

Pre-Trial Detention and Human Rights Protection: A Comparative Study of Hungary and Vietnam

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ABSTRACT Pre-trial detention is one of the gravest measures applied in criminal procedure law before trial. The International Covenant on Civil and Political Rights (ICCPR) states that everyone has the right to liberty and security of person, no one shall be subjected to arbitrary arrest or detention, or be deprived of his liberty. In some cases, however, to protect the public interest, as well as the success of the investigation and the trial process, the Court has the power to impose detention on the defendant, which leads to the deprivation of the personal freedom of this person. The indispensable role of pre-trial detention in criminal proceedings cannot be denied; however, it also results in disadvantageous consequences that affect the defendant, including his health, job, family, etc. Arbitrary, overused, or excessive pre-trial detention, and other violations occurring in its application in the proceedings pose a significant risk to human rights. This paper will follow a comparative method to analyse and clarify the relevant regulations on pre-trial detention in both Hungary and Vietnam. Then, the paper will analyse and assess the level of protection of human rights during the enforcement process of this legal measure. It shall also be emphasized that the 2015 Law on Temporary Detention and Custody of Vietnam is currently under revision and amendment. This paper provides a deeper understanding of this topic, identifies regulatory gaps, and offers some suggestions for improving the Vietnamese law by drawing on the experience of Hungary's legal framework.

KEYWORDS Pre-trial detention, human rights, criminal procedure, coercive measures

1. Introduction

Human rights are inherent to human beings, regardless of nationality, sex, national or ethnic origin, colour, religion, language, or any other status.¹ These rights are not granted by any state but exist naturally as the most fundamental

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¹ *What are human rights?*, United Nations, accessed October 13, 2025, <https://www.ohchr.org/en/what-are-human-rights#:~:text=Human%20rights%20are%20rights%20we,of%20international%20human%20rights%20law.>

rights that make life worth living. Not all human rights are absolute; they are divided into two categories: absolute rights and relative rights. Absolute rights are never subject to any restrictions² and must be protected under all circumstances. However, in certain circumstances, the law grants the competent authorities the power to restrict some human rights. Such limitations derive from the very nature of state power to pursue legitimate goals, such as managing the State, protecting public order, ensuring society's safety and stability, and protecting the fundamental rights of other individuals. Therefore, most of the human rights are relative rights. It means these rights may be restricted, particularly if these limitations are envisaged by law³ and applied in according with due process.

Therefore, to implement the criminal procedure and ensure the effectiveness of the investigation and trial proceedings, the authorities must apply special measures to a defendant. Such measures may lead to a temporary limitation of the fundamental rights of the person reasonably suspected of having committed a criminal offence or those of the defendant. The strictness of these measures depends on the severity and complexity of the alleged criminal offense. Some measures restrict personal freedom, while others may limit property rights or other private rights. Among them, pre-trial detention is the gravest measure, imposed only when other coercive measures have been applied but the intended objectives cannot be achieved by those means. In other words, its use is only acceptable as a measure of last resort, in very limited circumstances.⁴

In both Hungary and Vietnam, pre-trial detention has been employed as a crucial tool in criminal proceedings. It plays a vital role in ensuring the presence of a defendant at trial, preventing the destruction of or tampering with evidence during the investigation, facilitating the tracing of criminal activities, and restricting the risk of reoffending. Additionally, the regulation on pre-trial detention has undergone significant amendments and improvements throughout the process of socio-economic reform and development. As a result, the protection of human rights has also been given special attention in this context. However, pre-trial detention remains a major concern as it is often criticized for its potential to infringe upon human rights. EU level research critically highlights the overuse of this measure at the national level.⁵ Specifically, there are several instances of abuse of detention, as well as other misconduct by the competent

² Serhiy Melenko, and Dan Paranyuk, "The Issue of Correlation Between Absolute and Relative Human Rights: Logical-Gnosiological Analysis," *European Journal of Law and Public Administration*, No 5(1), (2018), 39, <https://doi.org/10.18662/eljpa/25>.

³ Serhiy Melenko, and Dan Paranyuk, "Absolute and Relative Human Rights," 39.

⁴ Co-funded by the Criminal Justice Programme of the European Commission, "A measure of Last Resort? The Practice of pre-trial detention decision making in the EU," [fairtrials.org](https://www.fairtrials.org), accessed September 20, 2025, <https://www.fairtrials.org/app/uploads/2022/01/A-Measure-of-Last-Resort-Full-Version.pdf>.

⁵ Adriano Martufi, Christina Peristeridou, "Pre-trial Detention and EU Law: Collecting Fragments of Harmonisation Within the Existing Legal Framework," *European Papers - A Journal on Legal and Integration* 5, no. 3 (2020): 1478., doi:10.15166/2499-8249/423.

authorities in the enforcement of the law, which harm the human rights of detainees. It may include excessive and arbitrary detention; breaches of the duration of detention, which is often excessively prolonged; violations of standards regarding living conditions, nutrition, hygiene, sanitation, and health care, which are often not adequately ensured; even torture and other forms of cruel, inhuman, or degrading treatment or punishment⁶; etc.

Through the analysis and assessment of the current regulations on pre-trial detention, as well as through comparative legal research, the paper examines the regulations of the two countries from the perspective of human rights protection. It aims to identify the similarities and differences, the gaps in the current law, before offering suggestions to strengthen the protection of human rights under Vietnamese law. Moreover, this paper also clarifies three main research questions: (i) What are the conditions for ordering pre-trial detention under the regulations of the two countries? (ii) What are the regulations on the duration of pre-trial detention? (iii) How is humane treatment manifested in pre-trial detention? Especially, the Code of Criminal Procedure of Hungary (*hereinafter referred to as CPC of Hungary*), which entered into force in July 2018, brought along positive changes in the legal framework in the area of pre-trial detention,⁷ principally, by introducing a new approach. The court now has to justify why the aims of the criminal procedure can only be achieved by the most serious coercive measure.⁸ In addition, Hungary is a member of the European Union. Although criminal procedure law remains primarily a matter of domestic competence, its legal framework is partly influenced by EU law, especially regarding the standards of human rights protection in cases where pre-trial detention is imposed. All of these serve as valuable reference materials for Vietnam in the revision and amendment of the Law on Temporary Detention and Custody, as well as related guidance documents.

2. Basic issues of pre-trial detention

2. 1 Conditions for Ordering Pre-trial Detention

Freedom and personal security are fundamental rights of every individual. No one may be deprived of them except for reasons clearly prescribed by law. In the context of coercive measures restricting personal liberty, pre-trial detention is an exceptional measure, never mandatory, and never applicable for punitive

⁶ Ludwig Boltzmann Institute of Human Rights (Wien), University of Bristol, *Human Rights Implementation Centre. Pretrial Detention and Torture: Why Pretrial Detainees Face the Greatest Risk*, (New York: Open Society Foundations, 2011). 11.

⁷ “Helsinki Files Reports to international organisations-Submission to the Council of Europe on pre-trial detention”, [helsinki.hu](https://helsinki.hu/en/submission-to-the-council-of-europe-on-pre-trial-detention/), accessed October 16, 2025, <https://helsinki.hu/en/submission-to-the-council-of-europe-on-pre-trial-detention/>.

⁸ Krisztián Szabó, “10 years in the history of pre-trial detention in Hungary (2010–2019)”, accessed October 14, 2025, <https://ujbtk.hu/krisztian-szabo-10-years-in-the-history-of-pre-trial-detention-in-hungary/>.

purposes.⁹ Therefore, the law must ensure legal certainty to prevent arbitrary situations in which detention is applied even when it is not truly necessary. In other words, pre-trial detention should be ordered only when no other alternative measures can achieve the same purpose. Apparently, personal liberty must not be limited without compelling justification and reasonable grounds.

In Hungary, pre-trial detention is regulated as a coercive measure that affects personal freedom (Section 272(1)(d) of the CPC of Hungary).¹⁰ Accordingly, this Article divides coercive measures into two groups. The first one includes measures that affect personal freedom, and the other one comprises measures against property. Among them, certain coercive measures can only be ordered for the defendant, but numerous coercive measures can also be applied to other participants or even entirely outsiders, such as search, seizure, or disciplinary measures.¹¹ Detention is the most severe measure restricting personal freedom. Therefore, it is applied only to the defendant and entails the deprivation of personal liberty for a certain period before a final and binding decision is issued (Section 296 CPC of Hungary). Moreover, Section 276(1) of this Code provides that when a criminal act is punishable by imprisonment, a coercive measure limiting personal freedom may be imposed on the defendant only if two conditions are satisfied: *first*, the defendant is reasonably suspected of having committed a criminal offence or he has been indicted; and *second*, the measure is necessary to achieve the intended objective, which cannot be accomplished by any other means.

The purposes of coercive measures are also clarified by Section 276(2). Moreover, before the competent authority orders pre-trial detention, it is important to consider certain factors. These criteria help determine whether it is necessary to order pre-trial detention or alternative measures can be used to achieve the same purpose. Such factors include the nature of the criminal offence, the state and interests of the investigation, the personal and family situation of the defendant, the relationship between the defendant and another person involved in the criminal proceeding or any other person, the behaviour of the defendant before and during the criminal proceeding.¹²

Meanwhile, under the 2015 Criminal Procedure Code of Vietnam (*hereinafter referred to as the CPC of Vietnam*), pre-trial detention is classified as a preventive measure. Specifically, chapter VII of the Code distinguishes between two categories of measures applicable during criminal proceedings: preventive measures and coercive measures. However, by nature, both categories are coercive measures, as they involve compelling individuals to act through state

⁹ Viktor Bérces, *Chapters from the Scope of Hungarian Criminal Law and Criminal Procedure Law* (Forum Iuris Publishing House Cluj-Napoca, 2024), 471, https://real.mtak.hu/197272/1/BercesViktor_ScopeOfHungarianCriminalLaw1_BTv4-boritos.pdf.

¹⁰ Act XC of 2017 on the Code of Criminal Procedure

¹¹ Herke Csongor, *Criminal Procedure Law*, Lecture Notes, (University of Pécs – Faculty of Law, 2018), 30.

¹² CPC of Hungary, § 277(4).

power held by the competent authorities. The current legal distinction is based on the purpose pursued by the authorities when applying them.

Pre-trial detention is ordered as a last resort measure, which is indirectly embedded in the provisions on the objects and conditions of pre-trial detention. This measure in the CPC of Vietnam is based on the seriousness of the offence, as well as the resistant behaviour and specific personal circumstances of the suspect or defendant, which are to be considered when applying detention. Under the 2015 Criminal Code, crimes are classified into four categories according to their nature and the danger they pose to society, namely, less serious crimes,¹³ serious crimes,¹⁴ very serious crimes,¹⁵ and extremely serious crimes.¹⁶ According to Art. 119 of the CPC, pre-trial detention may be ordered for very serious crimes and extremely serious crimes without any other conditions. Meanwhile, for less serious crimes and serious crimes, additional conditions must be met to apply pre-trial detention, for example, the suspects or defendants continue to commit criminal acts or have absconded and been apprehended pursuant to a wanted notice; they have no fixed place of residence, or their identity has not been established; etc.

Another issue reflecting the protection of human rights concerns the exclusion of certain categories of people from pre-trial detention. In particular, Art 119(4) of the CPC lists the following categories and situations: if the suspect or defendant is a pregnant woman, a woman who raises a child under 36 months of age, an elderly person, or a person with a serious illness, and they have clear information of their residence and identity. The authorities shall replace pre-trial detention by other preventive measures, with the exception of the following cases: (i) They abscond and get arrested as per wanted notices. (ii) They continue criminal acts. (iii) They commit acts of bribing, coercing, or inciting other individuals to provide false statements or documents, or acts of destroying or forging case evidence.

The regulations on the conditions, purposes, and factors to be considered necessarily before ordering pre-trial detention create a screening mechanism to identify cases in which the application of this measure is truly necessary. But in Vietnam, in certain situations, the principle that “pre-trial detention should be

¹³ Art. 9(1) of the Criminal Code of Vietnam 2015, a *less serious crime* refers to an offence whose danger to society is not significant, and for which the maximum penalty prescribed by the Criminal Code is a fine, a non-custodial sentence, or imprisonment for up to three years.

¹⁴ Art. 9(2) of the 2015 CPC of Vietnam, a *serious crime* refers to an offence that poses a significant danger to society, for which the maximum penalty ranges from over three years to seven years of imprisonment.

¹⁵ Art. 9(3) of the 2015 CPC of Vietnam 2015, a *very serious crime* refers to an offence that poses a great danger to society, for which the maximum penalty ranges from more than seven years to fifteen years of imprisonment.

¹⁶ Art. 9(4) of the 2015 CPC of Vietnam 2015, an *extremely serious crime* refers to an offence that presents an exceptionally high degree of danger to society, for which the maximum penalty ranges from more than fifteen years to twenty years of imprisonment, life imprisonment, or the death penalty.

used as a last resort” is only indirectly reflected in the CPC or depends on the discretion of the competent authorities. This may lead to arbitrary pre-trial detention because detainees are entirely in the power of detaining authorities, who often perceive torture and other forms of ill-treatment as the easiest and fastest way to obtain information or extract a confession.¹⁷ It is a partial cause of human rights violations and societal problems associated with an overtaxed detention system. So, the purposes and conditions for its application should be clearly defined, thereby limiting the discretion of the competent authorities.

2. 2 Duration of Pre-trial Detention

Anyone arrested or detained on a criminal charge...shall be entitled to trial within a reasonable time or to release pending trial.¹⁸ Even though law enforcement authorities can order pre-trial detention to investigate and prosecute crimes, it is necessary to balance the legality and proportionality of this measure with the crime. The length of pre-trial detention is one of the most important aspects because it directly affects the period during which the defendant is temporarily isolated from the community and his fundamental rights are restricted. Therefore, the duration of detention enforcement must be clear, transparent, and needs to be subject to independent and impartial review.¹⁹

First, the moment from which pre-trial detention can be ordered. Although in Hungary and Vietnam criminal proceedings are not exactly the same, the nature of the criminal procedure is still quite similar, especially the starting point at which pre-trial detention may be ordered in the proceedings.

The first phase in Hungary’s criminal procedure is ‘*the investigation*’, which comprises three stages: preparatory procedure,²⁰ clearing up,²¹ and examination.²² In this phase, the main purpose is to obtain and record evidence and to decide whether to prosecute, to proceed to an alternative procedure or to close the investigation.²³ Pre-trial detention shall only be ordered once the defendant’s legal status has been established. This means that the authorities must have determined whether there is a reasonable suspicion of a criminal offence and reasonable grounds to believe that the defendant has committed the crime. Therefore, under the CPC, pre-trial detention is only applied following the clearing up (§ 296).

Meanwhile, under the CPC of Vietnam, detention may be applied to a suspect or defendant only after criminal charges have been officially initiated by the competent authority. The criminal charge is the initial phase of criminal

¹⁷ Ludwig Boltzmann Institute of Human Rights (Wien), University of Bristol, Human Rights Implementation Centre, Pretrial Detention and Torture, 11.

¹⁸ Art. 5(3), European Convention on Human Rights (ECHR).

¹⁹ The European Commission (2021), “Pre-Trial Detention Rates and the Rule of Law in the European Union – Briefing to the European Commission”, accessed October 18, 2025. <https://www.fairtrials.org/app/uploads/2021/04/pre-trial-detention-rates.pdf>.

²⁰ §339-347 of CPC of Hungary.

²¹ Also known as Detection stage, §383-390 of CPC of Hungary.

²² §391-397 of CPC of Hungary.

²³ Viktor Bérces, *Hungarian Criminal Law and Criminal Procedure Law* (Forum Iuris Publishing House Cluj-Napoca, 2024), 203.

proceedings in Vietnam. In essence, before the competent authorities decide to bring criminal charges, certain investigative activities are carried out. These activities aim to address denunciations, criminal reports, or requisitions for charges and to determine whether there are sufficient indications that a criminal offence has been committed. This stage shares several similarities with the preparatory procedure in Hungary.

Second, the length of pre-trial detention and extension issues. Concerning the concrete periods of time, the regulations on the length of pre-trial detention set out different durations in the two countries. In Hungary, if the authorities apply detention before the indictment, the initial period shall not exceed one month. This period may be extended repeatedly by the court for up to three months each time, until a total of one year has elapsed from the date of the detention order. After this year, the court can prolong this period for up to two months each time. Besides, Section 298 also determines the maximum overall duration of pre-trial detention. It depends on the severity of the offence and the corresponding statutory maximum penalty. More specifically, pre-trial detention may last up to one year for offences punishable by imprisonment of up to three years; two years for offences punishable by up to five years; three years for offences punishable by up to ten years; four years for offences punishable by more than ten years; and five years for offences punishable by life imprisonment. On the other hand, if pre-trial detention is applied after the indictment, the provisions governing the duration of criminal supervision shall apply, except in the following circumstances: the pre-trial detention was ordered or maintained after the announcement of a conclusive decision; a proceeding to adjudicate an appeal against a setting aside order of the court of second or third instance is pending; or a proceeding repeated due to setting aside is pending.²⁴

Under the CPC of Hungary, the initial pre-trial detention period cannot be longer than one month but may then be extended as necessary. The length of the initial detention period does not differ according to the type or severity of the offence. Instead, the maximum total duration of pre-trial detention is determined by the applicable term of imprisonment for the offence. In contrast, Art. 173 of the CPC of Vietnam classifies the duration of pre-trial detention based on the severity and classification of the crimes, which is clarified above. The maximum initial period of detention shall not exceed two months for less serious crimes and may be extended once for an additional month. For serious crimes, the initial period shall not exceed three months and may be extended once for up to two months. In the case of very serious and extremely serious crimes, the initial period of pre-trial detention shall not exceed four months; it may be extended once for up to three months in the former case, and twice for up to four months each time in the latter. Besides, in case of re-investigation or supplementary investigation under Art. 174, the same rules on time limits and extensions are applicable, which may lead to extending the total period of pre-trial detention.

Compared to the Hungarian Code, the CPC of Vietnam sets a shorter maximum total duration for pre-trial detention. Moreover, both Codes provide transparent

²⁴ §298(2) of CPC of Hungary

provisions about the duration of pre-trial detention. This serves as an effective tool to protect detainees from spending excessively long periods in detention. It partially prevents competent authorities from delaying proceedings, failing to conduct investigations and trials in a diligent manner. However, many pre-trial detainees are still detained well beyond the legal time limits.²⁵ This stems from several different reasons, which have led to a gap between the law on paper and its practical implementation. In some cases, it results from inadequate or incomplete record-keeping and information management for detainees. Or it may be explained by the absence of mechanisms to track detainees who exceed the legally prescribed detention period, a lack of clarity regarding the authorities responsible for ensuring compliance with the maximum duration. As a result, detainees suffer from excessive detention.

3.The Humane Treatment of Detainees

The right to humane treatment in pre-trial detention is aimed at ensuring that if people are detained, they are held in conditions befitting their inherent dignity as human beings,²⁶ regardless of their accusations of a criminal offence. The content of this right is demonstrated by two main aspects, including prohibiting the torture, other ill-treatment (cruel, inhuman, degrading treatment, or punishment) of detainees and ensuring the minimum standards for living, nutrition, sanitation, hygiene, and health care during pre-trial detention.

On the one hand, torture and other acts of ill-treatment are prohibited, which are non-derogable under any circumstances. This rule is considered to be a peremptory norm of international law.²⁷ At the international level, the UDHR, the ICCPR, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) are the foundational legal frameworks, which create international standards guiding Hungary and Vietnam in the domestic implementation of the prohibition of torture.

At the national level, basic values and inalienable human rights are enshrined in the 2013 Constitution of Vietnam and the 2011 Fundamental Law of Hungary (as amended in 2024), both of which are the highest laws in their respective national systems. Both affirm that no one shall be subject to torture, violation, coercion, corporal punishment, or any form of treatment harming his or her body and health or offending their honour and dignity.²⁸ This rule is reiterated in Art. 10 of the

²⁵ Open Society Foundation, Open Society Initiative for Southern Africa, “Pre-Trial Detention Custody Time Limits, Ensuring Compliance in Malawi”, October 20, 2025, 6, https://www.prisonstudies.org/sites/default/files/resources/downloads/malawi_custody_time_limit_report_january_2013.pdf

²⁶ ACT Government, “Right to Humane Treatment”, accessed October 23, 2025, https://www.act.gov.au/_data/assets/pdf_file/0010/2595115/L-s-19-Right-to-humane-treatment-when-deprived-of-liberty-Human-Rights-Education.pdf.

²⁷ Prosecutor v. Anto Furundzija (Trial Judgment), Case No IT-95-17/1-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 10/12/1998.

²⁸ Art. 20 of the Constitution of Vietnam 2013 and Articles III, IV, and V of the Fundamental Law of Hungary 2011 (amended 2024).

Criminal Procedure Law of Vietnam. The Criminal Law also defines the offences of coercing confession and the offences of corporal punishment (Art. 373 and Art. 374), sanctioning them with robust penalties, the most serious of which is life imprisonment. At the same time, the prohibition of torture under Art. 3 of the ECHR is binding on Hungary. Moreover, Section 303 of the Criminal Code defines acts of torture, with the penalty being imprisonment between one and five years if the criminal offense is committed by an individual or two to eight years if committed in a gang.

Although there are regulations prohibiting torture and protecting human dignity, bodily integrity, and health, pre-trial detainees may still be tortured; however, in practice, detention facilities, pre-trial detention centres, and police stations are typically the most difficult places to gain access to.²⁹ Because authorities, in some cases, can use torture and other forms of ill-treatment as the easiest and fastest method to obtain a confession or information during an investigation. Therefore, it is necessary to effectively implement the prevention of torture and other forms of ill-treatment in practice. First and foremost, the training of law enforcement personnel should be strengthened to improve their professional investigative skills and discourage the use of coercive interrogation methods. Police authorities and other law enforcement officials should receive training in modern crime investigation techniques that duly reflect international human rights standards.³⁰ Furthermore, it is necessary to establish a comprehensive mechanism that can monitor the detention process and promptly detect any violations against detainees. The participation of lawyers and access to medical services play an essential role in the fight against torture.

On the other hand, detainees must be ensured adequate conditions in detention facilities, including appropriate living and sanitary conditions, clothing, nutrition, access to healthcare, and other essential amenities. The minimum standards for detention facilities are governed by the 2015 Law on Temporary Detention and Custody for Vietnam. Meanwhile, in Hungary, the Detention Decree (16/2014. (XII. 19) of the Minister of Justice on the detailed rules of the execution of imprisonment, confinement, pre-trial detention and confinement imposed for non-payment of a procedure fine (IM), and Act CCXL of 2013 on the Execution of Punishments, Measures, Certain Coercive Measures and Detention for Offences sets out general standards for detention conditions, which are consistent with the minimum standards provided for by the European Union. Both emphasize that pre-trial detention should be applied only as a measure of last resort³¹ and require clear standards for detention conditions to minimize human rights violations and safeguard the right to humane treatment.

²⁹ Ludwig Boltzmann Institute of Human Rights (Wien), University of Bristol, Human Rights Implementation Centre, Pretrial Detention and Torture, 12.

³⁰ Ludwig Boltzmann Institute of Human Rights (Wien), University of Bristol, Human Rights Implementation Centre, Pretrial Detention and Torture, 14.

³¹ Article 6(1), United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules).

Generally, as regards accommodation, Hungary provides a higher minimum space for detainees than Vietnam. There are two separate sections in penitentiary institutions, namely, cells³² and living quarters,³³ which have different security requirements. Each cell shall have a washbasin with running water and a toilet separated from the living area and, if possible, with independent ventilation. In living quarters, the running water, baths, and toilets necessary for hygiene may be provided for each unit or section.³⁴ Each detainee is entitled to have at least 6 m² living space in a single occupancy cell or at least 4 m² in a multi-occupancy cell³⁵. This space excludes the area occupied by sanitary facilities.³⁶ Pre-trial detainees and convicted detainees must be separated,³⁷ except when they work together; in such cases, they may be accommodated together.³⁸ Besides, in the case of persons arrested or detained by the police, and before being transferred to a penitentiary, different standards apply to police detention facilities, which are regulated in Decree 56/2014. (XII.5.) on the Order of Police Jails. Pursuant to Section 3, male detainees must have at least 3 m² of living space, while female and juvenile detainees must have at least 3.5 m² of living space, excluding the space taken up by cell equipment and furniture.

Moreover, Annexes (1,2,3,7) to the Detention Decree (16/2014. (XII.19.) IM provide lists of objects, equipment items, which ensure basic conditions for living, necessary items for personal hygiene and personal needs during the detention period. Detainees may lock their cabinet and keep the key to store personal belongings. The items stored in the cabinet shall be inspected in the presence of the convicted person. However, for security or other penal enforcement reasons, in the absence of detainees or in the case of their refusal to open the cabinet, the authorities may open the cabinet and must record the event in a report.³⁹

Detainees will be provided with the necessary conditions for personal hygiene. They are permitted to bathe in warm water at least three times per week; female prisoners and working prisoners shall be provided with a warm-water bath daily after work. They are also entitled to receive a free haircut at least once a month.⁴⁰ However, in practice, prison overcrowding and ill-treatment are still challenging issues in Hungary. As of March 31, 2025, there were 18,988 prisoners for 17,024 places, indicating an occupancy rate of 111.5%. There are 15 penitentiary

³² § 2(6) of the Detention Decree (16/2014. (XII. 19.) IM.

³³ § 2(4) of the Detention Decree (16/2014. (XII. 19.) IM.

³⁴ § 120 of the Detention Decree (16/2014. (XII. 19.) IM.

³⁵ Viktor Kazai, “Criminal Detention in the EU Conditions and Monitoring, Update of FRA’s Criminal Detention Database”, accessed November 5, 2025, https://fra.europa.eu/sites/default/files/fra_uploads/hungary-criminal-detention-2022-country-study_en.pdf.

³⁶ § 121 of the Detention Decree (16/2014. (XII. 19.) IM.

³⁷ § 391(1) of Act CCXL of 2013.

³⁸ § 391(4) of Act CCXL of 2013.

³⁹ § 122 of the Detention Decree (16/2014. (XII. 19.) IM.

⁴⁰ § 132 of the Detention Decree (16/2014. (XII. 19.) IM.

institutions operating at over 110% capacity and two at over 120%.⁴¹ Furthermore, inadequate detention conditions, including heating systems, ventilation, cooling, and lighting, can lead to inhuman or degrading treatment. Besides, the lack of monitor systems or video recordings during pre-trial detention, particularly at the investigation stage, also sustains inhuman treatment. Several detainees experience fear and do not complain when they are ill-treated due to the police officers and prison staff being typically present during medical examinations.⁴²

In Vietnam, according to the 2015 Law on Temporary Detention and Custody, the provisions on accommodation are not as detailed as those in Hungary. The law does not specify the minimum living space for each detainee, which often results in cramped living conditions, overcrowding, and a lack of minimum living space. The regulation only provides for standards for the sleeping space of each detainee, which must be at least 2 m² for each person and at least 3 m² if the detainee is a pregnant woman or a woman who brings children under 36 months old (Art. 27 and Art. 35). Each person is provided with a sleeping platform and a mat. Moreover, there are no explicit provisions on ventilation or minimum standards of bathing and sanitation facilities necessary for hygiene, such as running water, toilets, and bathing areas. Therefore, the level of ensuring humane treatment largely depends on the capacity and infrastructure of each local detention facility. However, based on reports from the police representatives in several provinces, many facilities do not meet the required standards, most are makeshift and lack uniform construction.⁴³

On the other hand, the Law on Temporary Detention and Custody details the classification and separation of detainees (Art. 18). Detainees will be placed in separate areas according to specific categories, such as persons under 18 years of age, women, foreigners, persons with infectious diseases, persons with signs of mental illness, etc. This separation plays a vital role in maintaining security and ensuring appropriate management for different groups. Especially, detainees who are gay, lesbian, or transgender people are also held in separate cells, which emphasizes protecting human dignity and prevents discrimination under this Law.

During the detention period, detainees are allowed to keep personal belongings such as clothes, a blanket, a mat, and other necessary items for personal life activities. If they do not have these items, they can borrow them from the penitentiary institution or buy them via signing the book.⁴⁴ In particular, the

⁴¹ Hungarian Helsinki Committee, “Detention conditions in Hungary fall short of European standards”, accessed November 2, 2025, https://helsinki.hu/en/wp-content/uploads/sites/2/2025/07/HHC_DetentionConditions_250702.pdf.

⁴² Hungarian Helsinki Committee, “Detention conditions in Hungary fall short of European standards”, accessed November 2, 2025.

⁴³ Phuong Thuy, “Several Challenges and Limitation on Implementation of the Law on Temporary Detention and Custody”, People’s Public Security, accessed September 28, 2025, <https://cand.com.vn/Hoat-dong-LL-CAND/nhieu-kho-khan-vuong-mac-trong-thuc-hien-luat-thi-hanh-tam-giu-tam-giam-i717706/>.

⁴⁴ Art. 24 of the 2015 Law on Temporary Detention and Custody.

penitentiary institution shall lend clothing, coats, and blankets suitable for the local weather conditions, especially in provinces with cold weather. Personal hygiene products such as shampoo, toothpaste, soap, and additional items needed for women's hygiene shall be provided.

Regarding nutrition, detainees are entitled to receive food free of charge. Their meal will be decided based on the detainee's health assurance. Under Act CCXL of 2013 of Hungary, detainees will receive meals at least three times a day and must have a warm meal at least per day (§ 155). One of the aspects that highlights human rights is the provision of a special diet to meet detainees' state of health, the needs of juvenile detainees, and religious requirements. Pregnant detainees will receive 0.5 litre of milk per day or equivalent nutrition from the 20th week of pregnancy.⁴⁵ Furthermore, the Annex 6 of the Detention Decree (16/2014. (XII. 19.)) IM also sets out daily diet standards based on the categories of detainees according to type of work, their health status, and age. This aims to ensure health and implement humane treatment rights.

In Vietnam, the nutrition standard is determined based on the total amount of basic food for daily meals, such as rice, meat, fish, vegetables, and condiments, as well as electricity, water necessary for cooking. These are converted into monetary value equal to the local market prices in the area where the penitentiary facility is located.⁴⁶ In line with the principle of humane treatment, Vietnam also provides priority nutrition for special groups: (i) Pregnant women or women raising children under 36 months of age are entitled to twice the standard daily food allowance compared to ordinary detainees. Their diet may be adjusted based on the recommendations of doctors or medical staff to ensure adequate nutrition.⁴⁷ Children under 36 months who stay with their mothers in detention facilities also receive necessary items, access to healthcare, and nutrition appropriate to their age and practical conditions.⁴⁸ (ii) Juvenile detainees receive the same quantity of food as adults, but are provided with an additional quantity of meat and fish.⁴⁹ This aims to supply enough nutrition for the growth and physical development of juveniles. On the other hand, on certain holidays, such as public holidays, New Year holidays, detainees can receive additional food; however, the amount shall not exceed five times the food standard on normal days.

Based on the above provisions, it can be seen that freedom of belief and religion must be respected and protected, as stipulated in the 2013 Constitution of Vietnam. However, this rule has not yet been effectively integrated into the legal framework regulating detention. Therefore, it is necessary to amend and improve

⁴⁵ § 33 of Decree 56/2014. (XII. 5.) on the Order of Police Jails.

⁴⁶ Art. 4 Decree 120/2017/ND-CP Detailing and Guiding the Implementation of Certain Articles of the Law on Temporary Detention and Custody.

Art.1(2) Decree 113/2021/ND-CP On Amendment to Decree No. 120/2017/ND-CP Dated 6/12/2017 of The Government Elaborating the Law on Detention and Custody.

⁴⁷ Art. 1(2) of Decree 113/2021/ND-CP.

⁴⁸ Art. 1(5) of Decree 113/2021/ND-CP.

⁴⁹ Art. 33 of the 2015 Law on Temporary Detention and Custody.

the relevant regulations to better safeguard this right, emphasizing human rights and humane treatment that align with the State's policy. Moreover, the clear specification of the number of daily meals and the right to receive warm meals at least reflect humane regulations that are consistent with the practical conditions and cultural values of Vietnam. All factors need to be considered when improving and adapting the Law on Temporary Detention and Custody.

In conclusion, pre-trial detention is one of the key topics that needs careful research and consideration to protect human rights in criminal proceedings. This coercive measure needs to be effectively used while being balanced with the protection of human rights. Although numerous human rights issues are associated with pre-trial detention, this paper focuses on analysing and comparing some of the main aspects, including the conditions for ordering pre-trial detention, its duration, and the perspective of humane treatment. Both legal frameworks relating to pre-trial detention have their advantages and disadvantages. However, in general, the implementation of pre-trial detention has several challenges and requires improvement, especially with a view to protecting human rights. First, there are gaps between law and practice. The infrastructure and facilities are inadequate or below basic standards and require substantial financial investment for improvement. Besides, the prompt application of modern tools and equipment should be promoted to facilitate criminal proceedings and record necessary data on the detention process. Second, the authorities should review and amend provisions to align them with the State's policy on human rights protection. Third, training programs should be conducted to enhance the professional skills of personnel, thereby reducing coercive confessions and torture, and improving the effectiveness of investigations.