Przegląd Prawniczy Uniwersytetu im. Adam Mickiewicza | Adam Mickiewicz University Law Review

Vol. 17, 2025
DOI 10.14746/ppuam.2025.17.09

Martyna Kusak,[1] Kinga Krężel[2]

Recalibrating Pre-trial Detention in the EU: Key Findings and Recommendations from the RELEASE Project

Abstract: This article presents the key findings of the EU-funded RELEASE project, which examined the use of pre-trial detention and its alternatives in five Member States: Bulgaria, Croatia, Greece, Poland, and Slovakia. It reviews the applicable European legal standards, analyses national practices, and highlights good practices identified over the course of the project. The article concludes with policy recommendations aimed at fostering a more consistent and rights-compliant use of pre-trial detention across the EU, through enhanced professional practice, targeted training, and awareness-raising.
Keywords: pre-trial detention, alternative measures, European Supervision Order, European Court of Human Rights, European Union

Introduction

While pre-trial detention should be a measure of last resort, empirical evidence suggests that its application in some EU member states frequently strays from this principle.[3] One reason for this may be the limited range of viable alterna-

1 Martyna Kusak, Adam Mickiewicz University Poznań, Faculty of Law and Administration, Poznań, Poland. e-mail: martyna.kusak@amu.edu.pl, https://orcid.org/0000-0002-7596-9022.
2 Kinga Krężel, Adam Mickiewicz University Poznań, Faculty of Law and Administration, Poznań, Poland. e-mail: kinga.krezel@amu.edu.pl, https://orcid.org/0000-0003-4357-8454.
3 Commission Recommendation (EU) 2023/681 of 8 December 2022 on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions, Official Journal od The European Union L No. 86 of 24 March 2023, 44–57, Recitals 13–16.

AMU LR, 17, 2025, © The Author(s) 2025. Published by the Adam Mickiewicz University, Faculty of Law and Administration, ISSN Online 2450-0976, ISSN Print 2083-9782.

tives, which places practitioners in a difficult position between ensuring effective proceedings and addressing concerns related to fundamental rights.

Against this backdrop, the RELEASE project—"Reducing the Excessive usage of pre-trial detention via harmonisation & support to alternatives"[4]—was funded by the European Union. The project's primary objective was to research the use of pre-trial detention, assess the availability and effectiveness of its alternatives, and promote the consistent application of EU and the Convention on the Protection of Human Rights and Fundamental Freedoms (hereinafter: ECHR) standards. Focusing on five Member States—Bulgaria, Croatia, Greece, Poland, and Slovakia—the project combined case-law analysis, stakeholder engagement, and mutual learning to map divergences, identify good practices, and develop actionable recommendations.

This article presents the key findings of the RELEASE project, based primarily on its three main deliverables: the Handbook, Policy Brief, and Gaps and Needs Analysis Report.[5] It begins by outlining the legal framework for pre-trial detention and its alternatives, emphasizing the ECHR standards and EU efforts. Sections 3 and 4 build upon the project findings, providing an overview of national practices and good practices identified during the project that promote the proportional use of pre-trial detention and enhance the effectiveness of its alternatives. The article concludes with a summary of policy recommendations developed by the project consortium.

Legal Environment on Pre-trial Detention in the EU

The RELEASE project is grounded in the European legal environment, particularly the standards developed by the European Court of Human Rights (hereinafter: ECtHR), as well as EU initiatives.

4 Grant Agreement № 101090815.

5 Available at: https://zenodo.org/records/13736147.

EU Law and Policy

The EU's efforts date back to 2004, when the Hague Programme recognised that detention and alternatives to detention were an important area of EU justice policy. In 2009, the EU introduced the European Supervision Order (hereinafter: ESO).[6] It addresses a gap in equal treatment, where non-residents are often detained pending trial under circumstances where residents would likely be released. The instrument provides a mechanism to avoid this disparity by enabling the imposition of non-custodial measures on non-resident suspects, allowing them to await trial under supervision in their home Member State. The ESO empowers judicial authorities in the issuing Member State to transfer the supervision of alternative measures to the executing Member State, where the suspect ordinarily resides. While it offers significant potential to reduce unnecessary detention, its practical application remains limited, underlining the need for greater awareness, training, and institutional support.[7]

In the 2019 Council Conclusions on Alternatives to Detention,[8] Member States agreed that detention should be used only as a last resort and that, when appropriate, non-custodial sanctions and measures should be applied instead of detention, particularly with a view to the social rehabilitation and reintegration of offenders. The same document confirmed that in many Member States pre-trial detention is not used as a measure of last resort and that alternatives to pre-trial detention are used to a very limited extent.[9]

6 Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention, Official Journal of the European Union L No. 294 of 11 November 2009, 20–40.

7 Policy Brief, 17.

8 Council conclusions on alternative measures to detention: the use of non-custodial sanctions and measures in the field of criminal justice, Official Journal of the European Union C No. 422 of 16 December 2019, 9–13.

9 Council conclusions on alternative measures to detention: the use of non-custodial sanctions and measures in the field of criminal justice, 3.

The Commission Recommendation of December 2022[10] further elaborates on Member States' obligations. It reiterates that pre-trial detention should only be used as a last resort and encourages the development of a wide range of alternative measures, including bail, reporting obligations, restrictions on movement, and electronic monitoring. The Recommendation also calls for procedural safeguards, including reasoned decisions, regular review, and proportionality. The table below outlines key elements of the Recommendation.[11]

Commission Recommendation 2023/681	
Definitions (5)	'Alternative measures' should be understood as less restrictive measures as an alternative to detention.
General principles (10)	Member States should use pre-trial detention only as a measure of last resort. Alternative measures to detention should be preferred, in particular where the offence is punishable only by a short sentence of imprisonment or where the offender is a child.
Minimum standards for procedural rights of suspects and accused persons subject to pre- trial detention (14)	Member States should impose pre-trial detention only where strictly necessary and as a measure of last resort, taking due account of the specific circumstances of each individual case. To this end, Member States should apply alternative measures where possible.

Key ECHR's Case-Law

The following table provides an overview of the key points stemming from the case-law of the European Court of Human Rights relating to pre-trial detention and its alternatives.[12]

10 Commission Recommendation (EU) 2023/681 of 8 December 2022 on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions, Official Journal of the European Union L No. 86 of 24 March 2023, 44–57.

11 Full table is available on pages 16–17 of the Handbook.

12 The table mirrors pages 11–12 of the Handbook.

Obligation to consider alternatives to pre-trial detention	
Idalov v. Russia, § 140 Sulaoja v. Estonia, § 64	When deciding whether a person should be released or detained, the authorities have an obligation under Article 5(3) ECHR to consider alternative measures for ensuring his or her appearance at trial.
Vrencev v. Serbia, § 76	Whenever the danger of absconding can be avoided by bail or other guarantees, the accused must be released, it being incumbent on the national authorities to always duly consider such alternatives.
Jabłoński v. Poland, § 84	Consideration has to be given to the possibility of imposing other 'preventive measures'—such as bail or police supervision—to secure the proper conduct of the criminal proceedings.
Bail	
Muşuc v. Moldova, § 42	Bail may only be required for as long as reasons justifying detention prevail.
Toshev v. Bulgaria, § 68	The amount set for bail must take into account the accused's: • assets, • relationship with the persons who are to provide security, • citizenship, • age, and • occupation so that the prospect of loss of security, in the event of non-appearance at trial, will act as sufficient deterrent to dispel any wish on his part to abscond.
Iwańczuk v. Poland, § 66	Since the fundamental right to liberty guaranteed by Article 5 ECHR is at stake, the authorities must take as much care in fixing appropriate bail as they do in deciding whether or not the accused's continued detention is indispensable.

Georgieva v. Bulgaria, §§ 15 and 30–31, Mangouras v. Spain, § 37	The amount set for bail must be duly justified in the decision fixing bail.
House arrest	
Buzadji v. The Republic of Moldova, § 104	House arrest is considered, because of its degree and intensity, to amount to deprivation of liberty within the meaning of Article 5 ECHR. This type of deprivation of liberty requires relevant and sufficient reasons, just as with pre-trial detention.
Navalny v. Russia, § 60	The house arrest was ordered primarily on the grounds that the applicant had breached the previous preventive measure, an undertaking not to leave Moscow during the investigation, presumably indicating the risk of absconding. When imposing the house arrest, the domestic court had not indicated any specific facts which had not been previously identified, and had failed to show the emergence of those risks that would justify the application of house arrest.
Restrictions on movement (Article 2 of Protocol to ECHR No. 4)	
Gochev v. Bulgaria, § 44	Any measure restricting the right of movement must be in accordance with the law, pursue one of the legitimate aims referred to in the ECHR, and be necessary in a democratic society for the achievement of that aim. Such a measure must strike a fair balance between the public interest and the individual's rights.
Popoviciu v. Romania, §§ 91,95	The restriction on movement may be justified in a given case only if there are clear indications of a genuine public interest which outweigh the individual's right to freedom of movement. Periodic reassessment on maintaining restrictions on an individual's freedom of movement for a lengthy period is mandatory.

Miażdżyk v. Poland, § 35 Popoviciu v. Romania, § 91	The duration of the restriction in itself cannot be taken as the sole basis for determining whether a fair balance was struck between the general interest in the proper conduct of the criminal proceedings and the applicant's personal interest in enjoying freedom of movement. This issue must be assessed according to all the special features of the case. The restriction may be justified in a given case only if there are clear indications of a genuine public interest which outweighs the individual's right to freedom of movement.
Popoviciu v. Romania	Example of the Court finding no violation of freedom of movement. The specifics of the case are as follows: • the prohibition on leaving the country was imposed for a period of three months and eight days; • the applicant had the opportunity to challenge the application of the preventive measure before the courts, and pleaded that the measure had prevented him from pursuing his business, which involved travel abroad; • there was a reasonable suspicion that the applicant had committed the offence with which he had been charged, and that revoking the restriction would impede the proper administration of justice; • the complex nature of the proceedings against the applicant, which involved extensive evidence, could justify, for a limited period of time, the prohibition on the applicant's leaving the country so that his immediate presence could be ensured if necessary;

	• a reassessment took place every thirty days; and • the domestic courts lifted the preventive measure imposed on the applicant when they considered that it was no longer necessary for the proper administration of justice, although the criminal proceedings against him were still pending.
Antonenkov and Others v. Ukraine	Example of the Court finding no violation of freedom of movement. The specifics of the case are the following: • the obligation not to leave their area of residence was imposed on the applicants for a period of approximately five years and three months; • the preventive measures were not automatically applied for the whole duration of the criminal proceedings; and • whenever the applicants applied to leave their place of residence they were granted permission.
A.E. v. Poland	Example of the Court finding there was a violation of freedom of movement. In this case, a travel ban was imposed for a period of eight years, and: • a reassessment took place only once, at the applicant's request, which would indicate that the travel ban was in reality an automatic, blanket measure of indefinite duration; and • the Court considered that this ran counter to the authorities' duty under Article 2 of Protocol No. 4 to take appropriate care to ensure that any interference with the applicant's right to leave Poland remained justified and proportionate throughout its duration.

Prescher v. Bulgaria	Example of the Court finding there was a violation of freedom of movement. In this case, the ban on leaving the country lasted for about five years and three months. The Court reiterated that: • even if justified at the outset, a measure restricting an individual's freedom of movement may become disproportionate if it is extended over a long period; and • the authorities did not consider whether the applicant's presence continued to be necessary after so many years of investigation.
Police supervision	
Zmarzlak v. Poland, §§ 44–52	The applicant was under police supervision for a period of 12 years. The ECtHR stated that: • the risk that a person charged may disrupt the proper course of proceedings decreases over time; • any measure that results in limiting the freedom to exercise rights relating to the sphere of an individual's private life must be interpreted narrowly and applied with restraint; and • it is for the authorities to ensure that measures restricting the rights and freedoms of an individual do not jeopardise the maintenance of a fair balance between the interests of that individual and the general interest, in this case, respect for the interests of justice. The Court found a violation of Article 8 ECHR (right to privacy).

Forfeiture of bail	
Lavrechov v. The Czech Republic, §§ 43–57	Although a forfeiture of bail constitutes interference by the state with the applicant's property rights, it pursues the legitimate aim of ensuring the proper conduct of criminal proceedings and, more generally, of fighting and preventing crime, which undoubtedly falls within the general interest as envisaged in Article 1 of Protocol No. 1. Turning to the proportionality test, the Court noted that the bail of approximately EUR 400,000 was a substantial amount of money, but stated that the appropriate time for discussing the proportionality of the amount of security for bail is when the bail is set, not when it is forfeited.

Practices in the Consortium States

The RELEASE project's empirical activities revealed marked discrepancies in how pre-trial detention and its alternatives are implemented across the five participating Member States. Despite the common legal framework and shared commitments under EU and ECHR law, national practices vary considerably in both frequency and reasoning of pre-trial decisions.

In Croatia and Bulgaria, official data and stakeholder testimonies highlight persistent overuse of pre-trial detention, with pre-trial detainees occupying a disproportionate share of prison populations. In Croatia, for example, some detention facilities operate at more than 200% capacity. In Greece, 25% of detainees are held for more than one year while awaiting trial. In Slovakia, stakeholders report practical and technical barriers to implementing alternatives. In Poland, a wide range of alternative measures exists, but their practical application is limited.[13]

13 Gaps & Needs Analysis Report, 32–73.

One conclusion from the RELEASE project is that a recurring issue across jurisdictions is the lack of structured, evidence-based risk assessments to support decisions on alternatives. While all five states offer various non-custodial measures, such as bail, house arrest, reporting obligations, and restrictions on movement or association, these options are not fully used. Additionally, limited judicial familiarity with the full suite of available measures, and concerns about enforceability, contribute to the preference for custodial solutions.

Across all consortium states, use of the European Supervision Order remains negligible. Legal practitioners report low awareness of the ESO, insufficient training, and practical doubts about cross-border coordination as significant barriers to its application.

Good Practices Identified Through Mutual Learning

The RELEASE project facilitated a series of national and international workshops, enabling judges, prosecutors, defence lawyers, and civil society actors to share insights and evaluate current practices. This cross-professional exchange brought to light several practices that could inform broader reforms across the EU. These are outlined below.

Defence lawyers play a pivotal role in protecting the rights of the accused and advocating for the use of alternative measures. Their early involvement in the proceedings—particularly during the initial police detention—can influence the course of the preventive decision. The project found that effective representation requires timely access to case files, client interviews, and the ability to collect and present personal circumstances relevant to the imposition of non-custodial measures. Good practices identified include proactively proposing specific alternatives, ensuring that these are tailored to the suspect's situation, and challenging poorly reasoned or generic detention decisions. In several partner states, lawyers reported difficulties in accessing information early enough to formulate such proposals, especially under tight deadlines.[14]

14 Handbook, 18–22.

Prosecutors exert substantial influence over whether pre-trial detention is sought in the first place. The project highlighted the need for prosecutors to carry out individualised assessments of the suspect's circumstances before requesting custodial measures. Collaboration with probation officers and access to rehabilitation or treatment programmes were flagged as important avenues to support non-custodial solutions. The RELEASE project also underscored the prosecutor's responsibility to provide transparent, detailed justification when seeking pre-trial detention, and to explain why alternatives would be insufficient. Several stakeholders stressed the need for more robust internal guidelines and training on how to apply this reasoning in practice.[15]

Judges are ultimately responsible for authorising or rejecting pre-trial detention. Their decisions must be based on a comprehensive understanding of the case file and informed by relevant legal standards. According to the RELEASE findings, judicial decisions often lacked individualised reasoning and failed to demonstrate why alternatives were not suitable. Judges reported time constraints and limited access to reliable monitoring frameworks as barriers to broader use of non-custodial measures. Nonetheless, the project documented examples of good practice where judges referenced ECtHR case-law, and sought to balance the duration or intensity of pre-trial detention.[16]

Policy Recommendations from the Project

Drawing on its research, stakeholder consultations, and comparative analysis, the RELEASE project formulated a set of policy recommendations aimed at national authorities, EU institutions, and judicial actors. These recommendations target both the structural and procedural dimensions of pre-trial detention, with a view to fostering a culture of legality, proportionality, and mutual trust. These include, in particular:

15 Handbook, 22–25.
16 Handbook, 26–33.

- developing regular, mandatory training programmes for judges, prosecutors, and defence lawyers on the use of alternatives to pre-trial detention, ECHR case-law, and EU instruments such as the ESO;
- implementing digital access to case files to facilitate timely preparation by all parties involved, especially in urgent detention proceedings;
- engaging civil society and the media to promote informed public discourse about the legitimate and proportionate use of pre-trial detention, countering narratives that equate detention with justice;
- adopting and operating modern technological means to facilitate alternative measures (electronic surveillance, geo-location);
- activating the judicial police or probation officers charged with the implementation of alternative measures;
- promoting the practical implementation of the European Supervision Order through awareness-raising, training, and exchange of good practices.[17]

Conclusions

By documenting national divergences, identifying structural and procedural barriers, and highlighting good practices, the RELEASE project has contributed to a more nuanced and evidence-based understanding of the use of pre-trial detention and its alternatives. The findings show that meaningful change requires more than legislative action. It involves reshaping institutional capacity and fostering cross-professional collaboration.

For EU institutions, the project's outputs offer evidence to inform future policy development and judicial cooperation instruments. For national stakeholders, the project provides a roadmap for enhancing compliance with EU and ECHR standards, as well as a set of profession-oriented good practices.

17 Policy Brief, 14–22.