Judicial Reasoning and Individualised Risk in Pre-Trial Detention: A Transnational Standard of Justification

Fundamentação judicial e risco individualizado na prisão preventiva: um standard transnacional de justificação

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Abstract: This article examines what judicial reasons must establish before reasonable suspicion and a legally recognised ground can justify pre-trial detention. It argues that detention of a person presumed innocent requires a cumulative sequence connecting the evidential basis of suspicion, an independently justified risk, the insufficiency of less intrusive alternatives, and temporal proportionality. The method is a doctrinal and normative reconstruction of selected European, Inter-American and United Nations standards, informed by scholarship on proof, judicial reasoning and risk assessment. The comparison concerns transnational frameworks rather than a systematic comparison of domestic legal systems. The article proposes an Individualised Risk-Justification Standard, organised as a Four Justificatory Bridges Model. Its contribution is the integration and operationalisation of established requirements, not the discovery of those requirements or a new evidentiary threshold. The model distinguishes procedural from preventive risks, disciplines generalisations through case-specific scrutiny, and separates the justification of initial custody from its continued duration. Selected judgments and a hypothetical application

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illustrate its use as a framework for drafting and reviewing detention decisions. Defective reasoning is assessed as a failure of justification, with remedial implications that remain sensitive to the applicable legal system.

Keywords: pre-trial detention; judicial reasoning; individualised risk; criminal procedure; standards of justification.

Resumo: *Este artigo examina o que a fundamentação judicial deve demonstrar para que a suspeita razoável e um fundamento legalmente reconhecido justifiquem a prisão preventiva. Sustenta que a privação da liberdade de pessoa presumida inocente exige uma sequência cumulativa que conecte a base probatória da suspeita, um risco justificado autonomamente, a insuficiência de medidas menos gravosas e a proporcionalidade temporal. O método consiste na reconstrução dogmática e normativa de standards europeus, interamericanos e das Nações Unidas, informada pela literatura sobre prova, fundamentação e avaliação de riscos. A comparação incide sobre marcos transnacionais, sem comparar sistematicamente ordenamentos nacionais. Propõe-se o Padrão individualizado de justificação do risco, estruturado segundo o modelo das quatro pontes justificativas. A contribuição reside na integração e operacionalização de requisitos conhecidos, não na sua descoberta nem na criação de um novo standard probatório. O modelo distingue riscos processuais e preventivos, submete generalizações ao exame das circunstâncias concretas e diferencia a justificação da prisão inicial daquela exigida para sua continuidade. Decisões selecionadas e uma aplicação hipotética ilustram seu uso na elaboração e revisão de decisões. A fundamentação deficiente é examinada como falha de justificação, cujas consequências dependem do ordenamento aplicável.*

Palavras-chave: *prisão preventiva; fundamentação judicial; risco individualizado; processo penal; standards de justificação.*

Summary: 1. Introduction; 2. Judicial reasoning, suspicion and the grounds of pre-trial detention; 3. International standards of justification; 4. Defective detention reasoning; 5. The Individualised Risk-Justification Standard; 6. Consequences of defective reasoning; 7. Final considerations; References.

1. Introduction

Pre-trial detention stands at one of the most delicate thresholds of criminal procedure. It is ordered before conviction, applies to a person who must still be treated as innocent, and produces the most intrusive consequence that the criminal process can impose before judgment: the deprivation of liberty. Its legitimacy cannot therefore be derived from accusation, offence gravity, public concern, institutional convenience, or the mere fact that the prosecution requests custody. If detention before trial is to remain a procedural measure rather than an anticipatory form of punishment, the court must explain why liberty, in the individual case, must yield to a concrete and lawful detention purpose.

The duty to give reasons is central to that problem. In criminal proceedings, judicial reasoning is not an explanatory appendix attached to an already valid decision. It is the legal form through which coercive power becomes intelligible, contestable, and reviewable. A reasoned detention order enables the accused to understand why liberty has been restricted, allows the defence to challenge the factual and legal basis of the measure, provides the appellate court with a meaningful object of review, and exposes the decision to institutional scrutiny. Conversely, a formulaic order may appear formally reasoned while failing to perform the legal function of justification.

The scholarly difficulty lies in the relation between suspicion, risk, and reasons. Reasonable suspicion is indispensable because detention requires an objective evidential basis linking the accused to an offence. Yet suspicion is only an entry threshold. It does not explain why custody is necessary. A further inquiry must identify a legally permissible risk, such as absconding or interference with evidence, and establish why less intrusive measures cannot adequately address it. Whether prevention of further offending is also permissible depends on the applicable legal framework; it cannot simply be assimilated to protection of the proceedings.

The central claim of this article is that pre-trial detention decisions require an Individualised Risk-Justification Standard. The court must explain why a legally recognised risk exists in relation to this accused at this stage, why release under conditions would be inadequate, and why custody remains proportionate over time. The proposed Four

Justificatory Bridges Model organises these questions into a cumulative framework for drafting and reviewing decisions. Each requirement has existing doctrinal and legal foundations; the contribution lies in their integration and in specifying how a failure at one stage affects the justification of custody.

The research problem is therefore how established safeguards can be brought together to assess the reasoning in an individual detention decision. Scholarship already addresses proof thresholds, standardised decision-making, risk prediction and detention duration. The article does not claim that these subjects, or individualised reasoning itself, have been neglected. It develops a reconstructive model that makes their connections explicit and tests the justification of custody without introducing a new standard for accepting factual propositions.

1.1. State of the art and contribution

Four strands of scholarship inform the model. Work on proof standards asks what evidential support is needed for precautionary factual findings. Beltrán Calfurrapa and Badaró Massena address that problem in Chilean and Brazilian settings. Their analyses caution against treating reasonable suspicion as an undefined intuition. The question pursued here is how accepted premises are then connected to the legal necessity of custody.[2]

A second strand concerns judicial reasons and institutional practice. Legal justification theory distinguishes a defensible decision from an account of how it was reached. Recent studies by Velásquez Valenzuela with Riquelme Espinosa and with Correa Robles examine standardisation, time pressures and the use of reasons in Chilean detention proceedings. These studies make a broad claim that the field is under-theorised

[2] BELTRÁN CALFURRAPA, Ramón. Estándares de prueba y su aplicación sobre el elemento material de la prisión preventiva en Chile. *Política Criminal*, v. 7, n. 14, p. 454–479, 2012. https://doi.org/10.4067/S0718-33992012000200006 BADARÓ MASSENA, Caio. Prisão preventiva e standards de prova: propostas para o processo penal brasileiro. *Revista Brasileira de Direito Processual Penal*, v. 7, n. 3, p. 1631–1668, 2021. https://doi.org/10.22197/rbdpp.v7i3.617

untenable; the remaining task is to specify an integrated framework for scrutinising the justificatory transitions.[3]

A third strand examines prediction and dangerousness. Schauer challenges a simple opposition between generalisation and individualised evidence, while Quattrocolo analyses computational prediction in remand decisions. These contributions require the model to distinguish established facts from forecasts and to explain what constrains a permissible inference. A fourth strand addresses alternatives and duration: Martufi and Peristeridou examine detention purposes and alternatives, while Ryu analyses reasonable-time reasoning in Brazilian superior courts. The four bridges connect these inquiries without claiming to replace their distinct evidentiary and legal requirements.[4]

1.2. Method and scope

The article adopts a doctrinal and normative reconstruction of selected transnational standards. Its primary materials are judgments, human rights instruments, treaty-body interpretations, soft law and EU procedural-rights instruments. The comparative dimension concerns

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[3] VELÁSQUEZ VALENZUELA, Javier; RIQUELME ESPINOSA, Ignacio. Prisión Preventiva en Chile: Presión de la Gestión del Tiempo y Estandarización. *Revista Brasileira de Direito Processual Penal*, v. 10, n. 3, e998, 2024, p. 27–30. https://doi.org/10.22197/rbdpp.v10i3.998 VELÁSQUEZ VALENZUELA, Javier; CORREA ROBLES, Carlos. Motivación y uso de la prisión preventiva en Chile. *Política Criminal*, v. 20, n. 40, p. 485–519, 2025, sections 5(e) and 6. https://doi.org/10.4067/S0718-33992025000200485

[4] SCHAUER, Frederick. *Profiles, Probabilities, and Stereotypes*. Cambridge, MA: Belknap Press of Harvard University Press, 2003, chapter 3. https://doi.org/10.2307/j.ctvjz82xm; QUATTROCOLO, Serena. Forecasting the future while investigating the past. The use of computational models in pre-trial detention decisions. *Revista Brasileira de Direito Processual Penal*, v. 7, n. 3, p. 1859–1896, 2021. https://doi.org/10.22197/rbdpp.v7i3.633; MARTUFI, Adriano; PERISTERIDOU, Christina. The purposes of pre-trial detention and the quest for alternatives. *European Journal of Crime, Criminal Law and Criminal Justice*, v. 28, n. 2, p. 153–174, 2020. https://doi.org/10.1163/15718174-bja10002; RYU, Daiana Santos. Prisão cautelar e prazo razoável na jurisprudência dos Tribunais Superiores brasileiros. *Revista Brasileira de Direito Processual Penal*, v. 5, n. 1, p. 389–438, 2019. https://doi.org/10.22197/rbdpp.v5i1.176

the reasoning requirements within these frameworks, including their differences in permissible detention grounds and remedial structures. It does not comprise a systematic comparison of domestic legal systems or an exhaustive review of their practices.[5]

Materials are selected for their express treatment of suspicion, detention grounds, alternatives, duration or review. The judgments used in Section 4 illustrate doctrinal propositions; they are not a coded sample from which prevalence is inferred. Published empirical studies supply context and identify practical problems, without converting this article into an empirical investigation. The example in Section 5.6 is hypothetical and tests the model's internal operation, not its measured effectiveness.[6]

The argument does not claim that legal systems must adopt identical grounds, time limits, evidentiary thresholds or remedies. It asks what justificatory operations a court should perform when detention is legally available. A common structure of reasons cannot make a ground lawful where the governing legal framework excludes it.

Brazilian and other Lusophone scholarship contributes to this doctrinal dialogue through work on proof, proportionality, dangerousness and alternatives. Chilean scholarship adds analyses of factual thresholds and routinised reasoning. These sources are engaged on their own terms;

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[5] On the distinction between doctrinal-normative reconstruction and empirical assessment of detention practice, see MARTUFI, Adriano; PERISTERIDOU, Christina. Towards an evidence-based approach to pre-trial detention in Europe. *European Journal on Criminal Policy and Research*, v. 28, n. 3, p. 357-365, 2022. https://doi.org/10.1007/s10610-022-09526-6 DHAMI, Mandeep K.; VAN DEN BRINK, Yannick N. A multi-disciplinary and comparative approach to evaluating pre-trial detention decisions: towards evidence-based reform. *European Journal on Criminal Policy and Research*, v. 28, n. 3, p. 381–395, 2022. https://doi.org/10.1007/s10610-022-09510-0

[6] For empirical and comparative work illustrating why the normative problem matters, see SMITH, Tom. The Practice of Pre-trial Detention in England & Wales - Changing Law and Changing Culture. *European Journal on Criminal Policy and Research*, v. 28, n. 3, p. 435–449, 2022. https://doi.org/10.1007/s10610-022-09504-y; ROGAN, Mary. Examining the role of legal culture as a protective factor against high rates of pre-trial detention: the case of Ireland. *European Journal on Criminal Policy and Research*, v. 28, n. 3, p. 425-433, 2022. https://doi.org/10.1007/s10610-022-09515-9.

the article does not present them as a case study of Brazilian law or as evidence that all jurisdictions share the same practice.[7]

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Section 2 distinguishes proof, justification and detention grounds. Section 3 reconstructs the transnational materials. Section 4 identifies reasoning defects. Section 5 develops and illustrates the model. Section 6 addresses its remedial implications, before the final considerations.

2. Judicial reasoning, suspicion and the grounds of pre-trial detention

The duty to give reasons requires a public justification of judicial decisions. Legal reasoning scholarship provides the starting point: reasons must establish why a decision is defensible under the relevant facts and law, rather than merely report the decision-maker's subjective conviction. In criminal procedure, this distinction is especially important where the court exercises coercive power over a person whose guilt has not been

[7] For related RBDPP scholarship on preventive detention, proportionality, dangerousness and proof standards, see FEDATO, Matheus Arcangelo; KAZMIERCZAK, Luiz Fernando. Prisão cautelar, argumentação e proporcionalidade: uma proposta para a fundamentação das decisões judiciais. *Revista Brasileira de Direito Processual Penal*, v. 6, n. 1, p. 483-514, 2020. https://doi.org/10.22197/rbdpp.v6i1.268; BADARÓ MASSENA, Caio. Prisão preventiva e standards de prova: propostas para o processo penal brasileiro. *Revista Brasileira de Direito Processual Penal*, v. 7, n. 3, p. 1631-1668, 2021. https://doi.org/10.22197/rbdpp.v7i3.617; LEÃO, Bernardo Sodré Carneiro; PRADO, Alessandra Rapacci Mascarenhas. A periculosidade na decretação de prisão preventiva por furto em Salvador: controle racial e de classe. *Revista Brasileira de Direito Processual Penal*, v. 7, n. 3, p. 1713–1749, 2021. https://doi.org/10.22197/rbdpp.v7i3.627; ROMÃO, Vinícius de Assis. A aplicação de medidas cautelares pessoais em audiências de custódia: um olhar a partir da prisão em flagrante de pessoas em situação de rua. *Revista Brasileira de Direito Processual Penal*, v. 7, n. 1, p. 611-650, 2021. https://doi.org/10.22197/rbdpp.v7i1.425.

determined.[8] Summers's distinction between reasons based on anticipated beneficial effects and reasons grounded in normative rightness provides an analytical analogy: an expected reduction of risk does not, by itself, establish a lawful justification for custody.[9]

Judicial reasoning is used here to denote the reasons articulated in support of the decision. The related expressions motivação and fundamentação are retained when discussing the terminology of Portuguese-language sources. The inquiry concerns reasons that can be publicly stated, contested and reviewed, rather than the judge's psychological motives.

A first distinction follows. To explain a decision is not the same as to justify it. Explanation may describe how a conclusion was reached; justification shows why that conclusion may legitimately be imposed on another person. A court may explain that detention was ordered because the charge is serious, the case is complex, or the prosecutor requested custody. Without more, those statements do not justify deprivation of liberty. They describe context; they do not establish legal necessity.

Adequate judicial reasoning requires selection, ordering, and connection. The court must select legally relevant facts, place them within the applicable legal framework, and connect them to the conclusion through intelligible inferences. The value of a reasoned decision does not depend on length. A concise decision may be adequate if it identifies

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[8] For foundational accounts of legal justification and legal reasoning, see ALEXY, Robert. *A Theory of Legal Argumentation*: The Theory of Rational Discourse as Theory of Legal Justification. Oxford: Clarendon Press, 1989; MACCORMICK, Neil. *Legal Reasoning and Legal Theory*. Oxford: Clarendon Press, 1978. For criminal-procedural accounts of justified judicial decision-making and defects of motivation, see CARBONELL BELLOLIO, Flavia. Un modelo de decisión judicial justificada para el proceso penal chileno. *Política Criminal*, v. 17, n. 33, p. 58-84, 2022. https://doi.org/10.4067/S0718-33992022000100058; BELTRÁN CALFURRAPA, Ramón. Los vicios de la motivación como causa del error judicial: un primer esbozo. *Revista Brasileira de Direito Processual Penal*, v. 10, n. 2, e924, 2024. https://doi.org/10.22197/rbdpp.v10i2.924.

[9] SUMMERS, Robert S. Two Types of Substantive Reasons: The Core of a Theory of Common-Law Justification. *Cornell Law Review*, v. 63, n. 5, p. 707–788, 1978, especially p. 774–776. Available at: https://scholarship.law.cornell.edu/clr/vol63/iss5/1/ . Access on: September 24, 2026.

the decisive facts and explains their legal significance. A lengthy decision may remain defective if it accumulates statutory language, summaries of submissions, and abstract formulae without showing why custody follows.

Standards of proof and standards of justification answer distinct questions. A proof standard specifies the degree of evidential support required to accept a factual proposition. A justification standard examines whether the court has identified the relevant premises and explained why they support a lawful measure. Beltrán Calfurrapa's analysis of the material requirements of pre-trial detention in Chile proposes an intermediate evidential threshold for offence and participation, above preponderance but below proof beyond reasonable doubt. This addresses the acceptance of factual propositions at the precautionary stage, rather than establishing a universal threshold for predictions of future conduct. The present model addresses the further reasoning connecting such premises to custody. It neither replaces the applicable proof threshold nor permits inadequate evidence to be cured by elaborate reasons. The two inquiries interact whenever the court must expose the evidential basis of a risk inference.[10] Ferrer Beltrán's rationalist account likewise links acceptance of factual propositions to evidential support while recognising fallibility; it is not a detention-specific proof rule.[11]

Pre-trial detention is an exceptional coercive measure, not punishment for unadjudicated guilt or an instrument of general deterrence. Its permissible purposes require separate analysis. Strictly procedural risks concern securing attendance and protecting evidence or witnesses. Preventive risks concern further offending or harm to others. The latter do not become procedural merely because they are considered during criminal proceedings. Their admissibility and limits must be established under the governing domestic and human rights framework.

Reasonable suspicion is the first condition, but not the full justification. It is indispensable because detention cannot be based on

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[10] BELTRÁN CALFURRAPA, Ramón. Estándares de prueba y su aplicación sobre el elemento material de la prisión preventiva en Chile. *Política Criminal*, v. 7, n. 14, p. 454–479, 2012, especially p. 472–475. https://doi.org/10.4067/S0718-33992012000200006

[11] FERRER BELTRÁN, Jordi. *La valoración racional de la prueba*. Madrid; Barcelona; Buenos Aires: Marcial Pons, 2007, p. 19–21.

subjective belief or prosecutorial assertion. There must be objective facts or information capable of linking the accused to an offence. However, suspicion performs only an entry-threshold function. It opens the legal space in which coercive measures may be considered; it does not decide which measure is necessary. The movement from suspicion to custody requires a separate, prospective, and risk-based justification.

The model therefore uses legally permissible detention risk as its general category and procedural risk for the narrower class of threats to the proceedings. It can assess the reasoning offered for a preventive ground only where that ground is independently lawful. The required inquiry remains concrete, current and factually grounded, but lawful purpose is a prior constraint: individualised evidence cannot validate a purpose prohibited by the applicable framework. Section 3 identifies relevant differences between the European, UN and Inter-American approaches.

Individualisation requires the court to connect the alleged risk to relevant circumstances and to explain the inference. Personal conduct, access to witnesses, previous compliance and the stage of the proceedings may matter. These facts acquire significance through generalisations about behaviour, so individualisation cannot mean reasoning without categories. It means examining the applicability, limits and counter-indications of a proposed inference in the particular case. Section 5.2 specifies the corresponding safeguards.

Even a concrete risk does not automatically justify custody. Necessity and subsidiarity require the court to determine whether the risk can be adequately managed by less intrusive measures: bail, reporting obligations, electronic monitoring, travel restrictions, surrender of documents, residence requirements, witness-contact prohibitions, or other tailored conditions. The analysis of alternatives is not a humanitarian afterthought. It is part of the justification of detention itself. If the risk can be managed without custody, custody is not necessary.

Finally, detention is temporally fragile. It is not validated once and for all by the initial order. It must remain justified throughout its duration. Reasons that may be sufficient at the beginning of proceedings may lose force after evidence is secured, witnesses are heard, investigative acts are completed, or the accused demonstrates compliance with procedural obligations. Periodic review is therefore not a ritual confirmation of an

earlier decision. It is a renewed inquiry into suspicion, risk, alternatives, and proportionality.

These distinctions guide the reconstruction of international standards. Suspicion, lawful risk, necessity and duration perform different functions; the adequacy of one does not establish the others.

3. International standards of justification

The international materials support a common demand for justified and reviewable detention, although they do not recognise identical permissible grounds. Their requirements arise from adjudication, treaty-body interpretation, recommendations and EU procedural-rights law. The analysis identifies points of convergence without treating binding judgments, treaty interpretations and soft law as interchangeable sources.

In the European Convention system, Article 5 protects liberty and security. Detention under Article 5(1)(c) must be lawful and protected against arbitrariness. For detention pending trial, Buzadji clarifies that relevant and sufficient reasons additional to reasonable suspicion are required at the first judicial decision on remand, promptly after arrest. The passage of time is not a grace period during which suspicion alone suffices. European doctrine recognises risks of flight, interference with proceedings and further offending, as well as public-order grounds under restricted conditions; their invocation remains subject to concrete justification.[12]

Lach's analysis of preventive arrest under criminal procedure and police law further demonstrates why the procedural setting matters. Short preventive police custody should not be equated without analysis with remand pending trial. This article concerns the latter; the reference is used to clarify the boundaries of Article 5 reasoning rather than to import a separate police-law power into the proposed model.[13]

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[12] EUROPEAN COURT OF HUMAN RIGHTS. Buzadji v. the Republic of Moldova [GC], no. 23755/07, 5 July 2016, paras. 87–91 and 102; Letellier v. France, no. 12369/86, 26 June 1991, para. 51.

[13] LACH, Arkadiusz. Preventive arrest in criminal procedure and police law in light of Article 5 of the ECHR. *Revista Brasileira de Direito Processual Penal*, v. 7, n. 3, p. 1597–1630, 2021, sections 2–5 and 7. https://doi.org/10.22197/rbdpp.v7i3.609

The Court requires examination of the actual circumstances and rejects general or abstract reasons. Suspicion and the justification of custody thus remain distinct. Continued detention must also be accompanied by special diligence in the proceedings. The illustrative judgments discussed below show that an initially sufficient reason may require greater substantiation as custody continues.

The duty to address material defence arguments is anchored specifically in detention review under Article 5(4). In Nikolova, the Court held that the reviewing court need not answer every argument but cannot disregard concrete, non-frivolous facts capable of undermining an essential condition of lawful detention. Article 6 case law offers a broader analogy concerning reasoned judicial decisions, but its fair-trial guarantees should not be assumed to govern a remand hearing in the same manner as a determination of the criminal charge.[14,15]

The Inter-American framework requires a narrower account of permissible purpose. The Inter-American Commission's guidance and the Court's judgment in Chaparro Álvarez and Lapo Íñiguez link precautionary custody to ensuring appearance and preventing obstruction. They reject its use as anticipated punishment. The proposed model must therefore distinguish common reasoning requirements from differences over which risks may lawfully justify detention. Jenkins makes the restriction to preventing flight or obstruction explicit.[16,17]

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[14] EUROPEAN COURT OF HUMAN RIGHTS. Nikolova v. Bulgaria [GC], no. 31195/96, 25 March 1999, paras. 58 and 61–63. Available at: https://hudoc.echr.coe.int/eng?i=001-58228 . Access on: September 24, 2026.

[15] EUROPEAN COURT OF HUMAN RIGHTS. Guide on Article 6 of the European Convention on Human Rights: Right to a Fair Trial (Criminal Limb). Updated 28 Feb. 2026, paras. 198-202; ECtHR, Moreira Ferreira v. Portugal (no. 2) [GC], no. 19867/12, 11 July 2017.

[16] INTER-AMERICAN COURT OF HUMAN RIGHTS. Jenkins v. Argentina. Judgment of 26 November 2019, Series C No. 397, para. 76. Text reproduced in the Court's Cuadernillo de Jurisprudencia No. 8: Libertad personal, 2022, p. 38–40. Available at: https://www.mpf.gob.ar/dgdh/files/2022/12/Cuadernillo-de-Jurisprudencia-de-la-Corte-Interamericana-de-Derechos-Humanos-N8-Libertad-personal.pdf . Access on: September 24, 2026.

[17] INTER-AMERICAN COMMISSION ON HUMAN RIGHTS. Practical Guide on Measures to Reduce the Use of Pretrial Detention. Washington, DC: OAS, 2017. https://www.oas.org/en/iachr/reports/pdfs/guide-pretrialdetention.

This difference prevents a purely formal application of the model. A court could provide detailed reasons about a predicted danger and still rely on an impermissible detention ground. The initial legality inquiry must identify the governing source and lawful purpose before the adequacy of the risk inference is assessed.

The United Nations Human Rights Committee provides perhaps the most direct formulation of individualised necessity. In General Comment No. 35 on Article 9 of the International Covenant on Civil and Political Rights, the Committee states that detention pending trial must be the exception rather than the rule and must be based on an individualised determination that it is reasonable and necessary, taking into account all circumstances, for purposes such as preventing flight, interference with evidence, or recurrence of crime. It also warns against vague and expansive grounds and against mandatory detention based solely on offence categories.[18]

The Committee's approach strengthens the alternatives requirement. Courts must consider whether bail, electronic monitoring, or other conditions would render detention unnecessary. After an initial finding of necessity, there must be periodic re-examination of whether custody remains reasonable and necessary in light of possible alternatives. Alternatives are therefore not discretionary concessions. They are part of the necessity analysis itself.

Council of Europe Recommendation Rec(2006)13, a non-binding instrument, operationalises several safeguards. Rule 7 differentiates risks of absconding, obstruction and serious further offending, alongside a narrowly framed public-order ground. Rule 17 provides for periodic review, normally at intervals no longer than one month unless an application for release can be made and examined at any time. Rule 21 requires reasoned

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pdf INTER-AMERICAN COMMISSION ON HUMAN RIGHTS. Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas. OEA/Ser.L/V/II.163, Doc. 105, 3 July 2017. https://www.oas.org/en/iachr/reports/pdfs/PretrialDetention.pdf INTER-AMERICAN COURT OF HUMAN RIGHTS. Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Judgment of 21 Nov. 2007, Series C No. 170.

[18] HUMAN RIGHTS COMMITTEE. General Comment No. 35: Article 9 (Liberty and Security of Person). CCPR/C/GC/35, 16 Dec. 2014, para. 38.

decisions. Rules 22–24 address justified duration, proportionality and maximum limits. Review intervals, the individual decision's operative period and statutory ceilings should therefore be distinguished.[19]

European Union law requires a more nuanced formulation. It does not contain a comprehensive, binding code of pre-trial detention, nor does it fully harmonise the substantive grounds, maximum duration, or alternatives to custody across Member States. Its contribution is therefore fragmentary but not insignificant. It operates through procedural-rights instruments, mutual recognition, Charter-based constraints, Commission soft law, and the broader logic of mutual trust. EU law is used here not as a replacement for Convention-based or domestic safeguards, but as a supplementary procedural-rights framework that reinforces the need for reasoned, contestable, and reviewable detention decisions.[20]

Directive 2012/13/EU on the right to information matters because an accused person cannot meaningfully challenge detention without sufficient information about the accusation and access to materials essential to contest the lawfulness of arrest or detention. Directive (EU) 2016/343 reinforces the presumption of innocence and therefore constrains the language and logic of detention orders. Commission Recommendation (EU) 2023/681, although non-binding, addresses reasonable suspicion, grounds for pre-trial detention, alternatives, reasoned decisions, regular review, hearing the detainee, and effective remedies. Its doctrinal significance lies in recording an EU-level recognition that detention before trial requires a structured rights-based justification.[21]

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[19] COUNCIL OF EUROPE. Committee of Ministers. Recommendation Rec(2006)13 on the Use of Remand in Custody, the Conditions in which it Takes Place and the Provision of Safeguards against Abuse. 27 Sept. 2006, Rules 3, 7, 17 and 21–24.

[20] MARTUFI, Adriano; PERISTERIDOU, Christina. Pre-trial detention and EU law: collecting fragments of harmonisation within the existing legal framework. *European Papers*, v. 5, n. 3, p. 1477-1492, 2020. https://doi.org/10.15166/2499-8249/423; MARTUFI, Adriano. Pre-trial detention and EU law: Constitutional constraints, legislative reluctance and non-binding norms. *New Journal of European Criminal Law*, v. 17, n. 1, p. 78-100, 2026. https://doi.org/10.1177/20322844251410848.

[21] EUROPEAN PARLIAMENT; COUNCIL OF THE EUROPEAN UNION. Directive 2012/13/EU of 22 May 2012 on the right to information in criminal proceedings; Directive (EU) 2016/343 of 9 Mar. 2016 on the strengthening

Recent scholarship confirms that this EU framework remains a field of constitutional tension. Martufi shows that attempts to adopt harmonised rules on pre-trial detention face legislative reluctance, competence constraints, and reliance on non-binding norms. That insight is important for the present argument: where binding harmonisation is limited, judicial reasoning becomes even more central as a site where fundamental-rights standards are translated into concrete custody decisions.[22]

The common ground is a demand for identifiable, contestable reasons addressing the lawful basis, necessity and continued duration of custody. Convergence at that level does not remove differences in permissible purposes. Nor does it establish a single transnational remedy. The model below uses this qualified common ground to organise judicial justification.

4. Defective detention reasoning

The following typology identifies analytical failures in detention reasoning, illustrated by selected judgments rather than by a representative case-law sample. Formulaic reasoning means the repetition of legal categories or previous conclusions without explaining their present application. Stereotyped reasoning is used more narrowly for an insufficiently examined generalisation about a person or group that substitutes for assessment of the relevant individual circumstances. A generalisation may be false, poorly supported, irrelevant to the issue, unrebuttable in practice or legally impermissible despite some predictive value. The defect must be identified, not inferred merely from the use of a category.[23]

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of certain aspects of the presumption of innocence; EUROPEAN COMMISSION. Commission Recommendation (EU) 2023/681 of 8 Dec. 2022 on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions.

[22] MARTUFI, Adriano. Pre-trial detention and EU law: Constitutional constraints, legislative reluctance and non-binding norms. *New Journal of European Criminal Law*, v. 17, n. 1, p. 78-100, 2026. https://doi.org/10.1177/20322844251410848.

[23] ARENA, Federico José (coord.). *Manual sobre los efectos de los estereotipos en la impartición de justicia*. Ciudad de México: Suprema Corte de Justicia de la

The first defect is statutory repetition: the court reproduces a detention ground without identifying the facts that satisfy it. A legal category defines what may be relevant; it does not establish the existence of the risk. Ilijkov illustrates the related problem of a presumption driven by offence gravity and a burden effectively placed on the accused to disprove the need for detention. The judicial inquiry must instead establish why the ground is made out in the case.[24]

The second defect is the offence-gravity inference. A serious charge or severe possible sentence may bear on risk, but cannot replace examination of the accused's circumstances. Letellier distinguishes the relevance of the anticipated sentence from a sufficient finding of flight risk, and restricts public-order detention to demonstrated circumstances rather than automatic reliance on the accusation. The model accordingly requires an explained connection between seriousness and the particular lawful risk.[25]

The third defect is abstract dangerousness: references to danger, public order or further offending unsupported by a sufficiently specific factual account. In Maassen, the Court accepted an initial public-order justification but found that later decisions did not provide the substantiation required as detention continued. The defect was therefore sensitive to time and context, rather than a rule that such a ground is everywhere inadmissible.[26]

Nación, 2022, especially the contributions by Frederick Schauer, p. 111–139 and 249–285. The consulted copy is the 2023 reprint. Available at: https://www.scjn.gob.mx/derechos-humanos/sites/default/files/Publicaciones/archivos/2024-02/Manual-Estereotipos-en-imparticion-justicia.pdf . Access on: September 24, 2026. This is scholarly analysis published by the Court, not a binding judicial holding.

[24] EUROPEAN COURT OF HUMAN RIGHTS. Ilijkov v. Bulgaria, no. 33977/96, 26 July 2001, paras. 79–87. Available at: https://hudoc.echr.coe.int/eng?i=001-59613 . Access on: September 24, 2026.

[25] EUROPEAN COURT OF HUMAN RIGHTS. Letellier v. France, no. 12369/86, 26 June 1991, paras. 40–43 and 51–52. Available at: https://hudoc.echr.coe.int/eng?i=001-57678 . Access on: September 24, 2026.

[26] EUROPEAN COURT OF HUMAN RIGHTS. Maassen v. the Netherlands, no. 10982/15, 9 February 2021, paras. 62–65. Available at: https://hudoc.echr.coe.int/eng?i=001-207807 . Access on: September 24, 2026.

The fourth defect is unexamined adoption of the prosecution's position. Incorporation or agreement is not necessarily defective if the reasons are accessible, assessed by the judge and responsive to the defence. The defect arises where prosecutorial characterisation substitutes for independent control. Ilijkov's criticism of reliance on offence qualification and presumed severity illustrates the danger; the model requires the court to take responsibility for the inference and for the material objections to it.[27]

The fifth defect is missing alternatives analysis. In Letellier, the Court found that the domestic decisions had not established the inadequacy of guarantees of appearance; it explained that adequate guarantees require release when flight is the only remaining ground. Buzadji restates the general duty to consider alternatives. Naming bail or supervision is insufficient if their capacity to address the identified risk is left unexamined.[28]

The sixth defect is temporal inertia: repetition of earlier grounds without present reassessment. Maassen demonstrates that chains of reference to earlier orders may cease to suffice as detention continues. Ryu's study of Brazilian superior-court decisions supplies a distinct empirical context for criticism of generic duration reasoning; its findings concern the decisions and period studied, not a universal description of contemporary practice.[29]

The seventh defect is non-response to material defence arguments. Nikolova illustrates the Article 5(4) requirement to examine concrete submissions capable of undermining a detention condition. Zohlandt similarly emphasises the inadequacy of abstract reasons unconnected to the particular facts. The relevant question is whether the court engaged with

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[27] ECtHR, Ilijkov v. Bulgaria, paras. 81 and 83–87.

[28] ECtHR, Letellier v. France, paras. 44–46; Buzadji v. the Republic of Moldova, para. 87.

[29] ECtHR, Maassen v. the Netherlands, paras. 62–65; RYU. Prisão cautelar e prazo razoável na jurisprudência dos Tribunais Superiores brasileiros, p. 405 and 429–433. The study concerns decisions issued between 30 December 2004 and 30 December 2016.

objections capable of changing the risk, necessity or duration assessment, not whether it answered every sentence of the defence submission.[30]

These patterns may overlap. Research on time pressure and routinisation in Chile helps explain why an apparently complete decision may omit the inferential work required by its conclusions. That empirical literature informs the diagnostic questions; it does not establish the incidence of the seven defects across the systems examined here.[31] The 2024 study also cautions that oral reasons may be better understood in the context of the preceding hearing. Brevity or standardisation alone therefore does not establish the defect: the reasons actually adopted must remain ascertainable and open to later scrutiny.

5. The Individualised Risk-Justification Standard

The Individualised Risk-Justification Standard integrates the established requirements into a cumulative framework for judicial reasons. Its originality is reconstructive and operational: it specifies the transitions that a detention order must justify and the failures that cannot be compensated by strength elsewhere. It is neither a new evidentiary threshold nor a positive-law test binding every jurisdiction.

The four bridges connect evidence to reasonable suspicion; suspicion to an independently supported and lawful risk; that risk to the insufficiency of alternatives; and the remaining necessity of custody to proportionate duration. The second transition is a separate justificatory inquiry, not an inference that a person who is probably guilty is therefore likely to abscond or reoffend. Some facts may be relevant to both inquiries, but their different inferential roles must be explained.

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[30] EUROPEAN COURT OF HUMAN RIGHTS. Nikolova v. Bulgaria [GC], no. 31195/96, 25 March 1999, paras. 58 and 61; Zohlandt v. the Netherlands, no. 69491/16, 9 February 2021, paras. 52–59. Available at: https://hudoc.echr.coe.int/eng?i=001-58228 and https://hudoc.echr.coe.int/eng?i=001-207806. Access on: September 24, 2026.

[31] VELÁSQUEZ VALENZUELA; RIQUELME ESPINOSA. Prisión Preventiva en Chile, p. 27–30; VELÁSQUEZ VALENZUELA; CORREA ROBLES. Motivación y uso de la prisión preventiva en Chile, sections 5(e) and 6.

The model is cumulative in this sense: strong suspicion cannot compensate for an unestablished risk, and a substantial risk cannot dispense with consideration of alternatives. The four inquiries apply from the first judicial remand decision and remain necessary at later reviews. Their factual content and the explanations required change as the case develops.

5.1. Evidence and reasonable suspicion

The first bridge requires the court to identify the factual material supporting reasonable suspicion. The detention judge is not deciding guilt beyond reasonable doubt, but must show that there is an objective evidential basis linking the accused to the suspected offence. A vague reference to the file, the charge, or the prosecutor's application is insufficient if it leaves the accused unable to understand the foundation of the measure. The decision should identify the relevant evidential indications, explain their connection to the accused, and preserve the provisional character of the assessment. It must not use language that treats allegation as established guilt.

5.2. Lawful risk and individualised inference

The second bridge requires the court to specify the precise risk, the facts supporting it, the inference connecting those facts to the predicted event, and the legal relevance of that event. Established facts and predictions must be distinguished: evidence of a past missed appearance is not itself a finding that the accused will abscond now. The court must consider the circumstances of that event, subsequent compliance and feasible safeguards.

Individualisation does not eliminate generalisation. Schauer's work explains why even apparently particular evidence often depends on general beliefs about conduct.[32] The legal task is therefore to discipline

[32] SCHAUER, Frederick. *Profiles, Probabilities, and Stereotypes*, chapter 3, p. 79–107, consulted through the authorised Spanish translation in ARENA (coord.). *Manual sobre los efectos de los estereotipos en la impartición de justicia*, p. 249–285, especially p. 273–277; SCHAUER, Frederick. Statistical

the inference: identify the relevant generalisation, examine its evidential support and applicability, consider disconfirming circumstances, and give reasons that the defence can challenge. Foreign nationality, poverty or membership of a broad offence category cannot silently function as a substitute for this assessment. Wermink, Light and Krubnik's research makes the interaction between nationality and detention decisions an especially relevant context for these questions.[33] The Brazilian literature on dangerousness also directs attention to the use of race- and class-related assumptions in detention reasoning.[34]

For this model, a risk inference should disclose five matters: the fact relied on; the general proposition connecting it to a predicted event; the reason that proposition is applicable to the accused; material counter-indications; and the uncertainty that remains. The court must also ask whether the inference is legally permissible. Predictive usefulness alone cannot authorise discrimination, reverse the burden onto the accused or establish a detention ground that the applicable system rejects. These are proposed requirements of reason-giving, not a claim that every risk can be assigned a defensible numerical probability.

Quattrocolo's analysis is particularly relevant to computational assessments: predictions are generated from groups and incomplete information, while the decision concerns a particular person before trial. A score cannot itself explain why the legally relevant event is likely in this

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(and Non-Statistical) Discrimination. In: LIPPERT-RASMUSSEN, Kasper (ed.). *The Routledge Handbook of the Ethics of Discrimination*. London; New York: Routledge, 2018. p. 42–53, especially p. 44–51. https://doi.org/10.4324/9781315681634-5

[33] For empirical evidence of how foreign nationality may operate through flight-risk assumptions and case-processing disparities, see WERMINK, Hilde; LIGHT, Michael T.; KRUBNIK, Alicja P. Pretrial detention and incarceration decisions for foreign nationals: a mixed-methods approach. *European Journal on Criminal Policy and Research*, v. 28, n. 3, p. 367-380, 2022. https://doi.org/10.1007/s10610-022-09519-5.

[34] For a Brazilian empirical discussion of dangerousness reasoning in preventive detention, see LEÃO, Bernardo Sodré Carneiro; PRADO, Alessandra Rapacci Mascarenhas. A periculosidade na decretação de prisão preventiva por furto em Salvador: controle racial e de classe. *Revista Brasileira de Direito Processual Penal*, Porto Alegre, v. 7, n. 3, p. 1713–1749, set./dez. 2021. https://doi.org/10.22197/rbdpp.v7i3.627

case or why custody is necessary. Whether a court uses a tool or ordinary experience, the proposed standard requires access to the material basis of the inference, an opportunity to contest its application and an account of contrary circumstances. The article does not prescribe an algorithm or assume that unaided intuition is more accurate.[35]

Consider foreign ties coupled with a missed appearance. The court should determine whether notice was received, why the absence occurred, whether the person later appeared voluntarily and what practical capacity exists to leave. An inference based simply on nationality would suppress those distinctions. Individualisation here means a reasoned assessment of their bearing on the alleged risk, followed by evaluation of conditions capable of addressing it.

5.3. Alternatives and residual necessity

The third bridge concerns subsidiarity. Even if a concrete risk exists, detention follows only if that risk cannot be adequately managed by less intrusive measures. This requirement gives practical meaning to the exceptional nature of custody. If the risk is absconding, the court must consider whether bail, reporting obligations, residence requirements, surrender of travel documents, or electronic monitoring could secure appearance. If the risk is witness interference, it must consider whether contact prohibitions, witness-protection measures, evidential preservation, or targeted restrictions would suffice. The analysis must be concrete, especially where the defence proposes a realistic alternative.[36]

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[35] QUATTROCOLO. Forecasting the future while investigating the past, p. 1870–1872, 1881–1883 and 1888–1890.

[36] On alternatives and the ultima ratio structure of detention, see HUMAN RIGHTS COMMITTEE, General Comment No. 35, para. 38; COUNCIL OF EUROPE, Recommendation Rec(2006)13; MARTUFI, Adriano; PERISTERIDOU, Christina. The purposes of pre-trial detention and the quest for alternatives. *European Journal of Crime, Criminal Law and Criminal Justice*, v. 28, n. 2, p. 153-174, 2020. https://doi.org/10.1163/15718174-bja10002; ANDRADE, Joana; GONÇALVES, Rui Abrunhosa; RODRIGUES, Andreia de Castro. Pre-trial detention as a last resort measure? When the last shall be the first. *European Journal of Criminology*, v. 22, n. 6, p. 967-982, 2025. https://doi.org/10.1177/14773708251320250.

The proper question is not whether detention is the safest option. Custody is almost always the most restrictive method of reducing uncertainty. The question is whether it is the least intrusive measure capable of sufficiently addressing the legally relevant risk. A system committed to liberty cannot demand absolute procedural security at the price of routine detention. It must tolerate managed risk where conditions can protect the lawful interest at issue without custodial deprivation.

5.4. Duration and renewed justification

The fourth bridge addresses proportionate duration. Review must examine the continuing factual basis of suspicion and risk, progress in securing evidence, new guarantees offered by the defence, the diligence of the authorities and cumulative time in custody. The same four inquiries remain relevant, but the justification for continuing detention cannot simply be copied from the initial order. The need for greater substantiation over time does not remove the duty to justify custody fully at the first judicial hearing. Ryu's criticism of generic duration reasoning in the Brazilian decisions discussed in Section 4 reinforces the need to relate each extension to the case's actual progress and the persistence of a lawful risk.

The model also proposes that the initial order state the period for which detention is authorised where domestic law requires an expiry, or identify a fixed next review date and the reasons for that interval. This is an operational safeguard proposed here, not a claim that Rec(2006)13 imposes one universal form of expiry order. A review date is not permission to detain until that date despite earlier disappearance of the grounds. Statutory ceilings likewise limit custody without establishing that every shorter period is reasonable.[37]

As time passes, the court should explain what has changed and why the remaining reasons still suffice. Maassen expressly connects longer detention with a need for more substantial reasons. The applicable

[37] COUNCIL OF EUROPE. Recommendation Rec(2006)13, Rules 17 and 21–24. These provisions distinguish periodic review, reasoned decisions and duration limits. The proposed express date or operative period is an implementation proposal within those constraints.

proof threshold need not change for that justificatory burden to become more demanding: a risk supported at the outset may diminish after witnesses are heard, while unexplained official delay may undermine the proportionality of continued custody.[38]

5.5. Practical questions for decision and review

A decision applying the model should make clear which evidence supports suspicion, which lawful risk is established, why the factual inference withstands material objections, why feasible conditions are insufficient, and how the authorised period or next review is justified. The court need not write an essay or follow a mandatory template. The purpose is to expose consequential omissions, not to produce a new set of formulae.

5.6. Hypothetical application

The following invented scenario illustrates the reasoning sequence; it is not a reported case or empirical finding. Assume a lawful application for remand on witness-interference grounds. Authenticated communications and transaction records link the accused to the alleged offence. After notice of the investigation, a message from a device in the accused's possession asked an intermediary to secure destruction of records by a key witness, despite an existing contact restriction. The intermediary confirms receiving that request. The defence argues that another person used the device and proposes residence reporting and a renewed contact prohibition.

First bridge: the court identifies the communications and transaction records that provisionally support involvement in the offence, without deciding guilt. Second bridge: assume, for this illustration, that the prosecution also presents access logs and independently corroborated details of a contemporaneous exchange with the intermediary supporting attribution of the later message to the accused. The court explains why

[38] ECtHR, Maassen v. the Netherlands, paras. 62–65.

this affirmative evidence withstands the alternative-user objection under the applicable evidential standard. The absence of defence corroboration cannot cure insufficient evidence; the burden of establishing grounds for detention remains with the authorities. The court must then explain why the attributed request indicates a current capacity and intention to interfere. Suspicion of the original offence alone does not establish that risk.

Third bridge: the court examines whether records can immediately be secured, whether the witness can be protected and whether enforceable restrictions would prevent indirect contact. Residence reporting would not itself address the alleged mechanism. A prior failure of a contact restriction is relevant, but does not establish that every alternative or combination must fail. If adequate measures are available, this bridge requires their use rather than custody.

Fourth bridge: if custody remains necessary after that assessment, suppose the records can be secured and the witness heard within seven days. The court sets review for that date, explains the link to those acts and applies any earlier domestic expiry or review requirement. Seven days is an illustrative interval, not a proposed universal limit. Earlier removal of the grounds requires earlier reconsideration. At review, if the acts are complete and no remaining lawful risk is established, the initial reasons cannot justify continuation.

6. Consequences of defective reasoning

The remedial implications below are normative proposals derived from the model, subject to the procedural powers and safeguards of the applicable legal system. The argument does not establish a uniform international rule that every defect requires release or that an appellate court can never reconsider detention. It distinguishes the assessment of the original decision from the justification required for any continuing deprivation of liberty.

A failure to identify a lawful risk or to assess realistic alternatives concerns the substantive justification of custody, even if expressed as a defect in reasons. By contrast, a peripheral drafting error may leave the essential assessment intelligible. The model proposes that review focus

on whether a missing or inadequate bridge prevents the parties and the reviewing court from testing the necessity of detention.

Hasselbaink provides a limited but important basis for resisting retrospective rationalisation: reasons advanced by the Government before the European Court, and discussion during a domestic hearing, did not substitute for sufficient reasons in the domestic decisions. This should not be transposed into an absolute prohibition on domestic appellate correction. Where the reviewing body has appropriate powers and safeguards, a fresh adversarial assessment may justify custody prospectively; it does not by itself demonstrate that the original order was adequately reasoned.[39]

The appropriate response depends on the defect and the legal framework. If no lawful detention ground is established, custody must end. Where a lawful risk can be adequately addressed by less intrusive measures, non-custodial conditions may be appropriate, subject to their own legal basis. A prompt fresh hearing or remittal may be available where a competent court can reconsider the measure with effective participation by the defence. The normative constraint proposed here is that reconsideration should not operate as an automatic extension of custody lacking a current lawful basis. Article 5(4) requires speedy judicial control and the power to order release where detention is unlawful.[40]

Similarly, the proposed framework leaves only a limited role for treating defective reasoning as harmless. That is an evaluative recommendation, not a claim of a uniform transnational harmless-error doctrine. A reviewing court should explain why the identified defect did not conceal a missing ground, an unexamined alternative or an unanswered decisive objection. Evidence somewhere in the file should not be treated as equivalent to a judicial assessment that was never made.

Continued detention calls for particular care because deficient reasons and excessive delay may compound each other. Review should address the current risk and feasible alternatives, not merely improve

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[39] EUROPEAN COURT OF HUMAN RIGHTS. Hasselbaink v. the Netherlands, no. 73329/16, 9 February 2021, paras. 73 and 76–79. Available at: https://hudoc.echr.coe.int/eng?i=001-207805 . Access on: September 24, 2026.

[40] ECtHR, Nikolova v. Bulgaria, paras. 58 and 61–63; European Convention on Human Rights, Article 5(4).

the wording of earlier conclusions. Any new decision must expose its reasons to effective challenge. The choice among release, substitution, renewed hearing and other lawful remedies remains jurisdiction-specific; the model supplies questions for assessing whether the response restores accountable justification.

7. Final considerations

Pre-trial detention requires reasons that connect a legally sufficient factual basis to a lawful purpose, necessity and proportionate duration. The Four Justificatory Bridges Model integrates those established requirements into a framework for examining an individual decision. Its contribution is the relationship between the inquiries and their practical articulation, rather than a claim to have discovered new grounds of detention or a new proof threshold.

The reconstruction identifies both convergence and limits. The examined frameworks share demands for justified and reviewable custody, but differ over permissible preventive grounds and remedial arrangements. Individualisation requires scrutiny of generalisations and counter-indications, not an impossible exclusion of all categorical reasoning. The model also distinguishes the initial duty to give sufficient reasons from the increasingly substantial explanation required for prolonged custody.

The case illustrations and hypothetical application show how the framework can expose an omitted premise or an unexplained inference. They do not validate its effects on judicial practice. Future research could operationalise the four inquiries in a transparent coding scheme, test inter-coder agreement and examine their use in particular jurisdictions. Such research would need to preserve differences in lawful grounds and procedural settings.

The proposed discipline of reason-giving places the burden on the court to explain why liberty must yield in the case before it. Review of a defective order should identify the missing justificatory work and apply the remedies authorised by the governing legal system. Clearer reasons cannot make an unlawful purpose permissible; where a lawful purpose exists, they make its factual basis and the necessity of custody open to challenge.

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