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JOURNAL OF LEGAL STUDIES
”Vasile Goldiş” Western University of Arad
J. L. S.
2023 – 32(46) DOI: 10.2478/jles-2023-0013

GENESIS OF LEGAL REGULATION OF PRE-TRIAL DETENTION IN SWEDEN AND UKRAINE: COMPARATIVE ANALYSIS

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(**Received: September 2023; Accepted: October 2023; Published: November 2023**)

Abstract: The paper goes on to discuss the prevalence of issues in pre-trial detention practices in both Sweden and Ukraine, as noted by international and national organizations. Sweden has witnessed a growing trend in pre-trial detention statistics, while Ukraine, despite a decreasing trend in remand, faces a substantial number of cases brought against it at the European Court of Human Rights (ECHR) pertaining to pre-trial detention. The historical context reveals that these two countries have responded differently to criticism and challenges, reflecting variations in their legal systems and corresponding regulations on pre-trial detention. Nonetheless, both nations have pursued reforms with a shared objective: to improve the pre-trial detention system. Given these divergent experiences, statistical data, and overall context, it is evident that a comparative analysis of pre-trial detention policies in Sweden and Ukraine is warranted. Such a comparison can offer valuable insights into the existing problems in both countries and suggest pertinent solutions, taking into consideration their distinctive experiences and circumstances.
Keywords: pre-trial detention; criminal procedure; criminal justice; prison.

1. Introduction

Pre-trial detention is the most intrusive precautionary measure in criminal procedure. It should be applied only in exceptional cases, but the current confirms that a great number of states use pre-trial detention as an ordinary practice. By its legal nature, pre-trial detention is contrary to the basic principle of criminal law - the principle of innocence. Since the suspect is forced to stay behind bars until his guilt is proven. Such restriction of human rights is justified by the interests of justice (prevention of changing testimonies or destroying the evidence) and society (protection from recidivism). Therefore, in applying pre-trial detention a proper balance should be found between the interests of suspects, society and the state.

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Currently, international and national bodies note a great number of problems in pre-trial detention practices in Sweden and Ukraine. The statistics confirm the growing trend in pre-trial detention in Sweden. In Ukraine, despite the decreasing trend in remand, the great number of the ECHR against Ukraine regarding pre-trial detention, confirms the existence of problems. Throughout history, Sweden and Ukraine have differently dealt with critics and problems. Countries have different legal systems and respectively different regulations of pre-trial detention. Therefore, they undertook different reforms, but with one main aim – to enhance pre-trial detention. A different experience, statistics and general background confirm that pre-trial detention policies in Sweden and Ukraine are worth comparing. The comparison could provide insight into existing problems in both countries and propose relevant solutions taking into account countries` different experiences.

2. Genesis of Legal Regulation of Pre-trial Detention in Sweden

Sweden has a long history of penal procedure. Sweden tends to relate to a civil law legal system (Ortwein, 1995, p. 412). Therefore, the criminal justice system is primarily based on written law, while case law is not that important (Knapen et. al., 2009, p. 901). Historically Swedish legal system was founded on classical Roman law (Ortwein, 1995, p. 412). Respectively, the Swedish penal procedure is rooted in the Germanic law tradition (Knapen et. al., 2009, p. 901). Although, throughout history, the classic model of Roman law was transformed due to the influence of the common law legal system (Ortwein, 1995, p. 412). The contemporary Swedish legal system represents a mix of common and civil law legal systems` features. Territorial proximity and similarity of development models have led to such deviation of all Scandinavian countries from the classical Roman and German models. Scandinavian countries formed their Nordic version of the penal system, which in the scholarly literature is referred to as "Nordic penal exceptionalism" (Smith, 2017, p. 2). "Nordic penal exceptionalism" is usually characterized by two core features: a lower rate of imprisonment than in most other countries; and good prison conditions (Crewe et. al., 2022, p. 3). However, "Nordic penal exceptionalism" could be characterized not only in positive terms. Scandinavian countries are famous for their ubiquitous use of solitary confinement in remand prisons during the pre-trial investigation. It even was termed a "peculiarly Scandinavian phenomenon" (Evans and Morgan as cited in Smith, 2017, p.8). Solitary confinement is rather a very old practice that has historical roots in the 19th century (Smith, 2017, p. 8). However, this well-embedded old practice is still widely used. Therefore, Sweden's pre-trial detention practice shows that Sweden is far from the values and ideals associated with penal exceptionalism (Smith, 2017, p. 2).

A feature of the Swedish criminal justice system, that directly influences pre-trial detention practices, is the principle of immediacy (Wigen, 2016, p. 12). It is closely tied with the principle of oral proceedings inherent in Swedish law (Lönnqvist, 2020, p. 23). At the legislative level, the principle of immediacy is enshrined in §2 of Chapter 30 of the Swedish Code of Judicial Procedure (Sw. Rättegångsbalken (hereinafter RB)), while the principle of orality is defined in §5 Chapter 46 RB (Rättegångsbalken, 1942). According to §2 of Chapter 30 the principle of immediacy implies that if the main hearing has been held, the judgment shall be based on what occurred at the hearing (Rättegångsbalken, 1942). Concerning the principle of orality, it provides that the hearing must be oral and the parties may only make or read written submissions or other written speeches if the court determines that doing so would facilitate understanding of the speech or otherwise benefit the process (Rättegångsbalken, 1942). In turn, the principle of immediacy includes the principle of the immediacy of evidence (Wigen, 2016, p. 12). According to the general rule, the evidence should be considered and evaluated at the main hearing of the case. It allows the court to assess all evidence in a context (the principle of concentration) and put the necessary questions to the interrogators regarding the presented evidence (Åklagarmyndigheten, 2014, p. 19).

In criminal cases, the legal process in court should be completely oral. Therefore, all the procedural material must be presented directly at a hearing. Information, oral evidence, and other necessary materials gained during the preliminary investigation are relevant only in case they are included in the trial at the main hearing (Åklagarmyndigheten, 2014, p. 18). It also means that only what witnesses and suspects state during the main hearing court could take into account while evaluating evidence. Therefore, in many cases, a person is put in pre-trial detention with severe restrictions, so that this person could not "adapt" his/her testimonies to other relevant facts and testimonies in the case (Hidayat, 2016, p. 24) (Åklagarmyndigheten, 2014, p. 19). Such problems as high rates and long terms of pre-trial detention (Andersson, 2015, p. 28), as well as the ubiquitous use of restrictions, are owed to the above-mentioned principles of immediacy, orality and concentration (Wigen, 2016, p. 1).

Since the beginning of the 1990s Swedish pre-trial detention practices have attracted the close attention of respective international bodies (Swedish Parliamentary Ombudsmen [OPCAT], 2020, p. 31). Swedish legal regulation, as well as practices of pre-trial detention, were questioned for compliance with international standards. In this vein, Sweden was subjected to analysis by the universal body of the UN - UN Committee Against Torture (hereinafter - CAT) and its subcommittee (hereinafter - SPT) (Statens offentliga utredningar [SOU], 2016, p. 78); as well as by the regional body of the Council of Europe - European anti-torture committee (hereinafter - CPT), which was established in 1987 (Council of Europe anti-torture Committee [CPT], 2022, p. 23). The Reports of the above bodies are made on the basis of their visits to

Sweden. For instance, the CPT has the right to freely visit all the prison facilities, and during these visits, the CPT also can talk privately with detainees (Åklagarmyndigheten, 2014, p. 10). For 30 years Sweden regularly receives international criticism regarding the long periods of pre-trial detention combined with the extensive use of restrictions and isolation (Jerlström & Olsson, 2019, p. 1). The SPS conducted two visits to Sweden: in 2008 and 2014 (Statens offentliga utredningar [SOU], 2016, p. 78). In the first report of 2008, the SPT was concerned about the widely spread practice of restrictions on remand prisoners (Jerlström & Olsson, 2019, p. 32). In the SPT Report 2014, the Committee reaffirmed its observation on the restrictions problem (Jerlström & Olsson, 2019, p. 33). Moreover, in this Report the SPT expressed concern about the suicides and suicide attempts as a consequence of restrictions and isolation (Statens offentliga utredningar [SOU], 2016, p. 79). Along with this, the Committee also noted the insufficient use of alternatives to pre-trial detention as well as the absence of a time limit regarding pre-trial detention (Statens offentliga utredningar [SOU], 2016, p. 80).

In 1950, the European Convention on Human Rights was formed and established as a law in Sweden (Hedstrom, 2016, p. 9-10). Since its establishment in 1987 the European body – CPT was entitled to visit Sweden and check it for compliance with the Conventional standards in the prison system. The CPT has visited Sweden six times (Jerlström & Olsson, 2019, p. 26). Each time the CPT reported a significant number of drawbacks in Swedish pre-trial detention practices. The first visit occurred in 1994. At that time restrictions system was subjected to criticism. The visit in 1999 noted, that the restrictions system despite the received criticism remained unchanged (Jerlström & Olsson, 2019, p. 28). The report of 2004 highlighted the necessity for a prosecutor to justify their reasons for restrictions orally (Jerlström & Olsson, 2019, p. 29). In 2009 the CPT noted that since the visit in 2003, no legislative changes had been made (Jerlström & Olsson, 2019, p.30). Following the visit in 2015, the CPT reportedly signified that no legislative efforts took place despite 24 years of criticism (Jerlström & Olsson, 2019, p. 31). During the last visit in 2021, the CPT noted that there is still no substantive improvement in the entire approach to restrictions for remand prisoners. The CPT highlighted that the standard should be that prisoners could spend at least eight hours a day outside their cells (Report to the Swedish Government on the visit to Sweden carried out by the CPT, 2021, p. 5).

All the given critics require respective responses that should be made by the Swedish government. Generally, Sweden`s responses to international criticism regarding pre-trial detention practices are characterized as "evasive" (Lönnqvist, 2020, p. 5). Instead of proposing particular actions to comply with criticism or objecting to the

critics, Swedish reports rather consider Sweden`s judicial system and other merely technical and legislative issues.

Two principal legal documents govern pre-trial detention in Sweden: the Swedish Code of Judicial Procedure (RB) (Chapter 24) (Rättegångsbalken, 1942) (Knapen et. al., 2009, p. 902) and the Act on Detention (SCS 2010:611). The RB was initially introduced in 1942, however, since then pre-trial detention has been numerous times amended. The Act on Detention is a relatively new law adopted in 2010, although it has its predecessors dealing with the same subject matter. To have a comprehensive understanding of remand policy changes in Sweden, the genesis of pre-trial detention legal regulation should be considered. We will primarily focus on policy changes after 2000 since it is the limitation of our study. Although, a brief overview of legislative efforts in the pre-trial detention field before 2000 also will be considered.

The Swedish Code of Judicial Procedure (hereinafter - RB) was adopted in 1942 and introduced fundamental provisions on pre-trial detention, lots of them remained unchanged till nowadays. The RB presents a general legislative framework regarding the procedure of imposing and conducting pre-trial detention. Pre-trial regulation is a core focus of Chapter 24 RB (Rättegångsbalken, 1942) (Knapen et. al., 2009, p. 901). From the outset, it is worth mentioning that Swedish legislation does not contain any legal definition of pre-trial detention (Knapen et. al., 2009, p. 913).

Instead, §1 of Chapter 24 RB stipulates two bases for a person`s pre-trial detention: 1) grounded remand; and 2) a two-year rule. For grounded remand, RB envisages three general grounds (Jerlström & Olsson, 2019, p. 8). A person who for probable cause is suspected of a crime, for which imprisonment is prescribed for a year or more, may be detained if, given the nature of the crime, the suspect's circumstances, or any other circumstance, there is a risk that the suspect: 1) absorbs prosecution or punishment (danger of absconding); 2) suppresses evidence or in another way would contribute to the complication of the investigation (danger of suppression of evidence); 3) would continue criminal activities (danger of recidivism) (Rättegångsbalken, 1942). The RB determines the above grounds as alternatives. That is, the only ground suffices imposition of pre-trial detention or there could be a combination of the proposed grounds (Jerlström & Olsson, 2019, p. 8). Along with this, each of the grounds pursues different purposes. Evaluation of the danger of absconding aims at securing investigation and prosecution, and at creating the preconditions for the sanctions` imposition. The danger of suppression of evidence is responsible for securing evidence, and thus indirectly facilitates a further investigation. The purpose of the third ground is quite different – to protect society from other criminal acts that the suspect might commit (Jerlström & Olsson, 2019, p. 8). The above provision of §1 of Chapter 24 RB remains unchanged since 1989 (Rättegångsbalken, 1942).

Along with grounded remand, RB enshrines the "two-year rule". It implies that if a penalty of two years and more of imprisonment is prescribed, the suspect shall be detained unless it is clear that detention is unwarranted (§1 of Chapter 24 RB). For the "two-year rule" no other prerequisites, but more than two years imprisonment, are required (Lönnqvist, 2020, p. 42). This provision has been in force since the very RB adoption in 1942. It is grounded upon the presumption, that in almost all cases of serious crimes, one or more of the arrest grounds would be met (Jerlström & Olsson, 2019, p. 10).

The RB also provides a list of circumstances under which a person could be put on pre-trial detention irrespective of the prescribed imprisonment term. §2 of Chapter 24 RB envisages that anyone who is suspected of a crime for probable cause may be arrested regardless of the nature of the crime: 1) if the detained is unknown and refuses to state his/her name and domicile or if the provided information could be assumed to be untrue; 2) if the detained is not domiciled in Sweden and there is a risk that by evading Sweden, the suspect evades prosecution or penalty (Jerlström & Olsson, 2019, p. 10). This implies that foreigners are almost in all cases put in pre-trial detention. §2 of Chapter 24 RB has not been amended since 1987. This means that since 2000 the policy of Sweden regarding all grounds for remand has not been subjected to changes.

However, Chapter 24 RB provides that not in all cases pre-trial detention could be justified. The RB provides for a fair balance between the rights and interests of the detainees and the interests of society. In this regard, §4 of Chapter 24 RB stipulates that pre-trial detention should not be imposed if, due to the suspect's age, state of health, or any other similar circumstance, it can be feared that detention would result in serious harm to the suspect (Rättegångsbalken, 1942). The same rule should be also applicable to a woman who has given birth so short a time before that detention could be feared to cause serious harm to the child (Rättegångsbalken, 1942). §4 of Chapter 24 RB was not subjected to amendments since 1987.

For a long time, the acute problem of the legal regulation of pre-trial detention in Sweden was the lack of a maximum period of pre-trial detention. Sweden was one of four countries in the EU whose law did not define a maximum limit of pre-trial detention. Other countries have successfully established absolute or semi-absolute maximum time limits for remand (Kjällgren, 2020, p. 16). This problem has been widely noted both by international institutions (e.g. the CPT, the CAT, Amnesty International, Human Rights Watch) (Kjällgren, 2020, p. 16) (Andersson, 2015, p. 32) and national bodies (Swedish National Council for Crime Prevention [Brå], 2017, p. 10), as well as studied in detail in the scholar literature (Andersson, 2015, p. 32) (Jerlström & Olsson, 2019, p. 4). Even the ECHR resolved a case involving the issue of a maximum period of pre-trial detention in Sweden. In the McGoff vs.

Sweden case, the ECHR concluded a breach of Article 5 paragraph 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (Knapen et. al., 2009, p. 918). From 2013 to 2016, the Government undertook various efforts to investigate and assess long terms of pre-trial detention (Midby, 2020, p. 20). One of the proposed solutions to long-term pre-trial detention is the establishment of its maximum limit. It took Sweden almost 30 years of various criticism regarding the absence of a maximum limit to address this problem (Kjällgren, 2020, p. 17). Swedish government undertook decisive steps to introduce in Swedish legislation a strict maximum period of pre-trial detention only in 2019 when the respective Government`s Bill "More efficient handling of pre-trial detentions and less isolation" (Prop. 2019/20:129) was submitted (Kjällgren, 2020, p. 16). The government has chosen a semi-absolute model for the maximum term of pre-trial detention (Kjällgren, 2020, p.16). It means, that the law provides an upper limit of pre-trial detention, which under special circumstances could be further extended. Initially, the proposal was that the maximum period of pre-trial detention for adults should constitute six months, whereas, for youth under 18, it should not exceed three months (Prop. 2019/20:129) (Midby, 2020, p. 8). However, the Government's proposal was altered, instead of six months, the Committee on Justice insisted on nine months for adults. According to the Committee, a time limit of nine months means a more reasonable balance between, on the one hand, the need to prevent the longest detention periods and, on the other hand, the importance of not impairing either the conditions for investigative work or the possibility of prosecution (Justitieutskottet, 2020, p. 1). Finally, in 2021 §4a of Chapter 24 RB was amended by Law 2021:285 envisaging a nine-month semi-absolute time limit. It provides that a suspect may be put in pre-trial detention for no more than nine months until the prosecution has been instituted. If there are special reasons, the court may, at the request of the prosecutor, decide that the time may be exceeded (Rättegångsbalken, 1942).

One of the main problems of Sweden's pre-trial detention practices is the severe restrictions that usually accompany remand (Åklagarmyndigheten, 2014, p. 40). The habitual use of restrictions was widely criticized by international bodies (Jerlström & Olsson, 2019, p. 11). Restrictions mean limitations on detainees' freedoms concerning social interaction with other inmates, as well as communication with the outer world through visitations, letters, and telephone calls (Lönnqvist, 2020, p. 1). In other words, restrictions mean a person`s isolation. §5 of Chapter 24 RB cites the possibility of imposing the restrictions (Rättegångsbalken, 1942). However, it refers to a specialized act - Act on Detention (SCS 2010:611) for further explanations. The Act on Detention covers various aspects of remand prisoners' treatment and has a long-standing history. The first coherent Act focused exclusively on remand prisoners' treatment was adopted in 1958 (SCS 158:212, "Act on Remand and

Arrested Persons"). Among other matters, this Act addressed the restriction imposition. It was followed by the reform that resulted in its repeal and adoption of a new Act on Remand and Arrested Persons of 1976 (SCS 176:371) (Lönnqvist, 2020, p. 10). This Act was subjected to four revisions prior to 2000, namely in 1981, 1987, 1993, and 1998. In consequence of the first two (1981 and 1987), no law was adopted. However, reforms in 1993 and 1998 resulted in the adoption of SCS 1993:1408 and SCS 1998:602 Laws (Lönnqvist, 2020, p. 11). Following tense political debates and scrupulous study of pre-trial detention practices the Act on Remand and Arrested Persons of 1976 was finally changed in 2010 with the Act on Detention (SCS 2010:611) (Lönnqvist, 2020, p. 11). The necessity to change regulation occurred due to the criticism of international bodies and was directed at compliance with European standards (Knapen et. al., 2009, p. 923).

Prior to this, in 2008 restrictions practices were influenced by the EMR reform. As a result of the reform, the interrogations held in the district court are documented through audio and video recordings. If a case is appealed to the Court of Appeal, the oral evidence is presented in the Court of Appeal through playbacks of the audio and video recordings from the district court (Statens offentliga utredningar [SOU], 2016, p. 97). This reform was in particularly aimed at reducing the restriction within the time for appeal.

The restrictions used to have no time limitation and there were no possibilities for the detainees to appeal restrictions. However, since 2010 the right of remand prisoners to appeal the restrictions imposed by a prosecutor in multiple court instances (to the Court of Appeal and the Supreme Court) has become operative (Chapter 6, 4 § of the Act on Detention) (Lönnqvist, 2020, p. 42) (Jerlström & Olsson, 2019, p. 31). The newly established Act on Detention distinguished seven types of restrictions, which include prohibitions regarding 1) placing with other inmates; 2) staying together; 3) following what is happening in the outside world (through the mass media); 4) owning newspapers and magazines; 5) receiving visits; 6) communication with others through electronic communication (e.g. telephone); or 7) sending and receiving shipments (letters, etc.). In the scholarly literature, the above restrictions were divided into three groups: one concerning the possibility of associating with other inmates in the detention center (points 1 and 2), another relating to the possibility of having contact with persons outside the detention center (points 5, 6 and 7) and the last one that refers to the possibility of following what is happening in the outside world (points 3 and 4) (Åklagarmyndigheten, 2014, p. 49-50).

As soon as 2016 new amendments to the Act on Detention as well as to the RB were put forward. In 2015 Sweden appointed a special investigator to study the possibilities to reduce the use of pre-trial detention and the excessive use of

restrictions (Jerlström & Olsson, 2019, p. 33). The proposed amendments were a Swedish response to international criticism (Jerlström & Olsson, 2019, p. 1). Proposed in 2016 amendments were presented in the form of the Government`s Report "Fewer People in Custody and Reduced Isolation" (Jerlström & Olsson, 2019, p. 1). One of the proposals directly addressed the minimum of social interaction which should be granted to detainees irrespective of restrictions. The initial proposal was that all remand prisoners would be granted an unconditional right to two hours of daily human contact (SOU 2016:52, p. 177), and four hours for juveniles in remand (SOU 2016:52, p. 155). However, the proposal regarding four hours for juveniles was supported in the government bill (GB 2019/20:129, p. 40), whereas two hours for adults was not even mentioned (Lönnqvist, 2020, p. 23).

As a result of the reform, from 1 July 2021 suspects under the age of 18 in pre-trial detention have a right to social interaction for at least four hours every day. Within this reform maximum time limit of nine months pre-trial detention for adults, and three months for youth was introduced. A court since then must determine not only whether restrictions may be imposed, but also what type of restrictions the prosecutor may impose on the suspect (Åklagarmyndigheten, 2021, p. 54). The prosecutor must submit a time plan for the preliminary investigation to the court (Council of Europe anti-torture Committee [CPT], 2022, p. 23-24). The last change for a long time is required by the CPT.

No less important amendments entered into force from 1 January 2022 following the Swedish Parliament's approval of the Government Bill "Increased Possibilities to Use Early Documented Interrogations" (Prop. 2020/21:209) (Council of Europe anti-torture Committee [CPT], 2022, p. 24). These amendments altered the core principle of Swedish judicial procedure – the principle of immediacy. Adopted changes are aimed at increasing the possibility of using interrogations at the main hearing that have been documented during the preliminary investigation. It should contribute to reducing the term of remand as well as diminishing the necessity to impose restrictions (Council of Europe Anti-torture Committee [CPT], 2022, p. 25).

Pre-trial detention is the most intrusive criminal procedural coercive measure available to Swedish prosecutors in their work to ensure the preliminary investigation (Andersson, 2015, p. 13). Therefore, Swedish legislation provided less severe alternatives to pre-trial detention. Such alternatives are stipulated in §1 Chapter 25 of the RB. In case there are no grounds for pre-trial detention, the following measures might be applied: travel bans, notification obligations, and surveillance (Jerlström & Olsson, 2019, p. 8). Although the international institutions widely noted the insufficient use of alternatives as a problem of the Swedish penal procedure (Council of Europe Anti-torture Committee [CPT], 2022, p. 23).

2. Genesis of legal regulation of pre-trial detention in Ukraine

Pre-trial detention in Ukraine has a long-standing history. The development of criminal procedure law in Ukraine was influenced by the Soviet Union`s legal legacy. Despite the peculiarities of law development in Ukraine, the legal system throughout history shows its commitment to the Roman-German legal system. Belonging to the Romano-Germanic legal family is due to the presence of traditional Romano-Germanic features. The Ukrainian legal system is characterized by the leading place of regulations in the system of sources of law. (Bohachova & Mahda, 2021, p. 29). However, the influence of the common law precedence model is also visible in Ukraine. Nevertheless, written documents (Codes, Laws) are the main sources of law, while case law is not of that importance.

Pre-trial detention in Ukraine is governed by three main national acts, namely the Criminal Procedure Code; Criminal Code and Law "On pre-trial detention". To consider the current legal regulation of pre-trial detention in Ukraine and trace the policy changes, the genesis of remand`s legal regulation should be considered. Since our research is limited to the events afterwards 2000, we would primarily focus on changes regarding pre-trial detention that occurred after 2000. Although, for comprehensive analysis, some events before 2000 will also be cited.

The Criminal Procedure Code is the basic act on pre-trial detention in Ukraine. It lays down the notion of pre-trial detention, as well as the detailed procedure for its imposition and extension. For a long time, the Criminal Procedure Code of the Ukrainian Soviet Socialist Republic of 1960 (hereinafter – CPC 1960) was in force in independent Ukraine. The issue of pre-trial detention, as well as other precautionary measures, were governed within Chapter 13 of the CPC 1960 entitled "Precautionary measures". Article 148 of the CPC 1960 determined general aims and grounds for imposing all precautionary measures, including pre-trial detention. According to the above Article, precautionary measures are applied if there are sufficient grounds to believe that the suspect would 1) try to evade the investigation and trial; 2) prevent the establishment of the truth in the case; and 3) continue criminal activity.

Pre-trial detention is the most severe of the established precautionary measures in the CPC 1960 (Orlean, 2018, p. 5). The precautionary measures were enlisted in Article 149 of the CPC 1960 and included: 1) subscription not to leave the country; 2) personal guarantee; 3) a guarantee of a public organization or labor collective; 4) bail; 5) pre-trial detention. In the Article and herein the precautionary measures are provided in logical order from the least to the most severe measure.

The CPC 1960 provided a limited list of cases when pre-trial detention could be applied. Article 155 of the CPC 1960 dealt specifically with pre-trial detention and stipulated three types of cases where pre-trial detention could be applied (Dahl &

Ablamsky, 2017, p. 25). The first ground stated that pre-trial detention could be applied in cases of crimes for which the law provides for the main punishment in the form of a fine of more than three thousand non-taxable minimum income. Under this ground, pre-trial detention could be applied only provided that the suspect has not fulfilled the obligations related to the precautionary measure previously applied to him, or has not fulfilled the requirements for bail. Otherwise, pre-trial detention under the first ground is inapplicable. The second ground determined, that pre-trial detention could be imposed in cases of crimes punishable by imprisonment for a term not exceeding three years. Although this ground is also conditioned by the suspect`s behaviour. The second ground may be invoked if the suspect hid from police, obstructed the establishment of the truth in the case, continued criminal activity, or failed to fulfill obligations related to the precautionary measure previously applied to him. The third ground is not subjected to any limitations regarding its application, it reads as follows, pre-trial detention should be imposed in cases of crimes punishable by imprisonment for a term exceeding three years (USSR Criminal Procedure Code [CPC], 1960) (Dahl & Ablamsky, 2017, p. 25). Analogous to Swedish regulation, this ground might be termed the "three-year rule". However, unlike Swedish regulation, in this case, the "three-year rule" had clearly established exceptions. Further Article 155 of the CPC 1960 stated that pre-trial detention could not be applied to a suspect not previously convicted of any penal offense punishable by imprisonment for up to five years, except in cases where this person was hiding, obstructed the establishment of the truth in the case or continued criminal activity.

The former CPC 1960 established a semi-absolute maximum limit of pre-trial detention. According to Article 156 of the CPC, 1960 pre-trial detention during the preliminary investigation should not exceed two months. However, in cases where it is impossible to complete the investigation within two months, and there were no grounds for revoking or replacing the precautionary measure with a milder one, it might be extended. Under especially determined circumstances the above period might be extended up to 18 months (Orlean, 2018, p. 6). An interesting provision regarding the revocation of pre-trial detention was stipulated in Article 148 of the CPC 1960. It mentioned, that if a precautionary measure is applied to a suspect, he/she must be presented with charges not later than ten days from the moment of application of the measure. In case no charges were filed within this period, the measure of restraint should have been revoked. It could be stated, that this provision supplemented the established semi-absolute maximum limit.

Restrictions in Ukrainian legislation are embedded in pre-trial detention. As a rule meeting with detainees was prohibited. However, it could be specially allowed (Semenov, 2010). According to Article 162 of the CPC 1960 visitation of relatives or other persons with the detainee might be allowed by the body conducting the case.

The duration of the meeting was set from one to four hours. Such meetings might be allowed, usually no more than once a month (USSR Criminal Procedure Code [CPC], 1960).

The above-considered provisions remained in force from 2000 until 2012. In 2012 the fundamental reform in whole criminal procedure law took place. The reform was required by the necessity to change the outdated Soviet Union Criminal Procedure Code of 1960. Consequently, in 2012 a new Criminal Procedure Code (hereinafter – CPC 2012) was adopted (Dahl & Ablamsky, 2017, p. 26). The provisions regarding pre-trial detention were respectively reconsidered. But still, there was no definition of pre-trail detention (Dahl & Ablamsky, 2017, p. 35).

In the newly adopted CPC 2012, pre-trial detention was governed within Chapter 18 entitled "Precautionary measures, detention". New CPC 2012 established an updated list of precautionary measures among which pre-trial detention remained the most severe and intrusive one. Article 176 of the CPC 2012 enlisted the following precautionary measures: 1) personal commitment; 2) personal guarantee; 3) bail; 4) house arrest (Rudko, 2013, p.102); and 5) pre-trial detention. As it is evident, the new CPC 2012 changed the list of precautionary measures compared to the analogous provision in the CPC 1960.

The new CPC 2012 also further expanded grounds for imposition of precautionary measures, including pre-trial detention. Among them in Article 177 the CPC 2012 determines the risks of 1) hiding from police; 2) destroying, hiding, or distorting any of the things or documents that are essential for establishing the circumstances of a criminal offense; 3) illegally influencing the victim, witness, another suspect, accused, expert, a specialist in the same criminal proceedings; 4) obstructing criminal proceedings in another way; 5) committing another criminal offense or continuing a criminal offense in which he/she is suspected (Sharenko & Shilo, 2016, p. 51).

The notion and the procedure for the application of pre-trial detention were also subjected to changes in the CPC 2012. Article 183 deals specifically with pre-trial detention as one of the established precautionary measures. Article 183 additionally emphasized that pre-trial detention is an exceptional precautionary measure (Sharenko & Shilo, 2016, p. 51) (Pivnenko, 2016, p. 172). It could be applied provided that the prosecutor proves that none of the milder precautionary measures could prevent the risks mentioned above. Such specification in the CPC 2012 presents a great level of legal certainty in Ukrainian legislation.

The special grounds that allow the application of pre-trial detention were also further extended and detailed in comparison with the rules of the CPC 1960. Instead of three grounds, the new CPC 2012 established seven. The first ground duplicates the respective ground in the CPC 1960, regarding the possibility of imposing pre-trial

detention in cases of crimes for which the law provides for the main punishment in the form of a fine of more than three thousand non-taxable minimum income. The second ground provides that pre-trial detention could be applied to a previously convicted person of a crime punishable by imprisonment for up to three years unless the prosecutor proves the person could hide, obstruct criminal proceedings, or commit another crime. Similar circumstances of pre-trial detention application determined in the third ground. The difference is that under such circumstances pre-trial detention could be applied to a previously not convicted person of a crime punishable by imprisonment for up to five years. The fourth and fifth grounds establish so-called "five-“ and "three-years" rules. According to the fourth, ground pre-trial detention should be imposed on a previously not convicted person of a crime punishable by imprisonment of over five years. In turn, the fifth ground stipulates that pre-trial detention should be imposed on a previously convicted person of a crime punishable by imprisonment over three years. The sixth ground provides that pre-trial detention could be applied to a person subjected to extradition. And the last seventh ground was added in the CPC 2012 recently in 2022 due to the military events in Ukraine. It provides that pre-trial detention could be applied to a person in respect of whom a request has been made by the International Criminal Court for provisional arrest or the arrest and further transfer.

In order to prevent the unnecessary application of pre-trial detention, the legislator in the CPC 2012 established a brand new and progressive provision. The provision is aimed at the proper application of less severe alternatives to pre-trial detention. Article 183 of the CPC 2012 envisages that the investigating judge or the court when deciding on the application of pre-trial detention is obliged to determine the amount of bail sufficient to ensure the performance of the suspect`s obligations. When applying for remand, the Ukrainian court should rule two separate decisions - the first of which directly concerns the decision on the application of pre-trial detention; and the second - to determine the amount of bail, sufficient, in the opinion of the investigating judge, to ensure the performance of procedural duties of the suspect (Sharenko & Shilo, 2016, p. 53).

However, for public safety, the above general rule has its exceptions. Investigating judge or the court has a right (importantly not an obligation) not to determine the amount of bail in cases related to 1) the crime committed with the use of violence or threat of its use; 2) the crime that caused the death of a person; 3) previous violation of the bail by a suspect; 4) the crimes committed by the gang; 5) the serious crime in the field of trafficking in narcotic drugs, psychotropic substances, their analogues or precursors (Sharenko & Shilo, 2016, p. 53).

The new CPC 2012 also amended the maximum limit of pre-trial detention. It is worth mentioning that the general approach of semi-absolute maximum remained unchanged. However, some provisions were further clarified and detailed. The

previously established general maximum of two months was substituted by a 60-day term in Article 197 of the CPC 2012 (Halay, 2016, p. 61). In terms of legal technique term of 60 days is more appropriate. The Article also provides that the maximum limit could be extended. Although, the maximum extension in particular circumstances allowed for up to 12 months (instead of 18 in the CPC 1960) (Sharenko & Shilo, 2016, p. 53).

It is worth also noting, that the entire criminal procedure system in Ukraine is grounded on the principle of immediacy. It is determined in Article 23 of the CPC 2012 entitled "Immediacy of research of indications, things and documents". The article provides that the court examines the evidence directly. The court receives testimony from participants in criminal proceedings orally. Although the CPC provides some exceptional cases, the general rule is the principle of immediacy in the criminal procedure.

Another act, that deals with pre-trial detention, is the Criminal Code of Ukraine. Its regulation of pre-trial detention is limited to crediting of pre-trial detention term to the real imprisonment. Until 1st September 2001, the USSR Criminal Code of 1960 was in force. Article 47 provided rules for pre-trial detention crediting. According to this Article pre-trial detention was credited by the court to the term of imprisonment on a day-to-day basis. In 2001 the Parliament adopted the new Criminal Code of 2001. Article 72 of the Criminal Code of 2001 established the same provision: pre-trial detention should be credited by the court to the term of imprisonment on a day-to-day basis. However, in 2016 this provision was replaced with a new rule for crediting. The so-called "Savchenko Law" was adopted. This is the law of Ukraine, which amended the Criminal Code of Ukraine, according to which one day of pre-trial detention is credited to two days of imprisonment when the court calculates the sentence. The explanatory note tried to justify the adoption of such a dubious law by the need to ensure social justice, the practical implementation of the principle of presumption of innocence, and ending the negative practice of long-term detention in pre-trial detention of criminal investigations (Dykyj, 2017, p. 100). However, in practice, the law was politically motivated and had many negative consequences (Dykyj, 2017, p. 33). Many dangerous criminals were released. Instead of reducing the term of pre-trial detention, lawyers have artificially extended it in order to reduce the term of actual detention (Dykyj, 2017, p. 100). These tendencies were widely noted by international bodies (Council of Europe Anti-torture Committee [CPT], 2017, p. 23). This led to the fact that in 2017 the legislator returned to the day-to-day model.

Another document, that deals specifically with pre-trial detention, is the Law of Ukraine "On pre-trial detention" of 1999. In many regards, this Law just duplicates the provisions of the Criminal Procedure and Criminal Codes. Although, it addresses

more specific rights and restrictions of the detainees. Articles 12 and 13 deal with restrictions on meetings and correspondence. The articles repeatedly state that Ukraine adheres to the restriction model implied in the law. It means that as a rule restrictions are imposed, however, the exceptions should be granted by specially authorized bodies (Semenov, 2010).

As a member of universal and regional international organizations, Ukraine was subjected to visits from respective international bodies. The SPS conducted two visits in 2011 and 2016. The CPT conducted a total of 17 ad-hoc and regular visits. Ukraine was criticized due to insufficient use of alternatives to pre-trial detention (Council of Europe anti-torture Committee [CPT], 2020, p. 11) and restrictive provisions on remanding prisoners' contact with the outside world (Council of Europe anti-torture Committee [CPT], 2017, p. 25). Although, it seems like all reforms of pre-trial detention legal regulation were unrelated to the international critics.

3. Comparative Analysis

Both states Sweden and Ukraine have their origins in the Roman-German legal family. Although its influence is evident nowadays to a different extent. Having analyzed the respective legal regulation of pre-trial detention some fundamental differences may be noted. Despite the fact, that the regulation is the main source of law in both countries, Ukrainian acts on pre-trial detention are more detailed, strict and formal. While Sweden's acts could be characterized as rather vague and less specific. Such a difference in large part is due to the peculiarities of the historical legal development of all Scandinavian countries, where the influence of the common law legal system is very evident. For example, the Criminal Procedure Code of Ukraine of 2012 specifies that pre-trial detention is an exceptional precautionary measure that applies only if the prosecutor proves that none of the more lenient precautionary measures could prevent the risks. Swedish legislation does not directly stipulate such a provision, however, indirectly implies it. Such formal certainty contributes to the guaranteeing of human rights and moreover proves the country's commitment to the international standard. Provided provision is only one out of many examples, where Ukrainian legislation appears to be more specific and detailed. Regarding general similarities in the criminal procedure, it should be noted, that both countries rely on the principle of immediacy and orality in criminal procedure.

Acts which govern pre-trial detention are quite similar in both states, however, some differences in this regard could also be noted. In Sweden, there are two main acts – the Code of Judicial Procedure (RB) of 1942 and the Detention Act of 2010. In Ukraine three main documents deal with pre-trial detention – the Criminal Code of Ukraine, Criminal Procedure Code of Ukraine, and Law of Ukraine "On pre-trial

detention". The Sweden Detention Act of 2010 and Ukrainian Law "On pre-trial detention" serve quite similar purposes and encompass alike topics of legal regulation. Therefore, these two acts could be considered analogous. In the procedural realm, pre-trial detention in Ukraine is governed by the specialized Criminal Procedure code, while in Sweden it is attributed to a general Code of Judicial Procedure. Material rules of criminal law do not touch upon pre-trial detention in Sweden, although the Criminal Code of Ukraine addresses crediting of pre-trial detention.

Concerning grounds for pre-trial detention, they are different in Sweden and Ukraine. Ukrainian legislation establishes separate grounds for all precautionary measures (in the form of risks) and pre-trial detention in particular. To apply for pre-trial detention one of the general risks should be met (risk of hiding; suppression of evidence; recidivism). In Sweden, alike risks are established for the application of pre-trial detention solely. One of the mentioned risks should be met to apply for pre-trial detention if the crime provides a punishment of more than one-year imprisonment. If the crime provides imprisonment for more than two years (two-year rule), pre-trial detention could be applied irrespective of such risks. Ukraine also establishes a three-year rule for persons who have already been imprisoned and a five-year rule for persons who commit the crime for the first time. Although to apply pre-trial detention under these rules, still has to be conditioned by the above-mentioned risks. Thus, in this case, the Ukrainian provision is more detailed and takes into account the real necessity of a person`s remand. While Swedish provision tends to just blindly apply general rules where it could not even be necessary. Such a drawback of legal regulation increases the rates of pre-trial detention and was noted as a problem by various international bodies. It is also worth mentioning that Sweden provides special grounds for pre-trial detention for foreigners. It means that almost in all cases non-nationals of Sweden would be put in pre-trial detention. Ukrainian legislation contains no such discriminatory provision.

The next comparison could be made based on the maximum term of pre-trial detention. From the outset, it is worth mentioning that both countries have chosen a semi-absolute maximum term model. Sweden had for a long time a problem with the absence of a legally established maximum term of pre-trial detention. Only recently the respective provision has entered into force. It is provided with a limit of nine months, which under special circumstances could be further extended. However, the legislation does not specify for how long in total pre-trial detention could be extended. In Ukraine, the initial maximum limit is much less – than 60 days, which could be extended not more than 12 months. In this case, the Ukrainian provision is more specified and seems to be less intrusive. Such a difference could lead to the reduction of pre-trial detention in Ukraine. Also, the positive aspect of Ukrainian

legislation is that, if during the 10 days of pre-trial detention charges against a person are not presented, this person should be immediately released. No analogous provision could be found in Swedish legislation.
The models of restrictions on pre-trial detention in Sweden and Ukraine are also quite different. Ukraine follows the restrictions implied in the law model. It means that by general rule restrictions on detainees` meetings and correspondence are imposed unless other indicated by an authorized body or person. So the person should be provided with special allowances for meetings (no more than three times a month) and correspondence. In Sweden, restrictions should be provided by the special order of an authorized person or body. As a general rule restrictions in Sweden are not imposed. From a law perspective, the Swedish provision is more favorable to detainees. However, despite the advantage of Swedish legislation in this regard, Sweden is criticized by international bodies regarding its restriction practices.
The next difference that is worth consideration relates to the alternatives. States provide different alternatives to pre-trial detention. In Sweden, there are travel bans, notification obligations, and surveillance (home arrest, area arrest). The Ukrainian list of alternatives is different. The Criminal Procedure Court of Ukraine among alternatives determines personal commitment; personal guarantee; bail; house arrest. The significant difference is a stipulated bail in Ukrainian legislation. It is not only determined as an alternative to pre-trial detention but moreover, along with pre-trial detention court should determine the amount of bail for a suspect to secure his/her obligations. This provision means, that Ukraine not only declarative calls upon courts to apply alternatives but also provides special obliging provisions in this regard. In Sweden, there has long been a debate about bail as an alternative to pre-trial detention. However, to date, anyone in Sweden cannot escape pre-trial detention based on bail.
Ukraine, as well as Sweden, are subjected to international criticism by various international bodies regarding their pre-trial detention practices. Although their response to these critics is quite different. Sweden is very reluctant to make changes. However, almost all reforms seem to be connected to critics. Nevertheless, the government`s proposals are widely amended and therefore present only a small shift in regal regulation. All in all, in 30 years of criticism in Sweden, little has changed. Pre-trial detention reforms in Ukraine seem to be unrelated to the international critics. They appear as both fundamental shifts in criminal legal regulation following the Soviet Union collapse, and politically motivated changes.
In addition to the comparisons between pre-trial detention regulations in Sweden and Ukraine, it's also informative to briefly discuss how Romania approaches pre-trial detention. Romania, like Sweden and Ukraine, is part of the European legal landscape, but it has its unique legal framework and practices regarding pre-trial

detention. Romania's legal system is rooted in the civil law tradition, and its pre-trial detention regulations are primarily governed by the Romanian Code of Criminal Procedure. Romania, similar to Ukraine, establishes specific grounds for pre-trial detention, such as the risk of flight, the risk of obstructing the investigation, or the risk of reoffending. These criteria are explicitly outlined in the legal framework. Romania, like Sweden, has a maximum term for pre-trial detention, which is generally set at 30 days, with the possibility of extensions. However, the total period of pre-trial detention is typically limited to 180 days for the entire investigation process.

Romania imposes certain restrictions on detainees, such as limits on communication and visits, which can vary depending on the specifics of the case. Romanian law provides for alternatives to pre-trial detention, including house arrest, judicial control, and bail. These alternatives are intended to reduce the use of pre-trial detention, particularly for less serious offenses.

Like Sweden and Ukraine, Romania has faced scrutiny from international bodies regarding its pre-trial detention practices. As a member of the European Union, Romania is also subject to EU standards and monitoring.

In conclusion, Romania's approach to pre-trial detention shares some similarities with both Sweden and Ukraine, but it also has its distinct legal framework and practices. It places a significant emphasis on specific legal grounds, maximum detention periods, and alternatives to pre-trial detention. Monitoring and evaluating these practices are essential to ensure that they align with international human rights standards and contribute to the overall goals of justice and fair legal processes.

4. Conclusions

To sum up, this comprehensive analysis of pre-trial detention regulations in Sweden, Ukraine, and Romania reveals a diverse landscape of legal approaches within the broader context of the European legal tradition. While all three countries share origins in the Roman-German legal family, their contemporary legal systems reflect unique historical and cultural influences.

Sweden's legal framework appears relatively vague and less specific compared to the more detailed and formal Ukrainian regulations. The historical influence of the common law system in Scandinavia plays a significant role in these differences. However, Sweden's recent introduction of a maximum term for pre-trial detention is a positive step toward aligning with international standards.

Ukraine's legal framework is highly detailed, taking into account various risk factors and setting clear criteria for pre-trial detention. The Ukrainian system appears to prioritize the necessity of detention and offers multiple alternatives, including bail, which is accompanied by specific provisions.

Romania, although not covered in the initial analysis, presents its unique approach to pre-trial detention, characterized by specific grounds, maximum detention periods, and alternatives to detention.
All three countries face international criticism and scrutiny, but their responses to such criticism differ. Sweden has been slower to make changes, with limited reforms in response to international pressure. In contrast, Ukraine's pre-trial detention reforms seem to be driven by both legal necessity and political motivations, showing a more proactive approach.
In conclusion, while these countries share common legal roots, their approaches to pre-trial detention reflect the rich tapestry of their individual legal and historical developments. Ongoing evaluation and alignment with international human rights standards remain crucial in ensuring that pre-trial detention practices in these countries are fair, just, and respectful of individual rights.

Acknowledgments
The authors thank the anonymous reviewers and editor for their valuable contribution.

Funding
This research is not funded by any party and this research uses personal funds.

Author Contributions
The entire article was written by Melnykova Dariia.

Disclosure Statement
The authors have not any competing financial, professional, or personal interests from other parties.

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