



Guarantees of Administrative Detention and Its Impact on Public Freedoms in Jordan

Salem Hmoud Ahmmad Al Adailah

PhD, Assistant Professor, Faculty of Law, Mutah University, Jordan

Email: hmoud@mutah.edu.jo

ORCID: <https://orcid.org/0009-0005-5032-9183>

Abstract: The decision of administrative detention has a negative Impact on public rights and freedom because of its Impact on the life, livelihood and stability of individuals. However, despite its negative effects, this measure is justified In stabilizing and stabilizing society in the public interest. This study examines the definition of administrative detention as well as make a comparison with judicial detention and its legal nature. The study then examines the justification for the detention and Its impact on the public freedom of individuals.

The study concludes that such detention has a negative impact on the rights and freedoms of individuals, as well as the colliding with the principle of separation of powers between the authorities through interference with the jurisdiction of the judiciary, which is the competent body to authorize such detention.

The study recommends that this power of detention should be restricted in order to avoid its negative Impact, such as subjecting detention decisions to direct judicial jurisdiction and not limiting It to judicial appeal only to avoid undue expansion of authorizing it.

Keywords: administrative detention, justifications for detention, guarantees of detention, public freedom.

Received: 15 March 2024

Revised: 24 May 2024

Accepted: 16 June 2024

1. Introduction

Administrative detention is considered a severe measure that infringes upon the rights and freedoms of individuals. However, it is a necessary measure, and most legislations adopt this approach by granting the administration this authority according to constitutional guarantees that must be taken Into consideration. However, legislations differ in their view of this measure and the extent of Its justifications and its impact on individuals In pursuit of the public interest. Since the circumstances faced by each state differ due to various factors and exceptional or natural conditions, the legislator grants such authority to the executive authority to achieve the objectives of administrative control, particularly public security and public tranquility. Based on the above, the study has been divided into three sections: In the first section, we discussed the nature of administrative detention. Then, in the second section, we addressed some constitutional guarantees in facing administrative detention. Finally, in the third section, we discussed the justifications for administrative detention and its impact on public freedoms.

1.1 Research Problem

The research problem lies in the impact of the detention powers granted to the administration on public freedoms and Its negative reflection on the rights of individuals, despite the supposed guarantees that

must be taken into consideration and which the administration must comply with when resorting to such a measure.

1.2 Research Objectives

The objectives of the study are to attempt to reach legal controls to prevent the excessive use of administrative detention by the administration or, at the very least, minimize its use in order to mitigate its negative effects as much as possible.

1.3 Research Questions

1.Are decisions of administrative detention subject to judicial or administrative public prosecution control when used by the administration?

2.Do detention decisions affect individuals' freedoms such as freedom of work, movement, and expression?

3.What is the impact of the lack of awareness and culture of the targeted group of administrative detention on expanding its use as a control measure?

4.Are there any alternatives to administrative detention that mitigate its negative effects?

5.Did the legislator consider constitutional guarantees before granting the administration the power of administrative detention?

1.4 Study approach

The researcher used a descriptive and analytical approach to legal texts and judicial rulings related to the subject of the study, regarding the impact of detention on public rights and freedoms.

Firstly: Study significance

This study aims to demonstrate the impact of administrative detention on rights and public freedoms in light of the expansion of the administration's use of this authority and the negative repercussions that follow, despite the constitutional guarantees that have been considered

The nature of administrative detention

To understand the Impact of detention on individual freedoms as a non-punitive measure, we will discuss in this topic: the concept of detention In general and administrative detention in particular (first requirement), due to Its impact on individuals' rights when facing administrative authorities, and its effect on determining the ability of individuals to appeal against the effects of this measure. Then, we will discuss the legal nature of administrative detention.

The concept of detention

To understand the concept of administrative detention, we will first discuss the concept of judicial detention, and then we will discuss the concept of administrative detention by comparing them in terms of the common purpose of restricting the freedom of the targeted person.

the concept of judicial detention

The Jordanian legislator described judicial detention as an exceptional measure without delving into a comprehensive definition, clarifying its purpose. Article (114/1) of the Code of Criminal Procedure, 1961 and Its amendments, states: "Detention is an exceptional measure, and detention shall only be carried out if It is the only means to preserve evidence or material evidence of the crime, or to prevent coercion of witnesses or victims, or to prevent the complainant from contacting his partners in the crime, or those involved or inciting it, or if the purpose of detention is to protect the complainant himself or to put an end to the effect of the crime or to avoid its recurrence, or to prevent the complainant from escaping, or to prevent any disruption to public order caused by the crime".

While jurisprudence defines judicial detention as "the confinement of the accused for a period required by the interest of the investigation, according to legal procedures and regulations, from the beginning of the investigation until the transfer to the court, which becomes the authority to continue detaining or

releasing the accused based on the circumstances and details of the case and the evidence available to it," despite the fact that detention is similar to freedom-restricting penalties, it is not considered a punishment because there is no conviction against the accused (presumed innocent) according to the jurisprudential rule that there is no crime or punishment without a text. Some argue that it is a method of coercing the accused in order to obtain information that aids the investigation and helps determine their guilt. Others see it as a means of investigation because the accused is constantly under the control of the investigator, who can interrogate or confront them with others, and it is considered a means to ensure the execution of the punishment in the event of a verdict. Therefore, it is a method imposed by the nature of investigation in criminal cases, public prosecution, or members of the judicial police, according to the legal regulations granted to them by the law. We believe that the best definition of judicial detention is the comprehensive definition of its purposes, according to Article 114 of the Code of Criminal Procedure, which we referred to earlier and refer to it to avoid repetition.

the concept of administrative detention

Scholars have differed in defining administrative detention, some of whom defined it as "the confinement of a person in a place and preventing them from communicating with others or moving from their place or performing any action except in the field determined by the authority ordering it" (Ismail Salama, 1983).

Some see administrative detention as a means used by administrative authorities to restrict the freedom of a person who is expected to pose a danger to public order according to the law (Mansour, 1996). Others argue that it is the act of a non-judicial administrative authority, based on a legal or regulatory provision, to detain a person for a specified period without committing any legal crime (Boukheili, 1996). Another aspect of jurisprudence views it as a measure resorted to by the administration to maintain public security (Hassoun, 1988). Another definition describes it as a temporary deprivation of liberty carried out by the administrative authority to protect public security (Ghiebriyal, 1991). Yet another defines it as a decision by the administrative authority aimed at preserving public security from the danger posed by an individual according to the provisions of the law (Al-Sanousi, 1995).

By studying these definitions, we find that they all agree on several points, the most important of which are:

- 1) an administrative procedure issued by the executive authority.
- 2) a preventive measure taken by the administration to protect public order.
- 3) a measure aimed at preserving public order in all its elements, most notably public security.
- 4) the measure is taken against a person who has not committed any crime, but the circumstances surrounding him suggest a security concern to the administration.
- 5) this measure is directed against individuals who predominantly exhibit criminal and dangerous characteristics.

As expected, the judiciary did not lean towards defining administrative detention by relying solely on the jurisprudence or on a general concept. We find that the Jordanian judiciary focused on the procedural aspect of detention and on the jurisdiction, stating that the authority to issue such an order lies with the administrator, in addition to the element of the goal represented by the preservation of public order.

We can define administrative detention as a precautionary measure issued by an administrative decision that aims to restrict an individual's freedom indefinitely without charge or trial in order to maintain public order.

Similarly, the Egyptian judiciary has emphasized the need for the elements of the administrative decision to be present in detention orders, such as the reason for the detention being the person's danger to society through consistent actions that indicate a potential threat to public order (Administrative Judiciary, No. 5024, 1956).

We see that the Egyptian administrative judiciary aligns with administrative jurisprudence in terms of the importance of detention in preserving public order. Detention is a restriction of personal freedom taken

by the administration based on considerations that target the public interest as a preventive measure to prevent any potential crime. This measure can be appealed before the administrative judiciary for cancellation and compensation, unlike criminal detention, which can be appealed through an appeal and cannot be compensated for.

In addition, detention must be based on clear facts indicating the intention of the person targeted by the measure, whether they are material facts related to specific actions or personal facts related to the person's history and background, based on data that leads to a logical and rational conclusion of the intention to commit the crime. This is different from criminal detention, which is based on criminal evidence within subsequent procedures after the crime has occurred (Mahgoub, 1999).

There is no doubt that administrative detention causes moral and material harm to the detained person, as it deprives them of work and the resulting earnings, and may even deprive them of their job. Additionally, this has a negative impact on their reputation based on actions that do not guarantee any criminal act but are built on the administration's judgment of the necessity to prioritize the public interest over the detainee's private interest (Halmi El-Dakouki, 1992).

Secondly: The legal nature of detention decisions

Jurisprudence and the judiciary have concluded that the legal nature of detention decisions is administrative decisions. However, are these decisions temporary or continuous administrative decisions? This has implications for determining the deadlines for appeal, as well as the extent to which the person targeted by these decisions is entitled to compensation. Additionally, is it also a preventive or therapeutic decision? Consequently, it is necessary to provide certain guarantees for the benefit of the targeted group of these decisions before the judiciary.

To answer the above, we must clarify the characteristics of administrative detention, which are as follows:

detention decisions are subject to administrative judiciary control

Jurisprudence and administrative judiciary have established that detention decisions are administrative decisions arising from the will of the administration, which is bound by its authority under legislation in pursuit of public interest. Therefore, detention decisions are subject to administrative judiciary control as administrative decisions that must fulfill all the elements of an administrative decision, including cause, jurisdiction, place, form, procedures, and purpose.

The Supreme Court affirmed this by stating: "...the issuance of a detention order against individuals who pose a threat to public security is considered an administrative decision subject to administrative judiciary control and compensation" (Supreme Court, No. 43/2001).

The Egyptian administrative judiciary also confirmed this in one of its judgments: "Administrative decisions made to implement customary laws fall within the jurisdiction of this court" (Administrative Judiciary, No. 984, 1955).

This was also confirmed by the Egyptian Constitutional Court, stating: "...it is not difficult to demonstrate the administrative nature of detention decisions, as they are issued by the executive authority, which exercises one of its administrative functions to achieve one of the objectives of administrative control entrusted to the administration to maintain public order" (Constitutional Court, No. 55 of 1986).

The administrative judiciary's oversight of this procedure takes the following forms:

- 1-Verifying the material existence of the facts, which are the facts that require the implementation of detention measures.
- 2-Verifying the legal conformity of the facts, meaning that the material facts constitute a violation of public order as intended in the law on crime prevention, i.e., they are the same facts that the legislator intended to prevent by granting the administration this authority (Al-Saraira, 2016).

detention decisions are considered continuous decisions

Detention decisions have a lasting and renewable effect, and these effects do not end with the issuance of the decision, which means that they can be challenged at any time without being restricted to a specific

deadline (Gabriel, 1991). Initially, the Egyptian judiciary disagreed with this and did not consider them as continuous decisions, but rather temporary decisions with a continuous effect. The Egyptian Administrative Court ruled: "It is not true that the detention decision is renewed every day, as this decision creates a legal status for the detainee, restricting his freedom, and he remains under the control of the authority responsible for public security for an unlimited period. This legal status remains in effect as long as the detention decision is in place, and therefore the continuation of the detention is only a continuation of the effect of the issued decision, not a decision to renew the detention every day" (Egyptian Administrative Court, 4786, 1978). Based on this interpretation, the detention status continues indefinitely as long as the validity of the decision is dependent on the time it was made, even if the duration of the detention is extended. However, the Egyptian Administrative Court later reversed this interpretation and affirmed, with the support of the Supreme Administrative Court, that detention decisions are continuous and not restricted by appeal deadlines. The court stated: "It is not permissible to assume that the suspicion or danger that led to the detention at a certain time should continue indefinitely, and for that to happen, serious evidence of the continuation of the situation must be accompanied by new facts that are revealed" (Supreme Administrative Court, number 675, 1987).

In support of the Egyptian judiciary's effort to consider detention orders as temporary decisions with continuous effects, it is necessary to adhere to the deadline of filing an appeal within 60 days from the date of the detention order. The Jordanian administrative judiciary has also followed the same approach, as the Court of Cassation stated: "The governor of the capital issued a decision to detain a person, and the lawsuit was filed seven months after the issuance of the detention order, which the defendant was aware of. Therefore, the lawsuit is required to be formally responded to after the expiration of the appeal period" (Jordanian Court of Cassation, 59/2014).

Then, the Jordanian administrative judiciary adopted the same approach as the Egyptian administrative judiciary and considered detention orders as continuous decisions that do not have a specific deadline for filing an appeal due to their ongoing effects. The administrative court stated: "Our court finds that the decision to detain the respondent is one of the continuous administrative decisions that do not exhaust its subject matter upon issuance or after a specific period of time, as its effects are renewed due to its nature until it ends through one of the legally prescribed ways of expiration of administrative decisions. Therefore, the appeal against it is not restricted to a specific deadline until its expiration" (Jordanian Administrative Court, Case No. 107/2020).

Justifications for the administrative ruler's powers of detention and their impact on freedoms.

The legislator has granted the administrative ruler extensive powers of detention, in accordance with the objectives of administrative control, while balancing between individuals' rights on one hand and the goal of maintaining public security on the other, in order to uphold the principles of the general order. In this topic, we will discuss the targeted categories that can be subjected to the administrative ruler's powers of detention, followed by the powers that the administrative ruler must have (first requirement). Then, we will discuss the impact of detention on freedoms for the targeted category under the crime prevention law (second requirement).

Justifications for Detention and Its Impact on the Targeted Groups under the Crime Prevention Law

In this article, we discuss the groups for which the governing administrative legislator has granted the power of detention, as applied under the Crime Prevention Law.

the suspects

According to Article 3, Section 2 of the Jordanian Crime Prevention Law (Law on Crime Prevention, 1954): "If the administrator is contacted or if he has reason to believe that there is a person in his jurisdiction who belongs to a category mentioned below and he sees sufficient reasons to take action, he may issue a summons to the mentioned person in the form specified in this law. The person is then required to appear before him to clarify whether he has reasons that prevent him from being bound by a pledge, either with or without bail, as specified in the second appendix of this law. He must undertake to have good conduct during the period determined by the governor, not exceeding one year. 1. Anyone found in a public or private place under circumstances that convince the administrator that he was about to commit a crime or assist in its commission 2. 3"..... .

Here we find that the legislator has given the administrator broad discretionary power to detain for the purpose of preventing crimes against anyone found under circumstances and within data that logically and rationally lead to an intention to commit a crime. We emphasize that this type of data does not mean that the person in question has started to commit criminal acts and entered the circle of criminal initiation, which is punishable by the penal code – because this falls within the jurisdiction of the regular courts. Rather, the intention is that the actions carried out by the person in question are still within the scope of preparatory acts that are not punishable by criminal law but precede the stage of initiation and are connected to the intentions of the suspect, from which his intention to commit this act is deduced. We find that this authority is largely subject to the discretionary judgment of the administrative judge, as the legislator used the term "convinces the administrator that he is about to commit a crime".

It can also be understood from this text that the actions that led to the conviction of the administrative judge are directly preceding the intention to act, without any delay in time, because the phrase "about to" used by the legislator means that the time interval between the intention and the immediate execution is very short, barely allowing the administrative judge to take preventive measures to prevent the act.

The administrative judge is not granted this authority if the preparatory acts themselves constitute a crime punishable by law, such as the crime of criminal conspiracy stipulated in Article (157) of the penal code

individuals who are accustomed to theft are targeted by these powers. under Article 3, Clause 2 of the Crime Prevention Law, which states: "2- Anyone who Is accustomed to theft, robbery, possession of stolen property, protecting thieves, harboring them, assisting in hiding stolen money, or dealing with it." Here, we find a great danger to freedoms - contrary to previous cases – towards individuals who are accustomed to theft, robbery, hiding money, or assisting thieves or harboring them. We are faced with a unique situation where administrative authorities are granted the power to confront individuals who have been legally convicted and have had judicial sentences executed against them. This is as if we are making the crime they committed a perpetual sword hanging over them, which pushes them to remain in the circle of criminal life. This is unlike the previous case, which is more realistic, as it is based on the actions of the target that convince the administrative authorities of the necessity to take preventive measures against them to prevent them from carrying out their intentions. However, in this case, we are facing a person who, although they have made multiple mistakes in the past, has not committed any act that suggests their intention to repeat the offense. Otherwise, they would be included in the first category we discussed earlier. This is where the danger lies because it closes the door to repentance and reinforces resentment towards this category, whose guilt is limited to a previous mistake for which they were punished. Instead of giving them a new rehabilitative opportunity and showing them the path to return to society, we find that the legislator tightens the noose on them, pushing them to remain in the circle of criminal acts and the center of suspicion within the black community.

We see that this situation contradicts logic and justice if it does not include the word "habitual". The person who has been previously tried and punished should be treated differently to discourage them from repeating these actions, so that they feel the society's confidence in them and feel ashamed of their misconduct. Moreover, this action contradicts one of the main goals of rehabilitation centers, which is to reintegrate individuals into society. This authority granted to the administrative ruler may lead to the individual feeling frustrated and lacking society's trust, thus undermining all the efforts made to rehabilitate them as if nothing has changed. Therefore, we believe that a repeat offender, as defined in Article 100 of the Penal Code, is not worthy of trust again, and it is necessary to find means to ensure that they do not repeat criminal acts after disappointing society for the first time. Hence, we see that the wording of this paragraph aligns with logic and reality by including the word "habitual," meaning they have repeated their criminal behavior more than once, and this does not deserve society's trust unless they prove themselves worthy of it.

Thirdly: Suspected dangerous individuals

The administrative governor has been granted the power of detention against individuals or a group based solely on the belief that their presence poses a danger to people. This is stated in the third clause of Article 3 of the Crime Prevention Law: "3. Anyone in a state that makes their presence freely dangerous to people." The legislator has granted this authority towards a reckless group that disregards the safety of

others, and it is not hidden from the administrative authority the danger it poses. However, this does not mean that this authority does not pose a significant threat to individual freedoms, similar to its precedents.

Despite the importance of this provision in confronting individuals who pose a threat to public safety, the wording of this paragraph is vague and poses a real danger to individual freedoms, providing fertile ground for encroachment upon them. This can be referred to as arbitrary detention by the administrative governor without any oversight of their discretionary power. As a result, it has created a state of weakened trust in the law and those responsible for its enforcement. Therefore, it was necessary for the legislator to restrict this authority with specific controls to ensure its non-abusive use. This was affirmed by the National Center for Human Rights in Jordan, citing the lack of clarity and precision in this paragraph, which allows the administration an opportunity to encroach upon individual freedoms (Annual Human Rights Report, for the years 2019, 2020).

It is worth mentioning that the actions committed by an individual that make their presence freely dangerous to people can constitute a criminal offense that prevents the administrative governor from exercising this authority, such as the crime of disturbing public peace and the crime of drunkenness accompanied by rioting. Therefore, it is preferable to refer these cases to the criminal judiciary.

By reviewing previous cases, we find that they have broad and vague implications based on the absolute conviction of the administrative ruler, whether it is someone suspected or someone who is accustomed to theft or the danger of alcohol consumption on people. This makes the fate of these groups under the discretionary authority of administration without any controls or limits. This has led to varying court decisions. For example, the judiciary considered that the absence of a tribal reconciliation does not justify detention (Jordanian Supreme Court, No. 614/1999), while we find a contradictory ruling that found that the absence of a tribal reconciliation constitutes a danger and justifies detention (Supreme Court, No. 486/2005). On the other hand, the court stipulated that for someone who is described as a habitual thief, several final judicial rulings must be issued against him, and the provision does not apply to him as long as the record of his previous convictions does not include final judgments (Hattamla, 2015, Al-Shatnawi, 1996). Then we find it contradicting this interpretation by stating that there is no basis for objection that the cases referred to the court did not have judicial rulings as long as they indicate his danger in society (Supreme Court, No. 551/1999). From our side, we support the judicial decision that requires the issuance of several final judicial rulings to agree with the law in text and spirit, and to agree with one of the most important legal principles, which is the principle of "Innocent until proven guilty." It is not permissible to rely solely on the danger to society to resort to this condition, given the explicit legal text that includes the word "accustomed."

By reviewing the powers of detention towards targeted groups, despite their importance, they do not reach the level of granting the administrative ruler powers that are closest to the powers granted to the administration in exceptional circumstances. These justifications are based on assumptions that are subject only to the discretion and convictions of the administration, which decides to activate the duration of these powers to the extent that it can encroach on the rights and freedoms of individuals under the pretext of maintaining public order.

The administration may resort to this measure to achieve a purpose related to the public interest but not related to public order, and its decision and this situation are considered illegitimate, perhaps violating the rule of specifying objectives.

Although the powers granted to the administrative ruler are exceptions to the rule, as detention powers are primarily for the judiciary, we find that they have exceeded the rule and enjoyed the power of detention beyond what the judge possesses. For example, the Jordanian Code of Criminal Procedure in Article 114 specifies detention periods for the public prosecutor that cannot be exceeded. For example, detention periods in cases where the crime carries a punishment exceeding two years are (7) days and for a period of (14) days if the act attributed to the accused is punishable by a criminal penalty. The extension is only allowed for misdemeanors for one month and for a period not exceeding three months if it is punishable by a temporary penalty, and for six months in other felonies. If the public prosecutor wishes to

extend the detention period in felonies beyond what was mentioned, he must submit the matter to the competent court.

We see that the authority of the public prosecutor is limited to specific periods, while we have not found any text that restricts the administrative governor in this regard, as the law on crime prevention grants the administrative governor unrestricted authority for specific periods. This poses a major challenge to the rights and freedoms of individuals, which contradicts the basic principles of human rights that constitutions generally uphold. Despite our inclination to set a specific duration for administrative detention, following the example of judicial detention, this does not necessarily mean that the durations of detention are compatible in both cases. However, we believe it is necessary to establish regulations for the duration of administrative detention, even if these durations are sometimes subject to direct judicial oversight, in order to prevent harm caused by the unrestricted exercise of this authority on certain targeted groups within society, which negatively affects the preservation of public order.

The Impact of administrative detention on freedoms

Granting administrative rulers the power of detention without any necessary action is a serious contribution to the violation of freedoms that constitutions have sought to protect. Especially since the powers of the administrative ruler in this matter are not subject to any oversight except by the judiciary, given the broad discretionary power of the administration in this field. However, they are not oblivious to the importance of this measure in protecting public order by the authorities of administrative control.

However, by granting the administration such authority, the legislator has disregarded two of the most important principles on which states are based: the principle of separation of powers and the principle of judicial independence. This blurs and confuses the legal position of the accused before the principles of criminal proceedings and their procedures, and the legal position of the suspect before the authorities of administrative control. The legislator has worked to strip the judiciary of its powers, distorting its image as a guardian of freedoms. (Asfour, 1968)

One of the most common forms of abuse of this authority by the administration is its use for the purpose of silencing voices and suppressing freedom of opinion. It becomes difficult for anyone to express themselves or criticize the administration for fear of this authority being used against them. On one hand, and on the other hand, how can one exercise this right while being confined in prison? Laws are meant to regulate and protect freedoms, not to restrict them. Therefore, restrictions on freedoms should only be imposed when necessary. (Hattamla, 2015)

In addition to the fact that the regulations and rules regarding detention are not sufficient, which may infringe upon personal freedom, this system also violates the rights and freedoms guaranteed by the constitution, including the freedom of movement and the right to seek justice or a fair trial. This system contradicts some of the established rules in criminal law, the most prominent of which is the presumption of innocence and the requirement of explicit evidence for any crime or punishment.

One of the rights that a person may be deprived of due to this authority is the right to freedom of movement, which in turn deprives them of the right to work and has repercussions on their future and the future of their family. Not to mention the impact on scientific, cultural, and sports creativity, as well as participation in political work and holding public positions.

Especially since the judiciary has allowed the administration the right to restrict these freedoms. In the law on crime prevention, whether through detention, house arrest, or imposing good conduct obligations or multiple restrictions together. The Supreme Court stated in a ruling: "If a person is present or If the administrator orders his assignment based on Article 4 and deems it necessary to require him to provide a pledge of good conduct according to this law, it is permissible for him to order his placement under the supervision of the police or gendarmerie for a period not exceeding one year instead of providing a pledge or both, in accordance with Article (12) of the Crime Prevention Law No. 7 of 1954".

In order to avoid negative effects on rights and freedoms, it would be preferable if the legislator adopted a law to prevent crimes similar to what was done in Article (114) of the Criminal Procedure Code, which granted the judiciary some alternatives to judicial detention. This would give the administration the

authority to use these alternatives, such as electronic monitoring, travel bans, or any other means deemed appropriate as an alternative to detention

To demonstrate the impact of detention on rights and freedoms, we will discuss the violations of public freedoms documented in some human rights monitoring reports and reports from the National Center for Human Rights (Helsa, 2020)

a report from a human rights monitoring organization stated that the report.

which was over forty pages long, was based on numerous interviews with individuals who had been affected by the abuses of administrative power. The report highlighted serious violations of their freedoms, such as arbitrary arrests without following proper legal procedures, as well as the misuse of power through unjustified arrests accompanied by torture, humiliation, and mistreatment (Human Rights Watch, 2009).

The report also revealed several findings, the most significant of which was the disregard for the provisions of the Criminal Procedure Code, which allows for a maximum detention period of 24 hours. Article 100/b of the Criminal Procedure Code (Criminal Procedure Code, 1961) states that "...the suspect shall be heard immediately upon arrest and sent within twenty-four hours to the competent prosecutor's office along with the record referred to in paragraph (a) of this article. The prosecutor must record the date and time the suspect was first presented before him, and initiate the investigation within twenty-four hours in accordance with the procedures." However, Article 4 of the Crime Prevention Law states that "if any person mentioned in Article 3 receives a summons to appear before the administrator and fails to do so within a reasonable period, the administrator may issue an arrest warrant for that person, and the trial must take place within a week from the date of arrest." Moreover, it is worth noting that the administration does not have the authority to conduct trials, as this power is reserved for the judiciary.

Reports from the National Center for Human Rights (NCHR) (National Center for Human Rights, Jordan, 2019)

The NCHR report for the year 2018. expressed the opinion of its administrators regarding the unconstitutionality of the Crime Prevention Law due to its explicit violation of the principle of separation of powers, especially since the oversight of the administrative judiciary is practically ineffective as it comes after the implementation of the decision and subjects individuals to long periods of detention. Additionally, the report highlighted the rare cases in which the affected individuals resort to the judiciary due to the costs and delays involved, preferring to seek alternative means in this matter

The report stated that the law contradicts the wording and concept of Article (128/1) of the constitution, which states: "Laws issued under this constitution to regulate rights and freedoms shall not affect the essence of these rights or undermine their foundations." Meanwhile, the NCHR documented 37,683 cases of detention during the year 2018, surpassing all previous years' numbers

The NCHR emphasized the necessity of rephrasing Article 3 to precisely define the cases in which detention is permissible, considering the vague phrases it currently contains, as discussed earlier.

According to the National Center for Human Rights report for the year 2019. there have been no amendments to the law on crime prevention, and therefore no changes to the policy of using administrative detention against individuals. This confirms their consistent stance on expanding this matter, as the center recorded a total of 37,853 administrative detainees during this year, compared to 37,683 in 2018, 34,952 in 2017, and 30,138 in 2016 (National Center for Human Rights, 2019).

The National Center for Human Rights report for the year 2020 confirmed that there is no intention by the executive authority to propose any amendments to laws affecting individual freedoms and their right to a fair trial by imposing judicial oversight on detention decisions. The report also highlighted the absence of provisions invalidating detention decisions made without considering the procedures outlined in the Criminal Procedure Law, which requires administrative judges to follow before making detention decisions. Additionally, there is no indication of the executive authority's intention to provide free appeals to the administrative judiciary or legal assistance to the targeted group affected by the crime prevention

law, either through the Bar Association or the Ministry of Justice (National Center for Human Rights, 2020, p. 17).

Thirdly: The position of the Special Rapporteur on the issue of torture

During his visit to Jordan in 2006, the Special Rapporteur on the Issue of torture issued a report stating that this Issue is ongoing and persistent, and getting rid of It faces several obstacles, the most important of whichh is the lack of awareness among those affected by this issue, in addition to the rarity of accountability cases for its practitioners. It has started to transition from an individual approach to an institutional approach, and the Rapporteur expressed his conviction of the unconstitutionality of the law prohibiting crimes and also the policy of administrative detention accompanying ill-treatment during detention. (Helseh, 2020)

The position of the committee established under the International Covenant on Civil and Political Rights on the law prohibiting crimes.

This committee issued Its recommendations in its periodic report for the year 2011 regarding the law prohibiting crimes, criticizing this law and stating that it enables the administrative ruler to detain any person based on his beliefs without explicit accusation or judicial order. Due to the rarity of resorting to courts to challenge these powers, whether due to litigation costs or their lengthy duration, the administrative control authorities can continue to detain individuals indefinitely. (Helseh, 2020)

The position of the Committee against Torture established under the United Nations Convention against Torture.

The committee expressed its objection and concern about the powers of administrative control authorities in dealing with individuals, including the possibility of indefinite detention, and that detainees face administrative surveillance without any oversight, unlike their submission to limited judicial supervision under various procedural texts. The committee recommended that Jordan abolish the power of administrative detention in accordance with international human rights standards. (Helseh, 2020)

2. Conclusion

After conducting a study on administrative detention, its nature, justifications, and its impact on public freedoms, the following results and recommendations were reached

Results

- 1.The authority of administrative detention is an encroachment by the executive branch on the jurisdiction of the judiciary, thus undermining the principle of separation of powers
- 2.Administrative detention affects individuals' freedoms of expression, as this authority is often used to silence public opinion activists and opposition members. It also affects individuals' freedom of movement, which in turn affects their ability to work, leading to a negative impact on their strength, the well-being of their children, and the future of their families. Additionally, it has a negative impact on artistic, cultural, and sports creativity
- 3.One of the reasons for the abuse of administrative detention by the administration is the lack of awareness among those targeted by this procedure, as it is often directed towards less informed groups, contributing to the increase in this phenomenon and the abundance of administrative detainees
- 4.The law on crime prevention has not provided alternatives to administrative detention that can avoid its effects, similar to what is stated in the Code of Criminal Procedure

Note: The translation may not be an exact representation of the original text

Recommendation

- 1.Amend the law prohibiting crimes by setting a time limit for the administration's authority in administrative detention, and then subjecting the detention decisions to the scrutiny of the administrative prosecution, not just through appeals before the administrative judiciary for cancellation and

compensation. This enhances the legitimacy of these decisions and confirms the principle of separation of powers

2. Amend Article 3 of the law prohibiting crimes, which grants the administration the power of detention, and link it exclusively to specific cases to avoid its exploitation in silencing opposition and public opinion activities, and to avoid its impact on individuals' freedom of movement, work, livelihood, and creativity

3. Raise awareness among individuals targeted by administrative detention decisions about its negative impact on their lives and freedoms, and educate them through courses or media publications to prevent the administration from unlawfully exploiting this authority

4. Amend the law prohibiting crimes to take into account what is stated in Article (114) repeated from the Code of Criminal Procedure, In order to find alternatives to administrative detention, while considering the reasons and justifications for each, as administrative detention is a preventive measure, but this article includes provisions that help mitigate the negative effects of this measure, such as

5. Activate electronic monitoring of individuals targeted by the law prohibiting crimes to restrict their movement within a specific geographic area. Although this restricts freedom of movement, it is less severe than detention in prisons

6. To prevent the target of the crime prevention law from leaving the country, a travel ban is imposed on them, eliminating the possibility of escaping the consequences of their actions if they are allowed to travel.

7. The national identification number of the target of the crime prevention law is disabled, preventing them from conducting any legal transactions within official circles or banks, such as buying, selling, renting, mortgaging, or licensing services. They are also deprived of borrowing from banks or dealing with their accounts, except for transactions related to the rights of others, such as their family rights or those involving their basic rights, such as medical treatment or the right to litigation

References

- [1] Dr. Ahmed Jad Mansour, Judicial Protection of Human Rights, PhD thesis, Ain Shams University, 1996.
- [2] Dr. Adib Hilsa, The Law of Crime Prevention between the Requirements of Administrative Control and Respect for Rights and Freedoms, Journal of Legal and Political Sciences, Scientific Association for Research and Strategic Studies, Volume 25, Issue 4, Tenth Year, September 2020.
- [3] Dr. Ismail Salama, Pretrial Detention (A Comparative Study), PhD thesis, Cairo University, 1983.
- [4] Dr. El Akhdar Boukheil, Pretrial Detention in Algerian Legislation, PhD thesis, Cairo University, 1996.
- [5] Dr. Hassan Al-Masrafawi, Pretrial Detention and Guaranteeing Loan Freedom in Egyptian Legislation.
- [6] Dr. Helmy El-Dakdouki and Naguib Miftah, Judicial Oversight of the Legitimacy of Arrest Decisions, 1992.
- [7] Dr. Salim Hatamleh, a research entitled: Administrative Detention Provisions and Objective and Procedural Guarantees, a study in Jordanian law, Journal of Administrators and Social Sciences, Sultan Qaboos University, Volume 2, Issue 9, 2015.
- [8] Dr. Saleh Al-Hassoun, Judicial Encyclopedia, Dar Al-Raid Al-Arabi, Beirut, 1988, 1st edition.
- [9] Dr. Sabri Mohamed Al-Sanusi, Administrative Detention between Personal Freedom and the Requirements of Public Order, PhD thesis, Cairo University, 1995.
- [10] Dr. Azza Ali Al-Mahjoub, Administrative Detention and the Extent of its Subordination to Judicial Oversight, Cairo, untitled, 1999.
- [11] Dr. Ali Al-Shatnawi, 1996, Studies in Administrative Control, Amman, Al-Fahd Publishing Center.
- [12] Dr. Mohammed Al-Halabi, Concise Principles of Criminal Trials, Dar Al-Thaqafa, Amman, 1997.
- [13] Dr. Mohammed Asfour, Independence of the Judicial Authority, Dar Al-Nahda, Cairo, 1968, p. 91.
- [14] Dr. Mahmoud Hassani, Explanation of the Criminal Procedure Law, Dar Al-Nahda Al-Arabiya, Cairo, 1982.

- [15] Dr. Musleh Al-Sarayrah, Administrative Law (Volume 1), Dar Al-Thaqafa, Amman, 2016.
- Dr. Wajdi Thabit Al-Gharbal, Appeals in Administrative Detention Orders before the State Security Court, Dar Al-Nahda Al-Arabiya, Cairo, 1991.
- [16] Website of the National Center for Human Rights. <https://www.nchr.org.jo/>
- [17] Qararak Electronic Website for Legislation and Judicial Decisions. www.qarark.com.
- [18] Qistas Electronic Website for Legislation and Judicial Decisions. <https://qistas.com/ar/oldsystem/login>.