

Towards and Area of Freedom, Security and Justice

LIBERTY AND SECURITY

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Area of freedom, security and justice

Article 6 Treaty on European Union:

- “1. The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States;
2. The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms [...], as general principles of Community law [...].”

ECHR Article 5 – Right to liberty and security

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

[...]

- c.** the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

[...]

- 3.** Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

[...]

Pre-trial detention must always be the exception

*Recommendation No. R(80) 11 of the Committee of Ministers of
the Council of Europe concerning Custody Pending Trial*



- “Custody pending trial shall be regarded as an exceptional measure and shall never be compulsory nor be used for punitive reasons”
- “Whenever custody pending trial can be ordered, the judicial authority shall consider whether the use of custody can be avoided by imposing alternative measures [...]”

When is pre-trial detention allowed?

1) Is there a **REASONABLE SUSPICION** that the person concerned has committed the offence ?

Offence

- definition and
- threshold for pre-trial detention in accordance with national law

AND

2) Is there at least one **SPECIAL GROUND** for detention?, *i.e.*

α) danger of flight
(absconding)

β) danger of suppression of evidence

γ) danger of repetition of offences

If yes (1 + 2 (α and/or β and/or γ)). Are there any **ALTERNATIVE** (non-custodial) **MEASURES** available?

Principle of proportionality: the judicial authority must use the most lenient coercive measure that is available in order to try to eliminate the danger(s) described under α), β) and/or γ .

- European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR, 1950)

(International Covenant on Civil and Political Rights (ICCPR, 1966))

- Right to liberty
- Presumption of innocence
- Principle of proportionality
- Principle of legality

Maximum length of
pre-trial detention