

## The Human Rights Dimensions of Administrative Detention

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### ABSTRACT

The powers bestowed upon the administrative authorities are quite troubling because these are discretionary powers that directly affect the individual's freedoms. This piece of research speaks about the necessity of controlling the manner in which these authorities utilize their power, and it demands that not only should the powers be used but also that they should be in line with the laws that regulate this exceptional jurisdiction. This research is intended to review the legislation on administrative detention in light of the protection of individual rights and to identify if there is a necessity for a review or a change of certain parts of the law. The research method is based on thorough legal research and involves criticism of the laws with which the researchers disagree and legal perspectives that support the laws. The most important implication of the study has to do with the fact that the law endows the governor with the discretion of employing a wide range of preventive measures envisaged in the Crime Prevention Law including the issuing of a binding undertaking, bail, detention or probation (house arrest) without any restrictions. Said in other words, the governor may do so free of any legal constraint. Moreover, the Jordanian law allows for the lodging of appeals against the governor's decisions under the Crime Prevention Law before the Administrative Court for checking their legality and conformity with the law provisions. In brief, this work is a mirror of the indispensable necessity of revitalizing the laws about administrative detention so as to create a balance between the security of the public and the rights and freedoms of the individual which is to be the outcome of the rule of law and accountability gaining solidity.

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## 1. Introduction

The subject of "The Human Rights Dimensions of Administrative Detention" is an essential topic that delves into the core of human rights and individual freedoms, particularly due to expedited legal and social changes. When God created man, He not only made him but also gave him an

honored and elevated position, as it is mentioned in the Quran: "And We have certainly honored the children of Adam" (Al-Isra). This clearly signifies the great worth that is built into the nature of man and must be safeguarded and promoted by the legal and social systems. Human rights violations are the most obvious and tragic examples of the great gap between the moral values set by the prophets, especially the Prophet Adam, and the present practices that go against those values, which is the quintessence of our modern world. The current situation shows a significant deviation from ethical principles and their transformation into unjust norms which deprive individuals of their dignity. Therefore, it was deemed necessary to define the articles in the Crime Prevention Law, a law that aims at enhancing social security and diminishing crimes by ensuring public order.

The state undeniably considers the challenge of crime as its foremost concern. It is trying to solve this problem by a broad range of laws execution among which we can find the Crime Prevention Law that was first established in 1927 and later modified by law No. 7 of 1954 is at the top of the list. Through this act, the local government is enabled to take preventive measures against crime to a great extent including the use of force if needed. But the law is problematic because it conveys certain issues concerning the authorization of the administrative departments that might be turning into violations of people's rights. The administrative bodies are ordered to execute a series of disciplinary activities that may have a direct impact on people's rights, at the same time, it also raises questions regarding the legality of the arrest carried out by the administrative bodies and if it meets the principle of legality. There are many questions about administrative detention, how far administrative authorities are bound by these provisions, and whether the Crime Prevention Law contains any regulations guiding administrative authorities on how to correctly use their discretionary power when deciding on the seriousness of a crime. Moreover, the issue of whether administrative judges' arrest warrants are subject to judicial review is another question that arises.

This research is important because the administrative authorities have been exceptionally given the power that affects individual freedoms directly. It is, therefore, necessary that those authorities operate under strict supervision and follow the law when they exercise these powers that are under their extraordinary jurisdictions. This act has been objected to by different groups with some of them requesting its abolition and the others seeking changes in certain parts of it. Hence, the present research seeks to provide a comprehensive analysis of human rights aspects of administrative detention by closely examining the related legislation and potential violations, thus helping to understand individual rights and how to protect them.

## 2. Seizure procedures and measures derived from the Crime Prevention Law

The circumstances under which the administrative governor may carry out arrests, the procedures to be followed, and the categories of measures arising from the provisions of the Criminal Code are explained, divided into three sections. The first section deals with administrative detention, the second section explains the procedures that the administrative governor must follow when applying the law, and the final section identifies the various forms of enforcement measures stipulated in the law.

### 2.1. Administrative detention cases

Article 3 of the Crime Prevention Law gave the administrative governor the power to carry out steps to preserve public security and prevent crime. The local Jordanian lawmaker gave the green light to the administration to evaluate the possibility of a criminal risk of an individual even without any actual commission of a crime just on the ground that the person may commit a crime because of the suspicious circumstances around. The administration is allowed to take the person into custody if it thinks that the case will be brought to court (Al-Werikat, 2009). If he is found, these situations are that he is discovered, whether it be in public or a private place, and the governor under such circumstances may be induced to assume that this individual was not only about to commit a crime

but also to help in its execution might be involved in robbery, theft, possession of stolen goods, harboring or sheltering robbers, aiding in hiding stolen goods, or helping in discarding them; being at liberty without a warrant may endanger the lives of others.

The legislator judged the situation of the commission of a serious offense before it happened in these cases and did not use as a yardstick the preceding crime in order to gauge the degree of criminality of those persons subjected to the provisions of the Crime Prevention Law as determined by the administrative authority. The task of evaluating the potential for criminal activity was, however, handed over to the discretionary power of the administrative ruler, who was free of any officer or standard (Anmour, 2008). This goes against the standard of the imposition of preventive measures on a person unless he has been previously convicted of an offense. The judge is incapable of exercising the authority of imposition of preventive measures on an individual if such individual is not involved in a criminal act even though the criminal risk is detected, as set forth in Article 33 of the Jordanian Penal Code No. 8 of 2011 stipulating that a "precautionary bond may be established in the event of a threat insult or the instigation to commit a crime that did not take place, and if there is concern that the convicted person may harm the victim, their family, or property." Therefore, we understand all these provisions to refer to the word "verdict," which means that a judgment against a person who is subject to precautionary measures because of a previous crime must have been rendered. These methods cannot be used for those who have never committed a crime or for the speculation that the accused or the suspect will commit a crime in the future based on administrative authority decisions that are mostly founded on subjectivity, and the thoughts and whims of the persons concerned, which are not supervised. The legislator intended to protect individual freedoms.

The penalization of such instances while the accused is not proven to have actually committed a crime goes against the principle of legality. The principle holds that "there is no crime and no punishment except as provided by law (Nammour, 2004)." A great many modern constitutions, present laws, and the Universal Declaration of Human and Citizen Rights have been setting this principle as their foundation. The Jordanian constitution of 1952 is a good example where it puts this idea clearly in its Article 8 by stating "No man shall be arrested, detained, imprisoned or deprived of his liberty, except by the law stipulations." According to Article 3 of the Jordanian Penal Code (2011), "No penalty shall be imposed unless it is provided for by law at the time of the commission of the offense." Moving away from the principle of legitimacy puts individual's freedom at risk, which the legislator through endorsing this principle intends to protect.

## **2.2. Procedures to be followed by the administrative governor when applying the provisions of the law**

Two procedures must be adhered to, which are:

1. Procedures must be followed before appearing before an administrative judge.

The methods are delineated in Article 3 of the Crime Prevention Law (Law T. C., 1954). The administrative governor summons the individual to present reasons that may preclude their obligation to a pledge, with or without a guarantee (Abouyounes. (2025)), as specified in the second appendix above. The individual shall commit to maintaining excellent conduct for the duration designated by the governor, not to exceed one year. However, if this individual does not manifest within an acceptable timeframe. In such circumstances, the governor may authorize an arrest warrant against him, contingent upon his trial occurring within one week of the arrest date (Law T. C., 1954).

2. Protocols to be adhered to when an individual present themselves before the Administrative Governor.

The methods are defined in Article (5) of the Crime Prevention Law.

Upon the individual's presentation before the governor, an inquiry shall be conducted on the veracity of the information in accordance with established protocols. All potentially significant evidence will also be evaluated. Furthermore, the governor considers any additional evidence he finds pertinent (Law T. C., Article 13) and subsequently adheres to the protocols established by the Crime Prevention Law regarding the administration of oaths, interrogation and deliberation of witnesses, presence of legal counsel, issuance of orders, documentation of attendance, contesting judgments, and executing decisions, mirroring the principles applied in criminal procedures within the courts. This necessitates the subsequent:

No accusation shall be made other than the one specified in the information referenced in the proceedings.

It is unnecessary for the processes enacted under this act to demonstrate that the criminal has perpetrated a particular act.

### **2.3. Types of seizure measures derived from the law**

Upon the individual's appearance before the administrative judge, following the investigation, if the governor deems it unnecessary to impose a pledge on that individual, the governor shall document this in detail in the investigation record and release the individual if detained solely for investigational purposes, in accordance with Article 5, paragraph 3 of the Crime Prevention Law.

However, should the administrative governor reach a different conclusion, he possesses the authority to implement certain control measures delineated by law, which are categorized into three groups (Kanaan, 2009):

#### **1. Bind the person with a pledge**

If the individual's appearance before the administrative judge is followed by an investigation carried out in accordance with law, and the governor, upon consideration of the case, is of the opinion that there are sufficient grounds to impose a pledge upon that person, he shall, in his decision, bind the person with a pledge which is compatible with the points of the attendance or arrest warrant and whose amount or duration is not more than the provisions of either document, in accordance with the second paragraph of Article 5 of the law. This pledge refers to the person's obligation to behave properly during the time specified by the governor, which shall not be more than one year. This undertaking shall not go beyond the provision of security, refraining from acts which may endanger public safety or maintaining good behavior in accordance with Article 5, paragraph c of the same law. This assurance may be a personal one or with guarantors, and it may be a monetary, written, or judicial pledge.

Article 6 provides that: "In the case of a pledge given by a principal or warrantor, the governor's resolution in which he is obliged to maintain security, refrain from acts that may have a negative effect on public security, or be of good conduct, in the event of the warrantee's conviction of committing a crime that is regarded as a violation of the pledge terms, the governor may confiscate the amount of the pledge or bind the warrantee to pay it; the governor's resolution in this respect shall be considered final and it shall implement the procedure related to the juristic provisions under the applicable law."

#### **2. Detention**

There are two kinds of detention, which are as follows:

A. Detention under Article 4 of the law. The governor, upon non-appearance of any person referred to in Article 3 when duly summoned to appear before him, and such person not presenting himself within a reasonable time, may issue a warrant of arrest to apprehend the said individual as per Article 4, and make arrangements for the trial to be held within one week from the date of arrest. The detention took place because an arrest warrant was issued.

B. The detention pursuant to Article 8 of the same statute. It is mentioned in the article that if a person decided to give a pledge is the one mentioned in paragraph (2) of Article (5) and that he did not give a pledge on time, then he should be put behind bars. In the case when he is already in prison, he should continue to stay there until he gives the required pledge or until the time specified in the resolution for the provision of the pledge expires. The duration of time shall not, however, exceed one year.

Article 11 of the same legislation states that the guarantor of an individual's security and good behavior is allowed to file a request with the governor for the cancellation of the guarantee. As a result, the governor will issue an order or warrant directing the police to arrest the warrantee; when the warrantee comes before the governor, the governor will cancel the warranty and instruct him to provide a new one for the remaining period. In the event that the warrantee does not comply with the provision of the warranty, he will be detained until he furnishes it or until the expiry of the duration of the warranty. When the governor comes to the conclusion that the guarantor is not reliable anymore, he can ask the warrantee to find another guarantor with the same terms. However, if the warrantee does not do so within the predetermined period, the governor will cancel the previous guarantee (Law T. C., Article 13).

#### **2.4. Police oversight restrictions**

Article 12 of the aforementioned law stipulates that if an individual is presented to the governor pursuant to Article 4, and the governor determines it necessary to require a bond for good conduct under this act, the governor may mandate that the individual be placed under police or gendarmerie surveillance for a duration not exceeding one year, in lieu of a bond, or both measures may be implemented. Article (12) further authorized the governor to concurrently implement these two seizure procedures against the individual, including submitting the pledge and placing it under police control.

Article 13 of the law delineates the restrictions imposed on individuals under the supervision of the police or gendarmerie, either wholly or partially, as established by the administrative governor (Law T. C., Article 13).

### **3. Justifications for issuing the law and violating human rights laws**

The study included the judicial oversight established by the Crime Prevention Law and the rationale for its enactment. Administrative and judicial detention were analyzed in three sections to clarify the role of the Crime Prevention Law in human rights violations and the procedures derived from its provisions.

The first section addressed the oversight role of the administrative judiciary and previous administrative oversight protocols. The second section explained the justifications for applying the law. The third section clarified the difference between administrative detention and judicial imprisonment, and the fourth section addressed violations of human rights laws.

#### **3.1. Section 1. Administrative judiciary review and previous administrative control procedures**

The decisions of the administrative judges under the Crime Prevention Law as specified by the Jordanian legislator are only open to review by the Administrative Court. Hence, ordinary courts in the respective districts cannot appeal decisions of governors under the Crime Prevention Law. As a result, the conventional courts are not authorized to oversee these decisions since the contested decision was issued by an administrative body (Matthew, 2021, 2022). Indeed, decisions by the Supreme Court of Justice are final and binding right away and no other court has the power to re-examine them (Al-Bousoul, 2008). The Supreme Court of Justice Law No. 12 of 1992 mapped out

the court's jurisdiction and authority to hear all appeals related to the Crime Prevention Law. Consequently, the High Court of Justice was the only one allowed to review the seizure procedures that took place earlier for the purpose of annulment and compensation. Most of the governor's decisions under the Crime Prevention Law aimed at being revoked. The latest revisions to the Jordanian constitution (Law H. C., 1992) put an end to the citizens' deprivation, setting up a two-level administrative judiciary that protects the citizens from the arbitrary actions of the decisions made by governors under the Crime Prevention Law.

Judicial control over the previous administrative measures and actions is a prerequisite for the protection of the individual's rights and freedoms. At the end of the day, these measures infringe on the liberties of the people guaranteed by the constitution. The Administrative Court was limited to deciding on compensation in the case of unconstitutionally made decisions. Those who have been wronged are entitled to bring a suit for compensation for the damages caused by the illegal decisions either as a separate submission from the annulment of the decision or as a third party.

It is found that the legislator's decision to impose high appeal fees has unintentionally strengthened the decisions made under the Crime Prevention Law. The senator suggested that fees for filing a lawsuit against the administrative body's orders be abolished so that the administrative oversight would be more effective and those who feel that they have been wronged can take legal action without facing serious obstacles.

### **3.2. Section 2, Justifications for applying this law**

The termination of martial law in 1989 serves as a justification for the importance of enacting and maintaining the Crime Prevention Law. Moreover, a series of judicial judgments, particularly the current Code of Criminal Procedure, has constrained the authority of the Public Prosecutor to effect arrests solely in the precise instances outlined in Article (114). According to Article 112 of the same statute, the police's authority is restricted to detaining the defendant with spectacles for a maximum of 24 hours. He must be presented to the public prosecutor for investigation.

Judicial detention was restricted to specific cases as outlined in the Code of Criminal Procedure and other legal stipulations, such as the requirement for a complaint from designated individuals before prosecuting the crime of adultery. This objection must be directed at both parties, reflecting the social and tribal dynamics of Jordanian society, which is governed by social norms and traditions, particularly in instances delineated by the clan document bearing royal endorsement (murder, indecent assault, face-cutting) (Hosni, 1998). These factors advocate for the implementation of the Crime Prevention Law. Nevertheless, numerous offenses are perpetrated by hazardous individuals who cannot be prosecuted because to the actions not being classified as crimes, the absence of a registered complaint, or insufficient proof. Consequently, the governor must implement requisite administrative measures to mitigate the criminal risk posed by these individuals and to safeguard societal safety by averting the exacerbation of social issues, particularly those related to public morals, wherein the governor is instrumental in devising solutions through administrative and legal avenues, thereby actualizing the concept of social security.

The lack of legislation to deter criminal activity will result in a security disruption, allowing individuals deemed dangerous criminals, particularly those with prior offenses, to evade oversight, thereby undermining the foundational elements of public order upon which society relies.

### **3.3. Section 3: The difference between administrative and judicial detention**

Even though both administrative and judicial detention are means employed to maintain social security and limit the freedom of individuals who have not been subjected to penal sanctions, they still have different features, which are shown in the table below:

A. Jurisdiction: The decision on administrative detention by the executive authority is a non-judicial entity's decision. It is based on certain legislative texts that are usually related to a particular

period. Only a local court may order judicial detention for the police to conduct further investigation or a trial to be held, or a court may issue the warrant according to the Criminal Procedure Code.

B. Basic principles: If the administration decides unilaterally to impose administrative detention on a person, this is probably because the individual in question is regarded as potentially harmful or even dangerous and is suspicious of the latter. In the case of judicial detention referred to in Article 114 of the Code of Criminal Procedure, it is only the decision of the responsible authority which results in arrest on a specific charge against the defendant that is further supported by evidence.

C. Period: There is no indication of length in the decision to place someone under administrative detention; it can last from only a couple of hours to several days, weeks, or months, and unlike in the case of a criminal act, no evidence needs to be submitted, only the possibility that one might occur. The term of the judicial arrest decision is always mentioned on the spot by the officials who issued it. This duration varies depending on the crime committed and to what extent the maximum punishment stipulated by the law for this offense has not been exceeded.

D. Appeal: The administrative court is competent to deal with the case of a potential false review of the decision on administrative detention, as the latter is an administrative judgment. The decision on judicial detention can be challenged through appeal routes in the regular courts.

#### **3.4. Section 4: Violation of human rights laws**

The fifth article of the Universal Declaration of Human Rights states: "No individual shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment." If a person's absolute authority, which allowed the governor to issue an arrest warrant, is considered a violation of the right to liberty and an affront to the person's dignity, then it is a double violation of those rights if such acts are based on personal motives. Some parts of this law seem to violate Article 5 of the Universal Declaration of Human Rights. However, the Hashemite Kingdom of Jordan signed the statement and agreed to its terms after that. That is a lot of reasons to justify the law repeal and refusal to obey it, or at least, to change its provisions regarding individual liberties in line with the Universal Declaration of Human Rights because international agreements take precedence over domestic law.

The constitution of Jordan devotes a whole chapter to the rights and duties of citizens and guarantees their freedoms in line with the Universal Declaration of Human Rights. As a result, the researcher feels that corruption in the public sector should be directly addressed in order to stay focused on the core topic of our discussion. Corruption is an evil term that is linked to totalitarianism. It is mentioned in the Holy Qur'an more than twenty times in different surahs and language variants. Corruption has been around since the beginning of man, as illustrated by the very first murder when Cain killed his brother Abel, which is the most terrible kind of corruption on earth. Thus, after showing the dark side and the immorality of the soul that is the root of all evil in its most explicit form, Cain went on to widely demonstrate the ways of corruption. At the same time, Abel became the embodiment of goodness by deciding to reject corruption although, in the end, this choice led to his death. Murder is corruption and violation of human rights and is equal to theft and other kinds of serious crimes that are a deviation from moral norms. So, corruption in the public sector is a radical departure from the regulations of a free and dignified life that God has given to the descendants of Adam.

The difference in the relationship between state apparatus, the executive, and the common man, the citizen, the latter being the counterpart in this relationship, is a perfect example of administrative corruption. They are also the final products of that relationship functioning as the administrative process's intended results. Firstly, administrative corruption would not have concealed that relationship or stopped its progress if the results were positive. Secondly, if the results were negative, administrative corruption would have penetrated the center of the administrative process, thereby having a negative influence on the results and leaving the citizens whom the process was supposed to serve, disappointed.

## 4. Conclusion

Those laws which the legislatures enacted to prevent crime in cases of detention of aforethought, seem to have transferred some judicial powers from the court to the executive branch, the latter, however, being the guardian of the individual's liberty, of the government itself. The Jordanian legislator did not consider the prior offense as a benchmark for measuring the criminal severity of the persons subjected to the law. Besides, he empowered the governor to take various measures of a preventive nature under the Crime Prevention Law, such as the imposition of a promise, bail, imprisonment, or supervision by the police (house arrest) without any limitation.

According to the Jordanian legislature, the decisions of the governor under the Crime Prevention Law can be challenged in front of the Administrative Court to ascertain their legality and adherence to the law. The legislator realizes how serious this law is and, consequently, the chance of it violating human rights. The control was put in place to make it easier to revoke this act or to allow appeals against such decisions free of charge, with the losing party bearing the expenses at first. Unfortunately, a few governors manipulate different provisions of this law to achieve their non-explicitly stated goals and, thus, wrongly decide that in arresting people, they contravene the law by doing so without fulfilling any of the three conditions for arrest specified. At first, Article 3 of the Crime Prevention Law was vague. Because of the broadly drawn language, it was impossible to determine the facts of this case, which could have served as grounds for the administrative governor's intervention when somebody was seen wandering in a public or private place without giving any reason for their presence. In this case, the Penal Code is violated by specifying the illegal conduct and the exact penalty since the governor was given a considerable amount of discretion in handling the case's integrity. The laws and regulations relating to administrative detention should be examined in the above cases, while the execution of the crime prevention law should only be restricted to those who are repeatedly engaged in criminal activities so that there is consistency between the law's implementation and public safety, as well as the protection of citizens' rights. On the other hand, the former law empowered the administrative authority to place in prison those individuals who were accused of violating their personal liberty by a criminal act. Therefore, the legal provisions applicable to this matter should be revoked. Since the Crime Prevention Law has not undergone any changes from the time it was first enacted in 1954, it is necessary to reconsider the effect of administrative detention at present and define what constitutes an excessive period of such detention. It is of utmost importance to specify the total amount of the promise or guarantee that the administrative governor requires from the guarantor, as per the provisions of Article (6). The law does not set the pledge value or guarantee, thus the administrative governor can decide any amounts that he finds suitable.

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