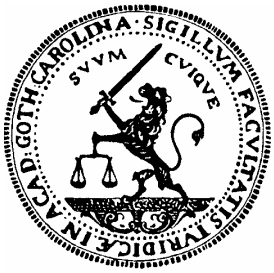

FACULTY OF LAW
University of Lund

Master of European Affairs programme, Law

Ulla Nilsson

Is the Swedish pre-trial detention system in conflict with principles of EU-law?

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Linda Gröning

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Contents

Summary

In the Swedish Procedural Code concerning criminal mattes there are two different thresholds as for the severity of the crime upon which a suspect could be detained or held in custody.[1] Normally there is a requirement of a penalty of one year imprisonment to make it possible to detain a suspect. However, according to a special provision it is possible to detain non-residents, suspected for minor crimes, that is crimes that only will lead to a financial penalty. In such a case a non-resident suspect can be detained because of the risk of abscounding.

This different treatment concerning detention is only actualized when the identity of the non-resident is revealed and when he or she has provided the judicial authorities with a correct information as for his or her address.[2] Due to the close Nordic cooperation in criminal matters, the special provision does not apply Nordic residents.

The question put in this thesis is if the special rule of pre-trial detention is in conflict whith principles in EU-law, more precisely the principles of non-discrimination and proportionality, if applied on citizens in the European Union.[3]

My conclusion is that the Swedish special provision on pre-trial detention is discriminatory. Since it has its object to guarantee the judicial proceedings and the enforcement of the judgment, it can be considered as justified by objective considerations. However, I have found that the special provision on pre-trial detention is disproportionate. This conclusion is founded on the fact that every part of the judicial proceeding can be carried through without the detention of the suspect. In addition, the fact that it, according to a Council Framework Decision in 2005, will be possible to enforce financial penalties in all Member States is of importance. This Framework Decision is to be transposed at the latest 22 March 2007.

Nevertheless, since enforcement of financial penalties in other Member States is not yet possible, it was also necessary to analyze if the special provision on pre-trial detention already is in breach of the principle of proportionality and thereby discriminatory. My conclusion is that the provision, even before 22 March 2007, is disproportionate. When balancing the interest of the individual not to be deprived of his or her liberty and the State interest to enforce financial penalties, the

[1] Swedish Code of Judicial Procedure, chapter 24 section 2 para. 1 and 2.
[2] Ibid, para. 1.
[3] Residents in the other Nordic countries falls outside the scope of the provision in question.

weight of the State interest does not outweigh the interest of the individual. The reason for this is primarily that it is a question of minor criminal offences. In addition it is of relevance that in Sweden financial penalties as a rule will not be commuted to imprisonment if unpaid. The fact that Sweden has chosen not to legislate on the possibility to ensure payment of financial penalties by seizure of property is also of importance.

Since the special provision on pre-trial detention is disproportionate it also is incoherent with EU-law. The practical effect of this is that the provision in the Swedish Code of Judicial Procedure, chapter 24 section 2 paragraph 2 should not be applied on EU-citizens.

Abbreviations

ECJ	European Court of Justice
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)
JO	the Parliamentary Ombudsmen in Sweden
NJA	Nytt Juridiskt Arkiv
Prop.	Proposition from the Government to the Parliament on a law
RB	Rättegångsbalk, Code of Judicial Procedure
SFS	Svensk Författningssamling, Swedish Official Collection of Legislation
SOU	Statens Offentliga Utredningar, Official Reports from a State Commission

1 Introduction

In August 2004, the Commission of the European Communities (the Commission) issued a Green Paper on mutual recognition of non-custodial pre-trial supervision measures.[4] In an Annex to this Green Paper the background to and the reasons for the issuing of the Green Paper was described.[5]

In the Annex, the following comment was noted.

> It is further important to note that the international legal instruments do not contain a common threshold for pre-trial detention. The threshold for detention varies between the different EU Member States. In some EU Member States, a suspect, who has no fixed abode in the territory, may be detained irrespective of the penalty for the offence, when there is a risk that he or she will abscond. In most cases, such persons are foreigners, including nationals of other EU Member States. This means that the "normal" (higher) thresholds apply to residents, while no threshold requirements exist with regard to non-residents. This could probably be considered as a source of a difference in treatment and an impediment to the free movement within the European Union. Moreover, it is probably contrary to the principle of proportionality.[6]

One of the problems that were identified was, according to the Commission, that there was an excessive use (and length) of pre-trial detention in the Union and that this use partly caused prison overpopulation[7]. The commission pointed to the circumstance that owing to the risk of flight, non-resident suspects are often remanded in custody, while residents benefit from alternative measures.[8] Through the Green Paper, the Commission invited the Member States to comment on a new development of cooperation in the field of alternatives to pre-trial detention.[9]

When outlining the background and reasons for the issuing of the Green Paper, the question of discrimination of non-residents and the risk of disproportionate measures was raised in the Staff Working Paper. This could be the case with national systems with one threshold as for the severity of the penalty for the suspected offence for residents and no such threshold for a non-resident suspect.[10]

Sweden has different formal thresholds for residents and for non-residents as for pre-trial detention. This raised my question: Is it coherent with principles developed in the European Union to apply

[4] COM(2004)562 final, Brussels 17.8.2004.
[5] SEC(2004)1046, Brussels 17.8.2004.
[6] Ibid, p. 24.
[7] COM(2004)562 final, Brussels 17.8.2004, p. 2.
[8] Ibid, p. 2.
[9] Ibid, p. 6.
[10] SEC(2004)1046 Brussels 17.8.2004, p. 24.

the stricter rules on pre-trial detention for non-resident EU-citizens? This problem is the focus of this thesis.

More precisely, in this thesis I will answer the question if the Swedish provision in chapter 24 section 2 paragraph 2 in the Swedish Procedural Code is coherent with the fundamental principles in EU-law of non-discrimination and – whitin the principle of non-discrimination – the principle of proportionality.

The differences in law in chapter 24 section 2 paragraph 2 in the Swedish Procedural Code only applies to non-resident suspects that have revealed their name and adress, and where this information can be held to be correct. It does not, because of a far-reaching cooperation in criminal matters between these countries, apply as for residents in the other Nordic States.

In order to answer the question whether the Swedish provisions on pre-trial detention is coherent with fundamental principles of EU law, the thesis is outlined in five chapters. After this introduction, the next three chapters are descriptive in character and aims at providing the reader with relevant background information concerning the problem at issue. In the last chapter the problem is analyzed in the light of this background information, and my conclusions are drawn. The descriptive part begins, in chapter two, with an overview of the relevant Swedish regulation. This is above all the regulation on pre-trial detention but also the regulation on financial punishment is examined. The examination of the latter regulation is of importance when examining the question of proportionality. Usually crimes that are punished by fines only are excluded as a ground for detention, but according to the provision analyzed in this thesis detention could take place also concerning such petty offences.

In chapter three the intergovernmental cooperation in criminal matters are described. This cooperation is an important factor when analyzing the question of non-discrimination and proportionality.

In chapter four the principles of non-discrimination and proportionality are described. Both these principles are founded on a basic idea of liberty. In this thesis the principle of proportionality is mainly examined as a part of the principle of non-discrimination. However, it should be noted that the principle of proportionality is also an independent and basic principle of EU-law and an analysis of the relevant problem could have been made also from such perspective.

Detention is a coersive measure by the state where the person is deprived of his or her liberty. Sweden, as the majority of other European States, has ratified the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The right of liberty is a fundamental right according to the ECHR. The

European Union is founded on the respect of human rights and shall respect fundamental rights as they are guaranteed by ECHR[11]. It thus became natural for me to take into consideration how the protection of this fundamental right is defined and on what conditions it can be set aside. This lead me to the principle of proportionality, a principle of outmost importance within the system of ECHR.[12] The principle of proportionality is also a established general principle within EU-law.[13] The principle of proportionality means that every State action has to be proportionatte as regards the balance between the interest of the State and for the burden on the individual. Since the special rule of pre-trial detention only applies to non-residents I have chosen to concentrate on the principle of non-discrimination. This later principle is covered not only in ECHR but also in EU-law.

In this context, also the concept of EU-citizenship is of importance.

[11] Article 6 TEU.
[12] Danelius, *Mänskliga rättigheter i Europeisk praxis*, second edition, 2002, p. 58.
[13] Paul Craig, Gráinne De Búrca, *EU Law*, 2003, p. 372 and Article 5 EC.

2 Swedish Regulation

2.1 Pre-trial Detention in Sweden

The Swedish Code of Judicial Procedure, chapter 24 section 1 and 2, has the following wording.[14]

> Section 1
>
> Any person suspected on probable cause of an offence punishable by imprisonment for a term of one year or more may be placed in detention if, in view of the nature of the offence, the suspect's circumstances, or any other factor, there is a reasonable risk that
> the person will:
> 1. flee or otherwise evade legal proceedings or punishment;
> 2. impede the inquiry into the matter at issue by removing evidence
> or in another way; or
> 3. continue his criminal activity.
>
> If a penalty less severe than imprisonment for two years is not prescribed for the offence, the suspect shall be detained unless it is clear that detention is unwarranted.
>
> Detention may only occur if the reason for detention outweighs the intrusion or other detriment to the suspect or some other opposing interest.
>
> If it can be assumed that the suspect will only be sentenced to a fine, he must not be detained.
>
> Section 2
>
> Any person suspected on probable cause of an offence may be detained regardless of the nature of the offence if:
> 1. his identity is unknown, and he either refuses to provide his name and address or he provides a name and address that can be assumed is false; or
> 2. he does not reside in the Realm and there is a reasonable risk that he will avoid legal proceedings or a penalty by fleeing[15] the country.

[14] Translation of the *Rättegångsbalk* (RB) on the Swedish governments web-site, http://www.sweden.gov.se/sb/d/3926/a/27778;jsessionid=aOR49BljxuD_

[15] The exact wording in Swedish is “genom att bege sig från”. A straight translation could therefore be ” through leaving...”.

The normal threshold for pre-trial detention presupposes that the criminal offence in question must have a scale of punishment that includes one year imprisonment. It does not follow that the assumed sentence must be one year imprisonment. However if the assumed sentence is only to be a fine, a resident in Sweden, must not be detained. Even if the assumed sentence will be harder than a fine, the suspect must not be detained if a detention is disproportionate.

The normal threshold does not apply if the suspect does not reside in the realm of Sweden. A non-resident suspect can be detained regardless of the nature of the offence, formally even if it is a minor offence that only will render a sentence of fines.

Neither is there any threshold if the suspected person is unknown or if he or she refuses to provide his or her name and address, or if the information on this can be assumed false. This exemption from the normal threshold applies irrespective of if it is a resident or a non-resident.

The difference in law thus only occurs between residents and non-residents who has revealed his or her identity and address, and where this information can be held to be correct. In the following, only this group is of interest.

In the preparatory work to the provision on detainment of non-residents, it was emphasized that a possibility to detain a suspect for smaller abuses was of special importance regarding sailors and others that had committed smuggling or traffic offences.[16] The rule was, by some commentators, held to be a presumed risk of absconding if there was no circumstance to outbalance this risk.[17]

In the mid 1980th the rules on detention was revised. In 1987 the Government as its view held that if the possibility to detain a non-resident suspect were to be abolished, this would lead to that society in practice would not be able to take legal measures against foreigners in minor cases. Since this would not be acceptable, the possibility to detain non-residents on minor offences should not be abolished. It was anyhow held that detention should restrictively be used, especially when the assumed sentence would be a very low fine.[18] The reasoning was that the measure chosen had to be proportionate. This principle was explicitly expressed some years later in chapter 24 section 1 in the Swedish Code of Judicial

[16] See NJA II 1943 p. 323.
[17] N. Dillén, *Föreläsningar i Straffprocessrätt enligt nya Rättegångsbalken*, Norstedts 1947 p. 161.
[18] Proposition from the Swedish government to the Parliament (Riksdag), prop.1986/87:112 p. 32 and SFS 1987:1211.

Procedure.[19] Even if this rule of proportionality was explicitly expressed, the lower threshold for non-residents was kept.[20] The special provision in the Swedish Code of Judicial Procedure, chapter 24 section 2 paragraph 2 is still in force.[21]

2.2 Short on the Swedish System of Fines

Fines for criminal offences may be imposed i proportion to the crime in question as day-fines (dagsböter), summary fines (penningböter) or standardised fines. Day-fines shall be determined in number to at least thirty and at most hundred and fifty. Each day-fine shall be imposed as a fixed amount from SEK 30 up to and including SEK 1 000. When deciding the amount of each day-fine regards is to be taken to what is reasonable accounting to the income, wealth, obligations to dependants and other economic circumstances of the accused.[22]

Summary fines shall be imposed to an amount of at least SEK 100 and at most SEK 2 000.[23]

Day-fines are regarded as a more severe punishment than summary fines.

A standardised fine shall, in accordance with what is provided for as for each offence, shall be determined according to a special basis of computation.[24]

Fines as a consolidated punishment for several crimes are imposed as day-fines, if any one of the crimes is punishable with day-fines.[25]

For very small traffic-offences like speeding with a motor vehicle, fines are decided as summary fines (penningböter). Many other small offences can be punished with summary fines.[26] Fines like this are,

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[19] Proposition from the Swedish government to the Parliament (Riksdag), prop.1988/89:124 p. 26 et sec. and SFS 1989:650.
[20] See 1997/98:JO1, Justitieämbetsmännens Ämbetsberättelser, p. 153, referred below.
[21] Peter Fitger, *Rättegångsbalken I*, part 2, section 24:18 where the author discusses whether the principle of proportionality applies at all as for chapter 24 section 2 paragraph 2.
[22] Swedish Government web-site http://www.sweden.gov.se/content/1/c6/02/77/77/cb79a8a3.pdf
[23] Idem
[24] Idem; In the following standardised fines will not be of interest and thus left aside.
[25] Swedish Government web-site http://www.sweden.gov.se/content/1/c6/02/77/77/cb79a8a3.pdf
[26] Information on crimes and amount of summary fines can be found at the web-site http://lagen.nu/1999:178

according to the penalty imposed in the provision on the offences, set as a lump sum. The maximum sum is prescribed in the penalty regulation in question. Detailed instruction as for how much each offence "costs" are provided for by the Office of the Prosecutor General.[27] A police officer as an on-the-spot fine (ordningsbot) can decide on summary fines, if the suspect admits the offence and accepts the fine. An on-the-spot fine is regarded as a sentence having legal force. The on-the-spot fine can be immediately enforced.

Day-fines are, as said above, decided upon on two different considerations. The number of the day relates on to how severe the offence is regarded to be. The other part of the day-fines is decided with regard to the income etc. of the perpetrator.

According to chapter 23 section nine in the Swedish Code of Judicial Procedure a person, not under arrest or detention can be held for questioning in six hours if there is a suspicion that a crime has been committed.[28]

The police, in some cases under the leadership of a prosecutor, do a preliminary investigation. If it is a simple matter, there is no need to make a full investigation. Instead, the police can file a report. As soon as the preliminary investigation or the report is completed, the suspect and the counsel shall be delivered the investigation.[29]

A police officer cannot decide day-fines as an on-the-spot fine. If it is a question of a crime that will lead to day-fines, the police officer has to make a report or a preliminary investigation. When this is done, its handed over to a Public Prosecutor and the Prosecutor can issue a written order of summary punishment. If the perpetrator accepts this order, the proceedings are stopped. An accepted order of summary punishment is, just like the on-the-spot fine, regarded as a sentence having legal force. No trial in court is hence necessary.

Another part of the Swedish system of fines that can be of interest is how fines are enforced. The Enforcement Service enforces unpaid fines. If a financial penalty cannot be collected through the Enforcement Service, no further measure is normally to be taken.[30] The matter can as an extreme exception be reported to the Public Prosecutor who has to apply at court for the communitation of the

[27] SFS 1999:178 Riksåklagarens föreskrifter om ordningsbot för vissa brott.
[28] Swedish Code of Judicial Procedure chapter 23 section eight and 9, where a suspect under extraordinary circumstances can be held for questioning another six hours.
[29] Swedish Code of Judicial Procedure, Chapter 23 section 21. A suspect is normally not awarded a public defence counsel if he or she only is suspected of a minor offence, Swedish Code of Judicial Procedure, chapter 21 section 3a.
[30] Proposition from the Swedish government to the Parliament (Riksdag) prop. 1982/83:93 p. 13.

sentence from fines to, at most, three months of imprisonment.[31] Communitation is only to be approved under very special circumstances. It has to be clear that the failure to pay is contumacious. If this is not the case there has to be another extreme reasons to commute. The basis for this position is the wish to leave the previous system where unpaid fines normally were commuted to imprisonment. A system with "personal execution" was said not to be desirable.[32]

In this context, it must be noted that a non-resident that is suspected of a minor offence has the possibility to make a deposition of the expected fine.[33] This applies both to day-fines and to summary fines. A deposition is to be made voluntarily. If a deposition is made, the suspected person cannot be detained, since there no longer is any risk that he or she can avoid justice. [34]

Another aspect is that if a person is sentenced to a fine and has been deprived of liberty as detained due to being suspected of a crime that has been subject to sentence, the court may direct that the sentence have been enforced in full or in part as a result of the deprivation of liberty.[35]

The Ombudsmen of Justice (JO) or the Parliamentary Ombudsmen are elected by the Swedish Riksdag (Parliament) to ensure that public authorities and their staff comply with the laws and other statutes governing their actions. The Ombudsmen exercise this supervision by evaluating and investigating complaints from the general public, by making inspections of the various authorities and by conducting other forms of inquiry that they initiate themselves.[36]

An opinion from JO does not as such have precedence. The reasoning from JO is normally highly respected and regarded as good practice in the Swedish courts and authorities.

JO have, after complaints from private persons, given opinions on the possibility to detain non-residents for minor offences.

One opinion from JO concerned a Brittish person residing in Denmark. The person was suspected of speeding when driving a motorvehicle. This offence could only lead to a summary fine. Since the suspect did not admit his offence, he was detained. JO concluded in this case that the requisite to detain the suspect on the

[31] Law on enforcement of fines (Bötesverkställighetslagen) 1978:189, section 15.
[32] Proposition from the Swedish government to the Parliament (Riksdag) prop. 1982/83:93 p. 15.
[33] Law on enforcement of fines, Bötesverkställighetslagen SFS 1979:189, section 2
[34] 1997/98:JO1, Justitieämbetsmännens Ämbetsberättelser, p. 153.
[35] Swedish Penal Code, chapter 33 section 5, *in fine*.
[36] See the web-site, http://www.jo.se/Page.aspx?Language=en

risk of abduction, was not fulfilled because of the closely developed cooperation between the Nordic countries in criminal matters.[37]

In another opinion[38] JO concluded that the principle of proportionality in the Swedish rules concerning detention on the risk of abscounding for a non-resident outside the Nordic countries is precluded when the expected sentence is a summary fine (penningböter).

As follows from the first opinion of JO above, the special rule on detention on the risk of abscounding is not to be used on persons residing in the Nordic Countries.

Summary fines are used only for very petty offences. According to the second opinion of JO, detention should not be used when the expected sentence is just a summary fine. This conclusion was drawn by the Chief Procecutor (Riksåklagaren) as early as in 1967.[39] JO applied the Swedish principle of proportionality and held that the abuse and expected punishment was not of such weight to motivate detention.

Non-residents, not residing in the other Nordic countries, that are suspected to have committed crimes of "higher value" as for the expected punishment can risk detention on the risk of avoiding justice even if the crime as such does not reach the "threshold" that is required for detention of residents on the same risk. The difference in law only applies when the identity of the non-resident is revealed and when he or she has provided the judicial authorities with a correct information as for his or her address.[40] The crimes in question are crimes that in fact will be punished by day fines.

In the Swedish Penal Code, there is a diversity of criminal acts, considered as petty. They have all less that one year of imprisonment as sentence. It is abuses like causing of bodily injury (3:8), defamation (5:1), seduction of youth (6:10), fraudulent conduct (9:2), unlawful withholding of property (10:1), unlawful use of an object belonging to another person (10:7), inflicting damage on property (12:1), careless endangering the public by handling explosives or fire (13:6), falsifying a document (14:2), careless statement, i.e. "perjury" by gross negligence, disobeying public order (16:3), outrageous conduct toward a public servant (17:2) and several others. Persons own use of narcotics, including cannabis, is a minor offence according to the Act on Penal Law on Narcotics (section 3, second paragraph).

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[37] 1996/97:JO1, Justitieombudsmännens Ämbetsberättelser, p. 103.
[38] 1997/98:JO1, Justitieämbetsmännens Ämbetsberättelser, p. 153.
[39] Riksåklagarens Cirkulär C 34, from 25 September 1967, abolished 1.1 2000 (RÅFS 1999:7) but still valid in substance (See SOU 2002:72 p. 74).
[40] Swedish Code of Judicial Procedure, chapter 24 section 2 para. 1.

As for traffic offences, hit-and-run[41] and drunk driving (above 0.2 but below 1.0 permillige of alcohol in the blood[42]) has the same level of punishment.

All these offences have fines and up to sex month imprisonment as punishment. Even if imprisonment would be formally possible, in practice all these offences will render day-fine, not imprisonment.[43] Most other traffic offences, like speeding, will only render summary fines.[44]

2.3 The Possibility to Judge in Absentio

According to Chapter 46 section 15 of the Swedish Code of Judicial Procedure is it possible to adjucate a case if the defendant does not appear in person or appears only through counsel.[45] The court has to decide, after hearing the prosecutor and the present counsel, if the matter can be satisfactory investigated without the personal appearance of the defendant. The only criminal sanctions that can be imposed in absentio are fines, imprisonment for a maximum of three months, conditional sentence, or probation, or such sanctions jointly. The defendant may be sentenced to imprisonment only if he or she previously has failed to appear at a main hearing in the case or then appeared only by counsel.[46] Adjucating a case in the defendant's absence presupposes that the defendant has been serviced the summons and a notice of the main hearing (huvudförhandling).

A non-resident person can issue a power of attorney and authorize the agent to be able to receive the summons and be present at the trial.[47] Such a power of attorney can be accepted if the case can be decided upon in absentio. In the following only suspects that have not made a deposition or issued a power of attorney are at issue.

[41] Swedish Law on certain traffic crimes, Lag (1951:649) om straff för vissa trafikbrott, section 5.
[42] Ibid, section 4a.
[43] See as comparison Georg Stertzel, *Studier rörande Påföljdsparaxis,m.m.,* p. 53, 72-73.
[44] Swedish Ordinance on road traffic, Trafikförordningen(1998:1276) chapter 14 section 1-13.
[45] Compare Swedish Code of Judicial Procedure, chapter 21 section 2, *in fine.*
[46] It is possible to adjucate *in absentio* if the defendant has fled after service of summons or if he remains hiding in such a manner that he cannot be brought to the trial. This possibility is very rarely used in practice. Another possibility is to adjucate *in absentio* when the defendant is mentally ill.
[47] Swedish Code of Judicial Procedure, chapter 21 section 2, *in fine*.

3 Cooperation in Criminal Matters

3.1 Cooperation on the European Level

In Europe, the development of the cooperation in criminal matters started in the bosom of the European Council. Conventions on cooperation between states have been agreed upon in different matters. Such cooperation is in principle regarded as a part of foreign politics. This can be explained by that criminal matters are regarded as closely related to State sovereignty.

Within the Council of Europe, the Convention on transfer of legal proceeding in Criminal matters was agreed upon in 1972. The Convention has as its main object to ensure that the judicial proceedings are handled in the State most suitable according to all circumstances. The Convention came into force in 1978. Only 15 States have ratified it. The transfer of proceedings could be used in situations where the severity of the crime excludes extradition. This is the case when the time of imprisonment is less than one year. The administrative procedure is rather complicated.

Provisions on transfer of proceedings can also be found in the European Convention on Mutual Assistance in Criminal Matters of 1959 (Article 21). This provision does not contain any obligation on the transfer of the proceedings. What is said in Article 21 is only how a request on transmitting the procedure is to be done.

The 1959 Convention on Mutual Assistance and its additional 1978 protocol[48] covers - among other items - taking of evidence, including questioning, cooperation on service of writs, summons and other procedural documents. Except for services of writs, summons or procedural documents the request for assistance is to be handled between the Justice Departments of the involved states. On the other hand service may be effected by a simple transmission to the person involved, i.e. mostly by international postal delivery.[49] A service can under certain circumstances, also be effectuated by the requested

[48] http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=030&CM=8&DF=6/7/2006&CL=ENG
http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=099&CM=8&DF=6/7/2006&CL=ENG

[49] The Convention of 14 June 1990 implementing the Schengen agreement of 14 June 1985, Article 52.

State in the manner provided for in that state. In Sweden, a request like that is to be sent through the Swedish Justice Department.[50]

Cooperation in criminal matters in the European Community started in the form of inter-governmental cooperation after separate agreements, outside the institiuons of the Economic Community.

With the Maastricht Treaty, in force in 1993, the European Union with its “tree pillar” structure was created. After the amendments in the treaty of Amsterdam in 1999, the Third Pillar of today was established. This pillar covers Justice and Home affairs.[51] The overall aim of the Third Pillar was declared to be the creation of an area of freedom, security and justice by developing `common actions` in three areas: police cooperation in criminal matters, judicial cooperation in criminal matters and the prevention and combating of racism and xenophobia.[52]

Since the Treaty of Amsterdam came into force, the development of the cooperation in criminal matters within the EU has been intensified. In 29 June 1998, the Council of the European Union adopted a Joint Action on Good practice in mutual legal assistance in criminal matters. In this Joint Action, the Member States referred to the 1959 Convention and declared that it was necessary to make further practical improvements regarding mutual legal assistance. In October 1999, the Council of the European Union met at Tammerfors. In the conclusions of this meeting, it was stated that the Council was determined to develop the Union to an area of Freedom, Security and Justice and that the Council was determined to make use of all possibilities to realize this aim. It was said that the creation of a `genuine European area of justice´ was of high priority.[53]

In 29 May 2000, the Convention on Mutual Assistance in criminal Matters (the 2000 Convention) was adopted between the Member States of the Union. This convention has its aim to improve judicial cooperation by developing and modernising the existing provisions governing mutual assistance, mainly by extending the range of circumstances in which mutual assistance may be requested and by facilitating assistance. A whole series of measures to make cooperation quicker, more flexible and more effective was agreed upon. The 2000 Convention has its base on the 1959 Convention and its 1978 protocol and the Convention of 14 June 1990

[50] Swedish National Courts Administration, Domstolsverket, Delgivingshandbok, delgivning i brottmål, avsnitt F.
http://www.dvhandbok.dom.se/delgivning%20i%20utlandet.htm
[51] Paul Craig, Gráinne De Búrca, *EU Law*, 2003, p. 26.
[52] Ibid, p. 39 and Article 29 TEU.
[53] Presidency Conclusions, Tampere European Council 1999, preamble, §§ 1, 2, 5 and 6 (http://ue.eu.int/ueDocs/cms_Data/docs/polju/EN/EJN360.pdf)

implementing the Schengen agreement of 14 June 1985.[54] To facilitate cooperation, this is to take place directly between the authorities in the involved Member State. Requests are, according to the 2000 Convention, not normally to be sent through member States Justice Department. Sweden has ratified this Convention, and so have all other Member States in the Union exept Greece, Italy, Ireland, Luxembourg, Malta and Slovakia.[55]

In Article 34 TEU the legal instruments that the Council of the European Union can adopt under the third pillar are defined. The Council can adopt common positions defining the approach of the Union to a particular matter. It can adopt Framework Decisions for the purpose of approximating of the laws and regulations of the Member States. Framework Decisions shall be binding upon the Member State as to the result to be achieved but shall leave to the national authorities the choice of form and methods. They shall not entail direct effect. [56] A Framework Decision could be compared with directives under the first pillar.[57] A directive under the first pillar is as well binding as for the result to be achieved and leaves a choise to each Member State as for the form and method to do so. - According to Article 34 EU the Council can, apart from these instruments, adopt decisions and establish conventions.

No instrument within the Union has governed the enforcement of a financial penalty across Member State border.[58] To realise the goals specified in the Tampere agreement the Council of the European Union has continued its effort to create a ´area of justice´. On 24 February 2005, the Council adopted a Council Framework Decision on the application of the principle of mutual recognition to financial penalties.[59] The Framework Decision has provisions on enforcement within the Union of financial penalties. A financial penalty on certain crimes is to be recognised and enforced in another Member State without any new decision in the latter state. The executing state shall take all the necessary measures for its execution. The Framework Decision was entered into force on the day of its publication in the Official Journal of the European Union or 22 March 2005. Member States shall take the necessary measures to comply with the provisions of the Framework Decision before 22 March 2007. In a recent decision, ECJ has declared that the binding character of a Framework Decision places an obligation on national authorities,

[54] Explanatory report on the Convention of 29 May on Mutual Assistance in Criminal Maters between the Member States of the European Union, (2000/C 379/02) Introduction, point B. As for Schengen aquis see http://www.consilium.europa.eu/uedocs/cmsUpload/SCH.ACQUIS-EN.pdf
[55] See web page of Council of European Union, Agreements details.
[56] Article 34 paragraph 2 (c).
[57] Article 249 EC.
[58] SOU 2002:72 p. 36 and proposition from the Swedish government to the Parliament (Riksdag), prop. 2003/04:160 p. 108.
[59] 2005/214/JHA of 24 February 2005.

including national courts, to interpret national law as far as possible in conformity with the wording and purpose of the Framework Decision.[60]

3.2 Cooperation on the Nordic Level

The Nordic States (Denmark, Finland, Iceland, Norway and Sweden) have a long tradition o cooperation in criminal matters. The first instrument was the Convention from 1948 between Norway, Sweden and Denmark concerning the recognition and enforcement of judgements in criminal matters. This Convention provided that final judgements given in one signatory State were enforceable in another State. Since 1963, all Nordic Countries have an agreement on cooperation in Criminal matters.[61] The scope of this latter Convention includes enforcement of fines.

The Convention 26 April 1974 on mutual cooperation in judicial matters concerns a wide range of practical cooperation, including criminal matters. The Nordic countries have since 1975 far-reaching agreements on mutual cooperation in criminal proceedings. The agreements covers service of summons, taking of evidence and and the possibility to move the judicial proceedings against a suspect to the State of residence. The appliction for judicial cooperation can be done directly between the authorities involved, i.e. without involving the governments.

[60] Case C105/03 *Pupino*
[61] Lag (1963:193) om samarbete med Danmark, Finland, Island och Norge ang. verkställighet av straff.

4 The Principles of Non-discrimination and Proportionality

4.1 The Regulation of ECHR

The 1950 European Convention for Protection of Human rights and Fundamental Freedoms (ECHR)[62] provide that everyone has the right to liberty (Article 5) and that everyone who has been charged with a criminal offence shall be presumed innocent until proven guilty (Article 6). It also protects against discrimination in the individual's enjoyment of his or her Convention rights.[63]

A very important part of the legal rights of the individual is the protection against deprivation of liberty.[64] In Article 5(1) of the ECHR it is stated that "everyone has the right to liberty and security of person". The right to liberty under Article 5(1) has six exeptions which prescribe when a person may be deprived of his or her liberty. The exeption that relates to pre-trial detention is on the ground that a person is suspected to have committed an offence.

ECHR does not contain any threshold for pre-trial detention to be allowed. A person must only be deprived his or her liberty on a reasonable suspicion of having committed a criminal offence. One of the special grounds for detention is the danger if flight.[65] The Committee of Ministers of the Council of Europe has in a Recommendation on ECHR declared that "Custody pending trial shall be regarded as an exeptional measure and shall never be compulsory nor be used for punitive reasons".[66]

The right to liberty is closely linked to the presumption of innocence. Article 6(2) ECHR provides that "everyone charged wih a criminal offence shall be presumed innocent until proven guilty according to law". The presumption of innocence implies a right to be treated in

[62] As well as the Charter of Fundamental Rights of the European Union (CFREU, 2000), not in force.
[63] Cameron, *An Introduction to European Convention on Human Rights*,1995 p. 105.
[64] Danelius, *Mänskliga rättigheter i europeisk praxis*, second edition. 2002, p. 92.
[65] Commission Staff Working Paper SEC (2004)1046, Brussels 17.8.2004.p. 10.
[66] The Committee of Ministers of the Council of Europe Recommendation on ECHR, Recommendation No. R(80) 11 http://www.coe.int/t/e/human_rights/cddh/2._theme_files/09._other_themes/02._persons_deprived_of_their_liberty/01._documents/Rec(80)11%20E.asp#TopOfPage

accordance with this principle. It is a duty for all authorities to refrain from pre-judging the outcome of a trial.[67]

A very important principle within the application of ECHR is the principle of proportionality.[68] In this context it should be viewed in the light of the right to liberty and the presumption of innocence. The principle of proportionality implies that coersive measures, such as pre-trial detention only should be used when this is absolutely necessary and only as long as required.[69]

4.2 The EU-regulation

In Article 6.2 TEU it is stated that the Union shall respect fundamental rights as guaranteed by ECHR as a general principle of the Union. Just as within ECHR, the principle of proportionality is of very high importance within EU-law. This principle can also be found in Swedish law. The principle of proportionality means within EU-law that a measure must not be heavier or far-reaching than is necessary to achieve the desired goal.[70] The principle has been used to question the actions from Member States.[71] The principle of proportionality can be used to challenge the legality of Member State actions, which fall within the sphere of application of EU-law.

According to ECJ, a measure has to be appropriate and necessary. In a proportionality inquiry, the relevant interests must be identified, and they have to be valued as for weight and value.[72]

The proportionality test has been described as follows.[73]

1. Is the measure suitable to achieve the desired end;
2. Is it necessary to achieve the desired end; and
3. does the measure impose a burden on the individual that is excessive in relation to the objective sought to be achieved.

When the European Economic Community was developed in the mid 1950th criminal law was not to be a part of the cooperation. Since it was a cooperation only on an economic base and criminal law and criminal procedural law was held to be closely connected with the nation state sovereignty, criminal law and criminal procedural law

[67] Danelius, *Mänskliga rättigheter i europeisk praxis*, second edition, 2002, p. 235.
[68] Ibid p. 58.
[69] Commission Staff Working Paper SEC (2004)1046, Brussels 17.8.2004, p. 18.
[70] SOU 2002:72 p. 88.
[71] Case C-24/97 *Commission v. Germany*, para. 11 and 15.
[72] Paul Craig, Gráinne De Búrca, *EU Law*, third edition p. 372.
[73] Idem

was not affected.[74] ECJ has repeatedly held that criminal legislation and procedure law are matters for which the Member States are responsible, but EU-law sets certain limits as for how this competence may be used.[75]

In *Pastoors and Trans-Cap*[76] ECJ accepted that a real risk that enforcement of a judgement against a non-resident would be impossible or, at least, considerable more difficult and onerous could justify a difference in treatment between residents and non-residents.[77] The case was about national provisions on enforcement in a criminal case. Pastoors was a truckdriver with residence in Germany. He was employed by Trans-Cap. Trans-cap also had its residence/seat in Germany. Pastoors was suspected of infringement of eleven different penal provisions concerning mainly roadtransports. According to Belgian law a driver in breach of these provisions could choose to pay a fine directly with BRF 10 000 for each infringemnet, a payment that normally extinguished procecution. The offender had the option not to pay and allow the criminal proceedings to take its course against him or her. In the latter case a non-resident had to deposit the sum of BFR 15 000 for each breach to cover the fines and legal costs. According to ECJ, an obligaton for a non-resident to lodge a sum 50 % higher as security for payment of a fine and any legal costs than would be imposed on a national, in default of which the vehicle would be impounded, was exessive and thus disproportionate.

The difference in treatment was furthermore held to be disproportionate by ECJ in *Commission v. Germany.* German law treated nationals of other member States differently from German nationals in the sanctions imposed for infringement of the requirement to be in possession of a valid identity document. In a case of a foreigner negligence sufficed to constitute an infringement whereas in the case of a German national intent or recklessness was necessary. The fine laid down for a foreigner was maximun DM 5 000 whereas a national as a general rule was subject to a fine of maximun DM 1 000. The Commission argued that Germany had failed to fulfil its obligations under EU-law "by treating nationals of other Member States residing in Germany disproportionate differently, as regards the degree of fault and scale of fines from German nationals when they commit a comparable infringement of the obligation to hold a valid identity document..." [78]

[74] Two exemptions to this are Article 27 in the statute of the European Court of Justice, which implied Member States to criminalize perjury in the Court and Article 194 in the Euroatom Treaty that had an obligation to criminalize breach of secrecy or state security. This was considered to be a confirmation that International criminal law as such was not involved. (See Asp, EU & straffrätten, 2002 p. 28).
[75] Asp, *EU & Straffrätten*, 2002, p. 121 and Case C-105/03 *Pupino* para. 34.
[76] Case C-29/95 *Eckehard Pastoors and Trans-Cap,* para. 24-26.
[77] Ibid*,* para. 22.
[78] Case C-24/97 *Commission v. Germany*, para. 1.

Since EU is to respect the fundamental rights in ECHR, not only the principle of proportionality is in common. Article 14 of the ECHR provides that "the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as ...national or social origin...."

The test that applies when determining whether or not Article 14 has been breached is four fold. There must be a (1) differential treatment in (2) equal cases (or "relevantly similar situations") without there beeing (3) an objective and reasonable justification or if (4) proportionality between the aim sought and the means employed is lacking. [79]

According to Article 12 EC any discrimination on grounds of nationality shall be prohibited. Within the EU the principle of non-discrimination is a general principle and as such binding on both the Union and Member States whithin the scope of application of EU-law.

As for discrimination, EU-law can be said to turn against formal as well as material discrimination.[80] In an historical perpective the prohibition on discrimination has had an economic backgound since it could disturb competition if nationals were treated better than non-nationals. The prohibition of discrimintation today means, according to ECJ, that nationals from another Member State must be treated in the same way as its own nationals.[81]

The principle of non-discrimination of nationals from other Member States prohibits both direct and indirect discrimination. Direct discrimination is when a Member State treats a person different only because of his or her nationality. Such a discrimination is in general prohibited. Indirect discrimination is when the Member State treats a person differently by the application of other criteria of differentation which mainly leads to the detrimentation av nationals in other Members States.[82] A distiction on the base of residence can, since non-residents are likely to be foreigners, constitute indirect discrimination.[83]

An indirect discrimination of non-nationals can be acceptable if it is justified by objective circumstances and the discrimination is just an unfortunate sideeffect of the application of the criteria.[84]

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[79] Cameron, *An Introduction to European Convention on Human Rights*,1995 p. 107.
[80] Asp, *EU & straffrätten*, 2002, p. 123.
[81] Case C-43/95 *Data Delecta.*
[82] Case C-29/95 *Eckehard Pastoors and Trans-Cap*, para. 16.
[83] Ibid, para. 17.
[84] Bernitz and Kjellgren, *Europarättens grunder*, p. 104.

ECJ has in a couple of cases ruled on the question of indirect discrimination in law. In *Mund & Fester*[85] the question was about the German rules on seizure of property. The applicable German provision on seizure was divided into two parts. In cases with pure national circumstances seizure of goods could be granted if the enforcement of a later judgement otherwise could be impossible or substanitally more difficult. If a execution of a judgement was to take place outside Germany this was held to be sufficient ground for a seizure order. ECJ held that it was not a question of direct discrimination, but since the rules could lead to the same result as a direct discrimination this was a question of indirect discrimination. ECJ then ruled over the question if the indirect discrimination was justified by objective reasons. Since Member States all were contracting parties in the Brussels Convention and thus was to be regarded as forming one single entity it was held not to be justified when enforcement was to take place in a Member State.[86]

In *Pastoors and Trans-Cap*[87] the question again was about indirect discrimination in law. In the proceedings before ECJ, the Belgian Government maintained that the difference in treatment between nationals and non-nationals was objectively justified by the fact that the legal position of non-residents is different as regards prospects for enforcements of judicial decisions, and by the fact that criminal proceedings against non-residents are more complex and involve greater costs. ECJ found that the Belgian legislation, relying on the criteria of non-residence, was an indirect discrimination.[88] ECJ accepted that there was a objective justification since Belgium and Germany had no convention on enforcement of criminal judgements. There would therefore, according to ECJ, be a real risk that enforcement of a judgement against a non-resident would be impossible or, at least, considerably more difficult and onerous. The situation objecively justified a difference in treatment between residents and non-residents as for the obligation to pay a sum by way of security being appropriate to prevent them from avoiding an effective penalty simply by declaring that they do not concent to the immediate levying of the fine and opting for the continuation of a normal criminal proceeding.[89] The Belgian system was accordingly as such not in breach of the obligation not to discriminate nationals from other Member States in Article 12 TEU. As for the question of proportionality, se below.

Another case that concerns discrimination in law is *Commission v. Germany*.[90] In this case ECJ concluded that treating nationals of

[85] Case C-398/92 *Mund & Fester.*
[86] Ibid*,* para 19.
[87] Case C-29/95 *Eckehard Pastoors and Trans-Cap.*
[88] Ibid*,* para.15-17.
[89] Ibid*,* para. 20-22.
[90] Case C-24/97 *Commission v. Germany.*

other Member States residing in Germany disproportionately different, as regards the degree of fault and the scale of fines, from German nationals when they commit comparable infringement of the obligation to carry valid identity document was not acceptable according to Community provisions.[91] ECJ also held that the fundamental freedoms in the Treaty are based on the same principles as regards the prohibition of all discrimination on grounds of nationality.[92]

4.2.1 Citizenship in the EU

Citizenship in the European Union was introduced through a symbolic and rethoric provision in the treaty of Maasticht. This treaty came into force in 1993. According to the provision, every citizen of the Union shall have the right to move and reside freely within the territory of the Member States. This right can only be limitated or conditioned by the Treaty itself or measures adopted to give it effect.[93] Even before 1993 ECJ had ruled that a person visiting another Member State as a turist is a reciver of services and as such exercising the fundamental freedoms which EU-law was protecting.[94]

In a judgement from 2001 ECJ further developed the concept of EU-citizenship and declared that Union citizenship is destined to be a fundamental status of nationals of the Member States, enabling those who find themseves in the same situation to enjoy the same treatment in law irrespective of their nationality subject to such exeptions as are expressly provided for.[95]

The rights of citizens in the Union are furthermore emphasised in the preamble of the Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004, on the right of citizens of the Union to move freely.[96]

[91] Case C-24/97 *Commission v. Germany*, para. 15.
[92] Ibid, para. 11.
[93] Paul Craig, Gráinne De Búrca, *EU law*, third edition p. 755.
[94] Case 186/87*Cowan.*
[95] Case C-184/99 *Grzelczyk*, para. 31.
[96] Para. 1-3 in the Preamble.

5 Analysis and Conlusions

Since the problem at issue is if the provision in chapter 24 section 2 paragraph 2 in the Swedish Procedural Code is coherent with fundamental principles whithin EU-law, I will in the following focus on these principles as they have developed within EU-law. This does not mean that the reference to ECHR is of no importance. This reference is of importance to give a background to and understanding of the principles in question.

5.1 Is the special rule discriminatory?

To begin with the principle of non-discrimination, this principle requires that comparable situations must not be treated differently and that different situations must not be treated in the same way. A difference in treatment may be justified only if it is based on objective considerations and is proportionate to the objective being legitimately pursued.[97] Thus the principle of proportionality will be considered in this context.

The situations to be compared are the situation where a resident is suspected to have committed a minor crime respectively the situation where a non-resident are suspected to have committed such a crime. The situations as such are comparable. There is a difference in law since a resident in Sweden would not, if suspected of crimes of the same severity, risk a pre-trial detention. The non-resident would on the other hand risk such a detention. I don´t think that a lower threshold for pre-trial detention for non-residents than residents on the suspicion of crime is to treat comparable situations alike. My conclusion so far is that this difference in law is as such discriminatory.[98]

However, the fact that there is a discriminatory provision does not automatically lead to the conclusion that the principle of EU-law shall be applied on national law. The provision in question on pre-trial detention lies within Swedish criminal procedural law. Criminal matters and national procedural law was long held to be matters for which the member States are solely responsible. According to ECJ, criminal legislation and the rules of criminal procedure are in principle matters for which the member States are responsible, but EU-law sets certain limits as for how this responibility may be used.[99] One such limit is that legislative provisions may not discriminate against

[97] Case C-148/02 *Avello*.
[98] Case C-24/97 *Commission v. Germany.*
[99] Asp, *EU och straffrätten*, p. 121 and Case C-105/03 *Pupino.*

persons to whom EU-law gives the right to equal treatment. Another limit is that the national legislation may not restict the fundamental freedoms guaranteed by EU-law.[100]

National criminal law and rules of criminal proceedings can accordingly come under the sphere of EU-law. The prohibition of discrimination in Article 12 EC refers to discrimination on grounds of nationality. Another question therefore occurs. That is if the difference in treatment i Swedish law can be held to be a discrimination on nationality. The special provision on pre-trial detention as for non-residents in the Swedish procedural law does not expressly cover persons of other nationalities. It could be reasoned that the difference do not apply to nationality since the difference in law has to do only with residence. Accordning to ECJ a distinction on the base of residence can, if non-residents are likely to be foreigners, instead constitute indirect discrimination.[101] My conclusion is that the Swedish legislation at issue has the same practical result as discrimination on grounds of nationality.[102] My reasoning is based on the fact that non-resident visitors in Sweden are likely to be foreigners. As a consequence the special provision on pre-trial detention is very rarely to be applied on Swedish nationals. To discriminate on grounds of residency therefore is in fact an indirect discrimination on the base of nationality.

For the Swedish special provision on detention to come under the scope of EU-law it is not enough to find that there is a question of discrimination as such, there has to be an EU dimension as well.[103] This requisite is rather easy o fullfille. This has to do with that the right to move freely and to visit other Member States is one of the fundamental freedoms covered by EU-law.[104] A non-resident EU-citizen can be presumed to – at least – take advantage of this right when visiting Sweden. The person in question could of course be a provider of service or a migrant worker as well. Since it for the following reasoning is enough to be visiting Sweden on a short term basis, I will not further evaluate the other options.

5.2 Is the diffrence in law justified?

An indirect discrimination of non-residents can be compatible with EU-law if it is justified by objective considerations.[105] What are the objective considerations at issue? The special rule on pre-trial detention in Swedish criminal procedural law covers only the risk of

[100] Case 186/87 *Cowan* para. 19.
[101] Case C-29/95 *Eckehard Pastoors and Trans-Cap*, para. 16, 17.
[102] Ibid*,* para. 17, 18.
[103] Case 175/78 *Regina v. Vera Anna Saunders*, Asp, *EU & straffrätten*, p. 177.
[104] See 2.3.1 above.
[105] Case C-29/95 *Eckehard Pastoors and Trans-Cap,* para. 21, 22.

flight – abscond – and can be applied on suspects that have relieved their names and have resident within the European Union, outside the Nordic countries.[106]

The considerations behind the special rule on pre-trial detention can be found in the preparatory work behind that provision.[107] The origin of the special provision on pre-trial detention dates back at 1948 when the Swedish Code of Judicial Procedure came into force.[108] According to the preparatory documents on this provision the individuals within the scope of the provision are sailors suspected of traffic crimes or smuggling. The mentioned group and the suspected crimes are only to be regarded as examples.[109] Not only the personal scope as for the individuals in question but also the scope as for what kind of crimes that could lead to detention has changed.

When comparing the situation of today with the situation in the 1940th it is easy to conclude that sailors are not the only group expected to be in a short stay in Sweden. The development of the mobility within the Union has lead to that the group of non-residents in a short stay can be composed of persons with a wide range of different background.

The same can be said to apply for the crimes at issue. Even if smuggling could be one of the crimes that come into mind when thinking of what a person in a short stay could be suspected for, crimes like shoplifting or drunk driving[110] comes more natural. Both these crimes have a maximum of sex months imprisonment and would lead to a judgement of day-fines. Anyhow, shop-lifting or drunk driving are not the only crimes that could come into question. In fact all crimes considered to have the same severity could be at issue. It should be noted that even if the same person commits more than one crime with this threshold normally this would not lead to a sentence of imprisonment.[111] The sentence would instead be a higher number of day-fines.

The next issue to take into consideration is what kind of arguments that can be considered as a objective consideration for a difference in in treatment in national law. According to ECJ in *Pastoors and Trans-Cap*, [112] a real risk that enforcement of a judgement on non-

[106] 1996/97:JO1, Justitieombudsmännens Ämbetsberättelser, p. 103.
[107] NJA II 1943.
[108] Ibid, p. 323.
[109] Peter Fitger, *Rättegångsbalken I*, part 2, section 24:17.
[110] Not gross drunk driving when the alcohol level is above 1.0 permillage in the blood.
[111] If the behaviour is systematic, it could lead to that the “harder” provision on theft in chapter eight section 1 in the Swedish Penal Code could be applicable. In that case, the behaviour falls outside the scope of the special provision on pre-trial detention. Theft has a threshold that includes one-year imprisonment.
[112] Case C-29/95 *Pastoors and Trans-Cap*, para. 21.

residents are impossible, or at least considerable more difficult and onerous, can be considered as an objective justification for a difference in treatment. When assessing the question of justification one has to accept that the national interest to uphold its own criminal system is very strong. This has to do with that the criminal system is very closely connected with the sovereignty of a state. It can also be said that it has to do with the general trust in and sence of legitimacy as for the national criminal system. Anyhow, when considering criminal issues, there is a strong national interest to investigate criminal behaviour and, if charges are raised, to bring judicial proceeding to an end and to enforce a given judgement.

My interpretation of the opinion put forward by ECJ in *Pastoors and Trans-Cap*[113] is that the national interest at issue can justify a difference in law on non-resident offenders. I therefore think that it can be concluded that the national interest to uphold its criminal law constitute an objective justification for a difference in law.

But a difference in law in the Swedish pre-trial detention system has not only to be justified by objecive considerations. According to EU-law it has to be proportionate as well. In a proportionality inquiry, the relevant interests must be identified, and they have to be valued as for value and weight.[114]

5.3 Is the special rule on pre-trial detention proportionate?

The interest of a national State is the importance that crimes are investigated, criminals brought to trial and their penalties enforced. This interest has to be evaluated as for weight and value when assessing if the difference in law is proportionate. It has to be mentioned that according to Swedish Constitutional law[115] any coercive measure has to be proportionate. This was emphasised in the mid 1980th when the Swedish Code on Judicial procedure in the "main" provision on detention was amended.[116] Anyhow, even after this amendment it is not obvious if the Swedish principle of proportionality covers the special provision on pre-trial detention as for non-residents.[117] This uncertainty is now of no importance, since the principle of proportionality deriving from EU-law is applicable.

As for the State interest and the reasons to uphold the special rule on pre-trial detention the Swedish Government, in its answer to the

[113] Case C-29/95 *Pastoors and Trans-Cap.*
[114] Paul Craig, Gráinne De Búrca, *EU Law*, third edition p. 372.
[115] See Instrument of Government (1974:152) chapter 2 section 12 (RF 2:12).
[116] Chapter 24 section 1.
[117] Peter Fitger, *Rättegångsbalken I*, 2, para. 24:18.

Green Paper[118] issued from the Commission, refers to the considerable risk that it would be harder to investigate crime and and take final measures after the criminal investigation has been terminated if the suspected person no longer is in the country. Another aspect was that the processing time would risk to become longer where the suspect or accused person is in another country.[119] In the same answer the Swedish Government notes that enquiry and detention period in this case are very short, and it is usual for the penalty to be in the form of fines or a shorter term of imprisonment, which is regarded as purged by the time spent in detention.

Not only the State interest has to be evaluated as for value and weight. The interest of the individual has to be evalutated as well. Pre-trial detention is an exemption from the fundamental right to liberty in Article 5 in ECHR. Preventive detention is a very serious coersive measure. Pre-trial detention therefore shall be regarded as an exceptional measure.[120] Pre-trial detention might as well burden the individual with a real presumption on guilt which is only reconcible with difficulty with the presumption of innocence in Article 6.2 ECHR.[121] In my view, this individual burden is not to be disregarded. In fact, the pre-trial detention at issue would not occur if the suspected person makes a deposition to pay the fines or if he or she files a power of attorney to a person present in Sweden.[122] I have therefore assumed that any person detained according to the provision at issue, would be a person who denies his or her guilt.[123]

When first considering the value of each interest, the interest of the individual to remain in liberty and, on the other hand, the interest of a State to maintain its criminal system, I have the opinion that both these interest as such are of equal value.

But, when balancing the interests of the State and the individual, in this specific situation, not only the value but also the weight of the interests must be considered. The right of liberty is a very important part of the legal rights of an individual. It must therefore be considered to have very heavy weight.

To fully assess the weight of the State interest, I think it is necessary to start applying the proportionality test and when doing so to consider the different parts of the State interest one by one.

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[118] COM(2004)562 final, Brussels 17.8.2004.
[119] Ju2005/439/BIRS, Swedish Cabinet office answer.
[120] Recommendation No. R(80) 11 of the Committee of Ministers of the Council of Europe (principle 1).
[121] Constens, Pradel, *European Criminal Law*, 2000, p. 371.
[122] Or accept an order of summary fines.
[123] Note the possibilitis mentioned above to file an summary note to a suspect admitting his or her guilt and accepting to pay the fines.

To begin with, the obligation on a Member State to respect the concept of citizenship in the Union and not to discriminate in fact or in law on nationals from other Member States has to be taken into consideration. The development of the concept of citizenship in the Union has strengthen the protection of the individual and his or her right not to be treated differently by a Member State. The mirror of this is that the State interest to treat non-nationals differently must be of considerable weight to outbalance a burden put on the individual. It is in this light the test on proportionality has to be applied.

When applying the test of proportionality the first issue to consider is if the coersive measure is suitable to fulfill the desired end. Rational and practical reasons can be said to speak for themselves. A person in detention is easy to find to be questioned under the police investigation and can also easily be serviced[124] the police report or preliminary investigation when that is brought to an end.[125] He or she can also easily be be serviced the charges from the public procecutor and the call for a main hearing (huvudförhandling) at court and finally be brought to trial. As the Swedish government emphasised, the enforcement of the fines can be regarded as purged. All parts in the desired aim can be achieved and I think the measure as such could be considered as suitable.

The next question to be considered is if the coersive measure is necessary to achieve the desired end. It is when assessing the necessity, the different parts referred to above has to be evaluated one by one.

The initial part of the desired end is the possibility for the police authority to question the suspected person. In my view this interest could be achieved using the possibility in the Swedish Procedural Code to bring a suspect to be heard in custody for six hours.[126] An obligation to remain in custody for six hours must be seen as less infringing on the individual than detention. On the other hand, the short timelimit would put a pressure on the police authority to persue the questioning as soon as possible. There could also appear difficulties as for the need for interpretation. If an interpretator is needed, he or she could be provided for by phone. If the questioning is done in a professional way, no futher hearing by the police normally would be necessary. The interest to be able to question the suspect could therefore be achieved without detaining him or her.[127]

[124] Swedish Code of Judicial Procedure, chapter 23 section 18.
[125] Idem
[126] In exceptional circumstances the time limit can be prolonged for another six hours, Swedish Code of Judicial Procedure, chapter 23 section 8.
[127] As for the possibility to appear by telepfone during the police investigation see the Swedish Code of Judicial Procedure, chapter 23 section 6a.

What happens next is that the police authority will bring the investigation to an end. When this occurs, a report (or preliminary investigation) is to be forwarded to the Public Procecutor. Before the Public Procecutor makes a decision on the question if the person is to be charged, the police report (or preliminary investigation) has to be serviced the suspected person.[128] Since investigations in cases concerning minor offences are likely to be rather easy, it is not unthinkable that the investigation could be brought to an end within the six hour limit. If not, the suspected person could be serviced, the report or preliminary investigation[129] in accordance with the 1959 and the 2000 Conventions using international postal possibilities.[130] This again would of course involve a larger adminstistrative burden on the Swedish authorities. The desired end - to be able to question the suspected person and to deliver/service the report or the preliminary investigation - could anyhow be reached through less coersive means on the individual than pre-trial detention.[131] The adminstrative burden on the national authorities would on the other hand increase. The processing time would also risk to be prolonged.

The next part of the desired end is the interest to bring the accused person to trial. In this context the possibility in the Swedish Procedural Code to assess minor criminal cases *in absentio* is of importance. If the charged person can be serviced the summons and the call for appearence at the main hearing at court, most minor cases could be judged without the personal apperance of the accused person. The possibility to do so relies partly on the quality of the police investigation. If the standpoint of the defendant is clearly recorded and his or her statement is complete, a minor case could be brought to an end without the defendants appearence. During the proceedings at court, the statement given by the defendant is delivered orally from the report before the court when hearing the case.[132]

The possibility to judge *in absentio* pre-supposes that the summons and the call to the main hearing at court has been serviced. Again the possibilities given through international Conventions binding upon Member States could be used.[133]

In this context another possibility in the Swedish Procedural Code, not mentioned before, is of interest. A Swedish Public Procecutor can be appointed by the court to issue the summons and the call for

[128] Swedish Code of Judicial Procedure, chapter 23 section 18.
[129] Idem
[130] See 3.1 above.
[131] The 2000 Convention makes it possible to use telephone under the police investigation, see above 3.1.
[132] Swedish Code of Judicial Procedure, chapter 46 section 6.
[133] Convention of 14 June 1990 implementing the Schengen agreement of 14 June 1985, Article 52 para. 1.

appearance at court.[134] If the Public Procecutor has been delegated the power to do so, he or she could make use of this possibility within the six hour limit. The administrative burden as for service would then be low.

Critics could be forwarded on a system with judgements *in absentio*.[135] Article 6(1) in ECHR gives the accused the right to trial(hearing). The word "right" indicates that the accused have the choise whether to attend the trial or not.[136] In my view, a judgement *in absentio* would normally not be in breach of Article 6(1).[137] One objection to this standpoint could be that the accused person could have difficulties appearing because of costs occuring to travelling expenses. Here another provision in the Swedish Procedural Code could be of interest, namely the possibility to have the defendant present by telepfone[138] in the main hearing at court.[139]

Several provisions in the Swedish Procedural Code thus give, when used accurately, a wide range of possibilities to bring the judicial proceeding to an end even if the defendant does not appear personally.[140] This is also of importance when assessing the weight of the state interest as such.

The next national interest to be assessed is the possibility to enforce a punishment. The issue here are judgments on day-fines. As has been accounted for above, a new instrument on EU-level has been decided on, namely the Council Framework Decision[141] on mutual recognition on financial penalties. This Framework Decision has entered into force 22 March 2005 and is to be transposed in the Member States in 22 March 2007. At the latest by the latter date, a penalty on day-fines for a wide range of crimes will be enforceable in all Member States when delivered on crimes within the scope of the decision. Without verification on double criminality, fines on theft, criminal damage, smuggling and traffic-offences shall be enforced in a Member State where the convicted person is present.[142] If the

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[134] Swedish Code of Judicial Procedure, chapter 45 section 1 para. 2.
[135] Proposition from the Swedish government to the Parliament (Riksdag) prop. 2000/01:108 p. 20 -24.
[136] SEC(2004)1046, Brussels 17.8.2004, p. 35. Compare Council Framework Decision on 24 February 2005 on mutual recognition to financial penalties, Article 7 section 2 (g) ii, which indicates that such a decision is to be recognised and executed in other Member States.
[137] Danelius, *Mänskliga rättigheter i europeisk praxis*, second edition, 2002 p. 190.
[138] Not all States allows hearing by telephone in criminal cases; see information in http://www.regeringen.se/sb/d/2608
[139] As for the possibility to appear by telepfone at the main hearing at court see the Swedish Code of Judicial Procedure, chapter 46 section 7 paragraph 2.
[140] The legal possibilities presuppose that the police and the Public Prosecutor are given proper organisational and financial means.
[141] 2005/214/JHA of 24 February 2005.
[142] Ibid, Article 5.

issue is another crime, the enforcement can be conditioned on double criminality.[143]

From the above reasoning follows that the national interests to place the non-resident suspect in custody could be satisfied by less coercive measures than detention. The crimes can be investigated, the criminal proceedings at court brougt to an end and the financial penalties enforced. Some of the alternative measures mentioned can put a heavier administrative burden on the Swedish authorities and even increase costs.[144] The judicial proceedings can also risk to be prolonged. When balancing the weight of the interests of the individual and his or her right to personal liberty and the costs and the administrative burden that might occur for the State, including the risk of prolonged judicial proceedings, the interest of the State to cut costs, minimize adminstrative burdens and shorten judicial proceednings cannot outweigh the individual interest of liberty. The difference in treatment in the provision in chapter 24 section 2 para. 2 in the Swedish Procedural Code cannot be considered as proportionate. My conclusion is that the provision, when the Council Framework Decision has been transposed, must be in conflict with the fundamental principle of non-discrimination within EU-law.

However, until the 2005 Council Framework Decision has been transposed in all Member States, difficulties still may occur to enforce a penalty on day-fines on a person residing in another Member State.[145] Until then it could be somewhat uncertain if other Member States will assist on enforcement of financial penalties.

5.4 Can present difficulties to enforce financial penalties make the difference in law proportionate?

As follows from above, until 22 March 2007 there could appear difficulties to enforce financial penalties. The question is if the difference in law as for pre-trial detention could be held to be proportionate for this reason. When answering this question one has – again - to bear in mind that difficulties to enforce financial penalties has been considered to be able to objectively justify an indirect

[143] 2005/214/JHA of 24 February 2005, Article 5 para. 3.
[144] On the other hand, costs are saved, since a detained person is to have a counsel provided by the state. Such a counsel will only be provided for in cases at issue for particular reasons (Swedish Code of Judicial Procedure, chapter 21 section 3a).The costs occurring in custody and transports will also be saved.
[145] Since it is a question of minor offences, the possibility to transfer judicial proceedings have been left out. It might seem improper to burden another Member State with minor criminal cases.

discrimination.[146] In the following assessment I will rely on the evaluation I have done above, i.e. that the provision in chapter 24 section 2 paragraph 2 in the Swedish Procedural Code is as such discriminatory and that this diffence in law could be objectively justified. I will i the following evaluate if the difference in law is proportionate as a part of the obligation of non-discrimination as for nationals from other Member States.

Just as I have been discussing above, it would not be necessary to detain the suspected person to bring the judicial procedure to an end. However, it still could be impossible or at least more difficult or onerous to enforce the judgement. [147] Even if the value of the interest for a state to enforce punishment is high, the weight of the State interest still can be outbalanced. As I see it, one has to bear in mind that the issue are offences of rather low gravity. On the other hand, the special pre-trial detention places a very heavy burden on the individual. When balancing these interests, I think the development of the concept of EU-citizenship is of importance. I think this development have consequences as for on what point the scale pan can be said to be in balance. In my view that point has moved so that the weight carried by the interest of the State has to be considerable to outweigh the interest of an individual. This opinion is also in line with the task set up by the European Union, to develop an area of freedom, security and justice, in respect of human rights and fundamental freedoms.[148]

As I have said above, the difficulties that would occur is that it could be impossible or at least more difficult or onerous to enforce a judgement on a financial penalty. Since such difficulties did not make an extra financial burden of 50% in default of which the vehicle would be impounded, proportionate in *Pastoors and Trans-Cap*[149] I think it would make it dis-proportionate to deprive a suspect of his or her liberty to overcome these difficulties.

If any doubts would be raised regarding my conclusion that the differrence in treatment in the pre-trial detention system in Swedein is dis-proportionate, the Swedish system on enforcing fines and the principles behind that system, carries weight. In fact it can be said to further lower the weight of the State interest. On residents, fines are enforced through the Swedish Enforcement Service. If a financial penalty cannot be collected through the Enforcement Service, no further measure is normally to be taken.[150] The matter can as an

[146] Case C-29/95 *Eckehard Pastoors and Trans-Cap*, para. 21.
[147] That is, until 22 March 2007.
[148] Compare Report from European Parliament A5-0094/2004(final) point A in the preamble.
[149] Case C-29/95 *Eckehard Pastoors and Trans-Cap*.
[150] Proposition from the Swedish government to the Parliament (Riksdag), prop. 1982/83:93 p. 13.

extreme exception be reported to the Public Prosecutor who is to apply at court for the communitation of the sentence from fines to imprisonment, at most, three months.[151] Communitation is only to be approved under very special circumstances. It has to be clear that the failure to pay is contumacious. If this is not the case there has to be other extreme reasons to commute. The basis for this position was the wish to leave the previous system with “personal execution” a system that was held to be undesirable.[152]

What has happened is that the system with personal execution as for fines has, in principle, been abolished in Sweden. Fines are normally not to be enforced by depriving the perpetrator his liberty. This previous position taken on the principles of enforcement of fines leads to that I think that the reasoning of the Swedish Government in its answer to the issued Green Paper could be questioned.[153] In this answer the Swedish Government notes that enquiry and detention period in this case are very short, and it is usual for the penalty to be in the form of fines or a shorter term of imprisonment, which is regarded as purged by the time spent in detention.

I don´t think that this view put forward in the answer can be regarded as coherent with the principles behind the Swedish rules of enforcement of fines.[154] The basic principle is that financial penalties are not to be enforced by depriving the perpetrator his or her liberty. The reasoning in the answer implies that personal execution when enforcing fines as for non-residents is not only acceptable but also desirable. This reasoning also implies that one motive to put non-residents in custody would be a punitive one; it is not only used as a way to guarantee that the judicial proceedings can be brought to an end, but as a way to purge the financial penalty in advance. In my view this would really be in breach of the presumption of innocence and not in line with Article 6(2) ECHR.

One final objection could be raised in this connection. If fines are not possible to enforce, this could lead to a systematic “misuse”. The situation is not unthinkable. Especially shoplifting could be committed in a systematic way. The situation could be that a non-resident commits this crime on a daily basis in a certain period. If the non-resident perpetrator cannot be detained the crimes might not be punished.[155]

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[151] Law on enforcement of fines (Bötesverkställighetslagen) 1978:189, section 15.
[152] Proposition from the Swedish government to the Parliament (Riksdag) prop. 1982/83:93 p. 15.
[153] Ju2005/439/BIRS, Swedish Cabinet office answer.
[154] See section 2.2 above.
[155] Systematic actions would not always lead to that the criminal action is assessed as “normal” theft.

It is naturally undesirable for a State not to be able to enforce financial penalties in cases of obvious misuse. The Swedish Government discussed the situation as such in 2000. Because of the difficulties to enforce financial penalties on traffic offences, the question was raised if Sweden was to have special provision on seizure of property to secure payment of fines on these crimes. Since the Council Framework Decision was in the pipeline, the Swedish Government decided not to propose such an amendment.[156] In my opinion and according to the wording in *Pastoors and Tranc-Cap*,[157] a seizure of property to secure payment of fines would have been proportionate. The Swedish Government took no such step. This position from Sweden, not to take this step to improve the possibilities for the State to collect fines, has also to be taken into account.

Anyhow, my conclusion is that the difference in treatment in law in the Swedish special provision on pre-trial detention even before 22 March 2007 must be regarded as disproportionate and thus in breach of principles in EU-law. Since EU-law is held to have primacy, a national provison in conflict of EU-law can not prevail.[158] The special provision on pre-trial detention is thus not to be applied on a citizen in the European Union.[159]

[156] Proposition from the Swedish government to the Parliament (Riksdag) prop. 1982/83:93 p. 107.
[157] Case C-29/95 *Pastoors and Trans-Cap,* para. 22. Compare Case C-224/00 *Commission v. Italy,* para. 26.
[158] Case 6/64 *Costa v. ENEL*, Case 11/70 *Internationale Handelsgesellschaft*, Case 106/77 *Simmenthal.*
[159] J Hettne, I Otken Eriksson, *EU-rättslig metod*, p. 111 et sec.

Bibliography

Books

Paul Craig, Gráinne De Búrca, *EU Law, Texts, Cases and Materials*, third edition, Oxford 2003, ISBN 0-19-924943-1.

Iain Cameron, *An introduction to the EUROPEAN CONVENTION on HUMAN RIGHTS*, second edition. Justus förlag, ISBN 91-7678-300-6.

Ulf Bernitz, Anders Kjellgren, *Europarättens grunder*, Norstedt Juridik, Stockholm 1999, ISBN 91-32-20173-2

N. Dillén, *Föreläsningar i Straffprocessrätt enligt nya Rättegångsbalken*, Norstedts 1947.

Georg Stertzel, *Studier rörande Påföljdspraxis,m.m*. second edition, Elander Gotab, Stockholm. ISBN 91-7223-100-9.

Jareborg, Asp, *Svensk internationell straffprocessrätt*, IUSTUS Förlag AB, 1995, ISBN 91-7678-311-1

G. Constens, J. Pradel, *European Criminal Law*, Kluwer Law International, 2000. ISBN 90-411-1362-2.

M. Melin, G Schäder, *EU:s konstitution*, 6 ed, Norstedts Juridik AB, 2004. ISBN 91-39-20354-9.

J Hettne, I Otken Eriksson *EU-rättslig metod*, Norstedts Juridik AB, 2005. ISBN 91-39-20386-7.

Legal Articles

Elsbeth Guild, *Crime and the EU´s Constitutional Future in Area of Freedom, Security, and Justice*, European Law Jornal, Vol. No. 2 March 2004, pp. 218-234.

Fredrik Wersäll, *EU och straffrätten*, Svensk Juristtidning nr 8, 2004 p. 665.

International Treaties and Conventions

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

Treaty establishing the European Community (EC Treaty), OJ C 325 of 24 December 2002.

Treaty on European Union (TEU), OJ C 325 of 24 December 2002.

Convention 1948 between Norway, Sweden and Denmark concerning the recognition and enforcement of judgements in criminal matters.

European Convention 1959 on Mutual Assistance in Criminal Matters and its 1978 additional 1978 protocol.
http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=030&CM=8&DF=6/7/2006&CL=ENG
http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=099&CM=8&DF=6/7/2006&CL=ENG

The Nordic Convention 26 April 1974 on mutual cooperation in judicial matters.

Convention of 14 June 1990 implementing the Schengen agreement of 14 June 1985, 42000A0922(02), Official Journal L 239, 22/09/2000 p. 0019-0062.
http://europa.eu.int/eurlex/lex/LexUriServ/LexUriServ.do?uri=CELEX:42000A0922(02):en:HTML

European Convention 29 May 2000 on Mutual Assistance in Criminal Matters. Official Journal C 379 (29/12/2000), C 197 (12/07/2000), C 110 (07/05/2002).
http://www.consilium.europa.eu/cms3_Applications/applications/Accords/details.asp?cmsid=297&id=2000023&lang=EN&doclang=EN

Legislative Material

Sweden

Swedish Instrument of Government (1974:152), *Regeringsformen* (RF)

(1942:740) The Swedish Code of Judicial Procedure, *Rättegångsbalk* (RB). As for translation see the Swedish governments web-site,

http://www.sweden.gov.se/sb/d/3926/a/27778;jsessionid=aOR49BljxuD_

Swedish Law on certain traffic crimes, Lag (1951:649) om straff för vissa trafikbrott.

(1962:700) Swedish Penal Code, *Brottsbalk*. As for translation see the Swedish governments web-site, http://www.sweden.gov.se/content/1/c6/02/77/77/cb79a8a3.pdf

Lag (1963:193) om samarbete med Danmark, Finland, Island och Norge ang. verkställighet av straff

Law on enforcement of fines (Bötesverkställighetslagen) 1978:189

Lag (1987:1211) om ändring i rättegångsbalken (SFS 1987:1211)

Lag (1989:650) om ändring i rättegångsbalken (SFS 1989:650)

Swedish Ordinance on road traffic, Trafikförordningen (1998:1276).

SFS 1999:178, Riksåklagarens föreskrifter om ordningsbot för vissa brott

EU

Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004, on the right of citizens of the Union to move freely. 32004L0038, 32004L0038R(01)

Council of the European Union, Framework Decision on 24 February 2005 on the application of the principle of mutual recognition to financial penalties, 2005/214/JHA. (Official Journal L 076, 22/03/2005 p. 0016-0030.)

Official Documents

Commission Green Paper on mutual recognition of non-custodial pre-trial supervision measures, COM(2004)562 final, Brussels 17.8.2004

Commission Staff Working Paper, Annex to the Commission Green Paper on mutual recognition of non-custodial pre-trial supervision measures, SEC(2004)1046, Brussels 17.8.2004

Official Report from a Swedish State Commission:

- SOU 2002:72 Verkställighet av vissa trafikböter/trafikavgifter för utländska trafikanter

Propositions from the Swedish government to the Parliament (Riksdag):
- Prop. 1982/83:93 Om ändring i brottsbalken, m.m. (förvandling av böter)
- Prop.1986/87:112 Om anhållande och häktning, m.m.
- Prop.1988/89:124 Om vissa tvångsmedelsfrågor
- Prop. 2000/01:108 Åtgärder mot inställda huvudförhandlingar vid brottmål vid tingsrätterna, m.m.
- Prop. 2003/04:160 Fortsatt arbete för en säker vägtrafik

1996/97:JO1, Justitieombudsmännens Ämbetsberättelser

1997/98:JO1, Justitieämbetsmännens Ämbetsberättelser

Presidency Conclusions, Tampere European Council 1999, (http://ue.eu.int/ueDocs/cms_Data/docs/polju/EN/EJN360.pdf)

Report from European Parliament A5-0094/2004(final)

Explanatory report on the Convention of 29 May on Mutual Assistance in Criminal Maters between the Member States of the European Union, (2000/C 379/02)

The Committee of Ministers of the Council of Europe Recommendation on ECHR, Recommendation No. R(80) 11 http://www.coe.int/t/e/human_rights/cddh/2._theme_files/09._other_themes/02._persons_deprived_of_their_liberty/01._documents/Rec(80)11%20E.asp#TopOfPage

Table of Cases

Case 6/64 *Costa v. ENEL* (Rec. 1964, p.1141)

Case 11/70 *Internationale Handelsgesellschaft MbH v. Einfuhr und Vorratsstellefür Gretreide und Futtermittel* (Rec.1970,p.1125)

Case 106/77 *Amministratione delle finanze dello Stato v. Simmenthal* (Rec. 1978, p.629)

Case 175/78 *The Queen v. Saunders* (Rec.1979, p.1129)

Case 186/87 *Cowan v. Trésor Public* (Rec. 1989, p. 195)

C-398/92 *Mund & Fester v. Hartex Internationaal Transport* (Rec.1994, p. I-467)

C-43/95 *Data Delecta Aktiebolag and Forsberg* (Rec. 1996, p.I-4661)

C-29/95 *Eckehard Pastoors and Trans-Cap v. Belgische Staat* (Rec.1947, p. I-285)

C-24/97 *Commission v. Germany* (Rec. 1998, p.I-2133)

C-184/99 *Grzelczyk* (Rec. 2001, p. I-6193)

C-224/00 *Commission v. Italy* (Rec.2002, p.I-2965)

C-148/02 *Garcia Avello* (Rec. 2003, p. I-3101)

C-105/03 *Pupino* (Rec. 2005, p. I-5285)