



## **Administrative Detention in Light of Human Rights**

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Received: August 25, 2022; reviews: 2; accepted: October 26, 2022.

### **Abstract**

The significance of this study lies in the fact that the competencies granted to administrative rulers are discretionary procedures and constitute a direct violation of the peoples' freedom; therefore, it must be practiced to the narrowest limits and adherence to the legal rules that organized this exceptional jurisdiction. As a result, this law has come under fire from various groups, with some calling for its repeal and others for the amendment of specific provisions. The most important finding of the study is that the law, He also granted the governor the right to sign all kinds of precautionary measures under the Crime Prevention Law, namely binding a pledge, bail, imprisonment, imprisonment, or placement under police control (house arrest) without restriction. The Jordanian legislator has also subjected the governor's decisions under the Crime Prevention Law to be challenged before the Administrative Court to ensure the legitimacy of these decisions and their consistency with the provisions of the law.

### **Keywords**

Administrative Detention, Human Rights, human rights violations.

### **Introduction**

Man is the most dignified creature, for he has been honoured by Allah Almighty since the creation of Adam (PBUH) until the Day of Judgment. Allah Almighty said: "*Indeed, We have dignified the children of Adam, carried them on land and sea, granted them good and lawful provisions, and privileged them far above many of Our creatures.*"<sup>1</sup>

Another evidence can be seen in the behaviour of the Prophet of Allah when a funeral passed by him, he stood up, and his companions said: '*O Messenger of Allah, it is a Jewish funeral.*' He said: '*Is it not a soul? Then Allah's Messenger said, "If the inhabitants of heaven and earth were to share in [shedding] the blood of a*

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<sup>1</sup> Surah Al-Isra verse 70.

*believer, God would overturn them in hell." The Prophet (SAW) also said: "The extinction of the whole world is less significant before Allah than killing a Muslim man."<sup>1</sup>*

The human rights violations that we observe in modern society are nothing more than a turn away from the moral principles that the Prophet Adam, peace be upon him, guided humanity toward, and a transformation of those principles into unjust ones that disregard people's dignity.

I consequently decided to write in the Crime Prevention Law, one of the preventive social security laws whose texts aim to prevent crime from occurring by maintaining public security as one of the components of public order by assisting in the preservation of morals and the stability of society as well as the protection of people's rights. The combat against crime is comparatively one of the most significant criminal policy priorities that the state seeks to realise via the enactment of several laws is the prevention of their occurrence. However, the Crime Prevention Law is one of these laws.

The first law in this regard was issued in (1927) and remained in force until the issuance of the second Crime Prevention Law No. (7) of (1954), which authorised the administrative ruler to take extensive measures to prevent crimes. The administrative ruler has entrusted under the Administrative Formation System No provisions. (37) for the year 1995) to preserve public morals, public security, health and public comfort.

The Crime Prevention Law has granted the administrative ruler (governor & administrator discretionary) the power to impose some disciplinary measures penetrating the violation of peoples' rights. That seeks to achieve the noble goal of protecting society's rights through the protection of public order.

Due to the sensitivity that the Crime Prevention Law possesses due to the existence of a discretionary authority entrusted to the administrative ruler during its application and touching the freedom of individuals, this topic raises several issues and questions that constitute the motivation that prompted us to write about it. These questions included: What is the legality of the arrest issued by the administrative rulers and its consistency with the principle of legality? What are the administrative detention cases and the extent to which the administrative rulers are restricted and bound by these cases? Does the Crime Prevention Law establish controls that guide the administrative ruler when exercising his discretionary authority in assessing criminal severity? For example, did the legislator take the previous crime as a criterion for the criminal danger of the persons whose provisions are to be applied by the administrative ruler? Are arrest warrants issued by administrative judges subject to judicial oversight?

The significance of this study lies in the fact that the competencies granted to administrative rulers are discretionary procedures and constitute a direct violation of the peoples' freedom; therefore, it must be practised to the narrowest limits and adherence to the legal rules that organised this exceptional jurisdiction.

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<sup>1</sup> Sahih Bukhari.

As a result, this law has come under fire from various groups, with some calling for its repeal and others for the amendment of specific provisions.

## **Chapter One**

### **Seizure procedures and measures derived from the Crime Prevention Law**

This chapter presents the cases in which the administrative governor may have the authority to arrest, the procedures to be followed, and the types of measures derived from the provisions of the Crimes Law through three sections. The first section discusses administrative detention, the second section describes the procedures to be followed by the administrative governor when enforcing the provisions of the law, and the third section presents the types of seizure measures derived from the law.

#### **Section 1: Administrative detention cases**

Article 3 of the Crime Prevention Law No. (7) of (1954) authorised the administrative governor to take measures to maintain public security and prevent crime. The Jordanian legislator entitled the administrative ruler to estimate the criminal risk and its availability in the person even if he did not commit any crime, but merely because he believed that he would commit a crime due to the suspicious circumstances surrounding him and authorised him to issue an arrest warrant for this person in preparation for his trial<sup>1</sup>. These circumstances are if he is caught in a public or private place in situations that may lead the governor to consider that this person was about to commit a crime or assist in executing it; used to robbery, theft, possessing stolen properties, protecting or lodging robbers, assisting in hiding the stolen properties or disposing of them; being free without a warranty might constitute a danger to the others.

The legislator has considered the criminal gravity prior to the occurrence of the crime in these cases and did not take the previous crime as a criterion for the criminal seriousness of the persons to be applied by the provisions of the Crime Prevention Law to them by the administrative ruler but left the task of assessing the criminal risk to the discretionary authority of the administrative ruler without an officer or standard.<sup>2</sup>

This contradicts the conditions for inflicting precautionary measures on a person unless he has committed a previous crime. The judge may not impose preventive measures on a person who has not committed a crime, even if there is a high criminal risk, as Article (33) of the Jordanian Penal Code No. (8) of (2011) stipulates that: a "precautionary bond may be imposed when a verdict is issued in threats cases; a verdict is issued in incitement to commit a felony, which did not

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<sup>1</sup> Mohammad Abdullah Al-Werikat, Principles of the Science of Punishment, Wael Publishing House, Amman, (2009), p.142

<sup>2</sup> Omar Muhammad Anmour, Explanation of the Crime Prevention Law, first edition, Culture Pioneers Amman (2008), p. 139.

materialise; and if there is a fear that the convicted person will harm the victim or one of their family members or their property."

Accordingly, we realise that all of these texts contain the word "verdict", which states that a judgment must have been passed against whoever is to be inflicted with precautionary measures for having committed a previous crime. These procedures do not apply to someone who has never committed a crime or to the possibility that the accused or suspect will do so in the future, according to the administrative ruler's convictions, which are frequently based on personal opinions and whims and without controls. This is because the legislator was keen to protect individual liberties.

However, the criminalisation of these cases without proof that the accused has really committed a crime violates the principle of legality. Which states that "there is no crime and no punishment except by a legal text."<sup>1</sup> Many modern constitutions, contemporary laws and the Universal Declaration of Human and Citizen Rights have been keen to adopt this principle.

In this context, the Jordanian constitution of 1952 adopted this principle in Article 8, which stipulates that "No person may be seized, detained, imprisoned or the freedom thereof restricted except in accordance with the provisions of the law." Article 3 of the Jordanian Penal Code of (2011 states: "No penalty shall be imposed unless provided for by the law at the time the crime is committed.." Deviation from the principle of legitimacy endangers individual liberties, which the legislator strives to protect by approving this principle.

## **Section 2: Procedures to be followed by the administrative governor when applying the provisions of the law.**

Two procedures must be followed which are:

1. Procedures must be taken prior to appearing before an administrative judge.

These procedures are specified in Article 3 of the Crime Prevention Law. in which the administrative governor orders that person to appear before him to illustrate if there are reasons that prevent binding him with a pledge, whether with or without a warranty pursuant to the form mentioned in the second appendix hereof. In this pledge, the person shall undertake to be of good conduct during the period specified by the governor, providing that it does not exceed one year. However, suppose this person does not appear within a reasonable period. In that case, the governor may issue a warrant of arrest against him, provided that his trial shall be within a week of the date of arrest<sup>2</sup>.

2. Procedures to be followed when a person appears before the Administrative Governor.

These procedures are stipulated in Article 5 of the Crime Prevention Law. When the person is brought before the governor, an investigation shall be made

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<sup>1</sup> Mohammad Saeed Nammour, *Studies in the Jurisprudence of Criminal Law*, first edition, House of Culture for Publishing, Amman, (2004), p 34.

<sup>2</sup> See Articles (3, 4) of the Crime Prevention Law No. (7) of (1954).

about the validity of the information according to the procedures taken. All evidence that might be of importance shall be considered as well. In addition, the governor hears any other evidence that he deems necessary<sup>1</sup> and then follows the procedures that take place under the provisions of the Crime Prevention Law concerning taking testimony after the oath, questioning and discussing witnesses, attending lawyers, serving orders, attendance notes and other documents, objecting to judgments and implementing decisions, the same principles followed in criminal procedures before the courts. This requires the following:

1. No accusation shall be made other than the one mentioned in the information referred to in the process.
2. It is not necessary for the procedures taken under this act to prove that the convict has committed a specific act.

### **Section 3: Types of seizure measures derived from the law:**

When the person appears before the administrative judge, and after the investigation, if the governor does not consider it necessary to bind that person with a pledge, the governor shall mention this in detail in the investigation record and release that person if he is detained for investigational purposes only in accordance to Crime Prevention Law Article 5, para 3.

But if the administrative governor finds otherwise, then, in this case, he has the power to take many of the control measures specified by law, and they vary in three types:

1. Bind the person with a pledge

After the person appears before the administrative judge and is investigated following the legal procedures, if the governor perceives that there are sufficient reasons to bind that person with a pledge, he shall issue a decision to that, provided that this pledge does not differ from the subject mentioned in the attendance or arrest warrant and that its amount or duration does not exceed the amount or the period mentioned in either of them per the second paragraph of Article 5 of the law

The subject of this pledge is the person's obligation to behave in good conduct during the period the governor specifies, provided that it does not exceed one year. However, this pledge shall not exceed the obligation to maintain the security or abstain from acts that might affect public security negatively or to be of good conduct pursuant to Article 5 paragraph c of the same law. This pledge may be personal or on the sponsorship of guarantors, as it may be a financial, written or judicial pledge.

Article 6 specifies that: "If someone has given a pledge, being a principal party or warrantor, per the resolution of the governor in which he is obliged to maintain security, abstain from acts that may affect the public security negatively or to be of good conduct, then if the warrantee's conviction of committing a crime that is considered a violation of the pledge terms, the governor may confiscate the

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<sup>1</sup> See Article (5) of the Crime Prevention Law No. (7) of (1954).

amount of the pledge or bind the warrantee to pay it, the resolution of the governor in this respect shall be considered final and shall implement the procedure related to the juristic provisions under the applicable law."

## **2. Detention**

Two types of detention can be distinguished:

- A. The detention under the provisions of Article 4 of the law. If any of the mentioned persons in article 3 has been sent a process to appear before the governor and does not appear within a reasonable period, the governor may, per Article (4), issues a warrant of arrest against that person, provided that his trial shall be within a week as of the date of arrest. In this situation, the detention occurred as a result of the issue of a warrant of arrest.
- B. The detention under Article (8) of the same law. If the person in respect of whom a resolution of giving a pledge by paragraph (2) of Article (5) has failed to provide such pledge in 2 the specified date, he shall be (imprisoned). If he has already been (imprisoned), he shall remain imprisoned until he provides the required pledge or if the period mentioned in the resolution of giving the pledge has passed. Provided it does not exceed one year

Under Article (11) of the same law, any warrantor warranting someone in terms of maintaining security and being of good conduct has the right to apply to the governor for cancelling the warranty. Hence, the governor shall issue a process or a warrant of arrest to the warrantee, so when the warrantee appears before him, the governor shall cancel the warranty and order him to provide a new one for the remaining period. Otherwise, he shall be (imprisoned) until he gives such a warranty or when the term of the warranty has passed.

When the governor deems that the warrantor is not competent anymore, he may request the warrantee to provide another warrantor instead of the old one in the same manner, considering the same terms. However, he shall cancel the previous warranty if the warrantee has not done so during the specified period<sup>1</sup>.

## **3. Police oversight restrictions**

Article (12) of the same law specifies that if someone is brought before the governor under the provisions of article 4 and the governor deems that it is necessary to bind him to provide a warranty of being of good conduct per this act, the governor may order to put that person under the surveillance of the police or the gendarmerie for a period not exceeding one year instead of providing a warranty or both procedures might be taken. Article (12) also permitted the governor to decide to bring these two seizure measures against that person at the same time, namely submitting the pledge and placing it under police supervision.

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<sup>1</sup> See Article (11) of the Crime Prevention Law No. (7) of (1954).

Article (13) of the law specifies the restrictions that apply to the person placed under the supervision of the police or the gendarmerie, all or some of them, as determined by the administrative governor<sup>1</sup>.

## **Chapter Two**

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

This section will discuss the judicial oversight under the Crime Prevention Law and the justifications that called for the issuance of this law. Then, the researcher will compare administrative and judicial detention through three sections to demonstrate the Crime Prevention Law for Human Rights violations and the measures developed from the Crimes Law's provisions.

The first section discusses the administrative judiciary's oversight and the previous administrative control procedures. The second demonstrates the justifications for the enforcement of the law. Finally, the third section addresses the difference between administrative detention and judicial detention:

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

The Jordanian legislator has subjected the decisions issued by the administrative judges under the Crime Prevention Law to be challenged before the Administrative Court as an exclusive jurisdiction. Thus, at their various levels, regular courts are prohibited from considering any appeal against decisions issued by governors under the Crime Prevention Law. Therefore, these decisions are not subject to the control of the regular judiciary, given that an administrative body issued the contested decision (Matthew, 2021, 2022).

Keeping in mind that verdicts made by the Supreme Court of Justice are final once they are issued and cannot be appealed to any other court<sup>2</sup>. The Supreme Court of Justice Law No. (12) of (1992) stipulated the jurisdiction and authority of the court to consider all appeals against the Crime Prevention Law, as the High Court of Justice was competent to review previous seizure procedures in terms of cancellation and compensation.

Most of the decisions issued by the governor under the Crime Prevention Law were destined to be repealed. Still, this deprivation inflicted on citizens has ended according to the recent amendments to the Jordanian constitution<sup>3</sup>, where the administrative judiciary has become two levels leading to the protection of citizens from arbitrary personal measures as a result of decisions governors made under the Crime Prevention Act.

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<sup>1</sup> See Article (13) of the Crime Prevention Law No. (7) of (1954).

<sup>2</sup> Omar Muhammad Al-Basoul, op, cit, p. 158

<sup>3</sup> See Articles (9/a//6, 11) and (9/b) of the High Court of Justice Law No. (12) for the year (1992).

Judicial oversight over the previous administrative control procedures and measures is crucial in protecting people's rights and freedoms. After all, these procedures restrict the constitutionally guaranteed freedoms of individuals.

The Administrative Court was granted the power to settle compensation disputes only for unlawful decisions. Anyone harmed may file a claim for compensation for the damages resulting from the illegal decisions, whether submitted in an original and independent form from the annulment action or as an accessory to it.

We notice, however, that the legislator's imposition of high appeals fees had indirectly strengthened the rulings made pursuant to the Crime Prevention Law. The legislator would have made it free to file a lawsuit challenging an administrative body's orders, adding another layer of administrative oversight and enabling anyone who feels wronged to do so without facing significant obstacles.

## **Section 2: Justifications for applying this law**

One of the justifications supporting the significance of implementing the Crime Prevention Law and its continuity is the abolition of martial law (1989). Furthermore, a set of judicial decrees, especially the Code of Criminal Procedure in force, has limited the powers of the Public Prosecutor to arrest in specific cases only mentioned in Article (114). As for Article (112) of the same law, the police's authority is limited to keeping the defendant with glasses for (24) hours only. Then he must be taken to the public prosecutor for investigation.

Judicial detention was limited to some cases according to the Code of Criminal Procedure and due to other legal reasons, such as the inadmissibility of prosecuting the perpetrator of the offence of adultery except after submitting a complaint from one of the persons stipulated in the law, provided that the objection is raised against both partners as the nature of Jordanian society is characterised by the social and clan character and the rule of social norms and traditions, especially in the cases specified by the clan document marked with the royal signature (murder, indecent assault, face-cutting).

These reasons encourage the application of the Crime Prevention Law. However, many acts are committed by dangerous people who cannot be prosecuted because the actions are not considered a crime, a complaint was not filed, or for lack of evidence. As a result, the governor must take the necessary administrative measures to lessen these people's criminal risk and to ensure society's safety by preventing the escalation of social problems, particularly those involving public morals, where the governor plays a crucial role in finding solutions to these issues through administrative and legal means, thereby realising the theory of social security.

Indeed, the absence of a law to prevent crimes will create a kind of security disturbance and the people who are considered dangerous criminals (especially those with precedents) will escape from security control, which will lead to the destabilisation of the pillars of the public order on which the society is based.



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

Although administrative and judicial detention are two procedures intended to protect the security of society, and they restrict the freedom of the individual against whom no freedom-restricting penalty was taken, there are differences between them as follows.

- A. Jurisdiction: The executive authority's administrative detention decision is made by a non-judicial body. It is based on particular legislative texts that are frequently connected to a specific period. When it comes to judicial detention, they can only be made by a competent authority for an investigation or trial, or by a competent judicial authority, and they are based on the Code of Criminal Procedure's rules.
- B. Basic principles: the administration bases its decision to impose administrative detention on the presence of a person who may be harmful or suspicious. As for judicial detention, in Article (114) of the Code of Criminal Courts Principles, the responsible authority's decision to order judicial arrest is based on a specific charge against the defendant when there is adequate evidence to support it.
- C. Period: The decision to place someone in administrative detention does not have a set duration; it can be made for a lengthy or brief period without any evidence of a crime being committed, just the possibility that one would. Regarding the judicial arrest decision, its duration is established as soon as it is made by the authority issuing it. This duration is renewed as needed, provided that the legal maximum sentence does not exceed the offence for which the arrest is being made.
- D. Appeal: The administrative detention decision is subject to appeal before the administrative court as it is an administrative decision. The judicial detention decision is subject to the methods of appeal before the ordinary courts.

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

In its fifth article, the Universal Declaration of Human Rights states: "No person shall be subjected to torture or cruel, inhuman or degrading treatment or punishment". The absolute authority that authorised the governor to issue an arrest warrant is considered a deprivation of the right to freedom and an infringement on the citizen's dignity if this behaviour is based on personal considerations. Some of this law's provisions seem to contradict Article 5 of the Universal Declaration of Human Rights. Nevertheless, the Hashemite Kingdom of Jordan signed the declaration and agreed on its terms.

We find that this is a significant justification for repealing this law and not complying with it, or at the very least for amending its texts related to individual freedoms under the Universal Declaration of Human Rights, as we are aware that

international conventions supersede internal law.

Referring to the Jordanian constitution, we find that the constitution singled out an entire chapter for the rights and duties of citizens in which it protected freedoms and was in line with the Universal Declaration of Human Rights. Hence, the researcher finds himself obligated to talk about administrative corruption, even in a straightforward manner, in order not to deviate from the basis of our topic.

Corruption is a negative totalitarian term. Nevertheless, it is mentioned in the Holy Qur'an more than twenty times in several surahs and various linguistic forms. Historically, corruption emerged with the presence of man, as the first crime of murder was committed by Cain, who killed his brother Abel in a story that represented corruption on earth in the worst form. Thus, Cain opened the doors of corruption wide after he described the evil side and the immorality of the soul that commands evil in the best representation. At the same time, Abel represented the good side when he decided to refrain from attempting corruption, even if that abstention cost him his whole life.

Generally speaking, murder is corruption and a violation of people's rights, similar to theft and all kinds of outrageous behaviour that represents a deviation from the right path. Thus, public corruption represents a general deviation from the principles of a free and dignified life Allah granted to Adam's children.

Indeed, the deviation of the relationship between government institutions as the highest authority and the ordinary citizen as the other side of that relationship specifically targeted by him is an example of administrative corruption.

As a result, the outcomes generated by that relationship serve as the administrative process' planned exits. If the results had been favourable, administrative corruption would not have clouded that relationship and affected its progress. On the other hand, if the results had been unsatisfactory, administrative corruption would have nestled on the hubs of the administrative process's driving forces, which would have had a negative impact on the outcomes and made them disappointing for the citizen who is the administrative process' target.

### **Conclusion**

The law on preventing crimes in the prior cases of detention transfers some of the judiciary's authority to the executive branch, which is the government's natural defender of individual freedom.

The Jordanian legislator did not consider the previous crime as a criterion for the criminal seriousness of the persons to whom the law is to be applied. He also granted the governor the right to sign all kinds of precautionary measures under the Crime Prevention Law, namely binding a pledge, bail, imprisonment, imprisonment, or placement under police control (house arrest) without restriction.

The Jordanian legislator has also subjected the governor's decisions under the Crime Prevention Law to be challenged before the Administrative Court to ensure the legitimacy of these decisions and their consistency with the provisions

of the law. We noted that the lawmaker is aware of the gravity of this law and the potential for human rights violations under it. This is why this control was put in place, and the first thing that came with it was to repeal this statute or make appeals to these judgments free of charge, with the loser initially covering the costs.

Regrettably, some governors exploit some of this law's provisions for purposes that are not specific to the categories mentioned in this law, as decisions are issued flawed by violating the law in the event of arresting a person without committing any of the three arrest cases.

In the first instance, Article 3 of the Crime Prevention Law was ambiguous. It made it difficult to ascertain the specifics of the case because it contained broad, sweeping language that could be used to justify the administrative governor's intervention whenever someone was seen aimlessly wandering through the streets or in any other area, whether public or private, without being able to demonstrate that his presence was justified. The Penal Code is violated by defining the criminal conduct, and the precise punishment since the governor was given broad leeway to control the case's quality.

Though the texts and procedures of administrative detention should be reviewed in the cases above, and the application of the crime prevention law should be restricted to those who are accustomed to thievery and criminality to achieve consistency between the application of the crime prevention law and the safety of society's security on the one hand, and the freedoms of citizens.

On the other hand, the preceding law gave the administrative ruler the right to detain anyone and place them under arrest if they were suspected of committing a crime that would violate or betray their right to personal freedom. As a result, the legal provisions pertaining to this case must be repealed. Since the Crime Prevention Law has not been modified since it was first published in 1954, it is necessary to reevaluate the impact of administrative detention in its current form and what constitutes an excessive amount of such custody.

It is also necessary to specify the amount of the pledge or guarantee that the administrative governor has required the guarantor to provide, which is included in Article (6). Since the law does not specify the pledge value or guarantee, the administrative governor may put any amounts he considers adequate. However, I believe there should be a minimum and maximum amount.

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