hours) and therefore has the effect of keeping the accused in detention. The case has to be set down for the "earliest possible hearing".

2. The Principal State Prosecutor supervises decisions in matters of flagrante delicto, pre-trial detention and release pending trial.

Where a person is caught in the act of committing an offence, the Principal State Prosecutor decides whether or not that person should be detained alone in a cell, segregated from other prisoners or assigned to perform prison work.

Regarding pre-trial detention, in accordance with Article 181 of the CCP, he or she also issues visiting permits. This prerogative is also exercised by the investigating judge with respect to persons charged with offences and the Director of Judicial Services with respect to persons convicted of offences.

Under Article 34 of Sovereign Order 69 of 23 May 2005 establishing prison regulations, the Principal State Prosecutor shall read mail sent to or by prisoners (except those in pre-trial detention). He may keep letters if he or she considers their content to be unlawful or immoral (Article 36 of the prison regulations).

With respect to release pending trial, the Principal State Prosecutor makes submissions on all applications for a defendant to be released pending trial in accordance with Article 191 of the CCP, which provides "*the investigating judge shall transmit to the prosecuting authorities, in order to obtain their submissions, applications for release pending trial made by persons charged with offences (...)*".

He or she may at any time and on his or her own initiative request the release of a defendant pending trial (Article 183, paragraph 3, of the CCP).

The Principal State Prosecutor makes submissions on any extension of an arrest warrant (Article 186 of the CCP) and may appeal against all orders issued by the investigating judge, including of course those concerning pre-trial detention. The prosecutor's appeal is suspensive (Article 231 of the CCP).

It is the investigating judge who decides what supervision measures a defendant released pending trial must comply with in order to guarantee his or her appearance in court. Supervision is, on the other hand, exercised by a judge of the trial court.

3. The prosecutor is required to visit the prison once every three months (Article 81 of the prison regulations).

It is not specified whether or not this visit involves interviews with prisoners. In practice, such interviews have already taken place at the Principal State Prosecutor's discretion.

4.a. If a senior police officer having the status of auxiliary of the Principal State Prosecutor unlawfully deprives a person of their liberty, the procedure whereby the Court of Appeal in chambers examines the decision may be initiated by the President of that court or the Principal State Prosecutor (Articles 48 et seq. of the CCP).

The officer concerned may be temporarily or permanently banned from performing his or her police duties, without prejudice to any administrative disciplinary measures that may be imposed by his or her superiors.

Criminal penalties are also possible under Article 126 of the Criminal Code, which makes it an offence for a Chief Inspector or subordinate police officer to abuse their authority in the performance or during the performance of their duties without legitimate reasons by using violence or ordering it to be used.

Articles 275 et seq. of the CCP also provide for criminal penalties for unlawful arrest and detention. A person who, without orders from the established authorities and in circumstances other than those in which the law requires that suspects be arrested, has a person arrested, detained or imprisoned is liable to 10 to 20 years' imprisonment.
Article 278 provides that the maximum prison sentence shall apply where a person unlawfully arrested and detained has been tortured.

Articles 78 and 79 of Sovereign Order 69 establishing prison regulations prohibits all forms of violence whether physical or psychological against detainees and provides for disciplinary sanctions to be taken against the perpetrators of such acts.

b. The penalties for intentional wounding and assault may be imposed in such cases. The Principal State Prosecutor may issue an immediate arrest warrant (flagrante delicto) or apply to the investigating judge for an arrest warrant concerning perpetrators of violent or degrading treatment. The ordinary criminal law is then applied.

5. As stated above, meetings between prisoners and the prosecutor are possible. There is no legislation either forbidding or authorising them. Article 32 of the Sovereign Order establishing prison regulations provides that all correspondence sent by prisoners to a judicial or administrative authority of the Principality, their lawyers or the authorities of the Council of Europe shall be transmitted to the addressee sealed without first being read by the staff of the prison registry.
Contact with the prosecutor without any supervision by a third party is therefore possible.

6. Article 1, paragraph 3, of the Sovereign Order establishing prison regulations provides "*the prison shall be placed under the authority of the Director of Judicial Services assisted by a prison administration office.*"

- Possibility to write to any Monegasque administrative or judicial authority, one's lawyer and Council of Europe authorities

If a prisoner wishes to complain about a member of the prison staff, the prisoner may, under Article 32 of the prison regulations, write to any Monegasque administrative or judicial authority, his or her lawyer or the authorities of the Council of Europe listed in the prison rules. Such correspondence is handed sealed to the Prison Governor and its dispatch may not be delayed for any reason whatsoever. In principle, the complaint is addressed to the Director of Judicial Services who is competent to take disciplinary measures against prison staff, but it may also be addressed to the Principal State Prosecutor, who will keep the Director of Judicial Services informed.

- Drafting a report on the facts and circumstances

When a prisoner lodges a complaint against a member of the prison staff, the Director of Judicial Services asks the Prison Governor to draw up a report on the incident, if he or she has not already done so pursuant to Article 80 of the prison regulations. Before any disciplinary measure is imposed, the staff member concerned must be asked to attend an interview at which his or her explanations are heard. He or she always has the right to consult his or her file. The Governor or, where applicable, the Secretary General shall draw up a report of the hearing and a precise report on the facts and the circumstances.

- Disciplinary measures

If a disciplinary measure is imposed, it will be decided upon by the Director of Judicial Services or the Secretary General, depending on its gravity, and notified to the person concerned.

With respect to permanent staff, the Director of Judicial Services or the Secretary General may impose disciplinary measures as provided for in Act 975, i.e. warning, reprimand, relegation in class or step, downgrading, temporary suspension for three months to a year, compulsory retirement or dismissal. If a serious breach of discipline has been committed, whether professional misconduct or an offence under ordinary law, the person concerned may be suspended by the Director of Judicial Services. If the person is subject to criminal proceedings, his or her situation will be finally settled only after the trial court's decision has become final.

In the event of a complaint against a contractual member of the prison staff, the procedure provided for in the general regulations applicable to contractual staff of the Judicial Services Department and the prison will be followed. Under that procedure any breach of discipline committed by a member of staff in the performance or during the performance of his or her duties will make him or her liable, without prejudice to any sanctions provided for in law, to the following penalties: warning, reprimand, deferment of advancement to a higher grade or step, temporary suspension without pay but with family benefits for a maximum of one month or dismissal without notice or compensation.

Warnings and reprimands are issued by the Secretary General and notified to the person by mail, while other penalties are decided by the Director of Judicial Services and notified to the person concerned by registered mail with acknowledgment of receipt.

Acting prison officers are attached to the civil service and, in the event of a complaint, are subject to the disciplinary procedure provided for in Act 975 of 12 July 1975 on the status of civil servants.

7.a., b. and c. The prison is under the authority of the Director of Judicial Services (Ministry of Justice).

Article 185 of the Criminal Code provides that defendants detained pending trial shall be subject to the general prison regulations as regards any matters not dealt with in the CCP.

8. The public prosecutor is responsible for the enforcement of sentences.

He or she takes measures to enforce prison sentences handed down by the criminal courts.

He or she is responsible for the distribution, via Interpol, of court decisions ordering imprisonment (international arrest warrants).

Article 598 of the CCP empowers the public prosecutor to suspend a sentence where immediate imprisonment would present the person concerned or his or her family with serious problems disproportionate with the offence.

NORWAY

1) Arrest based on the Criminal Procedure Act:
The prosecuting authority may order an arrest. If the prosecuting authority wishes to detain the person arrested, it must, as soon as possible and as far as possible on the day following the arrest, bring him before the court with an application that he be remanded in custody. When delay entails any risk, a *policeman* may make an arrest without a decision of the prosecuting authority. The question of ratifying the arrest shall as soon as possible be submitted to the prosecuting authority or court. If a person is caught in the act or pursued when so caught or on finding fresh clues, *anybody* is entitled to make the arrest, but must immediately hand over the arrested person to the police. The question of ratifying the arrest shall as soon as possible be submitted to the prosecuting authority or court.

Custody:
The court may decide custody for up to four weeks, or for a longer time in certain circumstances.

The legal basis of arrest based on the Criminal Procedure Act /custody:
The legal basis of arrest/custody is stated in the Criminal Procedure Act chapter 14 "Arrest and remand in custody". A condition of making an arrest or deciding custody is that a person with just cause is suspected of having committed a crime punishable pursuant to statute with imprisonment for a term exceeding 6 months. Furthermore, there must be reason to fear that he will evade prosecution or execution of a sentence, or there must be an immediate risk that he will interfere with any evidence in the case, or it must be deemed to be necessary in order to prevent him from again committing a crime punishable pursuant to statute with imprisonment for a term exceeding 6 months, or if he himself requests it for reasons that are found to be satisfactory. Arrest or custody may also be decided if the person is suspected of having committed or attempted to commit a felony punishable by imprisonment for a term of 10 years or more or having committed serious violence, and he has made a confession or there are other circumstances that strengthen the suspicion to a marked degree. Further, arrest or custody may be decided if a person is caught in the act and does not desist from the criminal activity, or if he does not have a permanent place of residence in the realm when there is reason to fear that he will, by fleeing abroad, evade prosecution or execution of a sentence.

Arrest or custody may only be ordered when it is deemed necessary and shall not be ordered when it would be a disproportionate intervention in view of the nature of the case and other circumstances.

Arrest based on the Police Act:
A policeman may make an arrest for up to four hours of a person who in a public place disturbs law and order or the public traffic, a person who refuses to comply with an order to remove himself from a public place when the circumstances give just cause to fear disturbance of law and order or the public traffic, a person who refuses to state his name,

date of birth, occupation and address, or if there is reason to doubt that the given information is correct, or a person who is found at or nearby a place immediately after a crime is deemed to have been committed.

A policeman may arrest a person who, due to intoxication, disturbs law and order or the public traffic, who molests others or causes danger to himself or other people. No one shall be detained longer than necessary and under no circumstances after the person has become sober.

Psychiatric ward:
A decision of deprivation of liberty may under certain conditions be made as part of necessary psychiatric ward of a person suffering from a serious mental illness. An application for psychiatric ward has to be made from a family member of the person or a public authority. The decision is made by a head doctor.

2)
Decisions of custody and arrest based on the Criminal Procedure Act are subject to review by the public prosecutor.

3)
The public prosecutor may enter places of detention (i.e. police cells or prison cells) and speak to an arrested person or a person in custody without permission of other authorities.

4) a. and b.
In such cases the public prosecutor would have to consider release as an immediate measure. He/she should also file a complaint against the responsible institution and staff.

5)
A person under arrest or in custody can meet – and maintain contact with – the public prosecutor without control by a third party. (Rules concerning control of a prisoners mail, telephone conversations and conversations with visitors, does not apply to conversations with (amongst others) the public prosecutor).

6)
Complaints against prison staff are made to the local police. Complaints against policemen, f.ex. incidents that took place in a police cell, are handled by the Special Police Investigation Commission.

7) a. , b. and c.
The public prosecutor may control and react to the conditions of deprivation of liberty of a person under arrest or in custody. If the conditions are unacceptable, the prosecutor may order the person released.

8)
The public prosecutor gives the order of the execution of sentences. The prosecutor has no other role in the execution, which is a matter for the prison authorities.

PORTUGAL

1. Under Portuguese criminal procedure (Article 254 of the CCP) the aim served by any arrest is:

a) to ensure that within forty-eight hours the person concerned is brought directly before a court for summary trial or brought before a judge competent to conduct the initial judicial examination or to impose or perform one or more judicial supervision measures;

b) to ensure that the arrested person is brought immediately or at the latest within twenty-four hours before a judicial authority for performance of a procedural measure.

Where a person is caught in the act of committing an offence punishable by a custodial sentence, the arrest may be made by any judicial authority or police officer. If none is present at the scene, anyone may apprehend the perpetrator and is required to deliver him or her to the said authorities forthwith (Article 255, paragraphs 1 and 2 of the CCP).

In other cases, arrest is possible only where a warrant has been issued by a judge or, in cases allowing of pre-trial detention, by the public prosecutor (Article 257-1 of the CCP).
In cases other than flagrante delicto, the police may also order arrest of their own initiative where (Article 257-2 of the CCP):

a) pre-trial detention is possible;
b) there are reasonable grounds for presuming the person concerned may abscond;
c) it is not feasible to wait for the judicial authority to act because of the urgency of the situation and the risk involved in delay.

If judicial supervision measures prove inadequate and insufficient in a particular case, the investigating judge may order a defendant to be placed in pre-trial detention where (Article 202-1 of the CCP):

a) there are reasonable grounds for presuming that a fraudulent offence punishable by up to three years' imprisonment has been committed;
b) the person concerned has unlawfully entered or lived in Portuguese territory or extradition or deportation proceedings are pending against him or her.
In addition, pre-trial detention may be ordered where (Article 204 of the CCP):
c) the defendant has absconded or is at risk of absconding;
d) there is a risk of interference with the inquiries or the investigation, notably as regards the gathering and preservation of evidence; or
e) there is a risk of unrest or disturbance of public order as a result of the nature or circumstances of the offence or a health problem suffered by the defendant or a risk that he or she will continue his or her criminal activities.

If the person to be placed in pre-trial detention shows symptoms of psychiatric problems the judge may decide, after hearing the defendant's counsel and, if possible, a member of

his or her family, to replace detention in a remand prison with detention in a psychiatric hospital or similar appropriate establishment until the symptoms cease (Article 202-2 of the CCP).

Sanctions and measures resulting in the deprivation of liberty are imposed by a judgment or a judicial order (Articles 477-1 and 501-1 of the CCP).

2. Arrests made by the police are immediately reported to the judge who issued the arrest warrant where their aim is to ensure the appearance of the arrested person before a judicial authority with a view to performance of a procedural measure and to the public prosecutor in all other cases.

All judicial decisions, i.e. pre-trial detention orders, judgments imposing a custodial sentence or orders for detention in a treatment unit, are subject to supervision by the public prosecutor, who may appeal against such orders, including in the sole interests of the prisoner or convicted person (Articles 219, 399 and 401-1 of the CCP).

3. Under Portuguese law it is for the court dealing with enforcement of sentences to visit places of detention at least once a month, in particular to supervise the way in which sentences are enforced and to hear any complaints by prisoners, whether in pre-trial detention or serving a sentence (Article 23 of Decree 783/76 of 29 October).

4.a. Where it becomes clear that an arrest was made on the basis of mistaken identity or in circumstances other than those where it is lawfully permissible, or that the arrest measure is no longer necessary, any authority which ordered the arrest or before which the arrested person is brought will immediately order his or her release (Article 261-1 of the CCP).

In the case of authorities other than judicial ones, a brief report must be drawn up and transmitted to the public prosecutor (Article 261-2 of the CCP).

Under the Portuguese Criminal Code, the qualifications of “torture” and “cruel, degrading or inhuman treatment” apply to any act whereby a victim is caused acute physical or mental suffering or extreme physical or mental fatigue or natural or synthetic chemical substances, drugs or other means are used to limit his or her ability to make decisions or freely express his or her will (Article 243-3 of the Criminal Code).

It is a criminal offence to inflict this type of treatment for the purposes, in particular, of obtaining confessions, testimony, statements or information from a person, punishing him or her for an act he or she or a third party has committed or is presumed to have committed, or intimidating him or her or a third party. On being informed of such treatment the public prosecutor is required to open an investigation (Article 243-1 of the Criminal Code and Articles 48 and 262 of the CCP).

b. Where it becomes clear that an arrest was made on the basis of mistaken identity or in circumstances other than those where it is lawfully permissible, or that the arrest measure

is no longer necessary, the public prosecutor is required to order the immediate release of the person concerned (Article 261-1 & 2 of the CCP).

Where a person's detention is arbitrary because the period of custody provided for by law or in a judicial decision has been exceeded, the public prosecutor submits an application to the judge, who must order the immediate release of the person concerned.

5. Except in situations where the presence of a lawyer appointed by the person concerned or by the court is compulsory, there is nothing to prevent a person deprived of his or her liberty from meeting a public prosecutor outside the presence of a third party. In practice, however, the prosecutor is accompanied by an official responsible for producing a record of the interview.

6. Complaints lodged with the public prosecutor and criminal proceedings against prison staff are dealt with no differently from any other criminal case triggered by other kinds of complaint or offence, taking into account the perpetrator and/or victim of the offence.

Complaints about non-criminal acts may be made to the prison governor, prison staff or prison inspectors or to the court dealing with enforcement of sentences during the monthly visits of places of detention (Articles 138 and 139-1 of Legislative Decree 265/79 of 1 August).

Judges responsible for the enforcement of sentences are required to endeavour to settle prisoners' complaints with the prison governor (Article 139-2 of Legislative Decree 265/79 of 1 August).

If there is disagreement between the judge and the prison governor, the matter is examined by a technical board taking decisions on a majority basis, against whose decisions an appeal lies to the Minister of Justice (Article 139-3 & 4 of Legislative Decree 265/79 of 1 August).

7.a. It is not for the public prosecutor to control conditions of deprivation of liberty in either police stations or prisons. The law solely requires him or her to ensure that the implementation of detention or compulsory treatment measures is lawful and to propose inspections by the relevant bodies or departments and the taking of the necessary disciplinary or criminal-law measures.

Police stations are supervised by the General Inspectorate of Internal Affairs, and prisons by the General Directorate of Prisons.

b. See above.

c. Since it is a central monitoring, supervisory and technical support service of the Ministry of the Interior, the General Inspectorate of Internal Affairs enjoys technical and administrative autonomy and operates under the direct authority of the minister. Its supervisory activities extend throughout national territory and encompasses all

departments under the direct authority of the Ministry of the Interior (Legislative Decree 222/95 of 11 September, as amended by Legislative Decree 154/96 of 31 August and Legislative Decree 3/99 of 4 January).

Prisons attached to the Ministry of Justice are supervised by an inspectorate which is part of the central services of the General Directorate of Prisons (Legislative Decree 265/79 of 1 August, as amended by Legislative Decree 49/80 of 22 March and Legislative Decree 414/85 of 18 October).

8. The public prosecutor is competent to request the enforcement of custodial sentences and orders for detention in treatment units (Article 469 of the CCP).

Where a defendant is sentenced to prison, the public prosecutor transmits a copy of the judgment, within five days of its becoming final, to the court dealing with the enforcement of sentences and the prison and rehabilitation services. If parole is possible, he also transmits the dates when half and two-thirds of the sentence will have been served (Article 477-1 & 2 of the CCP).

The public prosecutor is also required to calculate the duration of the sentence in order to determine the date when the prisoner should be released (Article 479 of the CCP).

In the case of an order for detention in a treatment unit the public prosecutor transmits a copy of the judgment, within five days of its becoming final, to the court dealing with the enforcement of sentences, the prison and rehabilitation services and the institution where the person is to receive treatment (Article 502 of the CCP).

In proceedings of the court dealing with enforcement of sentences members of the public prosecution service are required to look after the interests entrusted to them and have to be heard on all matters concerning them. They can also seek any clarifications they may require from prison governors, directors of institutions and the social counsellors attached to the court dealing with enforcement of sentences (Article 11-1 of Legislative Decree 783/76 of 29 October).

ROMANIA

1. Decisions of the court declared final and enforced according the provisions of Art. 418 and the following ones from the Criminal Procedure Code.

2. All the decisions related to the themes of this questionnaire.

   Therefore, according to Art. 68 of Law no. 304/2004 on judicial organization, the prosecutor exerts, in the terms laid down by law, the legal action against decisions of the court which he/she finds not grounded and not legal.

3. According to Art. 63 let. j of Law no. 304/2004 on judicial organization, one of the Public Ministry's duty is to check that law is respected in the places of preventive detention.

   These are the arrest places in the subordination of the Police General Directorate of Bucharest, respectively the arrest places of the county police inspectorates.

   The order no. 52/1996 issued by the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice provides for the periodicity (weekly) and the objectives (personal files of the accused persons and defendants brought to arrest, medical assistance, prompt notification of the prosecutor on cases of food refuse, conditions of preventive detention, disciplinary sanctions a.o.).

4. Those arising from the fact that both illegal deprivation of liberty (Art. 189 Cr.C) and submission to ill treatment (Art. 267 Cr.C), respectively torture (Art. 267/1 Cr.C.) are distinctly incriminated.

5. Yes, in the context of those mentioned at Answer no. 3.

6. The common procedure (Art. 222 from the Criminal Procedure Code).

7. a) Yes, in the context of those mentioned at Answer no. 3.

   b) Towards respecting the law. In case there are deficiencies or violations of law, towards removing them and recovering the legality.

   c) Those provided for by Order no. 52/1996 issued by the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice.

8. None. According to Art. 6 par. 1 of Law no. 301/2004, execution of sentences is performed under the supervision, control and authority of the judge delegated in this regard.

Also, according to Art. 6 par. 3, the judge delegated for execution of sentences supervises and controls their legality.

Finally, according to common legal norms (Art. 419 of the Criminal Procedure Code), taken over in the internal court regulations, the judge has decisional attributions related to any incident arisen during the execution of the sentence and has to solve all situations regarding execution measures and other dispositions included in the criminal decisions.

RUSSIAN FEDERATION

1) What kinds of decisions on deprivation of liberty exist in your country? (Please describe the legal basis for them and list the authorities empowered to take them.)

Pursuant to valid legislation an individual may be deprived of liberty on the grounds of the court's sentence or judicial decision on selection of a measure of restraint in the form of custodial detention.

No person may be subjected to detention for more than 48 hours without a relevant decision of the court. Decision to deprive a person of his or her liberty is passed in the form of the court's sentence, judicial ruling on selection of a measure of restraint in the form of custodial detention or record of detention to be issued by the body or person conducting inquiry, the investigator or the public prosecutor.

CONSTITUTION OF THE RUSSIAN FEDERATION

Article 22

1. Each person shall enjoy a right for freedom and personal inviolability.

2. Arrest, taking into custody and custodial detention shall be permitted only on the grounds of judgment. Until such judgment is taken, no person may be detained for more than 48 hours.

RUSSIAN FEDERATION CODE OF CRIMINAL PROCEDURE

Article 10. Inviolability of Personality

1. No one may be detained under suspicion of having committed crime or taken into custody in absence of lawful grounds for this as specified by the present Code. No person may be subjected to detention for more than 48 hours without a relevant decision of the court.

2. The court, the public prosecutor, the investigator, the body or person conducting inquiry are obliged to immediately release any person unlawfully detained or deprived of liberty or unlawfully placed into medical or psychiatric stationary institutions or held in custody for a period exceeding time term provided for in the present Code.

3. A person in whose respect custodial detention has been selected as a measure of restraint as well as a person who has been detained upon suspicion of having committed crime shall be kept under conditions which exclude threat to the health and life.

Article 92. Procedure of Apprehension of Suspect

1. After delivery of a suspect to the body of inquiry, the investigator or the public prosecutor, within 3 hours a record must be issued where an entry shall be made that the rights stipulated in article 46 of the present Code have been explained to the suspect.

2. The following shall be stated in the record: date and time of its issuance, date, time, grounds and motives of apprehension of the suspect, results of personal search and other circumstances of apprehension. The record of apprehension shall be signed by the person who has compiled it and the suspect.

3. The body or person of inquiry or the investigator are obliged to advise the public prosecutor in written regarding apprehension within 12 hours after the apprehension of the suspect.

4. The suspect must be interrogated in compliance with the requirements of part 2 article 46, articles 189 and 190 of the present Code. Before the beginning of interrogation the suspect, upon his or her request, is granted a private and confidential meeting with his defence counsel. In case of necessity to perform procedural measures with the suspect's participation, the person conducting inquiry, the investigator or the prosecutor may limit the duration of such meeting exceeding 2 hours with mandatory preliminary notification to this end of the suspect and his or her defence counsel. In any case, the duration of such meeting may not be less than 2 hours.

Article 108. Taking into Custody

1. Taking into custody as a measure of restraint shall be applied on the basis of judicial decision in respect of a person suspected or accused of having committed offences for which the criminal law specifies punishment on the form of deprivation of liberty for a period exceeding two years in case of impossibility to apply other, milder measure of restraint. In case of selection of measure of restraint in the form of custodial detention, specific factual circumstances must be specified in the judge's ruling on the grounds of which the judge has passed such decision. In exceptional occasions such measure of restraint may be chosen in respect of a person suspected or accused of having committed offences for which the criminal law specifies punishment on the form of deprivation of liberty for a period less than two years in case of availability of one of the following circumstances:

1) the suspect or the accused does not have a permanent place of residence in the territory of the Russian Federation;
2) his or her personality has not been identified;
3) he or she committed a breach of measure of restraint selected earlier;
4) he absconded from the bodies of preliminary investigation or the court.

2. Taking into custody as a measure of restraint may be applied to the suspect or the accused who is a minor in case he or she is suspected or accused of having committed grave or especially grave crime. In exceptional occasions such measure of restraint may

be chosen in respect of a minor suspected or accused of having committed an offence of average gravity.

3. In case of necessity to select custodial detention as a measure of restraint the public prosecutor as well as the investigator and the person conducting inquiry upon the consent of the public prosecutor initiate a respective motion to the court. In the decision on such motion motives and grounds shall be stated in virtue of which the necessity of taking the suspect or the accused into custody has arisen and the selection of any other measure of restraint is impossible. The materials that confirm reasonability of the motion shall be adduced to the decision. If motion is initiated in respect of the suspect apprehended following the procedure specified in articles 91 and 92 of the present Code, the decision and the specified materials shall be submitted to the judge not later than 8 hours before the expiration of detention period.

4. Decision on institution of the motion on selection of custodial detention as a measure of restraint shall be subject to individual consideration by a judge of district court or of military court of corresponding level with participation of the suspect or the accused, the public prosecutor, the defence counsel if the latter participates in the criminal case, as at the place of performance of preliminary investigation or the place of apprehension of the suspect within 8 hours after the materials were submitted to the court. The suspect apprehended following the procedure specified in articles 91 and 92 of the present Code shall be delivered to the court's hearing. A lawful representative of the suspect or the accused who is a minor, the investigator and the person conducting inquiry shall be entitled to take part in the court's hearing. Non-appearance of the parties timely notified of the time of the court's hearing shall not be an impediment for consideration of the motion, save of the occasions of non-appearance of the accused.

5. Adoption of the court's decision on selection of measure of restraint in the form of custodial detention in absence of the accused shall be permitted only in case the accused has been internationally declared 'wanted'.

6. In the beginning of hearing the judge shall announce what motion is to be considered and explain their rights and duties to the persons who attend the court's hearing. Then the public prosecutor or upon his or her instruction the person who initiated motion shall substantiate it, after this other attendees of the court's hearing shall be heard.

7. Having considered the motion, the judge shall take one of the following decisions:

1) on selection of measure of restraint in the form of custodial detention with respect to the suspect or the accused;
2) on denial of the motion;
3) on prolongation of detention period. Prolongation of detention period shall be admitted upon condition of judicial acknowledgement of lawfulness and reasonability of detention for a period not more than 72 hours after the time of adoption of the court's decision on the motion of one of the parties in order such party presents additional proof of reasonability or non-reasonability of selection of measure of restraint in the form of

custodial detention. The date and time by which the detention period is prolonged shall be specified in a decision on prolongation of detention period.

7.1. Upon denial of the motion on selection of measure of restraint in the form of custodial detention in respect of the suspect or the accused, the judge, upon his or her own initiative, shall be authorized, in case of existence of circumstances provided for by article 97 of the present Code and subject of availability of grounds specified in article 99 of the present Code, to select measure of restraint in the form of bail or home arrest.

8. Decision of the judge shall be forwarded to the person who initiated the motion, the public prosecutor, the suspect or the accused and shall be subject to immediate execution.

9. Repeated application to the court with a motion on taking into custody of the same person in relation to the same criminal case after the judge denied this measure of restraint shall be possible only after emergence of new circumstances which substantiate the necessity to take the person into custody.

10. If the issue on selection of measure of restraint in the form of custodial detention in respect of a defendant arises in the court, a decision to this end shall be passed upon a party's motion or upon the court's own initiative, and a ruling or decision is to be passed in this connection.

11. Decision by the judge on selection of measure of restraint in the form of custodial detention or on denial to do so may be complained against to a higher court following cassation procedure within 3 days after adoption of decision. The court of cassation level shall decide on complaint or representation within 3 days after their submission. A decision of the court of cassation instance on repealing the trial judge's decision on selection of measure of restraint in the form of custodial detention shall be subject to immediate execution. The decision of the court of cassation instance may be complained against in the order of supervision according to the rules specified by chapter 48 of the present Code.

12. A person who conducts the proceedings of criminal case shall immediately notify any of close relatives of the suspect or the accused, and in their absence – other relatives, or in case of detention of a military serviceman – the command of military unit, regarding the place of his or her detention or change of the place of his or her detention.

13. Vesting of the same judge on constant basis with powers stipulated by this article shall not be permitted. These powers shall be distributed among the judges of the respective court in compliance with the principle of distribution of criminal cases.
14. Requirements of article 95 of the present Code shall be applied to the accused being held in custody.

2) Which decisions are subject to review/supervision by the public prosecutor?

Decisions by the body or the person conducting inquiry, or the investigator on taking the accused into custody; decisions on selection of measure of restraint in the form of custodial detention (the public prosecutor may repeal it if it is not further necessary or to alter it to less strict one); decisions on placement into forensic psychiatric institution.

In compliance with the provisions of criminal procedural legislation the public prosecutor shall be entitled to challenge, following the procedures of appeal or cassation, the court's sentence in criminal case which provides for punishment in the form of deprivation of liberty or to request for review of the court's sentence, ruling or decision which have entered into legal force.

Prosecutorial supervision shall be applied to all orders, directives, decisions of administrations of detention facilities, remand prisons, correctional and labour institutions which execute punishments and coercive measures fixed by the court including decisions by the administration on imposition of disciplinary penalties on detained or convicted persons including decision on placement of a person to penalty isolation cells, cell-type premises, strict-regime cells, solitary cells and disciplinary isolation facilities.

3) Is the public prosecutor empowered to enter places of detention? What kind of places or institutions, how often, and with or without the permission of other authorities?

Yes, he is empowered to do so.

Pursuant to art. 33 of the Federal Law On the Public Prosecutor's Office of the Russian Federation, supervising law abidance, the public prosecutor is entitled, to enter, at any time, any detention facilities, remand prisons, correctional and labour institutions which execute punishments or measures of coercive nature fixed by the court.

Such visits do not require any permissions from any other authorities.

4) a. What kind of measures could be taken by the public prosecutor in case of unlawful deprivation of liberty or in case of torture or inhuman or degrading treatment or punishment?

Pursuant to art. 33 of the Federal Law On the Public Prosecutor's Office of the Russian Federation the public prosecutor or his (her) deputy shall be obliged to immediately release, by his (her) decision, any person who is kept in institutions which execute punishments and measures of coercive nature or who has been subjected to apprehension, preliminary detention or placement to forensic psychiatric institutions without lawful grounds.

Simultaneously with this, the public prosecutor shall be entitled to impose disciplinary sanctions unlawfully imposed on persons taken into custody or convicted, and to

immediately release them by his (her) decision from penalty isolation cell, cell-type premises, strict regime cell, solitary cell or disciplinary isolation facilities.

The public prosecutor basing upon the nature of violation of law makes submission on elimination of breaches of law or in case of existence of sufficient data indicating that the committed violations of rights and freedoms of a person and a citizen bear features of offence institutes criminal proceedings and takes measures for organization of investigation and bringing guilty persons to criminal liability.

b. Is the public prosecutor empowered to take an immediate decision in these cases?

Yes, he (she) is empowered and obliged to do so in virtue of the above provisions of law.

5) Is it possible for a person deprived of his/her liberty to meet the public prosecutor personally without any control by a third party?
Can that person maintain contact with the public prosecutor without any control by a third party (and vice versa)?

It is not directly stated in the law that a person deprived of his/her liberty may meet the public prosecutor without any control by a third party. However, this stems from the powers of the public prosecutor to enter, without hindrance and at any time, without permission from any other authorities, any detention facilities, remand prisons, correctional and labour institutions which execute punishments or measures of coercive nature fixed by the court.

Possibility of a person deprived of liberty to communicate with the public prosecutor without any control of a third party is actually ensured by the provision fixed in the Russian Federation Law On Criminal Procedure and the Federal Law On Custodial Detention of Persons Suspected and Accused of Having Committed Crimes that correspondence of persons deprived of liberty with the public prosecutor shall not be subject to censorship.

6) Please describe the procedure for complaints against prison staff.

Pursuant to art. 17 of the Federal Law On Custodial Detention of Persons Suspected and Accused of Having Committed Crimes and art. 12 and 15 of the Criminal Executive Code of the Russian Federation persons suspected or accused of having committed crimes and kept in custody, as well as those who have been sentenced to deprivation of liberty are entitled to apply with their proposals, statements, requests and complaints against the administrations of detention facilities or institutions or bodies executing punishments to superior authorities of management of such institutions or to the court or the bodies of public prosecution.

Pursuant to art. 21 of the above law and art. 15 of the Criminal Executive Code of the Russian Federation proposals, statements, requests and complaints of persons

suspected or accused of having committed crimes and kept in custody, as well as those who have been sentenced to deprivation of liberty addressed to the authorities which perform supervision and control over the activities of detention facilities or institutions or bodies executing punishment (including addressed to the public prosecutor), are forwarded through the administration of a place of detention.

The said proposals, statements, requests or complaints are not subject to censorship and not later than within 1 day (excluding day-offs and holidays) are forwarded to appropriate official persons in a sealed package. No persecution in any form of persons who filed their complaints shall be permitted. Official persons of the places of detention who are guilty of such persecution shall bear responsibility in compliance with the law.

7) a. Does the public prosecutor have authority to control and react to the conditions of deprivation of liberty?

Yes. According to art. 51 of the Federal Law On Custodial Detention of Persons Suspected and Accused of Having Committed Crimes the Prosecutor General of the Russian Federation and the public prosecutors subordinate to him perform supervision over compliance with laws in the places of detention of suspects and the accused in accordance with the Federal Law On the Public Prosecutor's Office of the Russian Federation.

In art. 32 of the Federal Law On Custodial Detention of Persons Suspected and Accused of Having Committed Crimes it is specified that the subject of supervision in the exercise of supervision over compliance with the laws of the administrations of bodies and institutions which execute punishments and measures of coercive nature fixed by the court as well as by the administration of the places of detention of apprehended and detained persons shall be the observance of the rights and obligations of detainees, convicted persons and persons subjected to measures of coercive nature, the order and conditions of their imprisonment as established by the legislation of the Russian Federation.

b. How should the public prosecutor react?

Pursuant to art. 33 of the Federal Law On the Public Prosecutor's Office of the Russian Federation, in the course of supervision over law observance by the administrations of the places of detention or imprisonment the public prosecutor is authorized to demand that the administrations should create conditions which ensure the rights of detainees, to submit warnings, protests and representations, to institute criminal cases or proceedings on administrative infringements. The execution by the administration of institution of decision which has become the reason for protest shall be suspended until such protest is duly considered.

c. Does domestic law in your country prescribe any special provisions for such situations?

Yes. All issues in such situations are regulated by section III of the Federal Law On the Public Prosecutor's Office of the Russian Federation and the Federal Law On Custodial Detention of Persons Suspected and Accused of Having Committed Crimes.

8) What is the role of the public prosecutor in the execution of sentences relating to persons deprived of their liberty?

Pursuant to art. 33 of the Federal Law On the Public Prosecutor's Office of the Russian Federation, in the course of exercise of his/her powers the public prosecutor shall familiarize himself/herself with documents and records on the grounds of which individuals were apprehended, taken into custody, convicted or subjected to measures of coercive nature; demand that the administration should create conditions which ensure the rights of detainees, convicted persons and persons subjected to measures of coercive nature; check orders, directives, resolutions of the administration as to their compliance with the legislation of the Russian Federation; demand explanations from official persons; submit protests and representations; institute criminal cases or proceedings on administrative infringements; repeal disciplinary sanctions unlawfully imposed on detained and convicted persons, release them immediately by his decision from penalty isolation cell, cell-type premises, strict regime cell, solitary cell or disciplinary isolation facilities.

In compliance with the provisions of criminal, criminal procedural and criminal executive legislation the public prosecutor is entitled to take part in the consideration of issues on replacement of custodial punishment, on conditional and pre-term release from serving punishment in the form of deprivation of liberty, on application of amnesty to persons deprived of their liberty, and on delay in serving punishment in the form of deprivation of liberty granted to convicted pregnant women and convicted women with infants.

SLOVAKIA

1) Pursuant to the Code of Criminal Procedure Act no. 301/05 Coll., as amended by the Act no. 650/2005, Coll., only a court has the power to impose the sentence of deprivation of liberty by means of a judgment or of a criminal order. Under the Section 46, of the Code of Criminal Procedure, the sentence of deprivation of liberty may be imposed as a punishment for a defined/specified period of time, for 25 years at maximum, or as a life sentence. While rendering the judgment, the court shall decide about a place where the sentence of deprivation of liberty shall be served. Namely, the sentence of deprivation of liberty may be executed in different establishments for execution of sentences of deprivation of liberty that have either minimum, either medium either maximum level of severity regime.

2) Under the above mentioned Code of Criminal Procedure, the prosecutor has the right to file an appeal against a judgment of a court of 1st instance in which the sentence of deprivation of liberty has been imposed. The appeal may be either in favor either to the prejudice of the indicted person and it may be filed even against the indicted person's will.

Pursuant to the Section 371, par. 1, letter h) of the Code of Criminal Procedure the General Prosecutor may file an appellate review against a judgment of a court of 1st instance the decision of which has become valid upon decision made by the court of 2nd instance (court of appeal) – such appellate review is called extraordinary remedial measure.

The prosecutor may file a motion for a new trial to the court either against the convicted person either in favor of the same.

The prosecutor may file a protest against the criminal order issued by the court of 1st instance.

3) Pursuant to the Section 18, Act no. 153/2001 on Public Prosecution Service (hereinafter: "PPS"), the Prosecution Service i.e. different prosecutors have the duty to supervise over the observance of laws and other generally binding legal regulations in the places where the people are kept in custody, in places where the sentences of deprivation of liberty are served, or the military disciplinary punishments are carried out, as well as in the institutions of protective in-patient treatment, protective young offenders rehabilitation and to supervise whether the laws and other generally binding regulations are observed in the police cells.

The prosecutor has the right to enter these places in any time and with no specific permission.

4 a) Pursuant to the Section 18, par. 2, PPS, the prosecutor has the duty to:

- carry out checks
- to issue a written order to immediately release a person kept unlawfully, or without court's decision or in contrary with the court's decision or contrary with the entitled state body
- to file a written order to cancel or to suspend an execution of a decision, order or measure of the bodies that administer these places; the prosecutor has also the duty to supervise over timely service to the respective bodies of the complaints and notices made by the persons kept there.

While carrying out the supervisory duties, the prosecutor is empowered:

- to visit these places in any time
- to inspect the documents and files in relation to the persons kept there
- to talk with these persons with no third persons attendance
- to check on whether the decisions and measures taken by the administering bodies are in accordance with the laws and other legal regulations
- to request the administration employees any explanations, files and decisions concerning the persons deprived of their liberty.

The employees that are in charge of the administration of these institutions are obliged to carry out the prosecutor's orders and to make it possible the prosecutor's duties and powers are fully performed.

5) In any time, the individual has the right to request for personal meeting with the prosecutor whilst the exchange of mail with the prosecutor has to be carried out without any interference of a third person as well.

6) Both accused and convicted person may file a complaint against the prison's staff. The complaint shall be sent either directly to the General Directorate of the Prison and Judicial Guards either to the Director of a specific institution for execution of custody or of sentences.

7) Partial reply to this question was given in question 4; by means of his powers, the prosecutor has the possibility to react on the conditions of the custody or of execution of sentence actually in relation to every accused and convicted person's activities (accommodation, food, leave, mail etc.).

As for health care, there is a specific department at the General Directorate of the Prison and Judicial Guards that is directly accountable to the Slovak Ministry of Health for its activity.

8) The reply was given at the item no. 4 and 5 (the question is very general).

SLOVENIA

1) What kinds of decisions on deprivation of liberty exist in your country? (Please describe the legal basis for them and list the authorities empowered to take them.)

Deprivation of freedom: police may deprive a person of freedom (if there exists at least one of the reasons prescribed for remand in custody), but such a person is to be taken before an investigative judge without delay.

Deprivation of freedom and detention: exceptionally, police may deprive a person of freedom and detain him if reasons exist for suspicion that he has committed a criminal offence liable to public prosecution, if detention is necessary for identification, checking of alibi, the collecting of information and items of evidence for the criminal offence in question, and if the reasons for the remand in custody exist. Such a detention is to last for 48 hours the longest and if it lasts more than 6 hours, a written decision is to be given to the detainee, explaining the grounds for the detention.

Remand in custody: it can only be ordered by a judge (investigative judge) and against a person suspected of a criminal offence, if:

- He is hiding, if his identity cannot be established or if other circumstances exist which point to the danger his fleeing,
- If there are grounds for concern, that he may destroy evidence or if circumstances indicate that he will obstruct the investigation by influencing witnesses, accomplices or people harboring him,
- If specific reasons warrant concern that he will repeat the criminal offence, to complete carrying out an attempted offence, or commit an offence he has threatened to commit

2) Which decisions are subject to review/supervision by the public prosecutor?

Police are obliged to inform the prosecutor of any deprivation of freedom and the prosecutor may give the police binding instructions regarding the deprivation of liberty.

The deprived person has the right to appeal the decision regarding his deprivation of liberty to the court

3) Is the public prosecutor empowered to enter places of detention? What kind of places or institutions, how often, and with or without the permission of other authorities?

The court supervises the execution of the deprivation of freedom.

4) a. What kind of measures could be taken by the public prosecutor in cases of unlawful deprivation of liberty or in cases of torture or inhuman or degrading treatment or punishment?

In such cases, the prosecutor has no special powers, other than those for prosecuting any other criminal offence liable to public prosecution.

b. Is the public prosecutor empowered to take an immediate decision in these cases?

Yes, but in scope as described in point 4a

5) Is it possible for a person deprived of his/her liberty to meet the public prosecutor personally without any control by a third party?
Can that person maintain contact with the public prosecutor without any control by a third party (and vice versa)?

The judge has such powers, but not the prosecutor.

Please describe the procedure for complaints against prison staff.

The person in custody can submit a complaint against prison staff to the judge, who is required to regularly (at least once a week) visit the prison and may speak with detainees alone during these visits.

7) a. Does the public prosecutor have authority to control and react to the conditions of deprivation of liberty?

No

b. How should the public prosecutor react?

/

c. Does domestic law in your country prescribe any special provisions for such situations?

Besides the activities described under point 6, the Ombudsman can also unexpectedly visit and check facilities where detainees are kept.

8) What is the role of the public prosecutor in the execution of sentences relating to persons deprived of their liberty?

None

SPAIN

1. What kinds of decisions on deprivation of liberty exist in your country?
(Please describe the legal basis for them and list the authorities empowered to take them.)

In regarding to criminal proceedings we must distinguish between judicial decisions and police measures.

a. The police can detain a person that has committed an offence under the basis established in the Criminal Procedure Act (section 492); the person detained has the fundamental rights (Miranda warning) established by our Constitution (section 17) and the Criminal Procedure Act (section 520), that must be respected. The maximum period of police detention is seventy two hours.

b. The judges can take a preventive detention measure awaiting trial. This measure is exceptional in our law and only may be adopted when the legal requirements coincide (section 502 and 503 of Criminal Procedure Act). The preventive detention has a maximum period that is different according to the seriousness of the offence. It is possible to extend the ordinary period (one or two years), until a maximum of eighteen months or four years).

The judges can pass a custodial sentence after the trial according to the Criminal Act.

c. It is possible to take other kinds of decisions on deprivation of liberty with regard to the immigration law. The Immigration Act 4/2000, 11 January, provides in some cases the possibility to take a confinement measure for illegal residents (section 62 Immigration Act). This measure is proposed by the administrative authorities, but the judicial approbation is required; the maximum period possible for this kind of measure is forty days.

2. Which decisions are subject to review/supervision by the public prosecutor?

In the three cases mentioned previously (police detention, judicial decisions on deprivation liberty and confinement measures for illegal residents), the Public Prosecutor is empowered to review and supervise the measures, to undertake legal actions or appeals. It is very important to underline that the preventive detention and the custodial sentence need the previous petition by the public prosecutor or the private prosecution.

3. Is the public prosecutor empowered to enter places of detention? What kind of places or institutions, how often, and with or without the permission of other authorities?

The public prosecutor is empowered to enter at any time the centers of detention placed in his jurisdiction and does not need the permission of others authorities on the basis of

the Organic Statute of the Public Prosecution Service (section 4.2 50/1981, 30 December Act).

4. a. What kind of measures could be taken by the public prosecutor in case of unlawful deprivation of liberty or in case of torture or inhuman or degrading treatment or punishment?

The public prosecutor can give notice of appeal against unlawful deprivation of liberty adopted by judges.

If there are cases of unlawful detention, or cases of torture or inhuman or degrading treatment by police or administrative authorities in charge of the people deprived of their liberty, the public prosecutor is empowered to promote the habeas corpus before the judge. On the other hand, if the conduct is an offence, the public prosecutor has to bring a criminal action against the liable.

b. Is the public prosecutor empowered to take an immediate decision in these cases?

Yes he is, but he can not release the person directly.

5. Is it possible for a person deprived of his/her liberty to meet the public prosecutor personally without any control by a third party? Can that person maintain contact with the public prosecutor without any control by a third party (and vice versa)?

Yes this is possible in both cases.

6. Please describe the procedure for complaints against prison staff.

The person deprived of his/her liberty can bring charges against prison staff, verbally or written, before the Director of the place of detention so that he adopts himself measures on his behalf or addresses the complaints to judicial authorities (judges or prosecutors) (section 50 of General Penitenciaria Act 1/1979, 26 September).

In our legal systems there exists the “Guardian Judge” who has competence for convicted persons with a custodial sentence. The convicted persons can bring their complaints before this judge (section 76 of General Penitenciaria Act 1/1979, 26 September).

7. a. Does the public prosecutor have authority to control and react to the conditions of deprivation of liberty?

In general the public prosecutor has to control that the preventive detention measures and the custodial sentences are executed under the law, and he has to make sure that the rights of the people deprived of liberty are respected. Mainly he has to control the respect of the deadlines of the preventive detention measures.

b. How should the public prosecutor react?

The public prosecutor should conduct the legal actions according to each case.

c. Does domestic law in your country prescribe any special provisions for such situations?

Yes it does.

8. What is the role of the public prosecutor in the execution of sentences relating to persons deprived of their liberty?

The public prosecutor has a very important role in the executions of sentences relating to persons deprived of their liberty.

The public prosecutor has to issue reports in different times during the execution of custodial sentences (ex: to approve settlement of custodial sentence or to grant the probation).

SWEDEN

1) What kinds of decisions on deprivation of liberty exist in your country?
2) Which decisions are subject to review/supervision by the public prosecutor?

There are three kinds of decisions on deprivation of liberty during a crime investigation (preliminary investigation):

1. detention
2. arrest
3. apprehension

Detention

The legal prerequisites for pre-trial detention are expressed in the Code of Judicial Procedure (RB) Chapter 24 Section 1-4. Anyone who is suspected to have committed a crime where the punishment carries a prison term of one year or more, can be detained if, considering the nature of the crime, the suspect's living conditions or any other circumstance, there is a risk that he or she will:

1. abscond or otherwise escape trial and punishment,
2. destroy evidence or otherwise hamper the investigation, or
3. commit further crimes.

If the committed offence carries a minimum punishment of two years or more the suspect shall be detained, unless it is evident that there are no grounds for such a measure.

Remand in custody is permitted only so far as the measure outweighs the damage and harm caused to the suspect or to any other conflicting interest.

If it may be feared that detention will cause serious harm to a suspect for reason of age, health status or similar factor, detention may only take place if adequate supervision of the suspect outside of detention cannot be arranged. The same rule applies to a woman who has recently given birth and it may be feared that her detention will bring serious harm to the child. If the suspect refuses to submit to supervision, he or she must be detained.

Remand is not permitted if it is likely that the offender will be sentenced only to fines. According to case law, pre-trial detention has to end if it is no longer likely that the actual imprisonment (taking only consideration the provisions on early release) will last longer than the period of the pre-trial detention.

Persons suspected of having committed crimes less serious than those mentioned above can be detained if their identity is unknown and they refuse to say their names or if they are foreigners who do not live in Sweden and can escape abroad.

When there is a lower degree of suspicion - not "probable cause" but merely ”reasonable cause” a pre-trial detention order may be given if it is of utmost importance that a suspect is detained until further investigations have been carried out. A detention based on such a lower degree of suspicion may only continue for one week after the detention decision.

Pre-trial detention can only be ordered by the court upon the request from the prosecutor.

Arrest

If there are grounds for detaining a person, he may be placed under *arrest* while awaiting the court's determination on the detention issue. Even in the absence of full case for detention, a person suspected of an offence may be arrested if it is of great importance that he be detained pending further investigation. Decisions concerning arrest are made by *the prosecutor*. The decision shall state the suspected offence and the grounds for arrest. (Chapter 24 Section 6 RB).

The maximum statutory time for arrest is four days. A request for a pre-trial detention order shall be made to the court the same day or, in extreme cases, by the end of the third day from the arrest. If the application for a detention order is not submitted within the prescribed time limits, the prosecutor shall rescind the arrest warrant immediately. (Chapter 24 Section 12 RB). When a request for a pre-trial detention order has been made, the court must on the same day or the following day hold a hearing to decide on the detention issue. In extreme cases such a hearing can be held later but it must be within four days of the suspect’s apprehension or issuing of the arrest warrant (Chapter 24 Section 13 RB).

Apprehension

If there are grounds for arrest, he or she may be apprehended. A police officer may in urgent cases, apprehend the suspect without an arrest warrant (Chapter 24 Section 7 RB).

If a person is observed in the act of committing or fleeing from an offence punishable by a prison sentence, he may be apprehended by *any citizen*. Similarly, anyone may apprehend a person wanted for an offence. The person apprehended shall be promptly turned over to the nearest police officer (Chapter 24 Section 7 RB). A police officer may subsequently bring the suspect to a police station for questioning as soon as possible by the police or a prosecutor.

The questioning may last up to six hours. In exceptional cases, a suspect may be held for another six hours. For persons under the age of 15, the respective time limits are three and six hours (Chapter 23 Section 9 RB). The suspect must be released unless he or she is subsequently *arrested* (Chapter 24 Sections 8 and 10 RB). Before a prosecutor has been informed of the deprivation of liberty, the decision on apprehension can be revoked by the *police authority*, if it is obvious that there is no longer reason to continue the detention. In immediate conjunction with the apprehension, the police officer who made the decision to apprehend can also reverse his decision.

Sentence by a court

A sentence by a court can, according to the Swedish Penal Code, include deprivation of liberty, such as imprisonment (Chapter 30), probation combined with imprisonment (Chapter 28 Section 3), closed juvenile care (Chapter 31 Section 1a) and forensic psychiatric care (Chapter 31 Section 3). It can also include measures on deprevation of liberty according to the rules on Committal to Special Care (Chapter 31).

Furthermore, if the person concerned is in detention when the court announces its sentence, the court shall determine whether he or she shall remain in detention pending the judgement entering into force (Chapter 24 Section 21 RB).

3) Is the public prosecutor empowered to enter places of detention? What kind of places or institutions, how often, and with or without the permission of other authorities?

The public prosecutor is empowered to enter places of detention. Persons who are awaiting trial are detained in remand prisons. The public prosecutor is enpowered to enter remand prisons whenever he or she wants to, without the permission of other authorities.

4) a. What kind of measures could be taken by the public prosecutor in case of unlawful deprivation of liberty or in case of torture or inhuman or degrading treatment or punishment?

As soon as word reaches the Public Prosecutor that an offence subject to public prosecution has been committed (such as those actions described in the question), a preliminary investigation is initiated. The Public Prosecutor or the police authority are obliged to initiate a preliminary investigation.

A decision to initiate a preliminary investigation is to be made either by the police authority or by the prosecutor. If the investigation has been initiated by the police authority and the matter is not of a simple nature, the prosecutor shall assume responsibility for conducting the investigation as soon as someone is on reasonably cause suspected of the offence. The prosecutor shall also take over the conduct of the investigation, if there special reasons so require.

Concerning other decisions on deprivation of liberty, see the answers on questions 1) and 2). It is the prosecutor who decides wheather the suspect shuld be prosecuted or not.

b. Is the public prosecutor empowered to take an immediate decision in these cases?

See answer 4) a. The prosecutor can decide upon coersive measures as described in the answers to questions 1) and 2).

5) Is it possible for a person deprived of his/her liberty to meet the public prosecutor personally without any control by a third party?
Can that person maintain contact with the public prosecutor without any control by a third party (and vice versa)?

Yes, a person deprived of his/her liberty has the right to meet the public prosecutor personally without any control by a third party. That person can also maintain contact with the Public Prosecutor without any control by a third party (and vice versa).

6) Please describe the procedure for complaints against prison staff.

If a crime has been committed, a person deprived of his/her liberty can report that to the police or the prosecutor (as mentioned above).

Futhermore, anyone can complain to the Parliamentary Ombudsmen (JO) if they believe that they or anyone else has received improper treatment from an authority and/or public official (e.g. prison staff).

The Parliamentary Ombudsmen (JO) are elected by the Swedish Riksdag (Parliament) to ensure that public authorities and their staff comply with law and other statutes governing their actions. The Ombudsmen evaluate and investigate complaints from the general public, make inspections of the various authorities and by conducting other forms of inquiry that they initiate themselves.

7) a. Does the public prosecutor have authority to control and react to the conditions of deprivation of liberty?
b. How should the public prosecutor react?
c. Does domestic law in your country prescribe any special provisions for such situations?

The court, upon the Prosecutor's recommendation, decides if remand prisoners shall have restrictions imposed on them, such as restrictions on having visitors and reading newspapers. However, the lawyer representing the prisoner always has the right to meet him in private. The Prosecutor is obliged to reconsider decisions on any restrictions, as soon a reason emerges. If there is no longer any reason for a specific restriction, or all restrictions, the Prosecutor shall abolish the restriction/restrictions immediately. Issues concerning restrictions are regulated by legislation and regulations.

8) What is the role of the public prosecutor in the execution of sentences relating to persons deprived of their liberty?

It is the task of the Prison and Probation Service´s task to implement prison sentences. The Public Prosecutor does not have any role in executing sentences relating to persons deprived of their liberty.

SWITZERLAND

Preliminary comment: in Switzerland there are 26 cantonal codes of criminal procedure, a federal code of criminal procedure and a military code of criminal procedure. A draft Swiss code of criminal procedure harmonising the cantonal and federal codes of criminal procedure will be submitted to the Federal Parliament in 2006; it should enter into force in 2010. The replies are essentially based on the federal criminal procedure now in force.

1. a) Pre-trial detention decisions taken by the Principal State Prosecutor of the Confederation, the federal investigating judge or the court concerned (sections 44 et seq. of the Federal Act on criminal procedure of 15 June 1934 (PPF)).

b) Judgments of criminal courts passing custodial sentences under Article 35 of the Swiss Criminal Code (CP).

2. a) Defendants in pre-trial detention may apply for release at any time (section 52, para. 1, PPF). In the event of refusal by the investigating judge or the Principal State Prosecutor, an appeal may be lodged with the complaints court of the Federal Criminal Court (section 52, para. 2 PPF).

b) The prosecution service of the Confederation has no general powers relating to the enforcement of sentences passed by the federal courts dealing with offences (in particular, the Federal Criminal Court). It is the cantons which execute the judgments delivered by these courts (section 240, para. 2, PPF).

The prosecution service of the Confederation has been delegated special restricted powers by the Federal Council. It may suspend or interrupt the execution of a custodial sentence where the prisoner's state of health or other special circumstances so require (section 242 PPF); it may also decide to release a prisoner on parole and postpone a convicted person's deportation for a trial period (Arts. 38, 45 and 55, para. 2 CP).

3. The Principal State Prosecutor is empowered to enter places of (pre-trial) detention without permission and as often as he or she wishes. These premises belong to the cantons.

4.a. He or she may decide of his or her own motion to release a prisoner whose pre-trial detention is no longer justifiable (section 50 PPF). Defendants in pre-trial detention may apply for release at any time. In the event of refusal by the investigating judge or Principal State Prosecutor, an appeal may be lodged with the complaints court of the Federal Criminal Court (section 52, para. 2 PPF).

The cantons enforce and supervise the serving of sentences (section 240, para. 2 PPF). They see that prisoners' rights and duties are respected.

b. The public prosecutor may decide of his or her own motion to release a prisoner whose pre-trial detention is no longer justifiable (section 50 PPF). Furthermore, the complaints court of the Federal Criminal Court is informed of all arrests or releases ordered during police inquiries or a pre-trial investigation.

5. Theoretically possible but, generally, the prosecutor does not meet prisoners personally. If the latter wish to challenge their detention, they may apply for release at any time and have a right of appeal in the event of refusal by the investigating judge or public prosecutor (see reply to question 4).

6. The procedure is governed by cantonal legislation as the cantons are responsible for executing detention measures. Remedies (complaint, appeal) exist via the administrative or judicial authorities.

7.a. No, because the cantons execute detention measures and this is a matter for their prison or sentence enforcement services, whose decisions can be appealed against in accordance with the cantonal codes of administrative procedure and justice.

b. See a above.

c. No, see a above.

8. None, in principle as the cantons execute sentences.
See, however, reply to question 2.b.

THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

1. According to Macedonian criminal procedure law, there are several types of deprivation of liberty: police arrest (max. 24 hours); detention during an investigation and ordered by investigative judge (max 3 months, with the possibility of an additional 3 months at the Criminal Council's request); detention for trial at the request of the Criminal Council of a competent court (max 1 or 2 years depending of the criminal offence); detention for ensuring the presence of accused person at the trial, ordered by the presiding judge (max. 30 days); prison term for sentenced prisoners.

2. The public prosecutor is the only party who can make proposals to the court to deprive someone of their liberty.

3. The public prosecutor is empowered to enter places of detention only with the permission of the competent court

4. The public prosecutor is obliged to investigate every report of torture or inhuman or degrading treatment or punishment. The prosecutor is also empowered to take immediate action because it is very important to collect all evidence for criminal procedure

5. Yes, it is possible for a person deprived of his liberty to meet the prosecutor personally and without any control by a third party.

6. The simplest procedure is to talk to one of the competent judges who visits detention centres once a week, or inviting someone else to come or writing to the public prosecutor.

7. The public prosecutor has the authority to control the conditions and react to the conditions of deprivation of liberty. The prosecutor can react to police authorities in case of police arrest, or to appeal unlawful court decision for deprivation of liberty.

8. According the law on the public prosecutors' office and the law for execution the criminal sanctions, the public prosecutor has a general obligation to supervise the execution of criminal sentences and give opinions regarding conditional release of prisoners before their sentences are up.

TURKEY

1) In the Turkish criminal system, the measures and decisions with regard to deprivation of liberty are apprehension, detention, arrest and sending to a prison with a view to executing sentences. However, presuming that the question is concerned with the decisions taken during the investigation & prosecution phases, the measures in Turkish criminal system can be simply named as apprehension, detention and arrest.

If a person is caught in the act, any person is authorized to arrest him/her provisionally, even without judicial order.

If not caught in the act, the public prosecution office and the police are authorized to make a provisional arrest if delay would cause harm and if the prerequisites for issuing an arrest warrant have been fulfilled. In the Directive of Apprehension, Arrest and Taking Statement issued according to Code 5271, "the circumstance where harm will occur if delayed" is defined as situations where there is the risk of evidence loss, the suspect's escape, or where the suspect cannot identify himself/herself.

In cases where the public prosecutor is entitled to prosecute only upon an application, provisional arrest shall also be admissible if an application has not yet been filed.

The authorized institutions and persons that can order the apprehension vary according to different situations. In principle, the warrant of apprehension is given by the judge of the court of peace. However, in cases where an accused or suspect who has been apprehended earlier flies from the detention house, the public prosecutor or the law enforcement bodies can issue an order of apprehension as well. If an accused has fled or is hiding in the phase of prosecution, the warrant of apprehension can only be issued by the judge himself either by his own discretion or upon the request of the public prosecutor. In any case, the person apprehended shall be brought before the public prosecution office without delay with the related investigation documents. The warrant of apprehension shall be revoked by the public prosecutor or the judge where the conditions required for the warrant of apprehension no longer exist.

Where the person brought before the public prosecutor is not released immediately, he/she may be arrested with a view to completing the investigation. In the Directive of Apprehension, Arrest and Taking Statement issued according to the Code numbered 5271, arrest is defined as "the provisional deprivation of one's liberty based upon the competence provided by law without giving harm to his/her health during the lawful period until he/she is released or brought before the competent judge with a view to completing the procedure concerning himself/herself."

The period of arrest, except from the circumstances where the difficulty to collect evidence occurs or the number of the persons accused requires, shall not exceed 24 hours. In the exceptional circumstances mentioned above, the arrest period may be renewed three times, for one day each time. In order to ensure the immediate release of the

accused, his/her spouse, legal representative or lawyer or the blood relatives from the first or second degree may apply to the judge of the Court of Peace against an order of the public prosecutor to extend the period of arrest. The judge shall examine the application on the file within 24 hours. After the release of a person when the period of arrest is completed or upon the decision of the judge of the Court of Peace, he/she cannot be arrested again with regard to the same accusation unless new and sufficient evidence has been collected. Nor can he/she be apprehended once more with regard to the same act without the decision of the public prosecutor. At the end of the period of arrest (In principle within 24 hours or, in exceptional cases, within the specific period -for one day in each time and maximum 3 days where the conditions and the requirements are fulfilled), the person arrested shall be brought before the competent judge and examined by him/her in the presence of a lawyer appointed to him/her.

The detention can only be decided by a judge in any case, without any exception.

The Turkish Criminal Procedure Code numbered 1412 was amended in order to comply with Article 19 of Constitution which had been amended with the Law dated 3 October 2001 and numbered 4079. The apprehension and arrest periods were limited for a reasonable time with this amendment.

The Criminal Procedure Code numbered 5271 which entered into force on 1 June 2005 took into account both the provisions of the Convention on Human Rights and periods accepted generally in compared law. Concerning the legal ground of the Code, it is underlined that Article 5 of the European Convention on Human Rights and its Protocol number 11 and their interpretation by the European Court of Human rights have been taken into account and efforts have been made to achieve the full compliance with the said Convention and the case law of the Court.

According to *ex-Article* 19 of the Constitution, the apprehended or the arrested shall be brought before the judge of the nearest Court within 48 hours and within 4 days in collective crimes, excluding the period necessary to travel. Article 91 of the new Criminal Procedure Code numbered 5271 has limited the period of 48 hours to 24 hours. Moreover, it has limited the period for travel to the nearest Court to maximum 24 hours (Article 94).

Furthermore, the Criminal Procedure Code has introduced specific arrangements for various types of crimes. To illustrate, one cannot be detained in cases where the maximum limit of the sanction provided for that crime is not more than one year or where only a fine can be imposed to the accused (Article 100). There is a specific arrangement with regard to detention of children as well. The Law pertaining to prosecution of children (Article 21 of he law numbered 5395) states that the perpetrator who is not more than 15 years old cannot be detained due to the crimes for which the maximum sanction stipulated is not more than 5 years. The warrant of arrest can only be issued by the judge and one can apply for remedy against this decision.

2) The apprehended shall immediately be brought before the public prosecutor. The public prosecutor decides on whether to release or arrest the apprehended brought before him/her. According to Article 17 of the Directive of Apprehension, Arrest and Taking Statement issued according to the Code numbered 5271, the apprehended shall be released by the law enforcement bodies upon the order of public prosecutor in the event that no reason has been detected to arrest him/her or that the purpose of the apprehension has disappeared.

Public prosecutor should arrest the apprehended if he/she does not release him/her. However, to decide the detention by public prosecutor depends on the requisite for investigation and the existence of the circumstantial evidence which strongly indicate that the apprehended committed the crime in question. Without considering that both of these requirements have been met, the public prosecutor cannot decide on detention.

3) In the Turkish criminal system, places for the suspected or the accused are called "detention rooms at police station and detention houses" and for the convicted prisoners they vary from "closed prisons to high security prisons, prisons for juveniles, prisons for children, prisons for women, centres for supervision and classification, training centres for children", all of them are under the administration and supervision of public prosecutors.

According to Article 92 of the Criminal Procedure Code numbered 5271, the Chief Public Prosecutor of each town/province or the public prosecutors designated by him/her, shall, as a requirement of their judicial task, control the detention rooms at police stations or detention houses, the conditions of these places and that of the persons staying there, the reasons and the period of their arrest, the records and the processes with regard to their arrest; and accordingly, note the conclusion in the Register for the Detainees.

The definition of the "detention rooms" mentioned in the Criminal Procedure Code is provided in the Directive of Apprehension, Arrest and Taking Statement. According to this definition, detention rooms are places which are established with a view to keeping the apprehended or the suspect until the completion of the work of bringing him/her before the public prosecutor. A parallel provision to Article 92 of Turkish Criminal Procedure Code also appears in this Directive stipulating the competence and duty of public prosecutors with regard to the supervision of detention rooms.

A specific rule for the supervision of detention rooms is set forth since they are placed in buildings of law enforcement bodies. However, the administration and supervision of all of the detention houses and custody institutions other than detention rooms belong directly to public prosecutors; they can arrange regular and instantaneous visits to there.

In practice, public prosecutors visit these institutions at least once a week, where necessary much more often, and make sudden visits without the knowledge of the staff of the institutions concerned.

4) a. In the indent (b) of the first paragraph of Article 6 of the Law on the Execution of Sentences and Security Measures, it is stipulated that one should serve the deprivation of his/her liberty as a consequence of his/her sentence under material and other conditions guaranteeing the respect for human dignity. Needless to say, this is also the case for the arrest/detention conditions of the suspect or the accused. In the Turkish Criminal Code, torture is penalized both by Article 94, 95 and 96; and unlawful deprivation of liberty is penalized by Article 109.

According to Article 160 of the Criminal Procedure Code, the public prosecutor shall investigate as soon as he/she is informed of an act of crime or he/she is aware of a fact which gives the impression that a crime has been committed. Accordingly, committing of the acts mentioned above constitute a crime; therefore the public prosecutor who has been informed of a crime or has the impression of it during his/her controls in detention houses or prisons can directly conduct an inquiry.

On the other hand, according to Article 161 of Criminal Procedure Code, public prosecutor can make all kinds of investigations by himself/herself or through judicial police and ask for information from any civil servant. He/she gives his/her orders to judicial police in writing or, in case of urgency, orally. The public prosecutor himself/herself investigates the acts of the civil servants who neglect or abuse their duties imposed by law or the requested tasks and works with regard to judiciary in line with law and the law enforcement bodies who neglect or abuse the oral and written orders of him/her.

b. In such cases, the public prosecutor is entitled to take a decision immediately himself/herself. He/she is also entitled to release a person who is unlawfully deprived of his/her liberty. He/she is entitled to start an inquiry against people who committed these crimes. There is no need to take the approval or complaint of the victim in such cases. The public prosecutor shall investigate by his own initiative.

Moreover, to decide on detention is facilitated in cases of torture or ill treatment (Article 94, 95 and 100 of Turkish Criminal Code) as a measure in order to dissuade committing these crimes.

5) As mentioned before, the apprehended shall be brought before public prosecutor without delay. In this first stage, the apprehended can contact the public prosecutor without intervention of a third party. If the apprehended is not brought before the public prosecutor without delay, as mentioned in the response to the fourth question, an investigation shall be started against law enforcement bodies according to Article 161 of Turkish Criminal Procedure Code. Apart from this, the person deprived of his/her liberty can contact directly the public prosecutor during his/her visits to detention rooms and houses.

As far as the sustainability of this contact in later stages is concerned; it should be noted that public prosecutors responsible for the administration and supervision of detention

houses and prisons make regular and instantaneous visits to there. During these visits, public prosecutors control the wards.

In practice, the persons kept there are brought together in a hall in small prisons and detention houses and are asked by the public prosecutor whether they have a problem or complaint with regard to the staff and conditions of those places. In bigger prisons, a public prosecutor is appointed in order to just to deal with the prison concerned. This public prosecutor and his/her deputies work in those prisons and visit the wards regularly and ask the detainees and the convicted persons whether they have a complaint. Moreover, in practice one can ask to contact the public prosecutor personally.

6) According to Article 106 of the Regulation for the Administration of Execution Institutions and Execution of Sentences dated 1967, the detainees and convicted are informed by the director of the institution both in written and in oral on the regime that will be applied to their treatment and training, discipline rules, the procedure on asking for information and complaining, their rights and obligations, information on adopting themselves to the conditions of life in prison.

The detainees and convicted can express their wishes and complaints to the director of the institution, his/her competent representatives, the Public Prosecution Office or the Ministry of Justice. Their requests or complaints shall be forwarded in a sealed envelope to the institution concerned to be examined without delay.

Apart from this written procedure, complaints can be made orally to public prosecutors during their visits.

In practice, a locked box is provided in these institutions in order to allow the person who wishes to make a complaint to forward his/her complaint to the competent authority. Solely the competent public prosecutor possesses the key of these boxes. The prosecutor responsible opens these boxes during his/her regular visits. He/she will deal with the complaint and meet its requirements.

7) a. With regard to detention rooms;

As mentioned above, according to Article 92 of the Criminal Procedure Code numbered 5271, the Chief Public Prosecutor of each town/province or the public prosecutors designated by him/her, controls the detention rooms at police station or detention houses, the conditions of these places and of the persons staying there, the reasons and the period of their detention, the records and the processes with regard to their detentions, and accordingly note their conclusion in the Register for the Detainees.

With regard to prisons;

According to Additional Article 1 of the Regulation for the Administration of Execution Institutions and Execution of Sentences dated 1967, the prisons are under supervision of public prosecutor from the point of view of ensuring the discipline and order in prisons

and that they are being administrated in line with the laws, regulations, directives and guidelines of the Ministry of Justice.

b. During his/her regular or instantaneous visits, the public prosecutor shall control the obedience to laws, regulations, directives and guidelines. The rules for appropriateness of conditions of prisons to the health, heating, maintenance are stipulated in the said Regulation. During the visit, public prosecutor shall notify the defects and shortcomings he/she observed in the Register and take the necessary measures to remedy them.

c. There is no specific measure other than the ones mentioned in response to the question of (a) and (b).

8) The execution of the sentences is directly within the tasks of public prosecutors. According to Article 5 of Law on Execution of Sentences and Security Measures, the Court shall transmit the final decision involving a sentence to the Chief Public Prosecution Office. The execution of the sentence is followed up and supervised by public prosecutors.

The acceptance of the convicted to the prisons, register, sending to the right penitentiary institutions for the execution, the notification to his/her relatives and the supervision of the conditions of penitentiary institutions dealt with by the public prosecutor.

A document is given to the convicted accepted to an execution institution indicating the date he/she is taken there, the length of the period of sentence, the date of release and that to which final decision it belongs. The ones who have a sentence are sent to execution institutions upon an order of the Chief Public Prosecution Office. The Chief Public Prosecution Office controls the exercise of the right for prison leave and deals with the calculation of the time for conditional release.

However, whether the time for conditional release has been calculated correctly and the service of the sentence completely is decided by the Court. In other words, although the execution of the sentence is realized by the administrative bureaus, the final decision on execution is given by the judge. There are special judges dealing with execution. One can apply for a remedy against a decision of the judge on the execution.

UKRAINE

1

It should be noted that in the Ukrainian legislation the term "deprivation of liberty" should be seen in the context of human right to liberty and security of person:

1) punishments imposed by court in case when the individual is proved to be guilty;
2) arrest of the accused in the course of investigation of criminal case, or in course of his extradition;
3) detention of person when suspected (accused) of committing a crime, or with the aim of his deportation.

According to the Code of Criminal Procedure of Ukraine the courts only may take the decision on deprivation of liberty.

According to Art. 29 of the Constitution of Ukraine nobody can be arrested or detained unless there is a motivated court decision and according to the procedures foreseen by the law only.

The Criminal Code of Ukraine determines several types of punishment in connection to the deprivation or restriction of personal liberty:

- arrest for the period from 1 to 6 months;
- keeping of military personnel in the disciplinary battalion for the period from 6 months to 2 years;
- deprivation of liberty for a period (from 1 year to 15 years);
- life imprisonment for commitment of crimes of particular gravity.

Decisions on the arrest of a person as preventive measure for accused can be taken by court in accordance to the Articles 155, 156 of the Code of Criminal Procedure of Ukraine. The maximum term of the arrest of a person during the pre-trial investigation in cases of particular gravity can be prolonged up to 18 months when the decision is taken by the appropriate court.

The procedure is identical as for the decisions taken by court in connection with the arrest of a person for whom there are requests on their extradition to foreign country for calling them for criminal responsibility or requests on execution of sentences.

The detention of the individual foreseen by paragraph 3 of this answer is carried out by inquiry/interrogation agency for the period that does not exceed 72 hours. Such decision as well as the actual detention act can be contested to the court. Furthermore, such decisions are examined by the prosecutor.

Court may also take a decision on the detention of person with the aim to bring him to the court.

2

In court procedure:

According to Art. 106 of the Criminal Procedural Code of Ukraine the judge's decision on detention of the suspect can be appealed by the prosecutor, by the actual individual against whom the decision was taken or by his/her defender or representative-in-law during 7 days from the first day of the decision made. Admission of an appeal does not stop the execution of the court decision.

According to the Art. 347, 348 the Code of Criminal Procedure of Ukraine the prosecutor who took part in the court trial at the first instance, or the prosecutor who approved the indictment, may submit an appeal to the court's decision that has not yet come into force.

According to the Art. 383, 384 of the Code of Criminal Procedure of Ukraine the prosecutor has the right to submit the cassation claim with regard to the decision taken by the Court of Appeal as if by the court of first instance, and with regard to the judgements/verdicts and decisions made by the Court of Appeal according to the procedure.

At the stage of sentence execution:

According to Art. 22 of the Criminal Executive Code of Ukraine the Prosecutor General of Ukraine and subordinate prosecutors supervise over the observance of laws in execution of sentences in the agencies and institutions of sentences execution.

At the same time the agencies and the institutions that deal with the execution of the sentences are obliged to comply with the orders and instructions given by the prosecutor in relation to the procedures of sentence execution that is prescribed by the criminal executive legislation.

Besides, according to Art. 22 of the Law of Ukraine on Prosecution Service subject of the supervision is observance of law during the detention of individuals in facilities for detained persons, remand centers, correctional and other facilities provided for the execution of sentences or compulsory measures imposed by court; observance of the order established by the legislation on criminal procedure, conditions of detention or deprivation of liberty in these institutions, rights of persons serving their sentence and fulfillment of their obligations by them.

3

The institutions of sentence execution are prisons, criminal executive institutions and curative institutions (from now on referred to as curative colonies).

According to Art. 24 of the Criminal-Executive Code of Ukraine the Prosecutor General as well as prosecutors empowered by him, and prosecutors who are in charge of the supervision of sentence execution on the given territory have right to attend the places of detention without special permission.

According to Art. 44 of the Law of Ukraine on Prosecution Service prosecutor who supervise this sphere is entitled in any time to visit the facilities of detention, remand centers, places, where accused serve their sentences, facilities of compulsory treatment and reformatories; to put questions to persons placed there; to study documents that underlie their detention, arrest, conviction or application of compulsory measures.

4a
If the prosecutor determines that the individual is being detained illegally he takes all the necessary measures to release a person (in depth see the answer 4b).

In case of tortures or inhuman or degrading treatment or punishment the necessary examination must be conducted and then the decision must be taken according to Art. 97 of the Code of Criminal Procedure of Ukraine and if the facts are proved the criminal case must be initiated.

b
According to Art. 44 of the Law of Ukraine on Prosecution Service the public prosecutor is obliged to immediately release the person that is detained illegally in detention facilities, remand centers, prisons or in facilities of execution of compulsory measures.

According to Art. 45 of the Law of Ukraine on Prosecution Service resolutions and instructions of the public prosecutor on the observance of the established by law order and conditions of detention of persons arrested, detained, convicted to the deprivation of liberty or to other kinds of punishment, as well as subject to compulsory measures, are binding and subject to immediate execution.

5
Yes, in addition see paragraph 3 and 6 of this questionnaire.

6
According to the Law of Ukraine on Preliminary Detention and the Criminal Executive Code of Ukraine complaints, applications and letters addressed to the Ombudsman of the Parliament (Verkhovna Rada) of Ukraine, to the Court on Human Rights in Strasbourg as well as to other bodies of International Organisations to which Ukraine is a party or a member, to authorized persons of such organizations, to the prosecutor are not subject to control by the prison staff and are to be sent to the addressee within 24 hours from the time of their submission.

Complaints in connection to the actions of investigators or those who interrogate are sent to the prosecutor by the administration of an institution, whereas the complaints in connection to the decisions or actions taken by the prosecutor are sent to senior prosecutor not later than 3 days from the time of their submission.

Besides, according to Art. 44 of the Law of Ukraine on Prosecution Service supervising prosecutor is entitled to check the legality of orders, instructions and resolutions of administrations of these facilities, to stop the execution of such acts; to protest against

them or cancel them in case of their incompatibility with the legislation; to require from the officials explanations about committed violations.

7a, b and c
According to Art. 45 of the Law of Ukraine on Prosecution Service the subject of supervision is the due course of law during the stay of persons at all the places of detention, pre-trial arrest, at the institutions of the sentence execution, other institutions that execute sentences or other compulsory measures ordered by the courts, observance of the established order and conditions of detention and serving a sentence in such institutions of the above-mentioned individuals, their rights and duties.

According to Art. 44 of the Law of Ukraine on Prosecution Service the supervising prosecutor in any time to visit the facilities of detention, remand centers, places, where accused serve their sentences, facilities of compulsory treatment and reformatories; to put questions to persons placed there; to study documents that underlie their detention, arrest, conviction or application of compulsory measures.

8
See paragraph 2.

According to Art. 22 of the Criminal Executive Code of Ukraine the Prosecutor General of Ukraine and subordinate prosecutors supervise over the observance of laws in execution of sentences in the agencies and institutions of sentences execution.

UNITED KINGDOM

1) What kinds of decisions on deprivation of liberty exist in your country? (Please describe the legal basis for them and list the authorities empowered to take them.)

ENGLAND AND WALES

The principle means of depriving someone of their liberty is the imposition of a sentence of imprisonment. This may generally only be done by a criminal court following a conviction for a criminal offence. Most sentences of imprisonment are imposed by a judge in the Crown Court, where the maximum penalty is imprisonment for life, and by a District judge or three magistrates sitting in the magistrates' court, where the maximum penalty is 12 months' imprisonment.

There are other sanctions that deprive an offender of his liberty that are non-custodial, although such sanctions effectively amount to the curtailment or restriction of liberty rather than to total deprivation. The most significant of these sanctions is the Community Order. Again, they can only be imposed by a criminal court following a conviction for a criminal offence. A Community Order is tailored to suit individual offenders and comprises a combination of any number of measures from a list of 13 requirements.
Examples include a requirement to reside at a named address (not house arrest, but one must live and sleep there each night), to abide by a curfew, not to go to a prescribed place, to do unpaid work for the community or undergo compulsory medical treatment.

SCOTLAND

INTRODUCTION

The Crown Office and Procurator Fiscal Service (COPFS) is responsible for the prosecution of all crime in Scotland, the investigation of sudden or suspicious deaths and complaints against the police.

COPFS is headed by the Lord Advocate, assisted by the Solicitor General, both of whom are ministers of the Scottish Executive. Under the direction of the Lord Advocate, criminal cases are investigated and prosecutions conducted by Procurators Fiscal based within offices throughout Scotland. Any decision of the Lord Advocate as head of the prosecution system are taken by him independently of any other person by virtue of section 48 of the *Scotland Act 1998* and his position as head of the Criminal prosecution system is enshrined in section 29(2)(e) of the Scotland Act 1998.

The Procurator Fiscal receives and considers reports from the Police and over 50 other reporting agencies. The decision whether criminal proceedings should be commenced rests with the procurator fiscal, whether or not a person has been arrested or "charged" by the police.

It may be helpful to consider each of the stages of prosecution namely; initial investigation, pre-trial procedure, trial procedure and post conviction procedure.

INITIAL INVESTIGATION

(i) Detention

A police constable who has reasonable grounds for suspecting that a person has committed or is committing an offence punishable by imprisonment, may for the purpose of facilitating the carrying out of investigations into the offence and as to whether criminal proceedings should be instigated against that person, detain that person and take them as quickly as reasonably practicable to a police station or the other premises or place[2].

The period of detention is for a maximum period of six hours. Where a person has been released at the termination of a period of detention, he/she shall not be further detained on the same grounds or on any grounds arising out of the same circumstances. Generally the period of detention (six hours or less) will end with the suspect being arrested and charged or, alternatively, released without charge at that time if the grounds of suspicion have not been made out in that time.

A person detained under section 14(1) shall be under no obligation to answer any question other than to give his/her name and address, and a constable shall inform the detainee of this right both on detaining him/her and on arrival at the police station or other premises. It is a corollary of the detainee's right to silence that no inferences can be drawn from such silence as to the credibility of an accused's evidence on any matter in relation to which he/she declined to say anything while being interviewed, or indeed in answer to caution and charge[3].

A person detained under section 14, shall be entitled to have his/her place of detention intimated to a solicitor and a person reasonably named by him/her[4]. However, the detainee does not have the right to have legal representation during the period of detention.

Where a person has been detained, non-invasive samples may be taken similar to an arrested person[5]. All samples and information derived from samples must be destroyed as soon as possible following a decision not to institute criminal proceedings against the person or on the conclusion of such proceedings otherwise than with a conviction including admonition and absolute discharge.

(b) Arrest

---

[2] section 14 of the Criminal Procedure (Scotland) Act 1995

[3] Hoekstra v HM Advocate (No.5), 2002 S.L.T. 599, para.107; Larkin v HM Advocate, 2005 S.C.C.R. 302

[4] Note the case of Paton v Richie 2000 SCCR 151 at 156, where it was held that ECHR did not create "a universal right in an accused to have access to his solicitor before or during questioning by the police".

[5] Criminal Procedure (Scotland) Act 1995, s. 14(7) and s. 18. Hay v HMA 1968 JC 40; Walker v Lees 1995 SCCR 445.

There should be no arrest without warrant unless it is necessary in the interests of justice, and more particularly unless it is necessary to prevent the arrestee from absconding, committing further crimes or hindering the course of justice, for example interfering with witnesses or evidence or disposing of stolen property.

When a person has been arrested, he must be told immediately of the general nature of the charge on which an arrest has been made, and the arrest must be justified by reference to that charge, even if it was used mainly as a holding charge. A person charged with murder, or attempted murder or culpable homicide also has a right to the services of the duty solicitor under the provisions of the Legal Aid Regulations[6].

Following arrest in terms of the 1995 Act section 21(2), one of three things may be done with the person who has been arrested. He may be liberated on an undertaking to present himself at a specific court at a specific time. Failure to answer such an undertaking is an offence. Or he may simply be liberated. Or, finally he may be kept in custody in which event he must be placed before a court on the first lawful day after he has been taken into custody. The next lawful day is simply the next day that court sits.

Where an accused has been arrested on any criminal charge, he shall be entitled to have intimation sent to a solicitor[7] that his professional assistance is required by the accused and informing the solicitor of the place where the person is being detained; whether the person is to be liberated; and if the person is not to be liberated, the court to which he is to be taken and the date when he is to be so taken. The accused and the solicitor shall be entitled to have a private interview before the examination or, as the case may be at first appearance.

(ii) Pre-trial Custody and Trial Procedure

(a) Solemn Proceedings

Once proceedings have been initiated there are very definite time limits within which an accused person must be brought to trial. The starting date for calculating the relevant period differs according to whether or not the accused is in custody with regard to that period.

The 80-day rule applies to a person being detained in custody and awaiting service of the indictment. The starting point of the calculation of the time limits is from the date of full committal. Failure to observe the 80-day rule results in the accused being given his liberty, but does not free him rrrrrrrfrom prosecution for the offence even if he is detained beyond the eightieth day.

In terms of s.65(4) of the 1995 Act, as amended by s.6(5) of the 2004 Act, an accused who is committed for any offence until liberated in due course of law is entitled to bail if

[6] Criminal Legal Aid (Scotland) Regulations 1987, reg.5 (1)(b)
[7] Criminal Procedure (Scotland) Act 1995, s. 17

he has been detained by virtue of the committal warrant for more than a specified period, unless that period has been extended by the court. Where a High Court indictment has been served on him he is entitled to bail if he has been detained for a total period of more than 110 days without a preliminary hearing having commenced[8] (unless the hearing has been dispensed with under s.72B(8) of the Act), or of more than 140 days without his trial having commenced. Where a sheriff court indictment has been served on him he is entitled to bail if he has been detained for a total period of more than 110 days without his trial having commenced. Trials on indictment commence when the jury is sworn[9]. Where an accused is in custody by virtue of a warrant on petition committing him for trial for any offence, he may not be detained in terms of that warrant for a total period of more than 140 days without being brought to trial. Failure to meet the custody time limits now means that the accused is entitled to be admitted to bail and thereafter the bail time limits apply.

Applications for the extension of any of the periods in relation to solemn procedure are to be made to a single judge of the High Court where no indictment has been served, or to the court at which the accused is required to appear in the notice attached to any indictment, which has been served[10]. This means that a sheriff can now extend the 110-day period in sheriff court cases. The court is required to give parties an opportunity to be heard, but where all parties join in the application the court may determine it without a hearing and may discharge any hearing already fixed for hearing the application[11].

(b) Summary Procedure

An accused may not be detained before trial for a total period of more than 40 days after the bringing of a complaint against him in a summary court, unless that period has been extended by a sheriff. If his trial has not begun within that period he must be liberated forthwith and is free from all process for the offence[12]. A summary trial begins for this purpose when the first witness is sworn[13].

Section 147(2) of the Criminal Procedure (Scotland) Act 1995 entitles the sheriff to extend the 40 day period only if he is satisfied that delay in starting the trial is due to the illness of the accused or of a judge, the absence or illness of a necessary witness or any other sufficient cause which is not attributable to the fault of the prosecutor.

(iii) Bail
(a) Consideration of Bail on First Appearance

---

[8] A preliminary hearing commences when the diet is called: 1995 Act, s.65(9)(b), as inserted by Criminal Procedure (Amendment)(Scotland) Act 2004, s.6(10).
[9] Criminal Procedure (Scotland) Act 1995, s. 65 (9)(c)
[10] Criminal Procedure (Scotland) Act 1995, s.65(3), (5), as substituted by Criminal Procedure (Amendment)(Scotland) Act 2004, s.6(7)
[11] Criminal Procedure (Scotland) Act 1995, s.65(5A), (5B)
[12] Criminal Procedure (Scotland) Act 1995, s 147
[13] Criminal Procedure (Scotland) Act 1995, s 147(4)

All crimes and offences are bailable[14]. When a person charged with any offence is first brought before the sheriff on petition prior to his committal until liberated in due course of law, or a person charged on complaint is first brought before any judge having jurisdiction to try the offence, the court is obliged to consider whether to grant or refuse him bail (liberation pending trial). After the accused and the prosecutor an opportunity to be heard, whether or not he appears from custody[15]. Section 22A imposes a duty on the court before which the accused is first brought to give he accused and the prosecutor the opportunity to be heard.

(b) Bail Applications

Section 23 of the 1995 Act entitles a person to apply for bail on any occasion in relation to any occasion other than the person's first appearance and applies to persons accused of any offence. Any sheriff having jurisdiction to try the offence or to commit the accused until liberated in due course of law may allow or refuse an application for bail by a person who has been so committed, after he has given the prosecutor an opportunity to be heard[16].

Where a person charged with any crime applies for bail, the court to which application is made must grant it unless in the exercise of its discretionary right[17] of refusal it is of opinion that, looking to the public interest and to securing the ends of justice[18], there is good reason why bail should not be granted. Bail must be granted if it is not opposed by the Crown[19]. The discretionary power to refuse bail is not limited to cases where the court thinks there is a danger of the accused absconding before the trial. The court is not concerned merely with the duty of preventing the unnecessary detention of an untried person: it must also protect the public and safeguard the administration of justice from the consequences of his being at large.

By section 23(4) and (5) of the 1995 Act, bail may be sought after full committal even if it has been refused at committal for further examination.

The High Court and the Lord Advocate have the right to grant bail in the case of any offence[20]. The court, or the Lord Advocate, is obliged when granting bail to impose on the accused the standard conditions and any other conditions considered necessary to secure that the standard conditions are observed and that the accused makes himself available for the purpose of participating in an identification parade or enabling any print impression or sample to be taken from him/her[21].

(iv) Post Conviction

---

[14] Criminal Procedure (Scotland) Act 1995, s. 24(1)
[15] Criminal Procedure (Scotland) Act 1995, s 22A, as inserted by Bail, Judicial Appointments etc. (Scotland) Act 2000, s 1
[16] Criminal Procedure (Scotland) Act 1995, s. 23(5)
[17] Criminal Procedure (Scotland) Act 1995, s. 23(2)
[18] MacIntosh v McGlinchy 1921 JC 75 at p as per Lord Justice-General Clyde.
[19] Spiers v Maxwell, 1989 S.L.T. 282; G v Spiers, 1998 SCCR 517
[20] Criminal Procedure (Scotland) Act 1995, s. 24(2)
[21] Criminal Procedure (Scotland) Act 1995, s. 24(4) and (5)

(a) Interim Liberation pending Appeal

The Court may, if it seems fit, on the application of a person convicted, admit that person to bail pending the determination of their appeal or, as the case may be, an appeal by the Lord Advocate under s.108 or 108A of the 1995 Act (Lord Advocate's appeal against sentence). The appellant is in a much less favourable position than an untried prisoner who seeks bail. The latter is said to enjoy a presumption of innocence which involves that, unless good reasons can be shown to the contrary, he has a right to be released on bail if the crime with which he is charged is bailable. But once the prisoner has been convicted, any presumption of innocence is displaced, and the onus is on the appellant thereafter to show cause why, pending any appeal which he may take, he should be released from the prison confinement to which he was sentenced following upon the conviction[22].

(b) Sentences

The Court may impose a range of sentences that affect a person's liberty. They include:

- Imprisonment
- Detention for persons under the age of 21 years
- Restriction of Liberty Orders – also called "Tagging Orders" where offender fitted with an electronic tag to monitor movement. Offender must agree to the terms of the order.
- Supervised Release Orders

Travel Restriction Order – when a person is convicted of a drug trafficking offence where a custodial sentence of up to four years may be imposed, an order can be made preventing the offender from leaving the UK up to 2 years after his release from custody

NORTHERN IRELAND

It is the responsibility of the police to investigate an allegation that a criminal offence has been committed, to gather evidence in relation to that allegation and to present that evidence to the prosecutor. The police have power to deprive liberty by arrest and detention for the purposes of investigating crime. These powers derive mostly from the Police & Criminal Evidence (Northern Ireland) Order 1989 and the Terrorism Act 2000. The prosecution are not involved at this stage, other than through the provision of prosecutorial and pre-charge advice to police. This is usually limited to guidance on the prosecution of offences such as the quality and admissibility of evidence or the evidence needed to support a prosecution.

Remands in custody

[22] Young v H.M. Advocate, 1946 J.C. 5

Once a suspect has been charged, they will have to appear before a court. The prosecutor will review the charge before the accused appears in court. A court has power to remand a defendant in custody pending the hearing of the case against them. The prosecution have no determining power as to the deprivation of liberty, but may make representations in relation to opposition to the granting of bail.

The maximum periods a court may remand a person in custody is prescribed by legislation.

Custodial Sentences

Upon conviction, a court must then select the most appropriate sentence. Sentencing is exclusively a matter for the Judge and is the subject of judicial independence. However, the prosecutor will remind the Judge of the relevant facts of the case and will correct any misleading or inaccurate information presented by the defence. The prosecutor can also assist the Judge by indicating the range of sentencing options available.

For some offences the sentence is fixed by law, but otherwise there is an amount of discretion available to the Judge in imposing a sentence. There are general limits that the court must observe: in most cases there is a statutory maximum sentence for a particular offence. There are also limits for particular categories of offender: certain categories of offenders, in particular young offenders may not be given the full range of sentence available for the offence committed. There may also be limits on the jurisdiction of the court: in particular a Magistrates Court may not impose a sentence of in excess of 2 years imprisonment.

Within these applicable limits the Judge exercises a certain amount of discretion in relation to the length of sentence to impose, taking into account aggravating and mitigating factors and any precedent guideline cases on sentencing.

The court, where it considers a custodial sentence is appropriate must order a ‘pre-sentence report’ to be prepared by Probation Services, outlining the offender’s background circumstances. In addition, where the court considers that a sentence in excess of 12 months is required, it must consider imposing a ‘custody-probation Order’. Where such an Order is made, the convicted person serves time in custody, and then, after his release is placed under the supervision of a probation officer for a further period. This type of Order is unique to Northern Ireland.

The period of time spent in custody can be reduced by remission for good behaviour which can be up to 50%. The prosecutor has no involvement in this issue.

Hospital Orders

Upon conviction, where a defendant is medically assessed as unfit through mental health grounds to be detained in prison, the court may impose a Hospital Order. Hospital Orders provide for detention in a secure hospital and are indeterminate in length.

Care Orders

A young person can be subject of a care order and required to be admitted to a care centre for a period of time. Social Services has authority for making this type of Order.

Detention under the Mental Health Order

The Mental Health Review Tribunal has authority to make decisions regarding the detention of patients suffering from mental disorder. The Official Solicitor may legally represent the interests of the person suffering from the mental disorder.

2. Which decisions are subject to review/supervision by the public prosecutor?

ENGLAND AND WALES

Crown Prosecution Service (CPS) prosecutors in England and Wales review case files provided by the police, who conduct the investigation. Prosecutors will decide whether the test in the Code for Crown Prosecutors has been met, namely whether there is sufficient evidence to provide a realistic prospect of a conviction and, if so, whether it is in the public interest to prosecute the offender. If the prosecution is successful and the offender convicted, the criminal court will sentence him.

The prosecutor's role in the sentencing process is carefully defined. CPS prosecutors do not request or suggest particular sentences; sentencing is a matter for the court. The prosecutor draws the court's attention to the facts of the offence, to the relevant law and guidelines and may ask the court to make ancillary orders such as to award compensation to the victim of the crime or for an order to pay costs.

The prosecuting advocate has a duty to tell the court if it has imposed an unlawful or erroneous sentence.

There is no prosecution power to appeal against a sentence, except in certain serious types of offence, which may be referred to the Court of Appeal by the Attorney General if the sentence appears to be 'unduly lenient'.

SCOTLAND

Bail

The police are subject to general instructions from the public prosecutor about decisions in relation to the liberation or retention in custody of arrested person.

Decisions on bail can be subject to review by the Court on the Prosecutor's application. On application by the Prosecutor at any time after court has granted bail to a person the

court may, where the prosecutor puts before the court material information which was not available to it when it granted bail to that person, review its decision[23]. On receipt of the application, the court shall intimate application to person granted bail, fix a date for hearing the application and cite the accused to attend the diet. Where the court considers that the interests of justice so require, it may grant a warrant to arrest that person.

The Prosecutor can also lodge an appeal against the Judge's decision to grant bail. If dissatisfied with the decision allowing bail, the Prosecutor may appeal to the High Court[24]. The Accused to whom bail is granted shall be liberated after 72 hours[25] from the granting of bail whether the appeal has been disposed of or unless the High Court grants an order for further detention in custody[26].

NORTHERN IRELAND

The investigation of crime is a matter for police rather that the prosecutor. The prosecutor will consider the police investigation and may require the police to provide further evidence and information. The prosecutor will then apply the test for prosecution set out in the Code for Prosecutors and determine the charges if any which the accused will face. The test for prosecution is whether there is sufficient evidence to provide a reasonable prospect of a conviction and, if so, whether it is in the public interest to prosecute the offender. If the accused is convicted the court will sentence him.

The prosecution can appeal against an unduly lenient sentence imposed for a number of serious offences by the Crown Court, by way of an Attorney General's Reference. The prosecutor may bring a case to the attention of the Attorney General in order that he may consider whether to appeal on the grounds that the sentence was unduly lenient. Such an appeal can only be made with the leave of the Court of Appeal. The application to the court by the Attorney General for leave to appeal against the sentence must be made within 28 days of the sentence being imposed. The Court of Appeal can affirm the sentence or quash it and impose a different one.

(3) Is the public prosecutor empowered to enter places of detention? What kind of places or institutions, how often, and with or without the permission of other authorities?

[23] Criminal Procedure (Scotland) Act 1995, s. 31
[24] Criminal Procedure (Scotland) Act 1995, s. 32
[25] Criminal Procedure (Scotland) Act 1995, s.32(8) – 72 Hours excludes Sundays and public holidays.
[26] Criminal Procedure (Scotland) Act 1995, s. 32(7)

ENGLAND AND WALES

CPS prosecutors are unlikely ever to need to enter a place of detention. Accordingly, they have no power of entry, except, like any member of the public, at the discretion of the prison authorities.

SCOTLAND

The public prosecutor has no role in inspecting places of detention. However, the prosecutor would be entitled to enter places of detention to investigate a suspected crime. For example, if a suspected murder occurred in a place of detention, the Procurator Fiscal would attend the scene to provide advice and oversee the collection of evidence.

It would be unlikely for the prosecutor to enter a place of detention to question the accused further on the crime about which they are charged. Once a person has been formally charged by the police, he/she cannot be questioned further about the suspected crime with which they are charged. Any reply to questioning would be inadmissible.

The Procurator Fiscal may attend a place of detention to precognose (interview) witnesses who are detained or imprisoned, about a suspected crime that has occurred either within the place of detention or elsewhere.

NORTHERN IRELAND

No, the functions of the prosecutor do not entail prosecutors entering places of detention.

(4) a. What kind of measures could be taken by the public prosecutor in case of unlawful deprivation of liberty or in case of torture or inhuman or degrading treatment or punishment?

ENGLAND AND WALES

Prosecutors must tell the court if it has unlawfully deprived an offender of his liberty by imposing a wrongful sentence. A Crown Court judge may amend the sentence within 28 days to correct the illegality. In the magistrates' court there is no time limit, and the prosecutor may invite the court to re-open the case and re-sentence the offender according to the law.

Where someone has been subjected to inhuman or degrading treatment this would be investigated by the police, unless the police is the alleged perpetrator of the torture, in which case the matter would be investigated by the Independent Police Complaints Commission. Following the investigation the CPS prosecutor will decide whether to prosecute the perpetrators by applying the test in the Code for Crown Prosecutors (described in question 2).

b. Is the public prosecutor empowered to take an immediate decision in these cases?

The decision to prosecute lies with the CPS prosecutor, but the prosecutor has neither power to initiate an investigation, nor to decide upon the appropriate punishment.

SCOTLAND

a. As the public prosecutor has no role in inspecting places of detention or overseeing conditions of detention, the prosecutor's function would be limited to circumstances in which the circumstances of deprivation of liberty were such as to amount to a criminal offence. In such cases, the prosecutor would investigate the alleged crime and take such action as was considered appropriate in the public interest.

b. Not applicable.

NORTHERN IRELAND

a. Such an allegation would be investigated by the police unless the allegation was that such conduct was occasioned by the police in which case the prosecutor would refer the matter to the independent Police Complaints Ombudsman for investigation and report to the prosecutor.The prosecutor could direct a prosecution for the offence of false imprisonment or assault in appropriate circumstances.

A public prosecutor could withdraw charges in cases where they believed that there was no longer sufficient evidence to justify the prosecution. Additionally the public prosecutor can give legal advice to the investigating police.

b. In cases where the prosecutor considers that there is insufficient evidence to continue a prosecution and the defendant is in custody, the prosecutor can apply to have the case listed before a court at the earliest opportunity to have the charges withdrawn and the defendant would be released. If the defendant were held in custody any longer than required in the circumstances, the prosecutor may be held to be in breach of Section 6 of the Human Rights Act 1998 by virtue of acting incompatibly with Article 5 of European Convention on Human Rights.

(5) Is it possible for a person deprived of his/her liberty to meet the public prosecutor personally without any control by a third party?
Can that person maintain contact with the public prosecutor without any control by a third party (and vice versa)?

ENGLAND AND WALES

It is possible, by agreement with the prosecutor, but it is highly unlikely to happen. This is because it is difficult to see of what benefit it would be to the person deprived of his/her liberty to meet the prosecutor.

SCOTLAND

It is possible for a person deprived of his/her liberty to meet the prosecutor personally without any control by a third party, although this does not happen routinely and would be considered appropriate in exceptional circumstances only. Contact could be maintained with the public prosecutor without any control by a third party.

NORTHERN IRELAND

In general, no. The contact with the detained person would be via there legal representative. In exceptional circumstances, where a defendant were not legally represented it may be the case that the prosecutor would speak directly with them to answer any queries they raise by correspondence or telephone call. A defendant can also contact the prosecutor's 'Community Liaison Section' if they require particular types of factual information relating to a case against them.

6) Please describe the procedure for complaints against prison staff.

ENGLAND AND WALES

The procedures are based on the general principles that establishments should take full responsibility for dealing with requests or complaints internally, with recourse to headquarters only in the case of reserved subjects or confidential access, and that staff should take responsibility for the decisions and actions that they take and be prepared to explain.

The main elements are:

- Complaints are separate from requests.
- Complaint forms are freely available for prisoners to pick up on the wing.
- Prisoners post completed complaints forms into a locked box on each wing. A designated officer has sole access to the box, which will be emptied each day.
- The response to a complaint is in three stages, entirely in establishments. There are response times for each stage.
- There is no appeal to headquarters.

There are three stages:

- Stage 1 is the initial complaint, normally be answered at prison officer level.

- Stage 2 is where the prisoner may re-submit the complaint if dissatisfied with the response explaining why. This response will be made by someone senior to the person who made the initial response.

- Stage 3 is when the prisoner may appeal to the governor of the establishment if still dissatisfied.

- Once these three stages are exhausted, the prisoner may take his or her complaint to the Prisons and Probation Ombudsman.

Prisoners may address a complaint under confidential access to the Governor, the Area Manager or the Chairman of the Board of Visitors. They can pick up a form and an envelope on the wing. Completed forms in sealed envelopes go into the complaints box; addressed to the person the prisoner wants to consider the complaint. The response will also be sent in a sealed envelope. If a complaint is inappropriate for confidential access, the prisoner will be told so and may be advised to pursue the complaint under the normal procedures.

SCOTLAND

The public prosecutor does not have any role in the procedure for complaints against prison staff, except where the complaint involves an allegation of criminal conduct, in which case the prosecutor would investigate the alleged offence and take whatever action was considered appropriate in the public interest.

NORTHERN IRELAND

A Prisoner Ombudsman has been recently appointed in Northern Ireland. He is independent of the Prison Service and his remit is to investigate complaints from prisoners (and ex-prisoners) arising from their treatment in prison. The complainant must first exhaust the Prison Service's internal complaints procedure.

(7) **a. Does the public prosecutor have authority to control and react to the conditions of deprivation of liberty?**

ENGLAND AND WALES

No. This is controlled by the Office of the Secretary of State for the Home Department.

b. **How should the public prosecutor react?**

Not applicable.

c. **Does domestic law in your country prescribe any special provisions for such situations?**

No.

SCOTLAND

a. The public prosecutor does not have any authority to control the conditions of deprivation of liberty. The Scottish Prison Service is responsible for running Scotland's prisons and it manages sixteen penal establishments in Scotland.

In addition, HM Inspectorate of Prisons for Scotland was established to administer a system of inspection of prisons. Its main statutory responsibility is the regular inspection of individual establishments. In carrying out this function, matters that are inspected and reported on include physical conditions, quality of prisoner regimes, morale of staff and prisoners and facilities and amenities available to staff and prisoners. It is the aim of the Inspectorate to carry out a full inspection of each of these establishments once every 3 years. Following each inspection a report is prepared, which is submitted to Scottish Ministers and published.

b. As previously mentioned, the Procurator Fiscal is responsible for the prosecution of crime in Scotland and investigation of sudden or suspicious deaths and has no authority or control over the deprivation of liberty.

c. As previously mentioned, the Lord Advocate must not act in any way incompatible with ECHR by virtue of the Human Rights Act 1998 and the Scotland

NORTHERN IRELAND

a. The public prosecutor will make representation at a bail application and may also be able to make recommendations regarding appropriate bail conditions if a detained person is to be admitted to bail by a court.

b. Not applicable.

c. No.

(8) What is the role of the public prosecutor in the execution of sentences relating to persons deprived of their liberty?

ENGLAND AND WALES

In the time up to and including the sentencing of an offender, CPS prosecutors have those duties described in question two. Beyond that, they have no input.

SCOTLAND

Generally in Scotland, the prosecutor does not have role in the sentencing of the accused or in the execution of sentence.

Once the Prosecutor has moved for sentence either expressly or by implication, the matter of sentencing is entirely for the court and it is desirable for reasons of public policy that the prosecutor should be involved in no way with the sentencing process[27].

NORTHERN IRELAND

Generally none. However the prosecutor should be in a position to assist the court with reference to the relevant law and guidelene cases. The prosecutor does not ask for any particular sentence. That is always a matter entirely within the court's discretion.

[27] H. M. Advocate v McKenzie 1990 JC 62

APPENDIX

LES DEVOIRS DU MINISTERE PUBLIC A L'EGARD DE PERSONNES PRIVEES DE LEUR LIBERTE

QUESTIONNAIRE (IN FRENCH)

1) Dans votre pays, quels sont les types de décisions relatives à la privation de liberté ? (Veuillez préciser leur base légale et les autorités habilitées à prendre ces décisions)

2) Quelles décisions sont soumises à un contrôle/supervision de la part du ministère public ?

3) Le procureur est-il autorisé à entrer dans les lieux de détention ? Quels types de lieux ou établissements, à quelle fréquence, et avec ou sans autorisation d'autres autorités?

4) a. Quel type de mesures le ministère public peut-il prendre en cas de privation illégale de liberté ou en cas de torture ou de peines ou traitements inhumains ou dégradants?

   b. Est-il autorisé à prendre une décision immédiate dans de tels cas ?

5) Est-il possible, pour une personne privée de sa liberté, de rencontrer personnellement le procureur, et ce sans aucun contrôle par un tiers ? Ces personnes peuvent-elles rester en contact avec le procureur sans aucun contrôle par un tiers (et vice versa)?

6) Veuillez décrire la procédure de plaintes contre le personnel pénitentiaire.

7) a. Le ministère public est-il autorisé à contrôler et à réagir aux conditions de privation de liberté ?

   b. Comment devrait-il réagir ?

   c. Dans votre pays, la législation nationale prévoit-elle des dispositions spécifiques à de telles situations ?

8) Quel est le rôle du ministère public dans l'exécution des peines impliquant des personnes privées de leur liberté?

REPLIES RECEIVED IN FRENCH

ANDORRA

1) Dans votre pays, quels sont les types de décisions relatives à la privation de liberté ? (Veuillez préciser leur base légale et les autorités habilitées à prendre ces décisions)

Les privations de liberté peuvent résulter de quatre types de décisions selon le stade de la procédure :

a) La détention par la police
b) La prison de l'arrêt provisoire
c) Les peines privatives et restrictives de liberté
d) Les mesures de sécurité

a) La détention par la police

Conformément aux dispositions de l'article 27 de code de procédure pénale, les agents du service de police ont l'obligation de détenir : 1) la personne qui tente de commettre un délit ; 2) le délinquant pris en flagrant délit ; 3) l'évadé de prison ; 4) la personne contre laquelle existe une présomption de participation à un délit ou qui risque de ne pas comparaître quand elle sera citée devant l'autorité judiciaire.

Mais le ministère public, qui est compétent, selon l'article 3 de la loi du ministère public, pour diriger l'action de la police au cours de l'enquête préliminaire, peut contrôler l'opportunité et la durée de la détention par la police en adressant des instructions au directeur de la police.

De même, il appartient au ministère public d'ordonner au service de police de détenir les personnes dont l'extradition est demandée.

b) La prison de l'arrêt provisoire

Conformément aux dispositions de l'article 109 du code de procédure pénale, le batlle (juge de première instance) peut prendre la mesure exceptionnelle de prison provisoire dans l'une de leurs trois modalités, dans l'ordonnance d'ouverture des poursuites ou dans une ordonnance postérieure en précisant les motifs en plus de ceux qui motivent l'inculpation de la personne poursuivie.

Il peut le faire dans les cas suivants: 1) quand la liberté de l'inculpé présente un danger pour la sécurité publique ou quand les faits ont causé un trouble social; 2) s'il existe des motifs, compte tenu des circonstances des faits et de la gravité du délit et de la peine applicable, de craindre que le délinquant tente de se soustraire à l'action de la justice ; 3) si le délit a causé un préjudice à un tiers et si une caution ou une garantie suffisante n'a

pas été constituée ; 4) si la détention est nécessaire pour la protection de l'inculpé ou pour prévenir une récidive ; 5) si l'inculpé ne répond pas à l'ordre de comparution ordonné par le tribunal ou le batlle ; 6) si le maintien en liberté peut nuire au déroulement normal de l'instruction.

De plus, conformément aux dispositions de l'article 102 du code de procédure pénale, quand la personne contre laquelle existent des soupçons raisonnables de criminalité est en fuite ou ne comparait pas, le batlle peut délivrer un ordre de détention exécutoire sur tout le territoire de la Principauté et dont l'exécution peut aussi être demandée même hors de ce territoire, conformément à la loi.

c) Les peines privatives et restrictives de liberté

Les peines privatives de liberté sont la prison et l'arrêt, conformément à la liste générale établie par les articles 35 et suivants du code pénal, et il appartient aux organes de jugement de les prononcer.

Le maximum de la durée des peines que les organes juridictionnels peuvent prononcer est : de 25 ans pour les délits majeurs, sous réserve des règles relatives au cumul des peines et des peines prévues pour les crimes de génocide ou de crimes contre l'humanité ; de 2 ans pour les délits mineurs.

Les articles 39 et suivants du code pénal prévoient trois modalités concernant la peine d'arrêt :

1. l'arrêt de période de fête d'une durée hebdomadaire de 36 et 48 heures ininterrompues en fin de semaine ou en période de fête pour le condamné, selon le choix du tribunal. Il est exécuté dans un établissement pénitentiaire spécial ou un local séparé.

2. la peine d'arrêt partiel journalier exécutée dans un établissement pénitentiaire spécial ou dans un local séparé, durant deux heures suivies selon l'horaire fixé par le tribunal.

3. la peine d'arrêt domiciliaire exécutée au domicile du condamné ou au domicile que fixe le tribunal avec le consentement de son titulaire, de manière ininterrompue durant le temps fixé par la sentence. Si le condamné n'a pas de domicile dans la Principauté, l'arrêt s'accomplit dans un établissement pénitentiaire spécial ou un local séparé.

d) Les mesures de sécurité

Conformément aux dispositions de l'article 72 du code pénal, le tribunal a la possibilité d'appliquer des mesures de sécurité privatives de liberté, soit l'internement dans le centre psychiatrique, dans un centre de désintoxication, ou dans un établissement éducatif spécial ou de réhabilitation, après les expertises qu'il estime nécessaires, aux personnes déclarées exemptes de responsabilité pénale ou en cas de responsabilité partielle, lorsque les conditions suivantes sont réunies :

1. si la sentence estime que l'intéressé a commis un fait constitutif d'infraction ;

2. si les faits ou les particularités personnelles de l'intéressé permettent de pronostiquer un comportement futur susceptible d'entraîner la commission de nouvelles infractions.

En cas de concurrence de peine et de mesures de sûreté, les deux privatives de liberté, le tribunal doit ordonner en premier lieu l'exécution de la mesure dont la durée est supérieure de la peine. Le maximum de la durée conjointe de la peine et de la mesure doit être fixée par la sentence et ne peut être supérieure à la durée de la peine qui aurait été imposable s'il n'y avait pas eu d'atténuation de responsabilité.

L'internement terminé, le tribunal ordonne l'exécution de la partie de la peine restant à purger. Exceptionnellement, dans le cas où l'exécution de la partie de la peine risquerait de nuire aux effets obtenus par l'exécution de la mesure, le tribunal, après audition des parties, peut, par décision motivée, substituer à la peine une ou plusieurs mesures non privatives de liberté, ou même, si la durée de la peine restant à courir est inférieure à un tiers du montant total de la peine, en dispenser de l'exécution.

2. Quelles décisions sont soumises à un contrôle/supervision de la part du ministère public ?

Comme il est exposé dans la réponse à la première question du présent questionnaire, le ministère public est compétent, de par son statut organique, pour contrôler l'opportunité et la durée de la détention par la police.

De plus, dans la phase judiciaire des poursuites pénales, toute décision impliquant l'adoption ou la modification de mesures de privation de liberté des personnes en cause, est obligatoirement précédée de réquisitions du ministère public. Ce dernier peut aussi décider d'interjeter appel contre les décisions qui ne sont pas conformes à ses réquisitions.

3. Le procureur est-il autorisé à entrer dans les lieux de détention ? Quels types de lieux ou d'établissements, à quelle fréquence, et avec ou sans autorisation d'autres autorités?

La loi du ministère public dispose dans son article 4 que, dans l'exercice des fonctions qui lui sont dévolues, le ministère public peut visiter à tout moment les centres pénitentiaires, vérifier la situation personnelle et le dossier des détenus, et obtenir les renseignements qu'il estime utiles en ce qui concerne les personnes incarcérées, sans préjudice de la périodicité obligatoire fixée par l'article 211 du code de procédure pénale qui prescrit que le ministère public doit visiter au moins une fois par trimestre le centre pénitentiaire pour s'informer de tout ce qui a trait à la situation des détenus ou prisonniers et doit prendre toutes les mesures nécessaires pour corriger tout abus ou déficience constatés.

Le règlement dispose, de plus, que le directeur du centre pénitentiaire doit adresser chaque jour au procureur la liste des personnes emprisonnées au centre en précisant les entrées et les sorties intervenues. En outre, l'article3-4 de la loi du ministère public prescrit que le parquet doit recevoir chaque jour de la direction du service de police et de la direction du centre pénitentiaire, le rapport des activités et des incidents ainsi que l'état des personnes détenues et internées.

4. a) Quel type de mesures le ministère public peut-il prendre en cas de privation illégale de liberté ou en cas de tortures ou de peines ou de traitements inhumains ou dégradants ?

Le code pénal en vigueur spécifie aux articles 110 et suivants toutes les conduites constitutives de torture et d'atteintes à l'intégrité morale, avec abus de fonction comprenant les conduites actives ou celles qui consistent à s'abstenir d'empêcher ou de dénoncer la torture, les traitements dégradants et la détention illégale. Dans ces cas, le ministère public est compétent pour exercer l'action pénale devant les organes juridictionnels.

De plus, les articles 9 et 41 de la Constitution renvoient expressément à la loi aux fins d'organisation d'une procédure qui permette à tout détenu et à toute personne privée de liberté, d'accéder à un organe judiciaire pour que celui-ci se prononce sur la légalité de sa détention ainsi que sur la légalité de sa détention ainsi que sur le rétablissement de ses droits fondamentaux lésés.

En ce sens, la loi qualifiée de la justice instaure la procédure d' « habeas corpus » dans son article 6, procédure organisée par les articles 5 et suivants de la loi transitoire de procédures judiciaires, selon lesquels est considéré comme détenu illégalement : a) celui qui l'est par une autorité, agent, fonctionnaire ou particulier en dehors des cas prévus par la loi et, même dans les cas prévus par la loi, lorsque la détention s'est produite sans que soient respectées les formalités et conditions légales ; b) celui qui est interné illicitement dans tout établissement ou lieu d'Andorre ; c) celui qui est détenu pour un temps supérieur à celui prévu par la loi ; d) celui dont les droits que la Constitution et les lois garantissent à toute personne détenue ne sont pas respectées, bien qu'ayant été légalement privés de liberté.

Le ministère public est compétent, en vertu de la loi transitoire de procédures judiciaires et de l'article 3-11 de son statut organique, pour engager cette procédure, dans laquelle il intervient dans tous les cas.

b) Est-il autorisé à prendre une décision immédiate dans de tels cas ?

En cas de détention par la police, il est compétent pour apprécier l'opportunité et la durée de la mesure, ainsi que pour engager les actions pénales devant les organes juridictionnels afin de faire cesser la détention illégale, comme exposé au paragraphe précédent.

5) Est-il possible, pour une personne privée de sa liberté, de rencontrer personnellement le procureur, et ce sans aucun contrôle par un tiers ? Ces personnes peuvent-elles rester en contact avec le procureur sans aucun contrôle par un tiers (et vice-versa) ?

Oui.

6) Veuillez décrire la procédure de plaintes contre le personnel pénitentiaire.

Les plaintes contre le personnel pénitentiaire sont instruites par la section d'instruction de la batllie (juridiction de première instance). La juridiction de jugement saisie est celle qui est compétente selon la nature de l'infraction commise. Les questions de responsabilité disciplinaires sont de la compétence de l'administration générale.

Actuellement, les seules sources normatives en matière pénitentiaire sont le règlement des fonctionnaires du centre pénitentiaire.

Sont en cours de préparation, au stade d'avant projet de loi, aussi bien la loi du corps pénitentiaire que la loi pénitentiaire. Ces deux textes permettront de disposer d'un régime juridique complet en cette matière.

Effectivement, l'avant-projet de loi du corps pénitentiaire organise le régime statutaire des membres du corps pénitentiaire et en définit les droits et les devoirs avec la volonté d'instaurer une politique de gestion qualitative et quantitative des lieux de travail et des compétences du personnel, en tenant compte des spécificités de leurs fonctions.

Il institue aussi un véritable code de déontologie qui contient l'ensemble des dispositions juridiques nationales et internationales applicables aux personnes qui interviennent au centre pénitentiaire, de même qu'il règle l'attribution de distinctions, récompenses et gratifications, ainsi que le régime disciplinaire qui est directement lié aux règles de conduite.

Ce régime disciplinaire, organisé par le titre IV de l'avant-projet de loi, distingue les fautes commises par les membres du corps pénitentiaire dans l'exercice de leurs fonctions selon leur caractère, très grave, grave et léger, détermine les sanctions applicables à chaque type ainsi que la procédure à suivre qui se déroule en deux phases différenciées, l'instruction et la décision, cette dernière étant de la compétence du directeur du corps pénitentiaire pour les fautes légères, du ministre de l'intérieur pour les fautes graves et du gouvernement pour les fautes très graves. Un recours peut être exercé contre la décision dans les conditions prévues dans le code de l'administration.

7. a) Le ministère public est-il autorisé à contrôler et à réagir aux conditions de privation de liberté ?

Oui.

b) Comment devrait-il réagir ?

c) Dans votre pays, la législation nationale prévoit-elle des dispositions spécifiques à de telles situations ?

Il a été répondu aux questions 7b) et 7c) dans les réponses aux questions 2, 3 et 4 du présent questionnaire.

8. Quel est le rôle du ministère public dans l'exécution des peines impliquant des personnes privées de leur liberté ?

Le code de procédure pénale prévoit dans ses articles 207 et suivants les modes d'exécution des peines privatives de liberté, ainsi que le rôle du ministère public en la matière.

D'une manière générale le ministère public est chargé de promouvoir devant les organes juridictionnels l'exécution des peines conformément au principe de légalité. Il surveille tous les incidents ou les avantages pénitentiaires qui concernent les personnes privées de liberté.

FRANCE

1. Dans notre pays, quels sont les types de décisions relatives à la privation de la liberté ? (Veuillez préciser leur base légale et les autorités habilitées à prendre ces décisions)

Il existe :

- le placement d'un suspect en garde à vue (sous responsabilité d'un officier de police judiciaire)
- le placement d'un mis en examen en détention provisoire (par décision du juge des libertés et de la détention)
- l'incarcération (sur décision de la juridiction de jugement)

Chacune de ces situations est très précisément prévue par les textes en vigueur (garde à vue : art.63 Code de Procédure Pénale / détention provisoire : art.137-1 Code de Procédure Pénale / incarcération : art.132-24 Code Pénal)

2. Quelles décisions sont soumises à un contrôle-supervision de la part du ministère public?

Seule la mesure de garde à vue ordinaire (48 heures maximum) est placée sous contrôle du ministère public.

3. Le procureur est-il autorisé à entrer dans les lieux de détention ? Quels types de lieux ou établissements, à quelle fréquence, et avec ou sans autorisation d'autres autorités ?

Oui, le ministère public est de droit autorisé à visiter les lieux de détention. Il en a même l'obligation selon des périodicités définies par les textes, qu'il s'agisse des locaux de garde à vue ou des établissements pénitentiaires (art.41 Code de Procédure Pénale - art.727 Code de Procédure Pénale - D.178 Code de Procédure Pénale). Il peut ou doit le faire sans autorisation particulière.

4. a. Quel type de mesures le ministère public peut-il prendre en cas de privation illégale de liberté ou en cas de torture ou de peines ou traitements inhumains ou dégradants ?

Le ministère public est habilité à engager des poursuites contre les auteurs d'arrestation illégale, de détention arbitraire, ou de torture. Il peut également intervenir auprès des autorités pénitentiaires compétentes en cas de constat de traitements inhumains ou dégradants.

b. Est-il autorisé à prendre une décision immédiate dans de tels cas ?

Oui, dans le cadre de la compétence qui lui est reconnue (cf.supra a.). Il doit ordonner la mise en liberté d'une personne illégalement détenue et engager des poursuites contre les auteurs de ces infractions ou d'éventuelles infractions de torture.

5. Est-il possible, pour une personne privée de sa liberté, de rencontrer personnellement le procureur, et ce sans aucun contrôle par un tiers ? Ces personnes peuvent-elles rester en contact avec le procureur sans aucun contrôle par un tiers (et vice versa ?)

Oui, ponctuellement dans le cadre d'une demande d'entretien au parloir de la prison ou même dans la cellule. Ultérieurement, un détenu peut toujours écrire au procureur de la République, son courrier étant alors spécialement protégé par la confidentialité (l'inverse est également vrai).

6. Veuillez décrire la procédure de plaintes contre le personnel pénitentiaire.

Si une plainte est dirigée contre un membre de l'administration pénitentiaire, le procureur de la République en est saisi et apprécie la suite qu'il convient de lui donner après avoir déclenché une enquête au cours de laquelle seront entendus le plaignant, le mise en cause et d'éventuels témoins.

7. a. Le ministère public est-il autorisé à contrôler et à réagir aux conditions de privation de liberté ?

Oui.

b. Comment devrait-il réagir ?

Par intervention auprès de l'administration pénitentiaire.

c. Dans notre pays, la législation nationale prévoit-elle des dispositions spécifiques à de telles situations ?

Oui, en cas de violences ou mauvais traitements constatés, ceux-ci peuvent entraîner enquête et, le cas échéant, poursuites. En dehors de ces cas, l'administration pénitentiaire peut être saisie afin de mettre un terme à une condition anormale de privation de liberté (mise à l'isolement sans contrôle médical ou sur une période excessive au regard de la réglementation par exemple).

8. Quel est le rôle du ministère public dans l'exécution des peines impliquant des personnes privées de leur liberté ?

Il appartient au ministère public de mettre en oeuvre les peines prononcées par les juridictions et de veiller à leur exécution (art.32 Code de Procédure Pénale - art.707 Code de Procédure Pénale).

ITALY

1) Les décisions relatives à la privation de liberté par rapport à la supposée commission d'un crime relèvent de la police, du m.p., d'un juge.

La police a un pouvoir d'arrestation en deux situations:

- *flagrante delicto*, il y a des cas d'arrestation obligatoire ou facultatif, selon la gravité de la peine prévue ;
- il y a aussi une hypothèse de « fermo », à savoir la possibilité d'une privation de la liberté hors de la situation du crime *flagrante*, lorsque il s'agit de crimes particulièrement graves.

Une arrestation facultative est justifiée selon la gravité du fait ou la dangerosité de la personne, telle qu'elle résulte de sa personnalité ou des circonstances du fait ;
Pour l'adoption d'un « fermo » d'autres conditions doivent être réunies, telles que l'impossibilité d'identifier l'accusé, le danger concret de sa fuite.

Le m.p. est compétent pour adopter une mesure de « fermo », la sienne étant une compétence primaire par rapport au pouvoir de la police.

L'exercice desdits pouvoirs est lié à l'urgence et a par conséquence la nature provisoire et temporaire de la détention, qui cesse si il n'y a pas de décisions de la part d'un juge, le « juge de l'enquête préliminaire » les validant. La Constitution italienne statue que la décision du juge doit intervenir dans le délai maximum de 96 heures, depuis le premier moment de privation de la liberté.

2) La police doit :

- informer immédiatement le m.p. de tout arrêt ou « fermo »opéré, et
- dans un délai de 24 heures, mettre la personne privée de la liberté à la disposition du m.p., grâce à deux actes précis : (**a**) lui transmettant le procès verbal relatif et (**b**) conduisant ladite personne dans la prison judiciaire.

Le m.p. doit libérer la personne concernée s'il apparaît que il y a une erreur de personne ou si l'arrestation ou le « fermo » on été effectués hors des cas prévus par la loi.

3) Il n'y a pas des limites formels - par rapport aux situations concernées – au droit de l'exercice d'un pouvoir d'accès qui est au niveau général accordé au m.p. par la loi.

Dans la pratique de la physiologie des rapports, l'accès du m.p. aux prisons est lié à la nécessité de l'enquête concernant les crimes dont les personnes détenues sont accusées (ou possibles témoins). Dans ces cas l'accès a lieu avec la collaboration des autorités pénitentiaires. Dans la pathologie des rapports, si l'enquête implique la nécessité de contrôles sur place ou, pire, d'écoutes téléphoniques ou de fouilles, les ordres pertinents

seront exécutés suivant les formes prévues au niveau général par le code de procédure pénale.

4) Il faut distinguer entre une détention illégale fruit uniquement d'une erreur, ce qui n'implique d'autres conséquences qu'au niveau disciplinaire et tous les autres cas : arrêts consciemment illégaux, torture, traitement inhumain etc.

A l'égard de ces derniers il faut dire qu'ils sont considérés en tant que des crimes par la loi italienne et rappeler que en Italie l'action publique est obligatoire.

Par conséquent, le m.p. dans ces cas doit entamer une enquête pénale et exercer l'action publique si à la conclusion de l'enquête les accusations sont confirmées. La décision de ouvrir l'enquête est un devoir et, le cas échéant, le m.p. doit la prendre immédiatement.

5) Les rencontres entre les personnes détenues et le m.p. se passent matériellement sans la présence de personnel de l'administration pénitentiaire et dans les conditions de confidentialité qui sont prévues pour tous les autres actes de l'enquête. La confidentialité concernant le moment initial (the triggering moment) est évidemment plus problématique, étant donné la condition même de détenu.

6) Compte tenu des réponses précédentes, la procédure concernant ces plaintes ne présente pas de caractéristiques particulières.

7) Voir la réponse précédente.

8) L'exécution des peines relève du juge de « sorveglianza », un organe proche du juge de l'application des peines français.

MONACO

1. Dans votre pays, quels sont les types de décisions relatives à la privation de liberté ?
(Veuillez préciser leur base légale et les autorités habilitées à prendre des décisions)

Les décisions de privation de liberté peuvent être prises par :

- les autorités policières :

Les agents de la Sûreté Publique peuvent retenir des personnes dans les locaux de la Sûreté Publique suite à la décision d'un officier de police judiciaire. Il est à noter que ces agents sont les auxiliaires du Parquet Général. La rétention est d'une durée de 24 heures maximum non renouvelable. Dans ce délai de 24 heures, l'intéressé doit être présenté à un juge. Ces règles sont en conformité avec le deuxième alinéa de l'article 19 de la Constitution qui prévoit que : « *Hors le cas du flagrant délit, nul ne peut être arrêté qu'en vertu de l'ordonnance motivée du juge, laquelle doit être signifiée au moment de l'arrestation ou, au plus tard, dans les vingt-quatre heures. Toute détention doit être précédée d'un interrogatoire ».*

- les autorités judiciaires :

En application de l'article 162 du code de procédure pénale, « *le mandat d'arrêt est l'ordre en vertu duquel le juge d'instruction, la juridiction compétente ou le Procureur Général, celui-ci dans le cas de crime ou de délit flagrant, fait saisir l'inculpé par la force publique pour être conduit dans la maison d'arrêt. »*

En vertu des articles 162 et 399 du code de procédure pénale, le Procureur général peut émettre un mandat d'arrêt en cas de crime ou de délit flagrant. L'article 399 dispose que « *toute personne arrêtée en état de délit flagrant est conduite immédiatement et au plus tard dans les vingt-quatre heures devant le procureur général qui l'interroge et, s'il y a lieu, la traduit devant le tribunal correctionnel (...).*

Le procureur général peut décerner un mandat d'arrêt contre le prévenu ainsi renvoyé (...)». Il a également compétence, dans le cadre de la procédure de flagrant délit ou de crime, pour faire saisir la personne contre laquelle se révéleraient des indices graves ou décerner contre elle un mandat d'amener.

L'article 162 du code de procédure pénale prévoit également, pour le juge d'instruction, la possibilité d'émettre un mandat d'arrêt dans lequel il fixe le point de départ de la détention préventive. Ce mandat est renouvelable tous les deux mois.

Le tribunal correctionnel peut également délivrer un mandat d'arrêt. Celui-ci doit être motivé, et ne peut être délivré que si la peine prononcée est au moins d'une année (article 395 du code de procédure pénale). Il est à noter que cette juridiction peut prononcer des

peines d'emprisonnement pouvant atteindre vingt ans dans certaines matières (exemple : trafic de stupéfiants).

Le juge de paix, qui préside le Tribunal de police, peut décider d'une mesure d'emprisonnement dont la durée maximum est de cinq jours.

Le tribunal criminel prononce quant à lui des peines d'emprisonnement allant jusqu'à la réclusion à perpétuité.

Enfin, l'appel formé par le ministère public suite à une décision rendue par une juridiction répressive est suspensif (24 heures) et a donc pour effet le maintien du prévenu en détention. L'affaire doit être audiencée à la « prochaine audience utile ».

2. Quelles décisions sont soumises à un contrôle/ supervision de la part du Ministère public ?

Le Procureur Général exerce un contrôle des décisions en matière de procédure de flagrant délit, de détention préventive et de liberté provisoire.

S'agissant de la procédure de flagrant délit, le Procureur général se prononce sur l'opportunité de placer le prévenu en cellule de détention seul ou non, d'être ou non séparé d'autres détenus, de travailler au service général.

S'agissant de la détention préventive, aux termes de l'article 181 du code de procédure pénale, il délivre également des permis de visite. Cette prérogative appartient également au juge d'instruction pour des inculpés et au Directeur des Services Judiciaires pour les individus condamnés définitivement.

En vertu de l'article 34 l'Ordonnance Souveraine n°69 du 23 mai 2005 portant règlement de la maison d'arrêt, le Procureur général lit les courriers adressés par ou aux détenus (hormis ceux des inculpés en détention préventive). Il peut les retenir s'il estime que la teneur des correspondances est contraire aux lois ou aux bonnes mœurs (article 36 du règlement de la maison d'arrêt.)

S'agissant de la liberté provisoire, le Procureur général prend des réquisitions sur toute demande de mise en liberté d'un inculpé en application de l'article 191 du code de procédure pénale qui prévoit que « *le juge d'instruction communique au Parquet, en vue d'obtenir ses réquisitions, les demandes de mise en liberté provisoire formulées par l'inculpé* (…) ».

Il peut à tout moment et de sa propre initiative requérir la mise en liberté provisoire de l'inculpé (article 183 alinéa 3 du code de procédure pénale).

Le Procureur général prend ses réquisitions sur toute prorogation du mandat d'arrêt (article 186 du code de procédure pénale) et peut interjeter appel de toutes les ordonnances du juge d'instruction, y compris bien entendu de celles statuant sur la

détention préventive. L'appel du ministère public est suspensif (article 231 du code de procédure pénale.)

C'est le juge d'instruction qui détermine les mesures de contrôle que doit respecter l'inculpé laissé en liberté provisoire afin de garantir sa représentation en justice.

Le contrôle judiciaire est en revanche le fait d'un magistrat du siège.

3. Le procureur est-il autorisé à rentrer dans les lieux de détention ? Quels types de lieux ou d'établissements, à quelle fréquence, et avec ou sans autorisation d'autres autorités ?

Le Procureur est tenu de se rendre à maison d'arrêt, une fois tous les trois mois (article 81 du Règlement de la maison d'arrêt.)

Il n'est pas précisé si cette visite implique des entretiens avec les détenus. Dans la pratique, de tels entretiens ont déjà eu lieu à la discrétion du Procureur général.

4. a. Quel type de mesures le ministère public peut-il prendre en cas de privation illégale de liberté ou en cas de torture ou de peines ou traitements inhumains ou dégradants ?

Dans l'hypothèse où une privation illégale de liberté serait le fait d'un officier de police judiciaire (O.P.J.), auxiliaire du Procureur général, la procédure visant à assurer le contrôle de leur activité par la chambre du conseil de la Cour d'appel peut être initiée par le Premier président de cette cour ou par le Procureur général (articles 48 et suivants du code de procédure pénale).

L'intéressé peut se voir interdire soit temporairement soit définitivement d'exercer ses fonctions d'O.P.J., sans préjudice des sanctions administratives pouvant lui être infligées par ses supérieurs hiérarchiques.

Des sanctions pénales sont également prévues par l'article 126 du code pénal qui réprime les abus d'autorité commis par un commandant en chef ou en sous ordre de la force publique qui aura, sans motif légitime, usé ou fait user de violences envers les personnes, dans l'exercice ou à l'occasion de l'exercice de ses fonctions

Des sanctions pénales pour arrestation illégale et séquestration de personnes résultent en outre des dispositions des articles 275 et suivants du code de procédure pénale. Ainsi, celui qui sans ordre des autorités constituées et hors les cas où la loi ordonne de saisir les inculpés, aura arrêté, détenu ou séquestré une personne, sera puni de la réclusion de 10 à 20 ans.

L'article 278 dispose que le maximum de la réduction à temps sera applicable si la personne illégalement arrêtée et retenue aura subi des tortures.

Les articles 78 et 79 de l'Ordonnance Souveraine n°69 portant règlement de la maison d'arrêt prohibe tout comportement violent que soit d'ordre physique ou moral à l'encontre des détenus et prévoit des sanctions disciplinaires à l'encontre des auteurs de tels actes.

b. Est-il autorisé à prendre une décision immédiate dans de tels cas ?

Les sanctions correspondant aux délits de coups et blessures volontaires et voies de fait peuvent être appliquées en la matière. Le Procureur général peut délivrer un mandat d'arrêt immédiat (flagrant délit) ou en requérir du juge d'instruction un mandat d'arrêt, à l'encontre de l'auteur des traitements violents ou indignes. Il est alors fait application du droit pénal commun.

5. Est-il possible, pour une personne privée de sa liberté, de rencontrer personnellement le procureur, et ce sans aucun contrôle par un tiers ? Ces personnes peuvent-elles rester ne contact avec le procureur sans aucun contrôle par un tiers (et vice versa) ?

Comme précisé ci-dessus, les rencontres entre un détenu et le Procureur sont possibles. Aucun texte ne les interdit, ni ne les autorise. L'article 32 de l'Ordonnance Souveraine portant règlement de la maison d'arrêt dispose que toute correspondance adressée par un détenu à une autorité judiciaire ou administrative de la Principauté, à leurs avocats, ou aux autorités du Conseil de l'Europe sera transmise cachetée à leur destinataire sans être au préalable lues par le personnel du greffe de la maison d'arrêt.

Un contact avec le procureur sans aucun contrôle par un tiers est donc possible.

6. Veuillez décrire la procédure de plaintes contre le personnel pénitentiaire ?

L'article 1er alinéa 3 de l'Ordonnance Souveraine portant règlement de la Maison d'arrêt dispose que « *la Maison d'arrêt est placée sous l'autorité du Directeur des Services Judiciaires qui est assisté d'un bureau d'administration pénitentiaire*. »

- Possibilité de rédiger un courrier à toute autorité administrative ou judiciaire monégasque, à son avocat ou aux autorités du Conseil de l'Europe :

En cas de plainte d'un détenu à l'encontre d'un membre du personnel de la Maison d'Arrêt, il lui est possible, en vertu de l'article 32 du Règlement de la Maison d'arrêt, de rédiger une lettre à toute autorité administrative ou judiciaire monégasque, à son avocat ou aux autorités du Conseil de l'Europe dont la liste apparaît dans le Règlement intérieur de la Maison d'arrêt. Cette correspondance est remise cachetée au Directeur de la Maison d'arrêt et son envoi ne peut être retardé sans aucun prétexte. En principe, la plainte est adressée au Directeur des Services Judiciaires qui a compétence pour prendre des sanctions à l'encontre du personnel relevant de la Maison d'arrêt mais il se peut qu'elle soit adressée au Procureur Général qui en tiendra informé le Directeur des Services Judiciaires.

- Rédaction d'un rapport sur les faits et circonstances :

Ainsi, en cas de plainte d'un détenu contre un membre du personnel pénitentiaire, le Directeur des Services Judiciaires demande au Directeur de la Maison d'arrêt d'établir un rapport d'incident s'il ne l'a pas déjà fait en application de l'article 80 du règlement de la Maison d'arrêt. Avant que toute sanction ne soit prononcée, l'agent contractuel dûment convoqué, doit être entendu en ses explications. Dans tous les cas, il a droit à la consultation de son dossier. Le Directeur, ou le cas échéant, le Secrétaire Général, établit un procès verbal de l'audience accordée à l'intéressé et un rapport précis des faits et circonstances dans lesquelles ils se sont produits.

- Sanctions disciplinaires:

Si une sanction est prise, elle sera prononcée selon sa gravité, par le Directeur des Services judiciaires ou le Secrétaire Général et notifiée à l'intéressé.

Pour le personnel titulaire, le Directeur des services judiciaires ou le Secrétaire Général peut prendre des sanctions dans les conditions prévues par la loi n°975, à savoir l'avertissement, le blâme, l'abaissement de classe ou d'échelon, la rétrogradation, l'exclusion temporaire de fonction pour une durée temporaire de trois mois à un an, la mise à la retraite d'office ou la révocation. En cas de faute grave, qu'il s'agisse d'un manquement aux obligations professionnelles ou d'une infraction de droit commun, l'intéressé peut être suspendu par décision du Directeur des Services judiciaires. Si cette personne fait l'objet de poursuites pénales, sa situation ne sera définitivement réglée qu'après que la décision rendue par la juridiction saisie est devenue définitive.

Pour les agents contractuels de la maison d'arrêt, c'est la procédure prévue par le Règlement général applicable aux agents contractuels de la Direction des Services Judiciaires et de la Maison d'arrêt qui sera suivie en cas de plainte contre l'un d'entre eux. Ainsi, toute faute commise par un agent dans l'exercice ou à l'occasion de l'exercice de son emploi l'expose, sans préjudice, le cas échéant, des peines prévues par la loi, aux sanctions suivantes : l'avertissement, le blâme, le retard à l'avancement, l'exclusion temporaire avec retenue de traitement pour une durée maximale d'un mois avec maintien des prestations familiales ou licenciement, sans préavis ni indemnité.

L'avertissement et le blâme sont prononcés par le Secrétaire Général et notifiés par courrier à l'intéressé alors que les autres sanctions sont prononcées par le Directeur des Services Judiciaires et notifiées par lettre recommandée avec demande d'avis de réception.

Le personnel pénitentiaire suppléant dépend quant à lui de la fonction publique et en cas de plainte, la procédure disciplinaire prévue par la loi n°975 du 12 juillet 1975 portant statut des fonctionnaires de l'Etat sera appliquée.

7. a. Le Ministère public est-il autorisé à contrôler et à réagir aux conditions de privation de liberté ?

b. Comment devrait-il réagir ?

c. Dans votre pays, la législation nationale prévoit-elle des dispositions spécifiques à de telles situations ?

Réponses a,b et c : La Maison d'arrêt est placée sous l'autorité du Directeur des Services judiciaires (Ministre de la justice).

L'article 185 du code pénal dispose que les inculpés détenus préventivement sont soumis pour tout ce qui n'est pas prévu par le code de procédure pénale au règlement général du service pénitentiaire.

8. Quel est le rôle du ministère public dans l'exécution des peines impliquant des personnes privées de leur liberté ?

Le ministère public assure l'exécution des peines.

Il met a exécution les peines d'emprisonnement prononcées par les juridictions répressives.

Il est en charge de la diffusion, via le canal Interpol, des décisions de justice ayant prononcé des peines d'emprisonnement ferme (mandat d'arrêt international).

L'article 598 du code de procédure pénale autorise le Ministère public à accorder un sursis lorsque l'exécution immédiate d'une peine d'emprisonnement serait de nature à entraîner pour le condamné ou sa famille, un trouble considérable et hors de proportion avec l'objet de la répression.

PORTUGAL

1) Dans votre pays, quels sont les types de décisions relatives à la privation de liberté ? (Veuillez préciser leur base légale et les autorités habilitées à prendre ces décisions)

D'après la procédure pénale portugaise, l'arrestation de toute personne a lieu pour (article 254 du Code de procédure pénale):

a) que, dans un délai de quarante-huit heures, elle soit soumise à jugement direct ou présentée au juge ayant compétence pour mener l'interrogatoire de première comparution, ou encore pour imposition ou exécution d'une ou plusieurs obligations du contrôle judiciaire;
b) assurer la présence immédiate, ou dans le meilleur délai sans dépasser vingt-quatre heures, de la personne arrêtée par devant l'autorité judiciaire en acte procédural.

Dans le cas d'infraction flagrante punie de peine privative de liberté, l'arrestation peut être effectuée par toute autorité judiciaire ou entité policière. Si aucune de ces entités n'est présente sur les lieux, toute personne a qualité pour appréhender l'auteur, étant tenue de le conduire dès lors devant lesdites autorités (article 255-1 et 255-2 du Code de procédure pénale).

Hors les cas de flagrance, l'arrestation ne peut avoir lieu que moyennant mandat décerné par un juge ou, en cas d'admissibilité de détention provisoire, par le ministère public (article 257-1 du Code de procédure pénale.).

Les autorités de police criminelle peuvent aussi ordonner l'arrestation hors les cas de flagrance, de leur propre initiative, lorsque (article 257-2 du Code de procédure pénale):

a) la détention provisoire est admissible;
b) il y a des indices motivés faisant présumer qu'une fuite pourra avoir lieu,
c) il ne soit pas faisible d'attendre l'intervention de l'autorité judiciaire, en raison d'urgence et de péril de demeure.

Si les obligations du contrôle judiciaire prouvent être inadéquates et insuffisantes à l'égard du cas en espèce, le juge d'instruction peut ordonner la détention provisoire de la personne mise en examen lorsque (article 202-1 du Code de procédure pénale):

a) il existe des indices motivés faisant présumer qu'une infraction douleuse fut commise, celle-ci étant punie de peine privative de liberté jusqu'à trois ans au maximum; ou
b) il s'agit d'une personne ayant entré ou séjourné irrégulièrement sur le territoire national, ou à l'encontre de laquelle une procédure d'extradition ou d'expulsion est en cours.

En outre, en cas de (article 204 du Code de procédure pénale):

a) Fuite ou péril de fuite;
b) Péril de trouble au cours des phases procédurales d'enquête ou d'instruction et, nommément, péril au regard du recueil, du maintien ou de la vérité des éléments de preuve; ou
c) Péril de trouble portée à l'ordre public et à la tranquillité publique en raison de changement des qualifications et des circonstances de l'infraction ou de trouble manifestée par la personne mise en examen, ainsi que péril de poursuite des activités criminelles.

Si la personne à être placée en détention provisoire manifeste des troubles psychiatriques, le juge peut déterminer, ouï le défenseur et dès que possible un membre de sa famille, que la détention provisoire soit remplacée par détention provisoire en établissement psychiatrique ou autre établissement similaire adéquat jusqu'à ce que les symptômes cessent de se manifester (article 202-2 du Code de procédure pénale).

Les peines et les mesures entraînant privation de liberté sont imposées à travers jugement ou arrêt judiciaire (article 477-1 et 501-1 du Code de procédure pénale).

2) Quelles décisions sont soumises à un contrôle/supervision de la part du ministère public ?

Les arrestations faites par entités policières sont communiquées sans délai au juge ayant décerné le mandat d'arrêt lorsqu'elles visent à assurer la présence de la personne arrêtée à l'autorité judiciaire au sein d'un acte procédural et au ministère public en tout autre cas.

Toutes les décisions judiciaires, nommément les ordonnances imposant la détention provisoire ou les jugements imposant une peine privative de liberté ou une mesure de détention en institution de traitement, sont soumises au contrôle du ministère public, à l'encontre desquelles il peut interjeter appel, y compris les appels au seul intérêt du prévenu ou du condamné (articles 219, 399 et 401-1 du Code de procédure pénale).

3) Le procureur est-il autorisé à entrer dans les lieux de détention ? Quels types de lieux ou établissements, à quelle fréquence, et avec ou sans autorisation d'autres autorités?

Selon la législation portugaise, il incombe au tribunal de l'exécution des peines de, du moins une fois par mois, visiter les lieux de détention, en particulier afin de surveiller la mise en exécution des jugements condamnatoires et d'écouter les prétentions des personnes qui se trouvent détenues, soit en régime provisoire, soit en subissement de peine (article 23 du décret n.º 783/76, du 29 octobre).

4) a. Quel type de mesures le ministère public peut-il prendre en cas de privation illégale de liberté ou en cas de torture ou de peines ou traitements inhumains ou dégradants?

Lorsqu'il devient manifeste qu'une arrestation a été faite sur erreur de la personne visée, hors les cas d'admissibilité, ou qu'elle n'est plus nécessaire, toute entité ayant ordonnée l'arrestation ou par devant laquelle la personne arrêtée est présenté ordonne sans délai sa remise en liberté (article 261-1 du Code de procédure pénale).

S'agissant d'entité autre que l'autorité judiciaire, un rapport abrégé d'en doit être dressé et transmis au ministère public (article 261-2 du Code de procédure pénale).

D'après le Code pénal portugais, les termes torture, traitements cruels, dégradants ou inhumains s'étendent à tout acte par lequel des souffrances aiguës, physiques ou mentales, des fatigues graves, physiques ou psychologues, ou l'emploi de produits chimiques, drogues ou autres, autant naturels qu'artificiels, sont infligées à la victime en vue de limiter sa capacité de décision ou la libre manifestation de sa volonté (article 243-3 du Code pénal).

Lorsque ce type de traitement est infligé aux fins notamment d'obtenir des aveux, témoignages, déclarations ou renseignements de toute personne, de la punir d'un acte qu'elle ou une tierce personne a commis ou est soupçonnée d'avoir commis, de l'intimider ou d'intimider une tierce personne, le fait est pénalement puni et le ministère public est tenu d'ouvrir une enquête lorsqu'il d'en est informé (article 243-1 du Code pénal et article 48 et 262 du Code de procédure pénale).

b. Est-il autorisé à prendre une décision immédiate dans de tels cas ?

Lorsqu'il devient évident qu'une arrestation fut faite fondée sur erreur d'identité, hors les cas de son admissibilité légale, ou que la mesure n'est plus nécessaire, le ministère public est tenu sans délai de mettre la personne visée en liberté moyennant ordonnance rendue à cet effet (article 261-1, 261-2 du Code de procédure pénale).

Dès lors qu'une personne est maintenue en détention arbitraire, nommément du fait que les délais de garde à vue prévus à la loi ou à une décision judiciaire ont été dépassés, le ministère public d'en fait réquisitoire au juge, qui doit ordonner l'immédiate remise en liberté de la personne visée.

5) Est-il possible, pour une personne privée de sa liberté, de rencontrer personnellement le procureur, et ce sans aucun contrôle par un tiers ? Ces personnes peuvent-elles rester en contact avec le procureur sans aucun contrôle par un tiers (et vice versa)?

Sauf pour des situations auxquelles la présence de l'avocat choisi ou d'office est obligatoire, rien n'empêche qu'une personne privée de sa liberté puisse rencontrer le magistrat du ministère public hors la présence d'un tiers. Nonobstant, en pratique, le magistrat du ministère public se fait accompagner d'un fonctionnaire de justice chargé de dresser le respectif procès-verbal.

6) Veuillez décrire la procédure de plaintes contre le personnel pénitentiaire.

Autant les plaintes déposées auprès le ministère public que les procédures pénales contre le personnel pénitentiaire ne font pas l'objet d'aucun traitement en particulier vis-à-vis toute autre affaire pénale déclenchée en raison de plaintes et d'infractions à nature différente, compte tenu nommément l'auteur de l'infraction et/ou la victime.

Les plaintes sur des faits à nature non criminelle peuvent être déposées auprès le directeur de l'établissement, le personnel, les inspecteurs des services pénitentiaires et le tribunal de l'application des peines lors des visites qu'ils sont tenus de faire mensuellement aux lieux de détention (articles 138 et 139-1 du décret-loi n.º 265/79, du 1 août).

Les juges de l'application des peines doivent essayer de résoudre les prétentions des détenus en conjoint avec les directeurs des établissements pénitentiaires (article 139-2 du décret-loi nº 265/79, du 1 août).

En cas d'absence d'accord entre le juge et le directeur pénitentiaire, la question sera examinée par un conseil technique qui décide à la majorité et dont la décision peut faire l'objet de recours pour le ministre de la justice (article 139-3 et 139-4 du décret-loi nº 265/79, du 1 août).

7) a. Le ministère public est-il autorisé à contrôler et à réagir aux conditions de privation de liberté ?

Il n'incombe pas au ministère public de contrôler les conditions de privation de liberté, soit dans les postes de police, soit dans les institutions pénitentiaires. En effet, la loi n'impose au Ministère Public que veiller à la légalité de l'exécution des mesures restrictives de liberté et d'incarcération ou de traitement d'office, et de proposer des mesures d'inspection aux établissements ou aux services, ainsi que l'adoption des mesures disciplinaires ou pénales nécessaires.

La surveillance des postes de police est attribuée à l'Inspection générale des affaires intérieures, tandis que celle des établissements pénitentiaires reste à la charge de la Direction générale des prisons.

b. Comment devrait-il réagir?

Voir réponse ci-dessus.

c. Dans votre pays, la législation nationale prévoit-elle des dispositions spécifiques à de telles situations ?

Étant un service central de contrôle, surveillance et appui technique du Ministère des affaires intérieures, l'Inspection générale des affaires intérieures jouit d'autonomie technique et administrative et opère sous la directe dépendance du ministre. Elle étend

son activité de contrôle à tout le territoire national et comprend tous les services directement dépendants ou subordonnés au Ministère des affaires intérieures (décret-loi n.º 222/95, du 11 septembre, tel que modifié par le décret-loi n.º 154/96, du 31 août et par le décret-loi n.º 3/99, du 4 janvier).

Les établissements pénitentiaires dépendants du Ministère de la justice sont surveillés par les services d'Inspection intégrés dans les services centraux de la Direction générale des prisons (décret-loi n.º 265/79, du 1 août, tel que modifié par le décret-loi n.º 49/80, du 22 mars et le décret-loi n.º 414/85, du 18 octobre).

8) Quel est le rôle du ministère public dans 1'exécution des peines impliquant des personnes privées de leur liberté?

Il incombe au ministère public de requérir l'exécution des peines et des mesures de détention en institution de traitement (article 469 du Code de procédure pénale).

En cas de condamnation à une peine privative de liberté, le ministère public remet, dans un délai de cinq jours à compter de la date à laquelle le jugement a acquis la force de chose jugée, une copie du jugement au tribunal de l'application des peines et aux services pénitentiaires et de réintégration sociale. Si la libération conditionnelle est admissible, cette copie est accompagnée d'un calcul des dates à lesquelles la moitié et les deux tierces de la peine seront atteints (article 477-1 et 477-2 du Code de procédure pénale).

Le ministère public est aussi chargé de procéder au calcul de la duration de la peine aux fins de détermination de la date à laquelle le détenu devra être restitué à la liberté (article 479 du Code de procédure pénale).

En cas de condamnation à une mesure de détention en institution de traitement, le ministère public remet, dans un délai de cinq jours à compter de la date à laquelle le jugement devient définitif et exécutoire, une copie du jugement au tribunal de l'application des peines, aux services pénitentiaires et de réintégration sociale et à l'institution où le détenu est soumis à traitement (article 502 du Code de procédure pénale).

Dans le Tribunal de l'exécution des peines les magistrats du ministère public sont chargés de s'occuper des intérêts qui leur sont confiés, devant être ouïs sur tout ce qui les concerne. En outre, ils peuvent requérir aux directeurs des établissements et aux orientateurs sociaux attachés au Tribunal de l'exécution tout éclaircissement dont ils aient besoin (article 11-1 du décret-loi nº 783/76, du 29 octobre).

SWITZERLAND

Remarque liminaire: il y a en Suisse 26 codes cantonaux de procédure pénale, un code de procédure pénale fédérale et un code de procédure pénale militaire. Un projet de code de procédure pénale suisse unifiant la procédure pénale des cantons et la procédure pénale fédérale sera soumis au Parlement fédéral en 2006; ce code devrait entrer en vigueur en 2010. Les réponses aux questions se fondent essentiellement sur la procédure pénale fédérale actuellement en vigueur.

1. Dans votre pays, quels sont les types de décisions relatives à la privation de liberté?
(Veuillez préciser leur base légale et les autorités habilitées à prendre ces décisions)

a) Décisions ordonnant la détention préventive, prises par le procureur général de la Confédération, le juge d'instruction fédéral ou la juridiction saisie [art. 44ss de la loi fédérale sur la procédure pénale du 15 juin 1934 (PPF)].

b) Jugements des tribunaux pénaux prononçant des peines privatives de liberté au sens de l'art. 35 du Code pénal suisse (CP).

2. Quelles décisions sont soumises à un contrôle/supervision de la part du ministère public?

a) L'inculpé en détention préventive peut demander en tout temps d'être mis en liberté (art. 52, al. 1 PPF). En cas de refus du juge d'instruction ou du procureur général, la décision peut être l'objet d'un recours à la cour des plaintes du Tribunal pénal fédéral (art. 52, al. 2 PPF).

b) Le Ministère public de la Confédération n'a pas de compétence générale en matière d'exécution des peines prononcées par les juridictions fédérales de répression (notamment par le Tribunal pénal fédéral). Ce sont les cantons qui exécutent les jugements prononcés par ces juridictions (art. 240, al. 2 PPF).

Le Ministère public de la Confédération a des compétences spéciales et restreintes déléguées par le Conseil fédéral: il peut suspendre ou interrompre l'exécution de la peine privative de liberté lorsque l'état de santé du condamné ou d'autres circonstances spéciales l'exigent (art. 242 PPF); il peut aussi décider de la libération conditionnelle et du renvoi, à titre d'essai, de l'expulsion du condamné (art. 38, 45, 55 al. 2 CP).

3. Le procureur est-il autorisé à entrer dans les lieux de détention ? Quels types de lieux ou établissements, à quelle fréquence, et avec ou sans autorisation d'autres autorités?

Le procureur général peut entrer dans les locaux de détention (détention préventive), sans autorisation et sans limitation quant à la fréquence. Ces locaux sont ceux des cantons.

4. a. Quel type de mesures le ministère public peut-il prendre en cas de privation illégale de liberté ou en cas de torture ou de peines ou traitements inhumains ou dégradants?

Il peut décider d'office de libérer le prévenu dont la détention préventive ne se justifie plus (art. 50 PPF). L'inculpé en détention préventive peut demander en tout temps d'être mis en liberté. En cas de refus du juge d'instruction ou du procureur général, la décision peut être l'objet d'un recours à la cour des plaintes du Tribunal pénal fédéral (art. 52 PPF).

Les cantons assurent et surveillent l'exécution des peines (art. 240, al. 2 PPF). Ils veillent au respect des devoirs et des droits des détenus.

b. Est-il autorisé à prendre une décision immédiate dans de tels cas ?

Il peut décider d'office de libérer le prévenu dont la détention préventive ne se justifie plus (art. 50 PPF). La cour des plaintes du Tribunal pénal fédéral est d'ailleurs informée de toute arrestation ou mise en liberté ordonnée au cours de l'enquête de police judiciaire et de l'instruction préparatoire.

5. Est-il possible, pour une personne privée de sa liberté, de rencontrer personnellement le procureur, et ce sans aucun contrôle par un tiers ? Ces personnes peuvent-elles rester en contact avec le procureur sans aucun contrôle par un tiers (et vice versa)?

Théoriquenment possible, mais, en général, le procureur général ne rencontre pas personnellement les personnes détenues. Si celles-ci contestent la détention, elles peuvent demander en tout temps d'être mises en liberté et recourir en cas de refus du procureur ou du juge d'instruction (voir réponse à question 4).

6. Veuillez décrire la procédure de plaintes contre le personnel pénitentiaire.

La procédure est réglée par la législation cantonale, car les cantons exécutent la détention. Il y a des voies de droit auprès d'autorités administratives ou judiciaires (plainte, recours).

7. a. Le ministère public est-il autorisé à contrôler et à réagir aux conditions de privation de liberté ?

Non, car les cantons assurent l'exécution de la détention et c'est l'affaire de leurs services pénitentiaires ou d'exécution des peines. Les décisions de ces services sont sujettes à recours conformément aux codes cantonaux de procédure et de juridiction administrative.

b. Comment devrait-il réagir ?

Voir sous a) ci-dessus.

c. Dans votre pays, la législation nationale prévoit-elle des dispositions spécifiques à de telles situations ?

Non, voir sous a) ci-dessus.

8. Quel est le rôle du ministère public dans l'exécution des peines impliquant des personnes privées de leur liberté?

Aucun en principe, car les cantons exécutent les peines.

Voir toutefois la réponse à la question 2, let. b).