

The Arrest for investigation Between the necessity of taking action and respect for human rights

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Abstract:

Arrest for investigation is a serious coercive measure that infringes on individuals' personal freedom and can be taken during the preliminary investigation phase by a judicial police officer. Therefore, Algerian lawmakers have enshrined arrest for investigation in the Algerian Constitution, given the importance of this measure and its impact on human rights and fundamental freedoms.

Consistent with this principle, Algerian legislators have endeavoured to establish assurances that must be upheld for detainees awaiting trial by enhancing their right to be maintained in conditions that uphold their human dignity .in addition to their entitlement to a health assessment. The latter is one of the most crucial basic assurances of respect for detainees' right to physical integrity protection, reaffirming Algeria's adherence to its international human rights commitments.

key words: *Arrest for investigation; Preliminary Investigation; Human Rights; Suspect; Judicial Police Officer.*

Introduction:

In the modern day, one of the most significant concerns for scholars and practitioners in all areas of law is human rights and fundamental freedoms. Without a doubt, the desire to uphold individual freedom and human dignity is a major factor in the rising interest in human rights and fundamental freedoms on both a national and worldwide level.

In order to ensure respect for these rights, international organisations have not limited their efforts to merely enshrining them in written documents, but have also sought to reinforce them with monitoring mechanisms that guarantee they are not violated or compromised. To achieve these goals, international and regional bodies have been

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The Arrest for investigation Between the necessity of taking action and respect for human rights

established to receive complaints and reports of human rights and freedom violations by states, after which the necessary measures are taken to investigate and inquire into such violations.

These principles, which include respect for the guarantees of those imprisoned for inquiry, have been codified by the Algerian legislature and are recommended by international legislative sources to be adopted and committed to implement under criminal procedural legislation.

The Algerian legislature has regulated the procedure for arrest for investigation and codified it in legal provisions that specify the cases in which the law authorises judicial police officers to arrest a person for investigation, the grounds on which they may do so, the duration of the arrest and the formalities that must be observed in carrying out this procedure. These provisions also serve as safeguards for the arrested person, as set out in the latest amendment to Law 15-02 of 23 July 2015, which contains the Code of Criminal Procedure.

The issue raised in this regard: To what extent has the Algerian legislator complied with its international obligations in enshrining guarantees of individual freedom during the Arrest for investigation?

To answer the question posed, we looked at the arrest for investigation as a restriction on the freedom of suspects during the initial investigation phase (first section), then the consequences of violating the rights of suspects in arrest for investigation (second section).

The First Section: Arrest for investigation as a restriction on the freedom of suspects during the preliminary investigation stage

It has been determined that the aforementioned individual does not act in a manner that is consistent with the principles of justice. Instead, their actions appear to be in violation of the rights of the accused, who are subjected to undue influence and coercion. This is in direct contravention of the principles of justice and the right to a fair trial. The issue at hand is the question of whether the individual in question is to be regarded as a free agent, or whether they are to be considered a captive of the state. The question of whether the individual is to be regarded as a legal person is also raised. The question of whether the individual is to be regarded as a legal person is raised not as a matter of legislative intent, but as a matter of fact. The Algerian legislation is consistent with other legislative systems in terms of its establishment of a legal framework for the establishment of a legal entity for the purpose of conducting commercial activities. This legal framework is designed to ensure that the activities of commercial entities are conducted in a manner that is consistent with the principles of justice and fairness, and that any actions taken by these entities are subject

to the principles of transparency and accountability. This is a preliminary step in order to present them before the relevant legal authorities, and in order to address the legal implications of this process. It is also an opportunity to consider the legal safeguards that are in place, and to establish the legal basis for the process. The following concepts must be considered in order to establish a comprehensive understanding of the matter: the initial concept (the first subsection), the temporal concept (the second subsection), and the security concept (the third subsection).

First Subsection: Concept of Arrest for investigation

The arrest for investigation procedure taken by a judicial police officer against a suspect is one of the most serious measures restricting a person's freedom of movement. We will therefore discuss the meaning of arrest for investigation (Firstly), followed by the circumstances in which it may be resorted to (Secondly).

Firstly: Definition of the procedure of Arrest for investigation

Referring to the Code of Criminal Procedure, we find that the Algerian legislator did not provide a definition of the procedure of arrest for investigation, but merely specified the cases in which it may be applied, in addition to the guarantees of this procedure and the rights of the person arrested for investigation¹. It was therefore necessary to refer to jurisprudence, which attempted to provide several definitions, including the following:

It is defined as: “A measure taken by a judicial police officer to place a person in a police or gendarmerie station for a period determined by the legislator whenever the requirements of the investigation so require.”²

Others defined it as: “A police measure whereby the police are empowered to hold any person, without charge, for a short period of time required for preliminary investigation, in official premises, usually police or gendarmerie stations.”³

It has also been defined as: “the necessary precautions to restrict the freedom of the arrested person and place him at the disposal of the police or gendarmerie for a temporary period of time, with the aim of preventing him from escaping and enabling the competent authorities to take the necessary measures against him.”⁴

In light of the definitions provided by legal jurisprudence, in determining the meaning of preventive detention, we can define it through the purpose of its establishment, relying on the legal texts governing this procedure in both French and Algerian legislation. It can therefore be defined as follows: “Detention for investigation is an exceptional and

The Arrest for investigation Between the necessity of taking action and respect for human rights

temporary measure that restricts a person's freedom of movement. It is ordered by a judicial police officer under the supervision of the judicial authority for the purposes of investigation or because there is strong and consistent evidence that the person has committed or is about to commit a felony or misdemeanor. Under this measure, the person is placed at the disposal of the security services in a place designated for that purpose, in accordance with the procedures laid down by law and with due regard for the rights and guarantees protecting personal freedom.

Secondly: Cases in which detention for investigation may be resorted to

Arrest for investigation is considered one of the most serious measures affecting individual liberty, which is why all legislation has sought to surround it with sufficient safeguards to protect human rights⁵. Article 12 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states that arrest⁶, detention, or imprisonment may only be carried out in strict accordance with the law and by competent officials and persons authorized to do so.

The term "cases" refers to the justifications and circumstances under which the law authorizes those with the right to make arrests to exercise this authority towards a specific category of persons. The Code of Criminal Procedure stipulates three (3) cases in which arrest may be resorted to⁷, namely:

A - Arrest for consideration in cases of felonies and misdemeanours caught in the act: In Algerian jurisprudence, being caught in the act is defined as "the simultaneity or proximity between the moment of committing the crime and its discovery."⁸ It is also defined as: "a crime that is witnessed while it is being committed or at the end of the act, as well as crimes whose perpetrators are arrested based on people's cries or who are caught with items that indicate that they committed the crime⁹, within a period of time after the crime occurred."

Referring to Article 41 of the Code of Criminal Procedure, we find that the Algerian legislator has defined cases of flagrante delicto as follows:

- Witnessing the crime as it is being committed or immediately after it has been committed.
- Public pursuit of the suspect by shouting.
- Seizure of the instrument or place of the crime with the suspect.
- The presence of traces or signs indicating that the crime has been committed.
- The discovery of the crime in a dwelling and its immediate reporting.

Accordingly, if the judicial police officer deems it necessary for the investigation and the nature of the crime committed, take a series of measures, including arresting a person against whom there is strong and consistent evidence indicating that they have committed a felony or misdemeanor punishable by imprisonment. They must notify the public prosecutor and submit a report on the reasons for the arrest for consideration, and inform the person concerned¹⁰. This measure may not be taken if the crime committed is a misdemeanor or if the offense is punishable only by a fine¹¹. Referring to Article 49 of Child Protection Law No. 15-12¹², we find that it explicitly specifies the crimes for which a judicial police officer may arrest a child for questioning, namely:

- Felonies in general, misdemeanors that constitute a clear violation of public order¹³, and those for which the maximum penalty exceeds five (5) years' imprisonment for felonies.
- Misdemeanors for which the maximum penalty is five (5) years' imprisonment.

B - Arrest for investigation during preliminary inquiries: Preliminary inquiries are a form of investigation carried out by judicial police officers, assisted by judicial police assistants, by reporting to the public prosecutor's office crimes that they observe and that are not investigated in accordance with the procedures for crimes caught in the act. The procedures for this investigation are simple in terms of formalities. Accordingly, judicial police officers are entrusted with the task of investigating and inquiring into crimes specified in the Penal Code, collecting evidence about them, and searching for their perpetrators, as long as a preliminary investigation has not yet been initiated¹⁴.

In the context of preliminary investigations, if the judicial police officer deems it necessary to detain a person against whom there is evidence of having committed a felony or misdemeanor for which the law prescribes a custodial sentence, and the period of detention exceeds 48 hours, he shall inform the person concerned of this measure and immediately notify the public prosecutor thereof. and shall provide him with a report on the reasons for the detention for investigation. However, persons against whom there is no evidence to suggest that they have committed or attempted to commit a crime may only be detained for the time necessary to take their statements¹⁵.

C- Detention for investigation in the case of judicial delegation: Article 13 of the Code of Criminal Procedure states that: "If an investigation is opened, the judicial police shall carry out the instructions of the investigating authorities and comply with their requests." This is known as

The Arrest for investigation Between the necessity of taking action and respect for human rights

judicial delegation, which is a measure issued by the investigating judge to one of the judicial police officers to carry out on his behalf, under the same conditions to which he is bound, by carrying out a specific investigative procedure that falls within his authority¹⁶. It is also a task assigned by the investigating authority to another authority to carry out certain investigative procedures that it cannot perform itself¹⁷.

If necessary to carry out the judicial delegation, the judicial police officer may arrest a person for questioning and must present him within 48 hours to the investigating judge in the district where the delegation is being carried out¹⁸.

The delegation of some of the investigating judge's powers to a judicial police officer must be carried out in accordance with the strict formal conditions laid down by law, with a view to providing the greatest possible guarantees to ensure the fundamental rights and freedoms of individuals. The delegation of powers must be in writing and must specify the nature of the offence, the subject of the investigation, and be dated and signed by the judge who issued it to carry out procedural actions to uncover crimes and their perpetrators. It may only order investigative measures directly related to the punishment of the crime that is the subject of the investigation¹⁹.

The Second subsection: the time frame for detention pending trial

We will first address the duration of detention pending trial, then we will discuss how to calculate the duration of detention pending trial.

Firstly: Duration of detention pending trial

Under the provisions of the Code of Criminal Procedure, the Algerian legislature has set the duration of detention pending trial at 48 hours as a general rule. A judicial police officer must bring the arrested person before the public prosecutor within 48 hours if there is strong and consistent evidence that the person is suspected of committing or contributing to a crime.

Meanwhile, Article 49 of the Child Protection Act sets the period of detention for children at 24 hours and stipulates that any extension of detention must be in accordance with the conditions and procedures set out in the Code of Criminal Procedure, provided that the period of detention does not exceed 24 hours at a time²⁰.

The period of detention for investigation may be extended in the case of preliminary investigations into crimes other than those caught in the act, with the written permission of the competent public prosecutor, as follows:

- Once (1) in the case of crimes against automated data processing systems.

- Twice (2) in the case of crimes against state security.
- Three (3) times in the case of drug trafficking, transnational organized crime, money laundering, and crimes related to exchange legislation.
- Five (5) times in the case of crimes described as terrorist or subversive acts.

The Algerian legislature has distinguished in the Code of Criminal Procedure, with regard to the powers of judicial police officers, the case of conducting preliminary investigations into flagrant crimes or misdemeanors, as provided for in Article 51 of the Code of Criminal Procedure. and their powers to conduct preliminary investigations on the instructions of the public prosecutor or on the basis of a complaint, as provided for in Article 65 of the Code of Criminal Procedure.

Second subsection :Start of the period of detention for consideration

There is no provision in the Code of Criminal Procedure specifying the start of the period of detention for consideration, nor is there any such provision in the judicial precedents of the Supreme Court, whether the matter concerns adults or juveniles. This raises the question of when the period of detention for investigation should begin to be calculated in the absence of a provision specifying this. Does it begin from the moment the suspect appears before a judicial police officer, from the moment he is caught in the act, from the moment his statements are taken, or from the moment he is notified of the detention for investigation taken against him?

As a general principle in determining the start of detention for investigation, we find that this procedure is not restricted to fixed formalities and is subject to the discretion of the judicial police officer, depending on the case. The latter only faces cases of coercive detention and voluntary detention, both of which affect the start of the period of detention for investigation.

Referring to French law, we find that it distinguishes between three cases for determining the duration of detention for investigation²¹:

- *First case: The period of detention for investigation shall commence from the moment the person appears voluntarily before a judicial police officer during the preliminary investigation, or if he was not subject to coercive measures to apprehend or arrest him and compel him to appear before a judicial police officer, and upon hearing him, it is decided to take measures to detain him for investigation.*
- *Second case: The period of detention for investigation shall commence from the moment of arrest or detention of the person who was subject to*

The Arrest for investigation Between the necessity of taking action and respect for human rights

coercive measures to arrest him and compel him to appear before a judicial police officer, i.e. from the moment he was deprived of his liberty.

- Third case: For a person who has been detained for investigation and then released, and who is subsequently re-detained for investigation for the same facts, the previous period of detention shall be deducted from the total period of detention for investigation²².

Referring to the Algerian legislator, and in the absence of an explicit text specifying the moment of beginning to calculate the period of detention for consideration, it can be said that detention for consideration is a coercive measure taken against the will of the person and his right to freedom. The period of validity of this measure begins from the moment of receiving the statement of the person who voluntarily appeared before a judicial police officer. It applies from the moment the person is arrested and detained if he is red-handed in a felony or misdemeanor²³.

Third subsection: Guarantees relating to the rights of persons in custody

The Algerian legislature did not merely strengthen the role of the judicial authorities during detention, but also sought to protect persons in custody by stipulating the guarantees and rights granted to them, thereby affirming the principle of presumption of innocence. In addition to the right to a medical examination and the right to communicate with the outside world, it emphasizes the need to respect the human dignity of the detainee by ensuring that they are detained in places that are appropriate to their dignity. It also emphasizes other equally important guarantees, such as the need to inform the detainee of their rights. This is an attempt to bring the Code of Criminal Procedure into line with the recommendations and suggestions of international conventions and repeated calls for their adoption in domestic legislation to ensure the protection of human rights during the initial investigation phase.

Firstly: The right of the detainee to be informed of his rights and the charges against him

It is unreasonable to question a detainee about the acts and facts attributed to him without the judicial police officer informing him of the facts that led to his arrest, since before the detainee decides to exercise his right to answer the officer's questions or to remain silent, he must be aware of the acts attributed to him and their seriousness so that he can prepare an appropriate defense. Article 9/2²⁴ of the International Covenant on Civil and Political Rights states that any person who is arrested must be informed of the reasons for the arrest at the time of arrest and must be promptly informed of any charges against him.

Furthermore, the Human Rights Committee, in Article 14, paragraph 3(a) of the International Covenant, states that the accused must be informed in detail and in a language, he understands of the nature of the charge against him and the reasons for it. This must be taken into account when the court or the prosecuting authority, during the investigation, takes procedural steps against the person suspected of committing the crime under investigation.

It is worth noting the decision of the Criminal Law Committee organized by the International Commission of Jurists in Athens in June 1955, which stated that “the accused may refuse to answer questions posed by the police and the prosecuting authority and may request to be heard by a judge, and the court may not compel him to speak.”

Secondly: The right of detainees to communicate with their families or lawyers

The right to defense is a natural right that guarantees every litigant, whether a natural or legal person, the freedom to face legal charges brought against them before the judicial authorities. Article 11(2) of the 1948 Universal Declaration of Human Rights states that everyone charged with a criminal offense shall be presumed innocent until proven guilty according to law in a public trial that provides all the necessary guarantees for their defense²⁵. The International Covenant on Civil and Political Rights affirms this right in Article 14, stating that the accused has the right to a lawyer to defend him²⁶.

Principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states that: “A detained or imprisoned person shall have the right to private visits and correspondence with members of his family and shall have adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions prescribed by law or regulation.”

The Algerian legislature has allowed suspects arrested for terrorism, transnational organized crime, money laundering, corruption, embezzlement, etc., to meet with their lawyers if half of the maximum period specified in Article 51 of the Code of Criminal Procedure has elapsed since the start of the arrest for investigation.

Referring to the first paragraph of Article 51 bis 1 of the Code of Criminal Procedure, which states that the judicial police officer must make available to the person under arrest any means enabling him to immediately contact one of his parents, children, siblings, or spouse, we believe that it gives judicial police officers discretionary power to assess the immediacy of the suspect's communication with one of his relatives,

The Arrest for investigation Between the necessity of taking action and respect for human rights

taking into account the confidentiality and proper conduct of the investigation²⁷.

Judicial police officers have two obligations: on the one hand, to enable the suspect under arrest to contact his family, and on the other hand, to maintain the confidentiality of the investigation. The discretionary power is left to them to decide when they consider that contacting the family of the arrested person would affect the course of the investigation.

Thirdly: The Right to Consider Physical Safety

Every person in custody has the right to be treated humanely in a manner that preserves their psychological dignity and physical safety. This right is guaranteed in many international human rights conventions and declarations, including the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which states that every person in custody or prison shall have the opportunity to undergo a medical examination as soon as possible after being admitted to the place of detention or imprisonment, and that he or she shall thereafter be provided with medical care and treatment as required, free of charge.

In addition, the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty stipulate that every juvenile has the right to adequate preventive and curative medical care, including dental, eye, and psychiatric care, and to receive pharmaceutical preparations and nutritional meals prescribed by a doctor, etc.

The Code of Criminal Procedure includes legal provisions that prohibit the use of unlawful means that harm the physical integrity of suspects in custody, namely:

A- Regulation of the periods of questioning of detainees

The judicial police officer must ensure that the minutes of the hearing of each person detained for questioning include the duration of the interrogation, the breaks taken during it, and the date and time of their release or referral to the competent judicial authority (public prosecutor, investigating judge, or juvenile judge). The signature of the person concerned shall be noted in the margin of the minutes. If the person refuses to sign, this shall be noted in the margin. The minutes prepared by the judicial police officer in accordance with the law shall be drawn up immediately and each page shall be signed²⁸.

It should also be noted that this information must be recorded in a special register, which is numbered and sealed and signed by the public prosecutor. In addition, a register is kept at each judicial police station that is likely to receive a child in custody for questioning.

B- The right of the detainee to be held in conditions that respect his dignity

All international and regional conventions have called for the need to treat people in a manner that respects their human dignity. Article 10/1 of the International Covenant on Civil and Political Rights states that " All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." These international standards require every state to guarantee a minimum level of protection for every detainee in custody or prison and not to subject them to any hardship or impose any restrictions on them other than those resulting from their deprivation of liberty. The state cannot justify inhumane treatment of suspects on the grounds of lack of material resources or financial difficulties.

Detention for investigation may only take place in places known in advance to the public prosecutor's office and designated for this purpose, provided that human dignity is respected, and the regional public prosecutor may visit them at any time.

Detention must also take place in appropriate facilities that respect the child's privacy and needs and are separate from those designated for adults. It should also be noted that the legislator has required the public prosecutor and juvenile court judge to visit the detention facilities for children located in police stations or national gendarmerie stations within their jurisdiction at least once a month²⁹.

Referring to the joint ministerial instruction on the hierarchical relations between the judiciary in the field of its administration, supervision and control of its activities, we find that it states: "Within the premises of the judicial police services conducting preliminary investigations, places shall be designated for the detention of persons under investigation, where the following conditions must be met...the safety of the detained person, the security of their surroundings, and the health and dignity of the detained person (space, location, ventilation, lighting, cleanliness, etc.). A sign or poster must be displayed in a visible place at the entrance of every judicial police station that is likely to receive persons detained for questioning, stating in bold and clear letters the provisions of Articles 51, 51 bis, and 52 of the Code of Criminal Procedure³⁰, as well as Articles 49, 50, 51, and 52 of the Child Protection Act.

C- Medical examination of detainees

The idea of the right of detainees to medical examination has occupied a large space at the international level, which has been enshrined in international conventions and conferences on human rights, including

The Arrest for investigation Between the necessity of taking action and respect for human rights

the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which emphasized the need for every detainee or prisoner to have the opportunity to undergo medical examinations as soon as possible after being admitted to prison or detention, and to be provided with medical care and treatment whenever necessary. shortest possible time after being admitted to prison or detention, and that they be provided with medical care and treatment whenever necessary³¹.

The legislator has authorized the public prosecutor, either on his own initiative or at the request of a family member of the detainee or his lawyer, to appoint a doctor to examine the detainee at any time within the time limits specified in Article 51 of the Code of Criminal Procedure.

At the end of the period of detention for investigation, the legislator requires that the detainee be subjected to a medical examination at his request or that of his family or lawyer, and the doctor is chosen by the detainee. Otherwise, the judicial police officer must appoint a doctor who is a practitioner in the jurisdiction of the court where the detention centre is located, and the medical examination certificate must be included in the case file, otherwise it will be invalid³².

The Second Section: Consequences of violating the rights of suspects in custody

The selection, training, and preparation of judicial police officers to carry out investigations and inquiries into crimes through legal procedures and within the framework of procedural legality is not sufficient on its own to prevent the possibility of abuse and arbitrariness in the exercise of their duties. Many legislatures, including the Algerian legislature, have recognized a number of consequences that may result from violating or infringing upon the rights of a person detained for investigation while taking measures to temporarily restrict their freedom. These consequences may take the form of personal sanctions against the person taking the measure. A judicial police officer who violates the legal obligations imposed by the arrest procedure may be subject to disciplinary, civil, or criminal liability depending on the degree of the violation. The consequence may also take the form of an objective penalty imposed on the measure itself, affecting its legality.

The First subsection: disciplinary liability

Judicial police officers are subject to dual supervision: administrative supervision by their immediate superiors in their original service, whether police, gendarmerie, or military security services; and functional supervision by the public prosecutor's office and under the supervision of the indictment division when performing their duties as

judicial police officers. This means that they are subject to dual disciplinary accountability in line with this dual supervision³³. Disciplinary responsibility for professional misconduct on the part of judicial police officers is exercised through supervision by their superiors, based on an investigation conducted after receiving complaints from the victims of such misconduct³⁴.

The Algerian legislature has stipulated the disciplinary sanctions imposed by superiors on judicial police officers, and these sanctions can be categorized into³⁵:

- First degree: Verbal warning, written warning, reprimand, suspension from work from one to three days.

- Second degree: suspension from work from 4 to 8 days, removal from the promotion list.

- Third Degree: Compulsory transfer, demotion, dismissal with prior notice and compensation, dismissal without prior notice or compensation.

If a security officer commits a serious professional error that could result in dismissal, the appointing authority will immediately suspend him or her³⁶.

As for the disciplinary sanctions that can be imposed by the judicial authority, the Algerian legislator granted the indictment chamber the authority to monitor the work of the judicial police, and to impose disciplinary sanctions on a judicial police officer who commits a disciplinary offense, such as issuing notes or temporarily suspending him from carrying out the work of the judicial police, or permanently revoking that status³⁷. The decision of the indictment chamber is final and not subject to any appeal, and the decision is communicated to the concerned persons and their administrative authorities by the Attorney General under Article 209 Algerian Penal Code.

These procedures are a guarantee that the judicial police officer will abide by the principle of procedural legality during the exercise of his duties, which means adhering to the procedures stipulated by law, thereby guaranteeing the rights and freedom of the suspect arrested during the preliminary investigation phase.

Second subsection: Criminal responsibility

Criminal responsibility is the most severe type of personal responsibility, as a result of the penalties it establishes, and laws have taken the method of establishing criminal responsibility for members of the judicial police in connection with any transgressions, violations or infringement of individual rights and freedoms, provided that the error attributed to the member of the judiciary rises to the degree of criminal

The Arrest for investigation Between the necessity of taking action and respect for human rights

wrongdoing in accordance with the provisions of the Algerian Penal Code³⁸.

One of the offenses for which a law enforcement officer can be prosecuted that affects the detainee is the crime of torturing the suspect for the purpose of obtaining a confession from him, which is an attack on the physical and moral integrity of the human body through torture, The Algerian legislature criminalizes attacks on the moral and ethical integrity of persons in Article 440 bis QC, which prescribes a penalty of one to two months' imprisonment and/or a fine of Dh10,000 to Dh20,000 for any official who, while performing his duties, insults or curses a citizen or insults him with any insulting words.

Among the offenses for which a judicial police officer can be prosecuted, which affect the person in custody, is ordering an arbitrary act or infringing on individual freedom³⁹, such as detention in custody by violating the provisions related to its duration, i.e. arbitrary detention, according to Article 51 (last paragraph) of the Criminal Code: "Violation of the provisions related to the time limits for detention in custody, as indicated in the preceding paragraphs, exposes the judicial police officer to the penalties incurred by those who arbitrarily detain a person" (Article 51 (last paragraph) of the Code of Criminal Procedure).

It should be noted that the Algerian legislature penalizes the refusal or objection to a medical examination of a person in custody under article 110 bis, paragraph 2, of the Code of Criminal Procedure, which stipulates that: "Any judicial police officer who, despite orders issued in accordance with article 51 of the Code of Criminal Procedure by the public prosecutor, refuses to conduct a medical examination of a person in judicial custody under his authority shall be punished by a prison sentence of one to three months and/or a fine of 10,000 to 20,000 dirhams."

Third subsection: Civil responsibility

Civil responsibility means the obligation of the perpetrator to compensate for the damage caused to the detainee, provided that the necessary conditions are met, such as the need to meet the elements of fault, damage and the causal relationship between them; in other words, any violation of the rights of the detainee and infringement of his freedom by any form of abuse by a judicial police officer that exceeds the provisions of the law would be a cause for civil liability that makes him obligated to compensate for the damage he caused to the detainee's person.

With reference to the provisions of Article 108 of the GC, we find that in addition to holding the judicial police officer criminally liable for violating the rights of the detainee, it also holds him civilly liable, stating

that: “The perpetrator of the offenses stipulated in Article 107 is personally liable for civil liability, as is the State, provided that it has the right of recourse against the perpetrator.”

Through this text, we find that the legislator has obligated the state to pay the compensation due to the victim and then return to the wrongdoing judicial police officer to facilitate the procedures to fulfil the right to compensation. Thus, any detainee who is a victim of a violation of his rights during the implementation of the arrest procedures can file a claim for compensation before the civil judiciary and establish a civil party before the criminal judiciary in a civil suit affiliated with the public case in accordance with Articles 5,4,3,3,2 of the Algerian Criminal Code.

Fourth subsection: The invalidity of the detention procedure as a consequence of the violation of the detainee’s rights

The Algerian legislature attaches special importance to certain procedures and stipulates that they are invalid if the person performing them does not respect their conditions and restrictions, which are considered guarantees of respect for personal freedoms. However, failure to comply with the conditions of the arrest procedure, despite its seriousness, sensitivity and infringement on the personal freedom of individuals, does not lead to the invalidation of the procedure in Algerian law, whether it is in flagrante delicto or in connection with preliminary investigations or due to the implementation of a judicial letter rogatory. The Algerian legislature does not provide in the Code of Criminal Procedure for nullity as a procedural sanction for violating the rights and freedom of the arrested person⁴⁰. Thus, the Algerian legislature considers arrest in custody to be a police procedure aimed at facilitating the search and investigation mission to reach the truth.

Conclusion :

The Algerian legislature has made great strides in protecting individual freedoms, particularly with regard to the rights of persons in custody, through the amendments to the Code of Criminal Procedure, in which it has made serious efforts to harmonize the legislative and procedural system with the requirements of international human rights instruments and the provisions of international and regional conventions and charters. These amendments to the Code of Criminal Procedure reflect the continuing process of reforming and developing these rules in a manner that enshrines respect for the guarantees of individual freedom and human rights as well as the rights of persons in custody and promotes the presumption of innocence.

Results include:

The Arrest for investigation Between the necessity of taking action and respect for human rights

-The Algerian legislature does not explicitly stipulate the right of a person in custody to be informed of the suspicion against him in Articles 51 to 52 of the Code of Criminal Procedure, which could lead the judicial police officer to arbitrarily violate the guarantees afforded to the person in custody, which could lead to the weakening of the safeguards granted to the person in custody.

- The guarantee that detainees can communicate with their lawyers in the presence of the judicial police officer, which demonstrates the Algerian legislature's respect for international conventions that promote respect for the rights of the defense and the presumption of innocence.

- The Algerian legislature has enshrined a guarantee that allows detainees to have recourse to a medical examination, when necessary, the Reb enhancing physical protection. However, the Algerian legislature has not clarified the places where the medical examination may be conducted, whether at the place of detention or in a hospital.

Accordingly, we offer the Following suggestions:

-The Algerian legislature should clearly and explicitly stipulate the right of the detainee to be informed of the suspicion against him, including the facts attributed to him and the Legal basis for his detention.

-The Algerian legislator should clarify the provisions for conducting a medical examination of the detainee and where this examination is conducted. The legislator should also explicitly stipulate that the medical examination is conducted at the beginning and end of the arrest, as stipulated in the Child Protection Law.

Bibliography List:

¹It should be noted that Arab legislators have not agreed on a single term for this procedure, known in French as *La garde à vue*. Some refer to it as 'retention pending investigation,' others as 'detention pending investigation,' and still others as 'placement under surveillance,' 'arrest,' or 'detention.' Algerian lawmakers initially called it 'Arrest under surveillance' but later changed the term to 'detention for investigation' to align with the term used in Article 45 of the 2020 Constitution. Ahmed Gay, *Guarantees for Suspects During Preliminary Investigations*, Dar Houma, Algeria, 2005, p. 204.

²Abderrahmane Khalfi, *Penal Procedures in Algerian and Comparative Legislation*, Dar Belqis Publishing and Printing, Algiers, 2016, p. 85.

³Omar Wasif al-Sharif, *General Theory of Preventive Detention*, first edition, al-Halabi Legal Publications, Syria, 2004, p. 35.

⁴Ahmed Gay, *op. cit.*, p. 204.

⁵Arrest for investigation is a measure that restricts personal freedom and may only be taken in exceptional circumstances. It derives its legitimacy and legal basis from the Algerian Constitution, Article 44 of Presidential Decree No. 20-442 of 15 Jumada I 1442, corresponding to 30 December 2020, concerning the adoption of the constitutional amendment, J.R.G. 82, issued on 30 December 2020, states that: "No one shall be prosecuted, arrested or detained except under the conditions specified by law and in accordance with the procedures laid down by law. Every person arrested shall be informed of the reasons for their arrest..." In the same context, Article 45 stipulates that: 'Arrest shall be subject to judicial review in the context of criminal investigations and may not exceed forty-eight (48) hours...'"

⁶Article 12 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment was adopted and promulgated by United Nations General Assembly Resolution 173/43 of December 1988.

⁷Articles 41 to 65 of Order No. 66-155 dated 18 Safar 1386, corresponding to 8 June 1966, containing the amended and supplemented Code of Criminal Procedure, as well as Article 141 thereof relating to judicial supervision.

⁸Litouch Delila, *Legal Protection of Persons in Custody*, Thesis submitted in partial fulfilment of the requirements for the degree of Master of Public Law, specialising in Criminal Law and Criminal Sciences, Faculty of Law, University of Constantine, 2008/2009, p. 9.

⁹Ali Shammall, *The New Algerian Criminal Procedure Code: 'Evidence and Prosecution'*, Dar Houma Publishing and Distribution, Algiers, 2016, p. 37.

¹⁰Article 51 of Order No. 15-02 dated 7 Shawwal 1436, corresponding to 23 July 2015, amending and supplementing the Code of Criminal Procedure, J.R.G. 40, issued on 23 July 2015.

¹¹Johan Dechepy-Tellier, *Criminal Procedure in Diagrams*, Ellipses Edition, 2015, p. 412.

¹²Article 49 of Law No. 15-12 of 15 June 2015 on child protection, J.G.A. 39, issued on 19 July 2015.

¹³We believe that Article 49/2 is unclear. What crimes constitute a clear violation of public order? Any crime, regardless of its nature, constitutes a violation of public order. What are the boundaries that distinguish between a normal violation and a clear violation?

¹⁴Article 12 of the Code of Criminal Procedure, amended by Law No. 17-07 of 28 Jumada II 1438, corresponding to 27 March 2017, containing

The Arrest for investigation Between the necessity of taking action and respect for human rights

amendments to the Code of Criminal Procedure, J.R.G. 20, issued on 29 March 2017.

¹⁵ *Article 65 of the Code of Criminal Procedure, as amended by Order No. 15-02.*

¹⁶ *Abdul Hamid Al-Shawarb, Guarantees for the Accused during the Criminal Investigation Stage, Al-Ma'arif Publishing House, Alexandria, 1996, p. 121.*

¹⁷ *Merle Roger, Vitu André, Treatise on Criminal Law, Criminal Procedure, 3rd edition, Edition Cujas, Paris, 1976, p. 427.*

¹⁸ *Article 141 of the Algerian Code of Criminal Procedure.*

¹⁹ *Article 138 of the Algerian Code of Criminal Procedure.*

²⁰ *Jean Larguier, Philippe Conte, Criminal Procedure, 23rd edition, 2014, Dalloz, p. 86.*

Referring to French legislation, we find that it sets the period of detention for investigation at twenty-four (24) hours as a general rule for adults, and twelve (12) hours for juveniles aged 10 years and above.

²¹ - *Article 63 III of LOI n°2014-535 of 27 May 2014 on the right to information in criminal proceedings, Official Journal Number 123 of 28/05/2014: “ If, before being placed in police custody, the person has been apprehended or has been subjected to any other coercive measure for these same facts, the time of the beginning of the detention shall be fixed, for the observance of the periods provided for in II of this section, at the time from which the person was deprived of liberty. If the person has not been subject to a prior detention order, but is placed in custody immediately following an examination, this time shall be set at the beginning of the examination. If a person has already been placed in custody for the same acts, the duration of previous periods of police custody is imputed to the duration of the measure”*

²² *Gilbert Azibert, Code of Criminal Procedure, 27th edition, Lexist, Paris, 2015, p. 86.*

²³ *Mohamed Hazit, Principles of Criminal Procedure in Algerian Law in Light of the Latest Amendments to the Code of Criminal Procedure and Judicial Precedents, Vol. 4, Dar Belqis Publishing House, Algiers, 2024, p. 159.*

²⁴ *Article 9/2 of the International Covenant on Civil and Political Rights was adopted and opened for signature, ratification and accession by General Assembly resolution 2200 of 16 December 1966. It entered into force on 23 March 1976.*

²⁵Youssef Delanda, *Al-Wajiz fi Damanat al-Mahkama al-Adila (A Concise Guide to Fair Trial Guarantees)*, vol. 2, Dar Homah Publishing and Printing, 2006, p. 119.

²⁶Ammar Boudiouf, *Fair Trial in the Islamic Criminal System and International Conventions: A Comparative Study*, Vol. 1, Jisr Publishing and Distribution, 2010, p. 50.

²⁷Mohammed Hazit, *op. cit.*, p. 167.

²⁸Article 52 of the Algerian Code of Criminal Procedure.

²⁹Article 52, paragraphs 4 and 5, of the Algerian Child Protection Act.

³⁰Serri, Khadija, Akroum, Adel, *The Role of the Presumption of Innocence in Promoting the Right of Detainees to Physical Integrity*, *Journal of Legal and Political Research and Studies*, University of Blida 2, Volume 6, Issue 2, 2017, p. 567.

³¹The body of principles for all persons subjected to any form of detention or imprisonment was adopted and made public by United Nations General Assembly Resolution 173/43 of 9 December 1988.

³²Article 51 of the Algerian Child Protection Act.

³³Abdullah Ouhaybia, *Explanation of Algerian Criminal Procedure Law*, Vol. 1, 2nd edition, Dar Houma Printing, Publishing and Distribution, Algiers, 2018, p. 465;

Abdelrahman Khalfi, *op. cit.*, p. 119.

³⁴Tabash Ezzedine, *Arrest for Examination in Algerian Legislation: A Comparative Study of Different Forms of Detention in the Preliminary Stage of Criminal Proceedings*, Master's thesis, specialising in criminal law, Faculty of Law, University of Baji Mokhtar Annaba, 2003-2004, p. 122.

³⁵Article 40 of Executive Decree No. 91-524 of 18 Jumada II 1412, corresponding to 25 December 1991, containing the basic law on national security personnel, *Official Gazette of the Algerian Republic*, No. 69, issued on 28 December 1991.

³⁶Article 41 of Executive Decree No. 91-524, cited above.

³⁷Article 209 of the Algerian Code of Criminal Procedure.

³⁸Litush Delilah, *op. cit.*, p. 140.

³⁹Article 107 of Decree No. 66-156 of 18 Safar 1386, corresponding to 8 June 1966, containing the amended and supplemented Algerian Penal Code.

⁴⁰Delilah Maghni, 'Arrest for Review in Algerian Legislation,' *Al-Haqiqa Magazine*, University of Adrar, Vol. 7, No. 01, 2008, p. 218.