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The Protection of Public Order as a Justification for Pre-Trial Detention in Jordanian Law

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Abstract

Article 114 of the Jordanian Code of Criminal Procedure authorizes prosecutors and judges to order pre-trial detention. Following the 2017 amendment of the provision, pre-trial detention is expressly treated as an exceptional measure and must be justified by one of the statutory grounds listed in Article 114. One of those grounds is the need to maintain public order and prevent any disturbance arising from the alleged crime. This article examines the meaning of disturbance to public order as a justification for pre-trial detention, the legal safeguards governing its use, and the criteria for establishing such disturbance in Jordanian law and prosecutorial and judicial practice. It draws on international and European human rights standards, comparative lessons from French law and jurisprudence, and the jurisprudence of the European Court of Human Rights. The article argues that public order is an inherently broad and unstable concept. Unless narrowly defined in legislation and carefully applied in practice, it risks violating international human rights norms by transforming pre-trial detention from an exceptional procedural measure into a preventive response to security concerns, public anxiety, or anticipated social reaction. The article therefore recommends amending Article 114 by removing public order as an independent ground for pre-trial detention or, at a minimum, limiting it to exceptional felony cases in which a concrete and factually supported risk to public order is established by reference to the seriousness of the crime, the circumstances of its commission, and the extent of the harm caused. Such risk should be reviewed by the judiciary at every stage of pre-trial detention, and detention should be ordered or extended only where less restrictive alternatives are demonstrably insufficient.

Keywords: pre-trial detention; public order, Jordanian Code of Criminal Procedure, international pre-trial detention standards, French Code of Criminal Procedure, European Court of Human Rights, arbitrary detention, presumption of innocence.

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Introduction

The right to personal liberty is fundamental for individuals and for societies governed by the rule of law. Deprivation of liberty before conviction therefore requires strict justification, careful judicial control, and effective safeguards against arbitrariness[1]. International human rights law reflects this position most clearly in Article 9 of the International Covenant on Civil and Political Rights (ICCPR), which provides that no one shall be subjected to arbitrary arrest or detention and that deprivation of liberty must be based on grounds and procedures established by law.[2] Similar protection is provided by regional human rights instruments, including Article 14 of the Arab Charter on Human Rights and Article 5 of the European Convention on Human Rights (ECHR).[3]

The ICCPR was published in the Official Gazette of the Hashemite Kingdom of Jordan in 2006 and thereby became part of the Jordanian legal order.[4] Since then, international standards on the right to liberty have increasingly influenced the interpretation and reform of Article 114 of the Code of Criminal Procedure (CCP), which regulates pre-trial detention in Jordan. In its earlier form, Article 114 did not require the prosecution or the court to identify specific reasons for detention. That gap was inconsistent with international standards and had already been criticized in Jordanian judicial practice. The Jordanian Court of Cassation held as early as 1998 that detention must be justified in order to be legitimate.[5]

The 2017 amendment to Article 114 was therefore a significant development. It introduced an express requirement that detention be exceptional and justified by statutory grounds. The current wording of Article 114(1) provides that pre-trial detention is an exceptional measure and may be used only where it is the sole means to achieve one of the listed objectives, such as preserving evidence or traces of the crime; preventing pressure on witnesses or victims; preventing communication with accomplices, interveners, or instigators; protecting the accused; ending the effects of the crime or preventing its recurrence; preventing flight; or preventing disturbance to public order arising from the crime.[6] The public-order ground has therefore been part of Jordanian criminal procedure since 2017 and

[1] Guinchard S. and Buisson, J. (2014), Procédure pénale ، Paris : Lexis Nexis, 1047. Guéry, C. and CHAMBON, P. (2013،), "Droit et pratique de l'instruction préparatoire", Dalloz action, n os. 50. à 52.55.

[2] International Covenant on Civil and Political Rights, Article 9.

[3] Arab Charter on Human Rights, Article 14; European Convention on Human Rights, Article 5.

[4] Official Gazette of the Hashemite Kingdom of Jordan N. 4764, 15 June 2006.

[5] Jordanian Court of Cassation (Criminal), 24 May 1998, N. 754/1997.

[6] Code of Criminal Procedure N. 9 of 1961, Article 114(1), as amended. The public-order ground introduced by the 2017 amendment remains in the current consolidated text. The relevant formulation is that detention is exceptional and may be used only where it is the sole means to avoid disturbance to public order arising from the crime.

remains part of the current text of Article 114(1).[7]

This article focuses on that ground: maintaining public order and preventing disturbances arising from the alleged crime. It examines whether the Jordanian legislator has achieved an appropriate balance between the accused person's interest in liberty and protection against arbitrary detention, on the one hand, and society's interest in security and stability, on the other. The article also draws on international human rights norms, French law, French Court of Cassation jurisprudence, and the case law of the European Court of Human Rights (ECtHR) to propose interpretive and legislative safeguards for detainees to be applied by prosecutors and judges in pre-trial detention cases.

The central argument is that public order cannot safely operate as an open-ended justification for detention. If retained, it must be confined to exceptional cases, supported by concrete and individualized facts, and subject to repeated judicial scrutiny. Public emotion, media attention, the seriousness of the charge in the abstract, or a general desire to reassure society cannot substitute for sound legal reasoning.

1. Definition and Scope of Public Order in Jordanian Legislation and Jurisprudence

The concept of public order in Jordanian law is broad and context-dependent. In earlier legislative practice, public order was primarily associated with public health, public safety, and public security[8]. Jordanian legislation uses the term in different contexts and often without definition. The CCP, for example, provides that criminal hearings are public unless the court decides to hold them in camera in order to preserve public order. Article 123(2) of the CCP also provides that release may be granted where it does not affect the course of the investigation or trial and does not prejudice public security.[9] The Jordanian Civil Code similarly provides that foreign law may not be applied where its application would be contrary to public order or morals in Jordan.[10]

Over time, the scope of public order has expanded beyond physical security and public health to include economic, environmental, cultural, and moral dimensions.[11] This expansion explains both the usefulness and the risk of the concept. It gives legal decision-makers flexibility to protect fundamental social interests, but it also creates uncertainty when public order is used to restrict individual liberty.

[7] Code of Criminal Procedure Amendment Law N. 32 of 2017, Official Gazette N. 5479, 30 August 2017. The current consolidated version of Article 114 also reflects later amendments concerning detention periods and extension procedures.

[8] Mohammad S. and Ismael A. (1979), Administrative Control Authorities in Exceptional Circumstances: A Comparative Study, PhD thesis, Ain Shams University.

[9] Code of Criminal Procedure N. 9 of 1961, Article 123(2).

[10] Jordanian Civil Code N. 43 of 1976, Article 29; see also Articles 163 and 165.

[11] Qbailat, H. (2010), Administrative Law, Dar Wael for Publishing, 225-226.

The Crime Prevention Law No. 7 of 1956 illustrates the connection between public order and preventive deprivation of liberty. That law gives administrative governors authority to act against persons considered to constitute a threat to public safety or security.[12] Although administrative detention under that law is distinct from pre-trial detention under the CCP, the example is important because it shows how public-order reasoning may facilitate preventive detention without the procedural safeguards normally required in criminal proceedings.

Jordanian legislation does not provide a precise general definition of public order. The reason is partly practical: the circumstances that may threaten public order cannot be exhaustively predicted in advance[13]. Venturing into the definition of public policy is akin to embarking upon an adventure in shifting sands, or traversing a passage flanked by thorns[14]. The task of defining and limiting the concept has therefore been left largely to the judiciary and legal scholarship.

The Jordanian Court of Cassation has defined public order as the political, social, and economic structure of the nation.[15] In another judgment, it described public order as a relative concept that varies from one country to another because it is connected to public interest and reflects the interaction of political, social, economic, and moral considerations.[16] The French Court of Cassation held that the concept of public policy (ordre public) is susceptible to numerous meanings, including respect for human life, the importance of safeguarding human property, and the prevention of self-help in the vindication of rights. That is, individual justice[17]. Moreover, the concept of public order varies from place to place, to the extent that the French Court of Cassation broadened reliance on this ground by holding that preventing and avoiding a disturbance to public order may constitute sufficient grounds for detaining a suspect in France, even where the disturbance occurred outside France as a result of the commission of the crime[18].

Legal scholarship has adopted similar formulations. Some scholars have regarded public order as an expansive concept and have relied on the notion of the public interest as the basis for defining it, so that it encompasses all prevailing foundations, concepts, beliefs, and activities in society, including social, economic, moral, and political dimensions[19]. Al-Sanhouri defined public order as the set of rules

[12] Crime Prevention Law N. 7 of 1956, Article 3.

[13] Al-Masri, M. (2013), « Une tentative de décrire les caractéristiques de l'ordre public international arabe avec le concept de droit international privé », Kuwaiti Journal of Law, N 4, 143.

[14] Alglave, É. (1968), "Définition de l'ordre public en matière civile ‹[action du ministère public", Revue pratique de droit français, tome 25, 524-562.

[15] Jordanian Court of Cassation, 12 April 2011, N. 2733/2010.

[16] Jordanian Court of Cassation, 6 March 2000, N. 648/1999.

[17] French Court of Cassation. (crime), 25-8 1994, N 1994.

[18] French Court of Cassation. (crime), N. 313, 15/10/1985: D 1986 juripr p 170 note D Mayer .

[19] Kanaan, N. (2002), Administrative Law, Book 1, 1st Ed, Dar Al-Thaqafa, Amman, 276.

aimed at achieving the political, social, or economic public interest, connected to the higher organization of society and superior to individual interests.[20] Other scholarship has linked public order to the institutions, means, and legal powers granted to public authorities to maintain respect for the system designed to combat crime.[21]

These definitions show that public order cannot be reduced to a fixed formula. Its meaning depends on prevailing political, social, and economic conditions[22]. The content of public order in a democratic state committed to human rights and personal liberty will differ from its content in a system that gives priority to state security or administrative convenience[23]. Even within the same state, its meaning may change over time as legal culture, constitutional commitments, and human rights standards evolve[24].

The characteristic of flexibility always leaves the door open to future developments. Accordingly, the concept of public order grants the judge a broad margin of discretion, which must be exercised in a concrete manner[25] by "linking the legal standard to natural or social life"; that is, by combining factual reality with legal judgment.[26] .

Given the flexibility of the concept of public order and its adaptability to societal developments and emerging circumstances, the concept of disturbance affecting public order is likewise a flexible term. The jurist Chambon attempted to define the disturbance affecting public order that justifies detention as widespread disorder, intense emotion, or frenzied movements resulting from the commission of a violent and heinous crime, which may pose a threat to the order of society [27]. In other words, detention is regarded as the means by which such disorder and emotion are brought to an end and calmed. The broad scope of the concept of disturbance grants the competent authority a wide margin of discretion in assessing it and in determining the circumstances that constitute a disturbance of public order, thereby justifying the detention of the person complained against who is suspected of committing the crime and causing such disturbance.

2. The Scope of Public Order in Article 114 of the Code of Criminal Procedure

The rationale for invoking public order in pre-trial detention under Article 114 of the CCP cannot be understood solely

[20] Al-Sanhouri, A. (1964), Mediator in Explaining the Civil Law, Beirut: Dar Ehyaa Al Turath Al Arabi, 399.

[21] Polin, R. (1995), L'ordre public, collection Politique d'aujourd'hui, PUF, Paris, 53.

[22] Guéry, C. (1997), "La nouvelle définition de l'ordre public par la loi dûà décembre 1996 ; un trouble exceptionnel persistant dix) sept ans après les faits", Dalloz, p. 593.

[23] Phi, T.T., (2012), La détention provisoire ‹(étude de droit compare ‹droit français et droit vietnamien), Thèse de droit, Université de Bordeaux IV, 128.

[24] Abu Al-Khair, A. (1995), Administrative Control and its Limits, Egyptian General Book Authority Press, 152.

[25] The opinion of Member of Parliament Saleh Al-Armouti during the deliberations of the House of Representatives, Minutes of the Second Session, Second Day, dated 18 July 2017, p. 81.

[26] Delmas M., (1994), "Pour un droit commun‹ « La librairie du XXe siècle", Seuil, 123.

[27] Chambon, P., (1989), "La loi n° 89-461 du 6 juillet 1989 modifiant le Code de procédure pénale et relative à la détention provisoire", JCP, I, 3417.

as a technical procedural matter[28]. In the Jordanian context, certain crimes - particularly homicide, honour-related violence, serious assaults, arson, and crimes perceived as threatening family or community security - may generate risks of retaliation, social unrest, or pressure on the criminal process[29]. This social context partly explains why public order has been treated as a justification for detention.[30]

Yet this rationale must be approached with caution. Pre-trial detention may be understood by the public as confirmation that justice is functioning and social stability is being protected[31]. However, the purpose of detention cannot be to satisfy public anger, reassure public opinion[32], or impose indirect punishment on the accused[33]. Pre-trial detention must remain an exceptional procedural measure justified by legal necessity[34], not a symbolic response to public anxiety[35].

A crucial distinction must therefore be drawn between the social disturbance caused by the alleged crime itself and the specific risk created by release of the accused. Many crimes disturb society in a general sense. That general disturbance cannot justify detention. The proper inquiry is whether release of the detainee would create a concrete, actual, and demonstrable risk of further disturbance to public order.[36] Examples may include a real risk of retaliatory violence between families of the victim and the accused, attacks on the accused or on the victim's family, intimidation of witnesses, renewed community unrest in the area where the crime occurred, or a serious risk that an alleged sexual or indecent crime will provoke immediate confrontation between the families or local communities concerned. Such risks must be established by facts in the individual case. They should not be presumed from the gravity of the charge, media attention, or public emotion.

A further safeguard for pre-trial detainees is that less restrictive alternatives should be considered. This safeguard is based on Article 114(1) and Article 114 bis of the Code of Criminal

[28] Smadi R .and Søndergaard, E. (2025), Non-custodial Alternatives to Pre-trial Detention in Jordan 2025, DIGNITY Publication Series on Torture and Organised Violence, N. 47.

[29] Al-Rahimi, M. (2018), Justification for the Detention Decision According to the Jordanian Code of Criminal Procedure, Master's Thesis, University of Jerash, 20.

[30] Al-Jabour, B. (2016), Procedures Followed in the Jordanian Tribal Judiciary House of Culture, 25.

[31] Behnam, R. (1987), Criminal Procedures: Analysis and Foundations, Al-Maaref Establishment, Part Two, 13th Edition, Cairo, 345. Sorour, A. (2016), The Intermediate in Criminal Procedure Law, Dar Al-Nahda Al-Arabiya, 10th Edition, Cairo, 87. Al-Janabi, F. (2018), Arrest Procedures and Guarantees: A Comparative Study, Master's Thesis, Middle East University, 30.

[32] Baz, S. (1985), Explanation of the Temporary Code of Criminal Procedure, Dar Ihya al-Turath, 198 Beirut, 238.

[33] Wild-Ali, M. (2007), Arrest and Pretrial Detention in the Palestinian Criminal Procedure Law, Master's Thesis, An-Najah National University, 29.

[34] Abd Alrahman N.S. (1985), Temporary Detention and Judicial Control, University of Jordan, 3.

[35] Rassat, M-L., (2015), Procédure pénale, Ellipses, 2 éd, .244.

[36] Muhammad, Sh. and Ismail, A. (1979), Administrative Control Powers in Exceptional Circumstances, A Comparative Study, Doctoral Thesis, Faculty of Law, Ain Shams University, 52.

Procedure, and it is increasingly reflected in Jordanian judicial practice.

First, the current text of Article 114(1) requires that detention be used only where it is the sole means to achieve one of the listed objectives[37]. This wording is important because it creates a legal obligation to consider whether the objective can be achieved through less restrictive means[38]. Article 114 bis reinforces this approach by allowing non-custodial alternatives to pre-trial detention in appropriate cases, including electronic monitoring, travel bans, house arrest or residence within a specified geographical area, deposit of a sum of money or judicial guarantee, and prohibition of access to specific places.

With regard to the judiciary, the Jordanian Court of Cassation has framed this approach in last-resort terms, affirming that liberty is the rule, detention is the exception, and pre-trial detention is a precautionary measure subject to legal limits.[39].

Recent Jordanian decisions concerning alternatives to pre-trial detention illustrate a developing judicial approach. In Zarqa First Instance Court (Appellate Division), Judgment No. 2597/2023 of 24 May 2023, the appellate court upheld the detainees' release subject to electronic monitoring, despite the Public Prosecutor's argument that the severity of the victim's injuries required their detention to preserve public confidence and deter crime. The court regarded electronic monitoring as a proportionate alternative that respected the rights of the accused while preserving public safety.[40]

In Karak First Instance Court (Appellate Division), Judgment No. 481/2024 of 6 February 2024, the appellate court overturned the decision refusing to release the appellant on bail. The court based its decision on the existence of a fixed residence, the absence of violent charges against the accused, and the accused's chronic health conditions. It emphasized that legal alternatives, such as bail, a travel ban, and electronic monitoring, may be appropriate and proportionate in misdemeanor cases carrying short custodial sentences.[41]

In Amman Criminal Reconciliation Court, Judgment No. 19040/2022 of 1 October 2022, the court replaced pre-trial detention with house arrest, balancing procedural safeguards with the rights of the accused. In Amman Court of First Instance, Judgment No. 153/2024 of 10 January 2024, the appellate court upheld release on bail with a travel ban and rejected the Public Prosecutor's request for re-detention. In Amman Court of First Instance, Judgment No. 4/2024 of 10 January 2024 and Judgment No. 52/2024 of 4 March 2024, the court upheld travel

[37] Code of Criminal Procedure, Article 114 bis.

[38] Al-Mahasneh, M. (2015), "Justification of the Detention Decision in Jordanian Criminal Legislation (A Comparative Study)", Studies in Sharia and Law Sciences, V. (42). Abuanzeh A. and Søndergaard,E.(2025), "International Perspectives on Jordan's Legislation on Deprivation of Liberty Prior to Trial", Arab Law Quarterly 39, N. 4.

[39]. Jordanian Court of Cassation, (Criminal), 5 May 2020; N. 1784/2019, Jordanian Court of Cassation (Criminal), 5 May 2022, N. 3129/2021.

[40] Zarqa First Instance Court, 24 May 2023, N. 2597/2023.

[41] Karak First Instance Court, N. 481/2024, 6 February 2024.

bans as alternatives to detention in misdemeanor cases, emphasizing that detention is exceptional and that the alternatives under Article 114 bis should be used where the accused presents a low risk. Finally, in Amman Court of First Instance, Judgment No. 5816/2023 of 4 March 2024, the court annulled the detention order for insufficient reasons, particularly in light of serious health conditions, and indicated that less restrictive measures, such as a travel ban or bail, should be applied where appropriate.[42]

These decisions are particularly significant with respect to detention justified by the need to prevent disturbance to public order. They show that Jordanian courts are capable of applying proportionality and individualized reasoning, and that procedural and public-safety concerns can be addressed through alternatives without resorting to detention. In public-order cases, prosecutors and judges should therefore be required to explain why a travel ban, electronic monitoring, house arrest, bail, a judicial guarantee, or a prohibition on access to specified places would not adequately address the identified risks.

The justification for detention must remain valid throughout the entire period of deprivation of liberty. It is not enough that a public-order risk existed at the time of the initial detention order[43]. If detention is extended, the competent authority should verify whether the risk remains concrete, actual, and strongly supported by facts. This requirement follows from the logic of Article 9 ICCPR and from the exceptional character of pre-trial detention.

Although the Jordanian legislature does not expressly require a disturbance to public order to persist, Jordanian judicial practice illustrates the importance of this point. In 2019, the Court of Cassation considered a challenge to renewal of detention where the Public Prosecution had failed to submit the case file to the competent court before expiry of the previous detention period. The appellant argued that the requirement was mandatory, related to public order, and that the violation should result in absolute nullity. The Court held that the failure constituted a shortcoming by the Public Prosecution but did not invalidate the subsequent renewal decision issued by the competent court.[44] This approach indicates that procedural irregularities in detention renewal may not always lead to release or nullity. It therefore reinforces the need for clearer statutory safeguards and stricter judicial reasoning whenever detention is ordered or extended.

[42] Amman Criminal Reconciliation Court, N. 19040/2022; Amman Court of First Instance, N. 153/2024, N. 4/2024, N. 52/2024, and N. 5816/2023.

[43] Abuanzeh, A. (2022), "The Rationale for Detention in the Jordanian Code of Criminal Procedure: A Comparative Study with French Law", Journal: Heliyon, V (E11164), N (8).

[44] Jordanian Court of Cassation, Criminal Division, 27 February 2019, N. 739/2019.

3. International and European Human Rights Standards

Article 9 ICCPR provides that everyone has the right to liberty and security of person, that no one shall be subjected to arbitrary arrest or detention, and that no one shall be deprived of liberty except on grounds and in accordance with procedures established by law.[45] International law does not treat public order as a free-standing and unlimited justification for pre-trial detention. Any deprivation of liberty justified by public-security or public-order considerations must remain subject to legality, necessity, proportionality, individualized assessment, judicial review, and consideration of alternatives[46].

The Human Rights Committee's General Comment No. 35 explains that arbitrariness includes elements of inappropriateness, injustice, lack of predictability, and lack of due process. Pre-trial detention must be based on an individualized determination that it is reasonable and necessary in all the circumstances, and alternatives to detention should be considered.[47] The Human Rights Committee similarly emphasizes that preventive detention for reasons of public security must not be arbitrary and must be based on procedures prescribed by law.[48]

Article 5 ECHR also does not list public order as an autonomous textual ground for pre-trial detention. Deprivation of liberty before trial must fall within Article 5(1)(c), and continued detention must satisfy the requirements of Article 5(3). The ECtHR has cautiously accepted that public order may constitute a relevant reason for continued detention in exceptional circumstances. In Letellier v. France, the Court accepted that the seriousness of certain crimes may justify detention for a limited period where release would genuinely disturb public order and where that risk is supported by facts.[49] The Court emphasized that such disturbance must be actual, must be based on objective factors rather than assumptions, and cannot be inferred merely from publicity or public anger.

The Court has also consistently held that reasonable suspicion alone is insufficient after the initial period of detention. In Buzadji v. the Republic of Moldova, the Grand Chamber held that after a certain lapse of time continued detention requires relevant and sufficient reasons, genuine consideration of alternatives to detention, and special diligence by the authorities.[50] This reasoning strengthens the scrutiny that must apply where a state relies on public-order considerations.

[45] ICCPR, Article 9.

[46] Soulard-Foucaud, A. (2003), De l'influence du droit européen sur les atteintes à la liberté avant jugement en procédure pénale française, Thèse de droit, Université de Poitiers.

[47] United Nations Human Rights Committee, General Comment N. 35: Article 9 - Liberty and Security of Person, CCPR/C/GC/35, 16 December 2014, paras. 12 and 38.

[48] United Nations Human Rights Committee, General Comment N. 8: Article 9 - Right to Liberty and Security of Persons, adopted 30 June 1982.

[49] Letellier v. France, N. 12369/86, Judgment of 26 June 1991. 14. Look : Delmas-Marty, M. (1994) "Pour un droit commun, La librairie du XXe siècle" Paris : Seuil 4.

[50] Buzadji v. the Republic of Moldova [GC], N. 23755/07, Judgment of 5 July 2016.

Other leading cases confirm the same principle. In Tomasi v. France, Kemmache v. France, and I.A. v. France, the Court rejected abstract or formulaic reasoning and required concrete circumstances to justify continued detention.[51] Similarly, in Labita v. Italy, McKay v. the **United** Kingdom, Mamedova v. Russia, and Idalov v. Russia, the Court emphasized individualized reasons, judicial scrutiny, and the insufficiency of stereotyped reliance on the gravity of the crime or the needs of the investigation.[52]

The international and European standards therefore require that public order, if used at all, be interpreted narrowly. It cannot rest solely on the seriousness of the alleged crime, public indignation, media attention, or a general desire to reassure society. It must be based on concrete, individualized circumstances and remain subject to rigorous judicial scrutiny throughout the period of detention.

4. French Law and Jurisprudence

French criminal procedure provides a useful comparative model because it contains a public-order ground but surrounds it with strict legislative and judicial safeguards. Article 137 of the French Code of Criminal Procedure establishes the principle that a person under investigation, presumed innocent, remains free. The person may be subject to judicial supervision or, where those obligations are insufficient, house arrest with electronic monitoring. Only exceptionally, where those measures are insufficient, may the person be placed in pre-trial detention.[53]

Article 144 of the French Code of Criminal Procedure provides that pre-trial detention may be ordered or extended only if it is demonstrated, by precise and detailed elements resulting from the proceedings, that detention is the only means of achieving one or more statutory objectives and that those objectives cannot be achieved through judicial supervision or house arrest with electronic monitoring.[54] Article 144(7) permits detention to end an exceptional and persistent disturbance to public order caused by the seriousness of the crime, the circumstances of its commission, or the extent of the harm caused. The same provision states that the disturbance cannot result solely from media coverage and that the public-order ground is not available in ordinary misdemeanor matters.[55]

This legislative structure is the product of repeated reform. One principal purpose of the 1996 French reform was to prevent vague invocations of public order from justifying detention[56].

[51] Tomasi v. France, N. 12850/87, Judgment of 27 August 1992; Kemmache v. France, nos. 12325/86 and 14992/89, Judgment of 27 November 1991; I.A. v. France, N. 28213/95, Judgment of 23 September 1998.

[52] Labita v. Italy [GC], N. 26772/95, Judgment of 6 April 2000; McKay v. the United Kingdom [GC], N. 543/03, Judgment of 3 October 2006; Mamedova v. Russia, N. 7064/05, Judgment of 1 June 2006; Idalov v. Russia [GC], N. 5826/03, Judgment of 22 May 2012.

[53] French Code of Criminal Procedure, Article 137.

[54] French Code of Criminal Procedure, Article 144.

[55] French Code of Criminal Procedure, Article 144(7).

[56] Sudre, F. (1993),"La détention provisoire avait duré plus de cinq ans ?", RSC 33 : Chambon, P. (1985), Note sous Cass. crim. 19 February 1980, N. 80-90.054, Bull. crim. N. 60, Dalloz, 357-358. Cohen, M. (1996), "A propos de la détention provisoire. Vers la réforme permanente ?

Pursuant to the 2007 amendment to Article 144 of the French Code of Criminal Procedure, the French legislature confined reliance on this ground as a justification for a detention order exclusively to Crimes of the highest degree of seriousness namely, *crimes*; to the exclusion of *délits*. Later reforms further narrowed the ground and required courts to explain why less restrictive measures were insufficient. The French experience is therefore important for Jordan not because it endorses public order as a broad ground for detention, but because it shows that if public order is retained, it must be narrowly defined and strictly controlled.

French Court of Cassation jurisprudence has consistently required concrete reasoning. The Court has quashed a detention order where the investigating chamber relied essentially on the gravity of the death of a young child and the public emotion generated by the case. More than five years after the facts, those reasons did not establish, by precise and circumstantiated elements, that detention remained the only means of ending an exceptional and persistent disturbance to public order.[57]

The Court has accepted continued detention only because the investigating chamber had identified detailed factual circumstances showing that the disturbance to public order remained exceptional and persistent and had also explained why judicial supervision and house arrest with electronic monitoring were insufficient.[58] This is important because it demonstrates that the three indicators are not independent grounds; they are evidential indicators used to determine whether release would create or maintain an exceptional and persistent public-order disturbance[59].

The Court has also reiterated that detention decisions must contain concrete legal and factual reasons and must explain why judicial supervision is insufficient.[60] General assertions concerning public order, seriousness of the crime, or the interests of the investigation are therefore inadequate.

Thus, French jurisprudence establishes four core requirements. First, public-order disturbance must be exceptional[61] and persistent[62]. Secondly, it must be supported by precise and factual elements. Thirdly, it cannot result solely from public emotion, media coverage, or the legal classification of the crime[63]. Fourthly, the judge must explain why less restrictive alternatives are insufficient. These requirements are

Historique - état des lieux et perspectives", Gaz. Pal. Doctr., 504.

[57] French Court of Cassation. (crime), 12 October 2021, N. 21-84.317.

[58] French Court of Cassation. (crime), 8 June 2017, N. 17-81.655.

[59] Bosly and H.-D. Vandermeersch, D. (2005), Droit de la procédure pénale, 4th ed, 861.

[60] French Court of Cassation. (Crime), 16 February 2010, N. 09-87.912.

[61] Chambon, P. (1985), "Analyse et réflexions sur la loi du 9 juillet 1984 tendant à renforcer les droits des personnes en matière de placement en détention provisoire et d'exécution d'un mandat de justice", JCP, Ed. G I, 3174. Cimanmonti, S. (1996), L'ordre public a la fin du XX siècle) in l 'ordre public en droit pénale, D, Paris.

[62] Pradel, J. (2007), "Les suites législatives de l'affaire dite d'Outreau - à propos de la loi N. 2007-291 du 5 mars 2007", Semaine juridique, Ed II. G, 38.

[63] Verges, E**.** (2015), Procédure pénale, 3rd ed. LexisNexis, p55. Nord-Wagner, M. (2007), "La détention provisoire : un équilibre renforcé ?", AJ pénal, 113.

essential to compatibility with the right to liberty and the presumption of innocence.

This restrictive doctrinal line has been confirmed in other judgments: Cass. crim., 24 August 2016, no. 16-83.804, confirms that the public-order disturbance must be exceptional and persistent and cannot result solely from the gravity of the facts or the media resonance of the case; Cass. crim., 2018, pourvoi no. 18-82.371, confirms that the seriousness of the crime may be relevant only where the investigating chamber demonstrates, through legal and factual reasons, that it has in fact produced an exceptional and persistent disturbance; Cass. crim., 29 June 2016, no. 16-82.238, censured reliance on possible renewed media attention and a conviction on appeal, many years after the facts, without precise and circumstantiated elements establishing the continuing disturbance; Cass. crim., 20 April 2022, no. 22-80.649, illustrates the converse situation, where detention may be upheld where the risks and the insufficiency of alternatives are reasoned in detail; finally, Cass. crim., 6 August 2025, no. 25-83.718, reiterates the exceptional character of pre-trial detention and the duty to explain precisely why judicial supervision or house arrest with electronic monitoring would be insufficient.[64]

Earlier French authorities form part of the same restrictive doctrinal line, rather than independent grounds for detention. The historical Court of Cassation authorities and the 1999 French appellate authority reinforce the movement from a broad public-order formula toward a precise and evidence-based test. They are especially useful to show that the seriousness of the crime, the circumstances of its commission, and the extent of the harm caused operate as evidential indicators for a single inquiry: whether release would create or maintain an exceptional and persistent disturbance to public order.[65]

The comparative lesson for Jordan is therefore clear: public order should not function as a general preventive ground for detention. If retained, it should be limited by the same type of safeguards found in French law and required by European human rights jurisprudence.

5. Criteria for Assessing a Risk to Public Order

If public order remains a ground for pre-trial detention in Jordan, prosecutors and judges need clear criteria to assess whether release of the detainee would entail a real risk to public order. Article 114 does not currently specify those criteria. It also does not expressly require the prosecutor or judge to set out the factual and legal reasons, derived from the

[64] French Court of Cassation. (crim), 24 August 2016, N. 16-83.804; Cass. crim., 29 June 2016, N. 16-82.238; Cass. crim., 2018, pourvoi N. 18-82.371; Cass. crim., 20 April 2022, N. 22-80.649; Cass. crim., 6 August 2025, N. 25-83.718.

[65] French Court of Cassation, (Criminal), 19 February 1980, N. 80-90.054, Bull. crim. N. 60; 15 October 1985, N. 313; 30 June 1987; 26 September 1989, Judgment N. 329; 7 August 1990, Judgment N. 296; 2 March 1994, Judgment N. 84; 26 July 1994, Judgment N. 285; 17 December 1996; 16 September 1997, Judgment N. 296; French Court of Appeal, Indictment Chamber, 28 May 1999; French Court of Cassation, Criminal Chamber, 12 September 2000; 16 January 2002.

circumstances of the individual case, that support the conclusion that public order is at risk. This lack of specificity may permit arbitrariness and weakens judicial oversight. It is also difficult to reconcile with the exceptional nature of pre-trial detention and the presumption of innocence.

With inspiration from French law and the jurisprudence of the ECtHR, three statutory indicators should be applied: the seriousness of the crime, the circumstances of its commission, and the extent of the harm caused. These criteria should not be treated as independent grounds. Rather, they should operate as evidential indicators that help determine whether release would create an exceptional and continuing disturbance to public order[66].

5.1 Seriousness of the Crime

The seriousness of the alleged crime may be relevant when assessing whether release would create an exceptional disturbance to public order. However, under both French law and the jurisprudence of the European Court of Human Rights, seriousness is neither an autonomous ground for pre-trial detention nor a sufficient justification in itself. It is only one factor among others[67].

In practice, seriousness is often assessed by reference to the legal classification of the crime and the penalty prescribed by law. Homicide, for example, is particularly serious because it entails the irreversible deprivation of life. In some cases, release of a person accused of murder may generate serious tensions between families or wider public unrest. Such consequences may be relevant, but only where supported by concrete evidence and not merely presumed from the charge.[68]

Jordanian case law has likewise treated the seriousness of honour-related crimes as relevant to public-order assessment, particularly where the victim's family has not waived its personal claim.[69] This reasoning may be understandable in a social context where certain crimes generate risks of retaliation. Nevertheless, seriousness cannot substitute for individualized reasoning. A court must identify objective facts showing that release would create or prolong a concrete risk of exceptional disturbance.

French jurisprudence and ECtHR jurisprudence consistently reject automatic inference from seriousness. Even crimes involving grave violence or organized criminality cannot, by themselves, justify detention on public-order grounds[70]. To treat seriousness alone as sufficient would transform pre-trial detention from an exceptional preventive measure into anticipatory punishment, undermining both the presumption of innocence and Article 9 ICCPR.

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66 Romnicianu, M. (1975), "Détention provisoire et ordre public", JCP, Ed. G I, 2744.

67 Louis-Edmond, P. (1991), "La motivation de la détention provisoire devant la Cour européenne des droits de l'homme", RSC, 805.

68 Hlayel, F. (2007), Pre-trial Imprisonment and Its Alternatives, Dar Al Matboaat Al Jamiyah, 7.

69 Jordanian Court of Cassation, (Criminal), 5 April 1998, N. 754/1998.

70 Romnicianu, M. (1975), "Détention provisoire et ordre public", JCP. Ed. G I, 2744.

5.2 Circumstances of the Crime

The circumstances in which the crime was allegedly committed constitute a second relevant factor. Unlike legal classification, this criterion requires individualized examination of the facts. Relevant considerations may include the manner in which the crime was committed, the vulnerability or public status of the victim, the social context of the crime, the relationship between the families or communities involved, the background of the accused, or concrete risks that release would reignite conflict or provoke further disturbance.

Jordanian jurisprudence illustrates this individualized approach by considering factors such as the personality and criminal record of the accused where they are relevant to public-order assessment.[71] Crimes committed against prominent political, religious, or community figures may, depending on the surrounding circumstances, carry heightened risk of public unrest. These factors should not create a presumption in favour of detention; they should simply inform judicial assessment of whether release would generate a genuine disturbance[72].

French jurisprudence similarly emphasizes concrete circumstances rather than legal classification alone. For example, the French Court of Cassation has recognized that fraud committed through impersonation or abuse of judicial authority may disturb public order because it undermines confidence in public institutions.[73] Crimes involving sexual abuse of very young children may also raise exceptional public-order concerns owing to the vulnerability of the victims and the strong societal interest in their protection.[74]

The circumstances criterion therefore helps distinguish genuinely exceptional cases from cases where detention merely reflects public indignation. It is an important safeguard against arbitrary public-order detention.

5.3 Extent of the Harm Caused by the Crime

The extent of the harm caused by the alleged crime is the third relevant indicator. Harm may be physical, as in crimes against life or bodily integrity; material, as in extensive destruction of property; psychological, particularly where vulnerable victims are involved; economic, where crimes undermine confidence in financial or public institutions; or societal, where the crime threatens public institutions or public security[75].

French jurisprudence requires judges to explain how the extent of the harm contributes to a continuing disturbance of public order in the particular case. The seriousness of the harm cannot be inferred solely from the legal classification of the crime or the penalty

[71] Irbid Magistrate Court, 5 June 2014, N. 2875/2014.

([72]) Cohen, C. (1995), "A propos de la détention provisoire. Vers la réforme permanente ? Historique- Etat des lieux et perspectives ", Gaz. Pal Doctr. 504.

[73] French Court of Cassation (crime), 26 July 1994, N. 285.

[74] French Court of Cassation (crime), 16 September 1997, N. 296.

[75] Aydalı, M. (1975), "La liberté et la détention provisoire dans la jurisprudence de la cour de cassation" mélange, Marc ANCEL, Ed. A. Pedone, Paris, p. 271

that may ultimately be imposed. Detention must be justified by concrete and individualized circumstances demonstrating that release would prolong or aggravate an exceptional disturbance to public order.[76]

Jordanian jurisprudence likewise considers gravity of harm when assessing whether release may endanger public order. For example, detention has been upheld where the accused was alleged to have deliberately burned the complainant's home and the courts considered that release could generate renewed tensions and disturb public order.[77] However, as under French law and ECtHR jurisprudence, the harm caused by the crime cannot by itself justify pre-trial detention. Its significance lies only in demonstrating, on the basis of objective and individualized facts, why release would create or maintain a concrete risk of public-order disturbance.

The extent of harm should therefore be understood as an evidential factor rather than an independent legal ground. Interpreted in this way, it remains compatible with the exceptional nature of detention and the presumption of innocence.

It is worth noting that public opinion and social reaction are particularly sensitive considerations. Public outrage may be real, but it is not always legally relevant. The crime may have been committed in a shocking manner, yet the public may not know the full circumstances, possible defences, mitigating factors, or reasons that may affect criminal responsibility. Public emotion cannot replace legal reasoning, individualized assessment, and judicial control[78].

French law expressly reflects this concern by providing that public-order disturbance cannot result solely from media coverage of the case) Article 144/7 of the Criminal Procedure Code) . French jurisprudence similarly requires concrete circumstances and rejects abstract reliance on public emotion. The Jordanian practice appears more vulnerable to the influence of public reaction, particularly where prosecutors or judges rely on public order to respond to community pressure. This does not mean public opinion should be ignored. It means that public opinion should never be a criterion on its own. It must be connected to concrete facts showing a real risk of disturbance and to one or more of the three evidential indicators discussed above. It must also be shown that the risk cannot be addressed by alternatives to pre-trial detention.

6. Empirical Practice in Jordan and Comparative Observations

This appendix concerns empirical data collected by the authors on reliance on the need to prevent disturbance to public order as a justification for detention. The following statistics should be regarded as preliminary

[76] See, for example: French Court of Cassation (crime), 17 December 1996; Cass. crim., 12 September 2000; Cass. crim., 16 January 2002.

[77] Ramtha Court of First Instance, 17 November 2020, N. 21/2020.

[78] Polin, R. (1995), L'ordre public, collection Politique d'aujourd'hui, PUF, Paris.

indicators rather than final statistical conclusions. These data were collected through questionnaires distributed to judges and public prosecutors in courts in Jordan up to July 2026.

Table 1. Percentage use of the need to prevent disturbance to public order arising from the crime as a justification for detention in practice by public prosecutors in Jordan, according to the researcher's questionnaires.

Percentage	**Number of Forms**
47%	14

Table 2. Criteria used in practice by public prosecutors in Jordan to assess the need to prevent disturbance to public order arising from the crime as a justification for detention.

Criterion	**Seriousness of the Crime**	**Circumstances of the Crime**	**Extent of the Harm Caused by the Crime**
Percentage	42%	38%	20%

Conclusion

This article has argued that the use of public order as a justification for pre-trial detention under Article 114 of the Jordanian CCP is difficult to reconcile with international human rights standards unless it is narrowly defined and strictly controlled. The difficulty lies not only in the wording of the provision but also in the inherently broad and context-dependent nature of public order, which is susceptible to public emotion, political pressure, and subjective judicial assessment.

The preferred approach would be to remove public order as an independent ground for pre-trial detention under Article 114 of the CCP. The legitimate objectives commonly associated with public order can usually be achieved through the more specific grounds already recognized by Article 114 and by using alternatives to detention.

Should the Jordanian legislature retain public order as a ground for pre-trial detention, its application should be confined to exceptional felony cases and subject to stringent safeguards, as illustrated in French law and jurisprudence, as well as in ECtHR jurisprudence. Prosecutors and judges should be required to identify concrete and individualized facts demonstrating that release would create a real and serious risk of exceptional disturbance to public order; link that risk to the seriousness of the crime, the circumstances of its commission, or the extent of the harm caused; and explain why less restrictive alternatives under Article 114 bis are insufficient. The decision should be reassessed whenever detention is extended.

Ultimately, safeguards against unlawful use of pre-trial detention depend upon the precision of the legal framework and the quality of judicial reasoning. A broadly defined public-order ground, applied without strict evidential and procedural safeguards, risks transforming pre-trial detention from an exceptional measure into anticipatory punishment. Thus, a narrow concept, which is subject to rigorous judicial

control, better protects the presumption of innocence and offers a more appropriate balance between the protection of public interests and the fundamental rights to liberty.

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Empirical and Research Materials

Authors questionnaire data as described in Section 6.

حماية النظام العام كمبرر للتوقيف قبل المحاكمة في القانون الأردني

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الملخص

تُجيز المادة 114 من قانون أصول المحاكمات الجزائية الأردني للمدعين العامين والقضاة إصدار قرارات التوقيف الاحتياطي. وبعد تعديل المادة عام 2017، يُعامل التوقيف الاحتياطي صراحةً كإجراء استثنائي، ويجب تبريره بأحد الأسباب القانونية المنصوص عليها في المادة 114. ومن هذه الأسباب ضرورة الحفاظ على النظام العام ومنع أي إخلال قد ينجم عن الجريمة. تتناول هذه الدراسة معنى ونطاق النظام العام كمبرر للتوقيف الاحتياطي في القانون الأردني والممارسات القضائية والنيابية. وتستند إلى معايير حقوق الإنسان الدولية والأوروبية، ودروس مقارنة من القانون والفقه الفرنسي، وفقه المحكمة الأوروبية لحقوق الإنسان. وتناقش الدراسة بأن النظام العام مفهوم واسع وغير مستقر بطبيعته. فما لم يُحدد بدقة في التشريعات ويُطبق بعناية في الممارسة، فإنه يُخاطر بانتهاك معايير حقوق الإنسان الدولية بتحويل التوقيف الاحتياطي من إجراء استثنائي إلى استجابة وقائية لمخاوف أمنية أو قلق عام أو رد فعل اجتماعي متوقع. لذا، توصي هذه الدراسة بتعديل المادة 114 بإلغاء الإخلال بالنظام العام كسبب مستقل للتوقيف قبل المحاكمة، أو على الأقل، قصره على قضايا الجنايات الاستثنائية التي يثبت فيها وجود خطر ملموس ومدعوم بالأدلة على الإخلال بالنظام العام، وذلك بالرجوع إلى خطورة الجريمة وظروف ارتكابها ومدى الضرر الناجم عنها. ويجب على القضاء مراجعة هذا الخطر في كل مرحلة من مراحل التوقيف قبل المحاكمة، ولا يُتخذ قرار بالتوقيف أو يُمدد إلا إذا كانت البدائل الأقل تقييدًا غير كافية بشكل واضح.

الكلمات المفتاحية: التوقيف قبل المحاكمة؛ النظام العام؛ قانون أصول المحاكمات الجزائية الأردني؛ المعايير الدولية للتوقيف قبل المحاكمة؛ قانون الإجراءات الجنائية الفرنسي؛ المحكمة الأوروبية لحقوق الإنسان؛ التوقيف التعسفي؛ قرينة البراءة.

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