

PRE-TRIAL DETENTION CHALLENGES IN SWEDEN AND UKRAINE

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Abstract: This article conducts a comparative analysis of pre-trial detention challenges in Ukraine and Sweden, highlighting common issues and distinctive features. Both countries face non-compliance with international standards in their remand policies, with legislative problems serving as a focal point. Recent legislative efforts in Ukraine and Sweden have addressed some issues, but significant challenges persist, requiring comprehensive solutions. The legislative disparities between the two nations manifest in the technical nature of Ukraine's problems and Sweden's more systemic issues. A unique challenge faced solely by Sweden is the disproportionately high number of foreigners in pre-trial detention, highlighting discriminatory legal regulations. Procedural hurdles vary, with Sweden grappling with the lack of specificity in prosecutors' grounds for restrictions, while Ukraine faces a formalistic approach to remand extensions. Long-term pre-trial detention is identified as a shared concern, attributed to systemic principles in Sweden and technical procedure problems.

Keywords: custody; arrest; probation; criminal procedure law.

1. Introduction

In the realm of criminal justice systems, the issues surrounding pre-trial detention constitute a critical area of study, drawing attention to the intersection of legal, human rights, and societal concerns. This article delves into the comparative analysis of pre-trial detention challenges in Sweden and Ukraine, seeking to shed light on the distinct dynamics and commonalities within these two jurisdictions. As the research agenda on pre-trial detention continues to evolve, it is imperative to assess the existing status quo and contribute nuanced perspectives that advance our understanding.

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The main added value of this paper lies in its comprehensive examination of pre-trial detention challenges, offering a fresh perspective that builds upon and extends the groundwork laid by previous works. By delving into the specific contexts of Sweden and Ukraine, this research aims to provide a deeper understanding of the intricacies involved in pre-trial detention practices, thereby contributing valuable insights to the broader discourse on criminal justice reform. This paper distinguishes itself by not only identifying challenges but also proposing nuanced solutions and highlighting best practices that may serve as models for other jurisdictions.

In comparison with existing literature, this article aims to bridge gaps and present a more detailed analysis, drawing parallels with similar studies while emphasizing the unique aspects of the Swedish and Ukrainian contexts. By engaging with the scholarly conversation surrounding pre-trial detention, the authors aim to enrich the academic landscape with a nuanced exploration that goes beyond mere enumeration of challenges, offering a qualitative assessment and a forward-looking perspective. This article is a logical continuation of the author's research project on pre-trial detention with a priory published article entitled "Genesis of Legal Regulation of Pre-trial Detention in Sweden and Ukraine: Comparative Analysis".

Structurally, this article is organized into key sections that facilitate a comprehensive exploration of pre-trial detention challenges. The first section of the article is devoted to the problems of pre-trial detention in Sweden. Then the article dwells on the problems of pre-trial detention in Ukraine. The article culminates with a thorough comparative analysis of the identified challenges in Sweden and Ukraine. To enhance the breadth of this comparative exploration, the examination of pre-trial detention in Romania has been seamlessly integrated for a more comprehensive understanding.

2. Problems in the Field of Pre-trial Detention in Sweden

Sweden has one of the lowest incarceration rates in the world, where only 1 in 1,422 of the country's total population was behind bars in 2021 (Council of Europe, SPACE I, 2021). However, within Sweden itself since 2018 there has been a strong trend in incarceration rate growth: from 5,713 in 2018 to 7,297 in 2021 (Council of Europe, SPACE I). Along with this, the number of pre-trial detainees is also growing. Since 2015 there has been a constantly growing trend: from 1,478 pre-trial detainees in 2015 to 2,021 in 2021 (Council of Europe, SPACE I). The growth in the number of remand prisoners may indicate, that Sweden's policies in the field of pre-trial detention are ineffective.

There are still problems with Swedish remand policies. International institutions continue to point out that Sweden does not meet international standards in the field of pre-trial detention. International conventional bodies, namely the CPT and the SPS, numerous times criticize Sweden for its pretrial detention practices. The

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criticism primarily relates to the excessive use of restrictions with isolation as a result, the long terms of pre-trial detention and too few alternatives to detention which even are rarely used (Swedish National Council for Crime Prevention [Brå], p.75).

The vast majority of the distinguished problems originate in imperfect legal regulation. The legal regulation of pre-trial detention is the main thing in its imposition. Problems in legal regulation could lead to unnecessary and totally unjustified detention. One of the main problems existing in remand's legal regulation is the so-called two-year rule. The Swedish Code of Judicial Procedure (RB) provides for grounded remand and a two-year rule. Grounded remand means that in cases where a suspect is threatened with imprisonment of more than one year, he/she should be detained if there is a "danger of absconding", "danger of suppression of evidence" and "danger of recidivism" (Chapter 24, Rättegångsbalken, 1942). But if a suspect is threatened with imprisonment of more than two years he/she should be automatically placed in pre-trial detention irrespective of the danger criteria. In fact, a two-year rule implies a presumption of arrest (Swedish National Council for Crime Prevention [Brå], p.17). In itself, pre-trial detention conflicts with the generally accepted presumption of innocence, and the two-year rule only deepens this conflict. Since the prosecutor does not need to prove that there are risks of absconding, hiding evidence, etc. in the case of the two-year rule, the suspect is simply automatically considered as producing such risks. The two-year rule also violates the principle of proportionality (Swedish National Council for Crime Prevention [Brå], 2017, p.109). According to the European Standards, remand should be considered an exceptional measure, the application of which should be exceptionally justified by the existing danger. In the two-year rule remand's automatic application, such a measure might be disproportionate to the risks the person entails. A detention decision should only be based on the need for detention in the individual case (Swedish National Council for Crime Prevention [Brå], 2017, p.109).

According to statistics, in 2017, over two-thirds of the suspects in detention, were arrested based on fear of danger of suppression of evidence; more than half were arrested because of the risk of recidivism and one-third due to danger of absconding. At the same time, only ten percent were arrested because of the two-year rule (Jerlström & Olsson, 2019, p.8). However, even among those ten per cents, there are might be those whose detention was unnecessary, since there were no risks.

Another legislative problem is a discriminatory provision regarding foreigners in pre-trial detention. §2 of Chapter 24 RB establishes a list of grounds under which a person should be placed on remand irrespective of the imprisonment term. One of the abovementioned grounds is if the detained is not domiciled in Sweden and there is a risk that by evading Sweden, the suspect evades prosecution or penalty

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(Rättegångsbalken, 1942). Under this provision, almost all foreigners are put in pre-trial detention, notwithstanding other circumstances. This provision is discriminatory because the fact that the suspect is a foreigner is the main reason for his pre-trial detention. This provision actually places citizens and non-citizens of Sweden in an unequal position. This problem is clearly represented by statistics, according to which, foreigners roughly constitute 20% of total Sweden's prison population (Council of Europe, SPACE I). On a European scale, these figures are quite high (Council of Europe, SPACE I). The statistical data repeatedly indicate the problem of remand legal regulation concerning foreigners.

International (the CPT, the CAT, Amnesty International, Human Rights Watch) as well as national (Swedish National Council for Crime Prevention [Brå], 2017, p.10) bodies repeatedly noted long terms of pre-trial detention as a problem pertinent to Sweden. Until 2021 the problem of lengthy remand was tied to the problem of absence of a maximum time limit for pre-trial detention, which was also reported by national (Swedish National Council for Crime Prevention [Brå], 2017, p.10) and international (Kjällgren, 2020, p.16) (Andersson, 2015, p.32) institutions. Recently Law 2021:285 envisaged a nine-month semi-absolute time limit, that could be further prolonged under special circumstances and by the prosecutor's request (Rättegångsbalken, 1942). Although, the very problem of long pre-trial detention is still relevant and requires appropriate solutions.

There are numerous reasons for long-pretrial detention in Sweden. First of all, the main reason is the peculiarities of the Swedish legal system. An underlying reason for today's long detention periods is the principles of immediacy, orality and concentration (Wigen, 2016, p.28). In their unity, these principles mean that only what was presented directly at the court hearing can be taken into account when ruling a court decision. The purpose of these principles is to prevent suspects from adapting and changing their testimonies over the course of the investigation and hearing (Hidayat, 2016, p.24). Respectively, if the nature of the case requires a long pre-trial investigation, or there are simply problems with gathering material evidence, the suspect all this time would remain behind bars.

In this vein, another reason for the long pre-trial detention directly follows - the slow work of the National Forensic Center (NFC, formerly SKL) (Wigen, 2016, p.30). The National Forensic Center (NFC) is in charge of all forensic investigations and consists of an information technology unit, a biology unit, a drug analysis unit, and a chemistry/technology unit (Polisen, 2017). In 2016, the State Treasury submitted the report *Detention Periods and Forensic Investigations - Proposals for a faster forensic process*. The report acknowledged that in 37 percent of all remand cases, the prosecutor justifies his request to prolong the term of pre-trial detention by waiting for answers from forensic analyses (Swedish National Council for Crime Prevention [Brå], p.113).

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In 2020 the average term of remand constituted 2,5 months (it was calculated based on the total number of days spent in remand) (Council of Europe, SPACE I, 2021, p.124). Compared to other European countries 2,5 months as an average term of pre-trial detention is pretty low. Out of 30 states which provided necessary data to the Council of Europe, only 5 countries have lower indicators of the average term of remand, namely Monaco (1,3 months); Romania (2 months); San Marino (0,3 months); Switzerland (2,4 months); and the Northern Ireland (2,2 months) (Council of Europe, SPACE I, 2017, p.123-124). But, it is worth mentioning, that in 2019 the average term of remand constituted 2 months (Council of Europe, SPACE I, 2020, p.121). Thus, there is a clear trend of increasing, which only confirms the existing problem.

But the problem of prolonged detention is not the problem of the average detainees, but the very problem of those who are forced to stay behind bars for an unduly long time before the trial. Out of 9,056 people detained in 2015, 486 people were detained for at least six months, 144 people were detained for at least nine months and 48 people were detained for at least one year, while most detainees, 68 percent, were detained for a maximum of two months (Swedish National Council for Crime Prevention [Brå], 2017, p.111). In percentage terms, a relatively small number are detained for more than six months (5.4 percent) and even fewer are detained for a year or more (0.5 percent) (Swedish National Council for Crime Prevention [Brå], 2017, p.112). This ratio confirms that the problem of prolonged detention is a minority problem.

However, the fact that long-term detention concerns only a minority does not eliminate the very problem of pre-trial detention. For a person each day of remand is a great strain (Åklagarmyndigheten, 2014, p.74), it requires enormous physical and psychological efforts, especially when the person is detained for a long time with restrictions. For those who are isolated from the outer world for a long time, this period of pre-trial detention is extremely stressful (Swedish National Council for Crime Prevention [Brå], 2017, p.112). Moreover, unduly long remand leads to waste of recourses, monetary as well as personnel (Åklagarmyndigheten, 2014, p.74). It is obvious that the country is interested in avoiding unreasonably long periods of pre-trial detention, both in order to protect the rights of detainees and also for reasons of efficiency and cost (Åklagarmyndigheten 2014, p.41).

Another huge problem addressed by national as well as international bodies is the extensive use of restrictions in remand (Report to the Swedish Government on the visit to Sweden carried out by the CPT, 2021, p.5) (Åklagarmyndigheten, 2014, p.40) (Jerlström & Olsson, 2019, p.11) (Lönnqvist, 2020, p.4). Afterwards all six visits of the CPT to Sweden, it was criticized for the extensive use of restrictions on the remand prisoners (Wigen, 2016, p.33) (Jerlström & Olsson, 2019, p.31). After 30

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years of criticism, Sweden has not made much progress in revising restriction practices. The statistics provided by the Ministry of Justice made it obvious that the use of restrictions only had been reduced by 2 % between 2010 and 2015 (Jerlström & Olsson, 2019, p.31). In this vein, the CPT report of 2016 observed that there had been no to little signs of improvement concerning the imposition of restrictions (Jerlström & Olsson, 2019, p.31).

These restrictions are aimed at limiting social contact and a person's interaction with the outer world (Lönnqvist, 2020, p.1). Restrictions aim at ensuring fulfillment with the principles of immediacy, concentration and orality (Wigen, 2016, p.14) (Lönnqvist, 2020, p.23). So that the court could rely only on facts presented during the hearing. Therefore, the suspect should be limited in his/her outside interaction so as not to adjust his/her testimonies to the circumstances of the case or the testimonies of other witnesses (Hidayat, 2016, p.24).

Pre-trial detainees constitute roughly one-fourth of the total prison population. Of which two-thirds of detainees are subjected to restrictions (Council of Europe, SPACE I). This in other words means that around 1/6 of the entire Swedish prison population is subjected to restrictions (Smith, 2017, p.4). Such statistics clearly show that the restrictions problem in Sweden has a considerable scale. Statistics confirm that restrictions are not an exceptional measure as it supposed to be but rather a general rule (Jerlström & Olsson, 2019, p.30) (Knapen et. al., 2009, p.919). In 2019 68% of admitted pre-trial detainees were subjected to restrictions, 2020 – 72%, and 2021 – 74%. Thus, notwithstanding national and international critics of the extensive use of restrictions in remand, there is a trend of restrictions increasing.

In 2016 the Government proposed that pre-trial detainees should be granted an unconditional right to two hours of daily human contact (SOU 2016:52, p.177), and for juveniles, in remand, an unconditional right to daily human contact should be four hours (SOU 2016:52, p.155). As a result of the reform in 2021, the juveniles were granted their right to four hours of interpersonal interaction, while the right of the adults was not even mentioned (Lönnqvist, 2020, p.23). According to the CPT, standards remand 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). It is obvious that Sweden is far away from this gold standard, Sweden even failed to provide two hours right. One of the reasons why the provision for mandatory human contact for 2 hours was not adopted is the lack of premises where inmates can associate with one another (Swedish Parliamentary Ombudsmen [OPCAT], 2020, p.10).

International bodies have repeatedly argued that extensive use of restrictions leads to isolation, which causes mental disorders and could lead to suicides (SPT Report 2014) (Statens offentliga utredningar [SOU], 2016, p.79). The danger of extensive use of restrictions lies in possible mental disorders and even suicides. Particularly

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the CPT Report of 2008 noted that prolonged periods of restrictions and insulations have a detrimental impact on inmates' mental health. The CPT conducted a visit to the Gothenburg Remand Prison, where at the time of the visit 62 of the 136 remand prisoners were liable to restrictions and some were subjected to periods of isolation ranging from six to 18 months. Interviewed remand prisoners argued that they had been given no explanation of the reasons for the restrictions. They stated that the main aim of these restrictions and prohibitions on contact with family members was to "break" them (US State Department, 2010, p.2). Recent research clearly demonstrates that imposed restrictions might harm the mental health of pre-trial detainees. And ultimately this could lead to a degradation in the suspect's ability to defend himself- or herself (Wigen, 2016, p.1).

Mental disorder is not the only restrictions' implication. The extensive use of restrictions could threaten suicides and suicide attempts (Swedish National Council for Crime Prevention [Brå], 2017, p.79). Even though Sweden has a comparatively low rate of death in penal institutions, the rate of suicide of the total number of deaths has been always high. In 2020 suicides constituted 50% of the total number of deaths. Therefore, remand restriction is a serious problem, that threatens the inmates' health and even life. Therefore, Sweden has to undertake decisive steps to reconsider restriction practices.

Along with legislative problems, there are also procedural problems. The CPT noted that the prosecutors impose restrictions almost automatically, i.e. without specifying the precise grounds under which they should be imposed. The prosecutors also do not usually specify the time at which the restrictions are imposed (Jerlström & Olsson, 2019, p.30). It leads to legal uncertainty, as well as violates the basic right of detainees – the right to personal integrity. It puts the detainee in limbo. In its survey, the Brå found out that the uncertainty about how long the restrictions will last is corrosive (Swedish National Council for Crime Prevention [Brå], p.112). Procedural problems also include the problem of delays in the NFC work, concerning the longtime of forensic expertise, which was discussed above (Swedish National Council for Crime Prevention [Brå], p.113).

Another problem existing in Sweden's prison system is overcrowding. Unnecessary and unduly long remand leads to the fact, that prison facilities are not able to offer a place to each inmate. Statistical data confirm that the problem of prison overcrowding occurred in Sweden in 2006-2006, 2009-1010, and now has recently been recorded in 2021 (Council of Europe, SPACE I) (see Figure 18). However, in other years, when the problem of overcrowding was not reported, the Prison and Probation Service had continuous difficulties in meeting the demand for prison places (Swedish Parliamentary Ombudsmen [OPCAT], 2020, p.52). In other words, Sweden has been always on the verge of overcrowding.

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Sweden has put great efforts to deal with the problem. The primary response is the building up of new prison facilities to expand the remand prison capacity (Knapen et. al., 2009, p.902). In 2021 prison's capacity increased by 356 places, however, the problem of overcrowding occurred again. Such a state of affairs indicates that the current response is ineffective and requires reconsideration (Council of Europe, SPACE I) (see Table 31). Such a fact shows, that the building up of new prison facilities alone is not enough, other responses to overcrowding should be found by the Swedish government.

One way to combat overcrowding in prisons is the widespread use of alternatives to pre-trial detention. Recommendation R (80) 11 of the Committee of Ministers to the member states of the Council of Europe establishes the duty of the judicial body to consider all possible alternative measures when considering the application of remand detention (Sharenko & Shilo, 2016, p.51). However, Swedish legislation does not contain such a provision, which should provide for obligatory consideration of alternatives when deciding to apply for remand. Furthermore, international institutions (the CPT in 2022, the SPS) are now citing too few alternatives (Swedish National Council for Crime Prevention [Brå], 2017, p.96) and their infrequent use as a problem with pre-trial detention in Sweden (Council of Europe anti-torture Committee [CPT], 2022, p.23). Currently, §1 Chapter 25 of the RB provides for such alternatives: travel bans, notification obligations and surveillance (Jerlström & Olsson, 2019, p.8). However, in its current form, the travel ban or obligation to notify does not prevent those who have a strong desire to avoid prosecution or leave the country. Alternatives are also not an effective barrier to recidivism. The consequence of this is that suspects are arrested or detained due to the lack of appropriate alternatives. When it comes to the risk that the suspect complicates the investigation, alternatives are ineffective and it is difficult, except in some exceptional cases, to find an alternative to detention (Swedish National Council for Crime Prevention [Brå], p.94-95). Thus, in order to prevent overcrowding and reduce the number of pre-trial detention, Sweden must seek relevant and effective alternatives to pre-trial detention.

All in all, remand should be considered as a last resort, as an exceptional measure rather than a rule (Havre 2014, p. 5) (Smith, 2017, p.3). Such a provision is even enshrined in the fundamental international instrument – the International Covenant on Civil and Political Rights of 1966. The above statement corresponds to paragraph 3 of Art. 9, which stipulates that "It shall not be the general rule that persons awaiting trial shall be detained in custody..." (Sharenko & Shilo, 2016, p.5). The problems in Sweden considered above testify that to date Sweden's remand is a general practice and not the exception.

3. Problems in the Field of Pre-trial Detention in Ukraine

At the European scope, Ukraine has an average imprisonment rate – of 119.6 per 100,000 inhabitants in 2021 (Council of Europe, SPACE I, 2021, p.34). In recent years a significant drop in numbers is observable in crime rates (from 503,679 in 2001 to 321,443 in 2021), imprisonment sentences (from 70,308 imprisonment sentences in 2001 to 13,230 in 2021), and consequently in pre-trial detention (from 44,700 in 2000 to 17,100 in 2022) (Council of Europe, SPACE I). Despite such positive trends, in comparison to other European countries, Ukraine is not the leader in remand policy (Council of Europe, SPACE I). In Ukraine, there are still a number of problems in the pre-trial detention field, which impede the effective realization of remand practices.

Core problems of pre-trial detention in Ukraine are concentrated within the legal regulation realm. The legal regulation of pre-trial detention application and its extension in the Criminal Procedure Code of Ukraine is not perfect. It contains certain gaps and legal constructions that allow their ambiguous interpretation, which leads to different case law and, of course, does not provide sufficient legal certainty in this matter (Sharenko & Shilo, 2016, p.51).

In 2016, an unsuccessful reform created a problem of legal regulation. Parliament approved the Law, which provided for crediting one day of pre-trial detention as two days of imprisonment. Defense lawyers have begun to use the tactic of dragging out the trial in order to ensure that the client spends more days in pre-trial detention. They were interested in such a delay of trial since each additional day of remand imprisonment brought closer the prospect of liberation for their clients (Council of Europe Anti-torture Committee [CPT], 2017, p.23). It was expected that with the adoption of such a new legal regulation, there would be a significant drop in the number of prisoners (Dykyj, 2017, p.100). But in 2016 and 2017, according to statistics, there was no sharp drop in the number of prisoners, only a continuing downward trend (Council of Europe, SPACE I). This reform did not have the desired effect on the number of prisoners, but it led to negative consequences. Many dangerous criminals were released (Dykyj, 2017, p.100). The lack of positive results and the presence of negative consequences led to the fact that already in 2017 the reform was curtailed and the policy was returned to the previously embedded model – day per day. Thus, the problem was rapidly eliminated.

Another problem, which existed in the legal regulation of remand since 1960, and has recently been solved was the absence of the right of a prisoner to appeal the imposition of pre-trial detention. Pre-trial detention is the most intrusive measure to secure preliminary investigation (Andersson, 2015, p.13). It should be imposed only in exceptional cases (Sharenko & Shilo, 2016, p.51) (Pivnenko, 2016, p.172). However, in practice, there are cases when a suspect is placed in pre-trial detention

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when it is not necessary. And for such cases, Ukrainian legislation did not provide for a special procedure for appealing. According to Article 392 of the Criminal Procedure Code, only court decisions could be challenged. This Article directly indicated that decisions made during the proceedings in the court of the first instance before the court decisions were not subject to separate appeals (Sharenko & Shilo, 2016, p.52). The pre-trial detainee was unable to protect his/her constitutional right to liberty and security of person (Sharenko & Shilo, 2016, p.52). Thus, the lack of the right to appeal the court's decision to apply pre-trial detention was recognized as a gap in the legal regulation of remand by the Constitutional Court of Ukraine in 2019. Consequently, in 2021 Parliament amended Article 392 with a new paragraph, which established that the decision to impose pre-trial detention may be appealed. Therefore, the problem was partially solved.

However, another aspect of the problem was not noted by the legislators. The core of another problem is also article 392 of the Criminal Procedure Code, which does not allow challenging the court's decisions before a sentence. Along with the imposition of pre-trial detention, the court has to determine the amount of bail that would suffice to ensure the obligations of the suspect (unless there are established obstacles to providing bail) (Article 183 of the CPC). In some cases, the amount of bail could be knowingly disproportionate for the suspect (Sharenko & Shilo, 2016, p.53). According to the current legislation, there is no possibility for a suspect to challenge the bail amount. In such a situation, when the amount of bail is unduly huge and the suspect cannot pay it, the suspect is forced to go into pre-trial detention. Such a gap leads to the deprivation of the suspect effective protection of his rights and legitimate interests. The ability to challenge bail will lead to greater use of alternatives to pre-trial detention and would contribute to reducing the number of remand prisoners. Therefore, appropriate state actions are required to solve this problem.

The next problem which has to be considered is the procedural problem - the extension of remand. In fact, there are two problems – the unjustified extension of remand and as a result long-term of pre-trial detention. The roots of the problem could be found in the former Criminal Procedure Code of 1960. According to Art. 156 of the CPC of Ukraine of 1960 neither the prosecutor nor the judge was obliged to provide any justification for the extension of the term of pre-trial detention. Such a situation not only could lead to arbitrariness on the part of state bodies. Moreover, this approach determined the mental attitude of the prosecutors and judges to the extension of pre-trial detention, and, unfortunately, has not been corrected to date (Orlean, 2018, p.6). The regulation was changed in 2012, and with the new Criminal Procedure Code justification for the remand's extension is required. Article 194 of the CPC of 2012 requires that the request for extension of pre-trial detention should contain: 1) a statement of the circumstances that indicate that the declared risk has

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not decreased or there are new risks that justify the detention of a person; 2) a statement of the circumstances that prevent the completion of the pre-trial investigation before the expiration of the preliminary remand order. The investigating judge is obliged to refuse to extend the term of detention if the prosecutor does not prove that the above circumstances justify further pre-trial detention of the suspect in custody (Orlean, 2018, p.7).

However, the mental attitude of authorized officials (judges; prosecutors) has not been changed. They continue to consider the extension of pre-trial detention as a formal step, which should not be duly justified. To date, the well-embedded practice is that judges and prosecutors use CCP formal phrases to extend pre-trial detention. This is confirmed by the results of the study "The role of the prosecutor in the pre-trial stage of the criminal process" conducted during 2016-2017. During this study, the investigating judges were asked about the quality of the justification of the motions to extend pre-trial detention. During the interview, the investigating judge noted: "The continuation is simply justified by the formal phrases, which are simply copied from the CCP". Another judge added: "... The continuation is not justified at all ... They just argue that risks remain and the same is listed from the previous petition". One judge provided an example from his practice. The prosecutor argued that "The suspect can go abroad." The judge asked, "How he can go abroad if he even does not have a foreign passport?". The answer was "In general, he can go abroad." (Orlean, 2018, p.7). Obviously, such a justification is artificially constructed and has nothing to do with reality. However, such a stupid justification in most cases is the basis for pre-trial detention extension in Ukraine.

This formal practice was strongly condemned in a few cases of the ECHR against Ukraine. In the case *Ignatov v. Ukraine*, the ECHR noted that the applicant's detention lasted for almost a year and eight months. The seriousness of the charges against him and the risk of his escape was mentioned in the original decision to put him in pre-trial detention. The same arguments, as well as the risk of his influence on the course of the investigation, which was added soon, remained unchanged until the verdict, except for the decision of October 1, 2013, which did not contain any grounds to extend remand. Thus, the courts used the same grounds to extend the applicant's pre-trial detention. However, according to par. 3 art. 5 of the European Convention, the justification of any term of detention, no matter how short, must be convincingly demonstrated by the authorities. Arguments for or against dismissal, including the risk that the accused may interfere with the proper conduct of the trial, should not be taken in the abstract and should be supported by factual evidence. The danger of hiding the accused cannot be assessed solely based on the severity of the punishment for the crime. The existence of a risk of absconding must be assessed concerning a number of other relevant factors which may either confirm the

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existence of a risk of absconding or make it so insignificant that it cannot justify detention. The Court noted that the decisions to detain the applicant were outlined and contained repetitive phrases. It cannot be inferred from these judgments that the courts made a proper assessment of the facts relevant to the question of whether such a precautionary measure was necessary for the circumstances at the relevant stage of the proceedings. In addition, over time, additional justification was required for the applicant's long detention, but the courts did not provide any additional arguments. In addition, at no stage do national courts consider any other preventive measures as an alternative to pre-trial detention (Orlean, 2018, p.7).

The same conclusions were reached by the ECHR in the Podvezko v. Ukraine case of 12 February 2015. The ECHR repeatedly drew attention to the need for proper legal justification in resolving the issue of extending the term of detention. In this case, the pre-trial detention of a suspect lasted over 10 months. Requests to extend pre-trial detention were formulated very generally and contained repetitive phrases. They do not show that the courts made a proper assessment of the facts regarding the need to apply remand in the present case. The ECHR concluded that over time, the applicant's continued detention required more detailed justification, but the courts did not provide any additional grounds in this regard. Therefore, the ECHR ruled the breach of par. 3 art. 5 of the European Convention. The considered cases are not alone. Similar findings of the European Court of Human Rights are given in the judgments "Molorodych v. Ukraine", "Pleshkov v. Ukraine", "Kharchenko v. Ukraine", "Tsygonii v. Ukraine", "Taran v. Ukraine", etc. (Sharenko & Shilo, 2016, p.54-55). Such well-established practice of the international court testifies to the existence of systemic procedure problems in the extension of pre-trial detention. Statement of violations by Ukraine of the European Convention in the field of pre-trial detention indicates that Ukraine's policy in the field of pre-trial detention does not meet international standards and requirements of international law. As a signatory of the European Convention, Ukraine has an obligation to act in compliance with it. Therefore, the problem of formal extension of pre-trial detention should be eliminated.

Another problem, which also indicates non-compliance with international standards, is the extensive use of restrictions in pre-trial detention in Ukraine. The CPT afterwards its visit to Ukraine, noted, that the restrictive provisions on remand prisoners' contact with the outer world (with visits and telephone calls requiring authorization by the competent prosecutor or court) continued to be applied (Council of Europe anti-torture Committee [CPT], 2017, p.25). Ukraine has an implied-in-law restriction model. This means that the general rule is that restrictions are applied, and exceptions should be separately granted. Therefore, possibilities of contact of detainees with the outside world through correspondence, packets and meetings are considered to be very limited today, although the presumption of innocence, in this

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case, is still in full force. Visits and letters, although permitted, require the permission of the investigator, and such permits, at least in the early stages of detention, are generally seldom granted. As a result, there is a tendency to limit or sometimes even eliminate the necessary social contact of a detainee, including his or her children, spouse and others (Semenov, 2010). Restrictions could have a detrimental effect on remand prisoners' health and even life since restrictions could result in mental disorders and even suicides. The statistics show that the percentage of suicides out of the total number of prison deaths in Ukraine is constantly growing. If in 2000 suicides constituted 2% out of the total number of prison deaths, in 2020 suicides equated to 13% (Council of Europe, SPACE I). Thus, the CPT calls upon the Ukrainian authorities to take decisive steps to revise such general practice of restrictions (Council of Europe Anti-torture Committee [CPT], 2017, p.25).

During its visits to Ukraine, the CPT also noted insufficient use of alternatives to pre-trial detention (Council of Europe Anti-torture Committee [CPT], 2017, p.5). Such a conclusion could be supported by statistical data. Prosecutors still often insist on the use of pre-trial detention, but the judge does not always apply it. In 2018, prosecutors requested the use of pre-trial detention in 21,501 cases. The courts instead applied pre-trial detention in 18,016 cases. In 2019, the prosecutors requested the application of pre-trial detention 20,645 times. The courts approved the prosecutor's request in 15,988 cases. When judges refuse to apply for pre-trial detention, they may, on their own initiative, impose house arrest. That is why, in the statistical data, prosecutors request the use of house arrest less, than it actually applied (Antidote). However, there is still a significant number of applied pre-trial detention. It could be clearly illustrated by statistical data on admissions to prison institutions. There is a small difference between the total number of admissions and admissions before the final sentence which means putting a person on pre-trial detention (20,591 and 20,462 persons respectively) (Council of Europe, SPACE). It means that almost every person admitted to penal institutions in 2021 was admitted initially as a pre-trial detainee. The CPT argued that wider use of alternatives would contribute to reducing the remand prisoner population (Council of Europe Anti-torture Committee [CPT], 2017, p.5). Recommendation R (80) 11 of the Committee of Ministers to the member states of the Council of Europe establishes the duty of the judicial body to consider all possible alternative measures when considering the application of remand detention (Sharenko & Shilo, 2016, p.51). Therefore, changes to ensure wider use of alternatives to pre-trial detention are required in Ukraine.

All the above problems testify that pre-trial detention as a precautionary measure to secure pre-trial investigation is rather a rule in Ukraine and not an exception (Halay, 2016, p.62). Thus, necessary reconsideration of remand policies is required, in order

to secure the rights of the suspects, as well as to reduce the number of pre-trial detainees in Ukraine, and also to comply with international standards in this realm.

4. Comparative Analysis

Ukraine and Sweden have pretty much the same established set of problems in the pre-trial detention field. Competent international bodies noted these issues. The problems show non-compliance of both countries' remand policies with international standards. However, both common and distinctive features in the problems of the two countries can be noted.

Both countries have legislative problems in pre-trial detention. Ukraine as well as Sweden in recent years have undertaken decisive steps to solve some legislative problems. In Ukraine, few legislative problems have been successfully solved in recent years. Namely, the Parliament was quick in fixing the problem of crediting one day of pre-trial detention as two days of imprisonment. Also, the CPC was amended to provide a suspect with the possibility to appeal the decision on the pre-trial detention application. In Sweden, afterwards repetitive international criticism the maximum time limit of pre-trial detention was introduced. However, a few problems in the pre-trial detention field remain in both states. In Ukraine the gap in legal regulation regarding the right to appeal remand was eliminated, however, such a gap regarding the right to appeal bail was not noted. In Sweden, the main legislative problem is a so-called two-year rule, which allows the automatic application of pre-trial detention in cases where the suspect is threatened with more than two years of imprisonment. It could be argued, that the nature of remained problems in Sweden and Ukraine differs. In Ukraine, the problem is more of a technical character, while in Sweden it is more of a conceptual problem. In Ukraine, the problem is more narrow, while in Sweden it could be characterized as systematic. In both cases, the mentioned legislative problems should be solved in order to secure the rights of the suspects and to reduce the number of pre-trial detention.

One more problem, the core of which lies within the legislation, is pertinent solely to Sweden. It is the large number of foreigners imprisoned. On average, the rate of foreigners out of the total number of prisoners in Sweden is 20%. Ukraine has no more than 2% of foreign prisoners. The difference between the two countries is more than significant - 10 times less in Ukraine. The reason for this is the imperfect legal regulation in Sweden, when foreigners almost always end up in pre-trial detention, regardless of the severity of the crime. Such imperfect legal regulation places foreigners in less favorable positions than Swedish nationals. Therefore, in order to reduce the number of remand prisoners and eliminate the discrimination inherent in legislation, the problem should be solved.

Another set of problems pertinent to both countries is the procedural problems. However, the exact problems differ. In Sweden, there is a problem that prosecutors

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do not specify grounds and time for restrictions imposition. In Ukraine, the main procedural problem is the formal approach to the remand's extension. Prosecutors and judges are guided by formal phrases from the CPC, rather than by real facts and evidence from the case. This problem was highly observed in the ECHR decisions as well as in national special studies. However, to date, the problem has not been solved.

In the long run, the problem of formal pre-trial detention extension in Ukraine is part of another comprehensive problem – long terms of pre-trial detention. This problem is also pertinent to Sweden. However, the reasons for long detention in Sweden differ. In Sweden, there are two main reasons: one is the systematic – principles of immediacy, orality and concentration; and the other one is the technical procedure problem – the slow work of the NFS. Despite the fact, that Sweden has comparatively good statistics among other European states, there is a tendency for the average time in pre-trial detention to increase. This testifies, that the number of long remand has increased. Therefore, it could be concluded that long-term pre-trial detention is a problem for both Ukraine and Sweden.

Another procedural problem pertinent solely to Ukraine is the high percentage of admissions to penal institutions before the final court ruling. Almost all admitted to prison facilities in Ukraine in 2021 were admitted prior to the final sentence, i.e. were placed on pre-trial detention (20,591 totally admitted and 20,462 of them before the final sentence). At the same time, in Sweden, a little more than half ended up in criminal institutions before the final verdict (19,725 totally admitted and 10,761 of them before the final sentence). This means that judges in Sweden are less hasty in putting a person in jail before a conviction with a prison sentence.

Both countries are criticized for the insufficient use of alternatives to pre-trial detention. In Ukraine, the prosecutors still request pre-trial detention as a precautionary measure more often than other precautionary measures, which could serve as alternatives to pre-trial detention. While in Ukraine there is a well-established wide range of alternatives that are underused, in Sweden the problem is deeper. Sweden even does not have enough effective alternatives to pre-trial detention, and existing alternatives are also underused. Therefore, Sweden should put legislative and practical efforts to fix this problem, while Ukraine should act towards practical changes to enhance to use of alternatives to remand.

International bodies also noted a problem in both countries - extensive use of restrictions on pre-trial detainees. The countries have a different legislative models for restriction imposition. In Sweden, a special ruling is required to impose restrictions in each particular case, while in Ukraine there is an implied-il-law model of restrictions. In Ukraine, restriction is the rule, and not the exception. Therefore, Ukraine should undertake legislative and practical steps to deal with the restrictions

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problem, while for Sweden only practical steps are required. In both countries, the outcomes of such wide restriction practices are scary. In Sweden, there is a stable trend, that subsidies constitute a significant part of the total number of deaths. While in Ukraine there is a rapidly increasing trend (from 2% in 2000 to 13% in 2020). Such terrifying statistics show that both countries should undertake decisive steps to change restriction practices in the pre-trial detention realm.

Sweden still has a problem with prison facilities overcrowding. Ukraine no more has this problem. It is worth comparing statistical data on population density in Sweden and Ukraine. In Sweden, the problem of overcrowding periodically arose. Sweden fought the problem by creating new prison facilities. This solution turned out to be ineffective. As prison capacity increased, so did the total number of prisoners. This led to the fact that in 2021 the problem of prison overcrowding in Sweden arose again. The problem of overcrowding in the prisons of Ukraine has not arisen since 2011. By 2021, there were almost 40% of free places in the prisons in Ukraine. At the same time, Ukraine does not build new prisons but rather reduces the number of existing places. This indicates that Ukraine has chosen more reasonable tactics to deal with the problem.

Thus, both countries have a number of problems in the pre-trial detention field. The problems precludes from effective usage of this precautionary measure as well as violate the rights of the suspects. To reduce the number of pre-trial detainees and comply with international standards both states should direct their efforts on solving the above problems. The key to solving the problems of pre-trial detention in both Sweden and Ukraine can come from both legislative and practical measures. Therefore, both countries should draw due attention to the possible solutions to the problems indicated.

In Romania, the pre-trial detention system grapples with several pressing challenges, each contributing to a complex and multifaceted set of issues. Overcrowding within Romanian prisons stands out as a persistent concern, casting a shadow over the living conditions of inmates, including those in pre-trial detention. The strain on resources, compromised hygiene, and limited access to rehabilitation programs all underscore the ramifications of overcrowded facilities.

A significant issue linked to pre-trial detention in Romania is the protracted duration of confinement. Lengthy periods of pre-trial detention raise substantial concerns, ranging from the infringement of the right to a speedy trial to heightened psychological stress on detainees. Furthermore, these extended detentions can lead to disruptions in familial and professional spheres, exacerbating the challenges faced by those awaiting trial.

The issue is further compounded by judicial delays, a critical factor contributing to prolonged pre-trial detention periods. Delays in the investigative and court processes, attributed to factors such as case backlogs, resource constraints, or

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procedural inefficiencies, impede the swift resolution of cases and exacerbate the hardships faced by individuals in pre-trial detention (Report CPT Romania, 2022).

5. Conclusions

In summary, this research underscores the persisting challenges in the pre-trial detention practices of Sweden and Ukraine. While the identified issues contribute valuable insights, not all of them find reflection in existing literature. This leads us to question the extent to which the conclusions drawn in this article align with those of previous works, both by the authors and in international studies.

Recognizing the importance of acknowledging potential shortcomings, it is imperative to highlight the main failures of the research output. This includes the need for further exploration into the overrepresentation of foreigners in Swedish prisons and the potential introduction of bail as an alternative to pre-trial detention in the Swedish context. These gaps not only reveal limitations in the existing research landscape but also pave the way for future investigations.

Moving forward, the recommendations put forth for the political establishments in the EU, Ukraine, and Sweden are crucial. The non-compliance of pre-trial detention practices with international standards necessitates immediate action. Legislative amendments addressing pre-trial detention should be prioritized in both Swedish and Ukrainian legislation. Additionally, practical seminars and training initiatives are indispensable to foster broader adoption of alternatives to pre-trial detention in both countries.

As this research lays the groundwork for understanding the current state of pre-trial detention practices, it also opens avenues for future exploration. The comparative analysis undertaken here not only sheds light on existing issues but also suggests potential directions for further research. By encompassing a wide array of problems and drawing from both published and grey literature, this review offers a comprehensive overview of how challenges in pre-trial detention in Ukraine and Sweden have been addressed to date and proposes avenues for future resolutions.

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