

*The extent to which the detainee has been temporarily
treated with special punitive treatment*

مدى تمتع المحبوس مؤقتا بمعاملة عقابية خاصة



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Abstract:

It is considered that pre-trial detention is an exceptional measure dictated by the necessity of investigation, and the rule was that the accused was innocent until proved guilty, the detainee must be temporarily subjected to special treatment in accordance with those rules. Most countries have tried to enshrine this in their laws in line with international conventions, however, the practical reality shows that those laws are not applied in most countries, especially poor ones, this is due to several considerations, the most important of which is the lack of technical resources and financial possibilities.

key words:

pre-trial detention, remanded in custody, punitive treatment, penal institution.

ملخص:

انطلاقا من اعتبار أن الحبس المؤقت يعد إجراء استثنائيا أملت ضرورة التحقيق، وأن القاعدة أن المتهم بريء إلى أن تثبت إدانته، وجب إخضاع المحبوس مؤقتا إلى معاملة خاصة تتفق وهاتين القاعدتين. وقد حاولت أغلب الدول تكريس ذلك في قوانينها تماشيا مع ما أقرته الاتفاقيات الدولية في هذا الشأن، غير أن الواقع العملي يبين أن تلك القوانين لا تطبق في غالبية الدول خاصة الفقيرة منها، وذلك نظرا لعدة اعتبارات وأهمها نقص الموارد الفنية والإمكانات المالية.

الكلمات المفتاحية: حبس مؤقت، احتياطيا، معاملة عقابية، مؤسسة عقابية.

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Introduction:

Since temporary detention is an exceptional measure dictated by the necessity of the investigation, and the rule is that the accused is innocent until

proven guilty, from this point of view, the provisionally or temporarily imprisoned must be subjected to special treatment in accordance with these two rules, and to achieve this goal and in line with what is approved by the international conventions on this subject, the countries worked To put in place texts that reflect the privacy of the system to which the temporarily imprisoned is subject, whether this is at the core of its procedural laws or by allocating separate laws for this matter.

The Algerian legislator, like other different legislations, was inspired by some principles relating to the treatment of temporary detainees from the rules of limitation for the treatment of prisoners that were adopted by the United Nations following the convening of its conference on the prevention of crime and the treatment of criminals held in Geneva on 30/08/1955.

Before we delve into the treatment to which a provisionally imprisoned person is subjected, we point out that the majority of criminal legislation requires that the accused may not be held in temporary detention before he is notified of this matter, with the necessity of having a basis for this deposit, since the legality of the accused being in temporary detention is achieved only on the basis of His detention is based on a legal document or justification that justifies it¹. Thus, it is the responsibility of the penal institution or the employee appointed for this purpose not to accept any person in prison for money that has not been verified by the existence of an order issued by a competent judicial authority to imprison him temporarily.

Those who are temporarily imprisoned are placed in separate places from the places of other convicts according to final judicial rulings of conviction in accordance with the text of Article 47 of Law No. 05/04 on the organization of prisons and the social reintegration of prisoners, dated 5/2/2005, which states that: Temporarily incarcerated persons shall be separated from other categories of detainees²... This principle came in accordance with the provisions of Rule 78 of the minimum rules for the treatment of prisoners, which stipulates that: "The accused must be separated from the convicted prisoners..."

The reason behind defining this rule lies in preventing the temporarily imprisoned from learning the methods of criminality from other convicts, on the grounds that temporary detention may be the first point of contact with the criminal world, on the one hand.

¹ Abdel Tawab Moawad, 1995, p. 225.

² Corresponding to Article 58 of the French Code of Criminal Procedure

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On the other hand, this chapter is based on the fact that punitive treatment in its true meaning applies to convicts who have been convicted by judicial rulings and whose need for rehabilitation and reform has become clear ¹while those who are temporarily imprisoned will not yet be proven guilty, but are detained for specific reasons, and this is what makes an attempt to rehabilitate them in most cases, it is of little use. In addition to the foregoing, the imprisoned enjoys the principle of the presumption of innocence that accompanies it throughout the investigation procedures and until the issuance of a final judicial ruling that now condemns him for the crime for which he is being pursued.

We point out that the Algerian legislator did not adopt the system of isolation for temporary detainees as a general principle, as Article 54 of the aforementioned Law No. 05-04 stipulates the following: “The system of collective confinement shall be applied in penal institutions, and it is a system in which prisoners live collectively.” This is in contrast to the French legislator who adopted the system of solitary confinement, and this is demonstrated by the text of Article 716 of the French Code of Criminal Procedure amended by Article 68 of Ordinance No. 516_2000 related to strengthening protection for the presumption of innocence and the rights of victims, as it states: Solitary day and night...

From this point of view, the question posed here: Does a temporary prisoner enjoy rights and special treatment different from the treatment of a prisoner with a final judgment? Does he actually have those rights, or are they just laws that we do not find implementation on the ground?

The Algerian legislator did not provide special texts regulating the rights and duties of the temporary prisoner - unlike the Egyptian and French legislation, and all it reached was the formulation of texts concerned with the organization of prisons and the re-education of prisoners through Order 82_02, which includes the Law on Prisons and Re-education of Prisoners issued on 2/10/1982, As well as amending it by Law No. 05-04, which includes the organization of prisons and the social reintegration of prisoners, and making the provisions of these articles common to those who are temporarily imprisoned and those who are sentenced.

We will try to clarify the rights of the temporary prisoner, from which it becomes clear how to treat him according to the following plan:

The first topic: the main rights of the temporarily imprisoned

The second topic: the subsidiary rights of the temporarily imprisoned

¹ Swailem Muhammad Ali, 2007, p. 121.

The first topic: the main rights of the temporarily imprisoned

The temporary detainee enjoys several fundamental rights, which we will address in this topic as follows:

The first requirement: the accused's right to wear his own clothes

Rule 88 of the Standard Minimum Rules for the Treatment of Prisoners stipulates the need for the accused to be temporarily allowed to wear his own clothes, and in this case all appropriate facilities must be made to enable him to purchase the clothes. which he needs while in prison. or at least allow his family to change clothes regularly. The prisoner should not be prevented from enjoying this right unless his clothes are dirty or inappropriate. If this is the case, the prison administration has the right to intervene and prevent him from wearing them in order to preserve public health and safety, to be clean and separate from the clothes of other convicts. This right was mentioned in article 48 of the Algerian law 04/05, as well as in article 61 of the French code of criminal procedure and in article 15 of the Egyptian law on the organization of prisons, which stipulated: "Defendants have the right to wear their own clothes, unless the prison administration decides to observe. For health, hygiene or safety, they can wear the clothes prescribed for other prisoners. As a result, the Egyptian legislator, in accordance with the provision of this article, violated what was established by rule 88 of the Minimum Rules for the Treatment of Prisoners, and it was at that time that it approved the port of the precautionary uniform prescribed to other prisoners as an exception to the wearing of his own clothes, while he had to maintain the limits of distinction between the two categories According to the wording of the rule, even if it is about an exception to this right.

The second requirement: the right of the temporary detainee to food and health care

Among the main rights of a temporary prisoner, is that the penal institution provide him with food and health care:

Section One: The right of the temporary prisoner to obtain food

Rule 87 of the Minimum Rules for the Treatment of Prisoners of a Temporary Prisoner permits a provisionally imprisoned person to purchase whatever food he wants at his own expense, whether through the prison administration if the latter is available in stores designated for this purpose, or to bring it from abroad through his family or friends. And that within the limits consistent with public order in the prison.

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But if the temporary prisoner is unable to buy his own food, the prison administration in this case must provide him with it at the expense of the government.¹

It should be noted that the right to adequate food should not be interpreted narrowly and limited to securing the minimum amount of calories, proteins and other specified nutrients². Rather, the food must be healthy and balanced, in which all the healthy and sound elements are available for its preparation and presentation³. With the need for the punitive administration at the level of these elements to take into account the nutritional requirements of a specific group of prisoners - whether they are sentenced or imprisoned temporarily - and it is related to sick cases, nursing mothers, pregnant women and children, given that these groups need special care that exceeds the care allocated to the ordinary prisoner.⁴

Section Two: The right of the temporary prisoner to health care

Those in charge of prisons and places of detention for temporary detainees must provide health care⁵ to these people while they are in prison, so it is not appropriate to say that the standard of living that a person deserves from care is lower because of his imprisonment than the level available to the average citizen. of his freedom.

In order to achieve this, every detainee, after being admitted to the place prepared for his detention, must undergo an appropriate medical examination by the prison doctor, who is responsible for detecting the diseases that the accused suffers from, in order to take the necessary measures to isolate him from the rest of the temporarily imprisoned if necessary⁶. If the temporarily imprisoned requests to see his own doctor and he is able to pay his expenses, the prison

¹ Article 11 of the International Covenant on Civil and Political Rights.

² International Human Rights Instruments, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, General Comment No. 12 of 1999 of the Committee on Economic, Social and Cultural Rights on the Development of the Right to Adequate Food (Article 11). s. 60.

³ Article 63 of Algerian Law No. 05/04 on the organization of prisons and the social reintegration of prisoners.

⁴ Article 50 of Law 05/04 mentioned above.

⁵ See the first paragraph of Article One of Article 25 of the Universal Declaration of Human Rights, the first paragraph of Article 12 of the International Covenant on Economic, Social and Cultural Rights, Rule 22 of the Minimum Rules for the Care of Prisoners, and Article 57 of the Algerian Law 05/04.

⁶ See Article 58 of the aforementioned Law No. 05/04.

administration must enable him to do so¹. If he is unable to do so, then in this case, she must transfer him for treatment in one of the state hospitals.

the second Topic: the subsidiary rights of the temporarily imprisoned

In addition to the main rights that the temporary prisoner enjoys, there are other rights that must be granted to him when he meets the conditions for entitlement or he requests them, and these rights are limited to the following:

The first requirement: the right to education and work

Education and work are among the rights that a temporary prisoner may need during his imprisonment, and that is according to his desire:

Section one: the right to education

Since education is a right guaranteed by all international conventions and internal laws², as it is an essential element in reforming and educating the prisoner in order to avoid making mistakes again, then every penal facility has a library, and the prisoners benefit from its references³, in order to educate themselves in terms of religious, moral and other aspects, as well as to fill their spare time, which naturally helps them to distract their thinking from learning the different criminal methods.

In addition, temporary detention must not be a barrier preventing the detainee from continuing his education, and therefore it is the responsibility of the punitive administration to enable him to take the exams for his studies at the institution's headquarters, especially since his conviction has not yet been confirmed and he may be innocent, and therefore it is unfair that We prevent him from continuing his education.

Section Two: The Right to Work

Distinguishing between the temporarily imprisoned and the convict in terms of treatment requires that the temporarily imprisoned not be obligated to work, and if he chooses to do so, he must receive a wage in return for doing it⁴. The majority of criminal legislation has tended to endorse this right, and this is evidenced by the text of Article 48 of Algerian Law No. 05/04, which states: "A

¹ Rule 91 of the Minimum Rules for the Treatment of Prisoners.

² Rules 75/2 of the Minimum Rules for Prisoners, Articles 59,98 of the Algerian Prison Organization Law, amended and supplemented, Articles 450/2,452,454 of the French Code of Criminal Procedure, Articles 39/2, 38, 30, 31 of the Prison Organization Law Egyptian.

³ It was published in the Algerian daily newspaper El Khabar that most of the references in Algerian prisons are old references, and this is due to the lack of funds allocated to the prison sector, according to his officials. See: "Impaired Nutrition and Exceeding the Pre-trial Detention Period". Al-Khobar newspaper published on 04/12/1999. Issue 2726, p. 3.

⁴ See Rule 89 of the Rules for the Minimum Treatment of Prisoners.

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person who is temporarily imprisoned is not required to wear a penal uniform or to work, except for work necessary to maintain the cleanliness of places of detention, after seeking the opinion of the penal institution doctor. Corresponding to it is Article 24 of the Egyptian Prisons Organization Law, which permitted work for a temporary prisoner if he requested it. However, the Egyptian legislator did not stipulate that he should be paid for this work, and this is a legislative void that he must remedy. As for the French legislator, it was regulated in Articles 62 and D 63 of the annex to the French Code of Procedure.

According to the foregoing, we see that acknowledging the work of a temporary prisoner in the different criminal systems is a desirable and commendable matter, given the benefit that it brings to him while he is in prison, especially if this period is long, as he will find something to occupy him during, thus reducing the probability of his contact with the criminal world, and he will get a wage for his work is a pure right for him to cover his personal and family expenses, especially if he is the one in charge of its affairs and requirements, and therefore it is better to take into account in his estimation the reward of the example in ordinary life¹. In view of these privileges, we believe that it would be better if the temporarily imprisoned person was allowed to choose the type of work that he will undertake within the limits of what the prison system allows, so that this work does not turn into a punishment imposed on him, as is the case for the convict within the framework of his rehabilitation and reform program, and so that the institution benefits Punitive in turn from the mastery and professionalism of the prisoner of a specific craft.

The second requirement: the right of the temporary prisoner to communicate abroad and to complain

The temporarily imprisoned has the right to contact abroad and the right to complain, which we will explain below:

Subsection One: The right of the temporary prisoner to communicate abroad

We mean the right of a temporary prisoner to communicate abroad, his right to visits and correspondence, as well as his right to contact his lawyer:

1_ The right of the temporary prisoner to visits and correspondence:

The rules for organizing visits and correspondence are considered among the most important rules regulating the treatment of a temporary prisoner while he is in prison, both internationally² and internally, because they directly affect

¹ Al-Marsafawi Hassan Sadiq, 1954, p. 132.

² Rule 92 of the Minimum Rules for the Treatment of Prisoners

his right to communicate with his family members, friends and lawyers outside prison. This is in order to notify them of the issue of his imprisonment and the place in which he is imprisoned so that they provide him with sufficient assistance to solve his problem and raise his spirits to overcome it.

The Algerian legislator regulated the right of visitation¹ in Articles 68, 67, and 66 of the aforementioned Law 05/04, while the French legislator stipulated it in the text of Article D 64 of the French Code of Criminal Procedure supplement and Articles 116 and 716/2 of the French Code of Criminal Procedure.

By extrapolating the provisions of the previous texts, we find that they have granted the temporarily imprisoned the right to communicate with whomever he deems appropriate to inform him of the order of his imprisonment. Unless the exigencies of justice so require, and prohibition should not be used as a means to pressure him to obtain his confession about the crime for which he is imprisoned. The Algerian legislator approved the ban on visiting and made it one of the disciplinary measures imposed on a temporary prisoner in the event of a violation of the rules related to the functioning of the penal institution. Especially if we know that he has equated the temporary prisoner with the convict in terms of the duration of the prohibition of communication under the provisions of Articles 70 and 83 of Law 05/04, which should not be in the context of the specificity of the internationally prescribed treatment for the category of pretrial detainees.

In addition to the right of visitation, the accused who is temporarily imprisoned has the right to correspond with whomever he wants, which is granted to him by the Algerian legislator in the text of Article 73 of the aforementioned Law 05/04. Algerian No. 82/02² amended by Law No. 04/05, with the exception of those that take place between the accused and his lawyer in application of the text of Article 74 of Law 05/04, which states: “The correspondences addressed by the prisoner to his lawyer or which are not subject to the supervision of the director of the penal institution are not subject to the supervision of the director of the penal institution. The latter directs it to him, and it is not opened for any excuse whatsoever, unless nothing appears on the envelope that indicates that it was sent to the lawyer or issued by him.

¹ A temporarily imprisoned person may not enjoy or exercise the right of visitation except by virtue of a license granted by the competent judicial authority to the person wishing to visit him. See Article 68 of the Algerian Prison Organization Law.

² This surveillance is not considered an attack on the personal freedom of the accused who is temporarily imprisoned, because this correspondence may include what would affect the interest of the investigation and its course, or would lead to disturbances in maintaining security and public order within the penal institution, such as political leaflets and obscene speeches, and this justifies be monitored. See/ Razzaki Nabila, 2008, p. 340.

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2_The right of a temporary prisoner to contact his lawyer:

Perhaps the most important person who needs a temporary prisoner to contact him during his imprisonment is his lawyer, given that the right of defense is one of the fundamental rights that the prisoner must have, especially since the crime has not yet been proven against him and he is still enjoying the principle of presumption of innocence, and therefore meeting him With his lawyer, he will be able to provide him with a set of information and instructions that will inevitably help him in showing his innocence if there is a place for them.

This right is emphasized in Rule 93 of the Minimum Rules for the Treatment of Prisoners, which states: "The accused must be allowed to request the appointment of a lawyer to defend him in cases where the law provides for the presence of a lawyer with him, and to receive the visit of his lawyer to prepare his defense, and to prepare He gives his own instructions to his lawyer and delivers them to him, and therefore the accused must be provided, if he wants, with writing tools, and the interview between the accused and his lawyer may take place under the sight of the policeman or the institution's employee without the exchange between the accused and his lawyer being within their hearing."¹

The Algerian legislator has cited the same principle in the text of Article 70/1 of Law No. 05/04, where it states: "The lawyer, upon presentation of the visitation permit handed over to him by the competent judicial authority, has the right to contact the accused freely without the presence of the guard in the prepared chat room. specially for that." In addition to this, the legislator made it obligatory not to prevent the lawyer from communicating with his client if the investigative judge decided to temporarily prevent communication from the detainee, and this meaning was mentioned in the text of the second paragraph of Article 70 of the same law, where it stated: Disciplinary measures, whatever their nature, have the right of the detainee to freely communicate with his lawyer.

Section Two: The Temporary Detainee's Right to Complain

The first paragraph of Article 79 of Law No. 05-04 amending and supplementing Ordinance 72-02 stipulates the following: "A detainee may, when any of his rights are violated, submit a complaint to the director of the penal

¹ The aim of making the interview between the temporarily imprisoned accused and his lawyer under the supervision of the prison administration employee without hearing the conversation that takes place between them is for fear of transferring this conversation to another party, which affects the accused's defense. That is, the interview must be conducted in a manner that guarantees the confidentiality of the defense aspects it addressed. See Saifi Abdel Fattah, 2004, p. 395.

institution, who must register it in the special register and consider it and verify the correctness of what is stated in it. and take all legal measures in this regard. Also, a person imprisoned temporarily according to the second paragraph of the same article, if he does not receive a response to his complaint from the director of the penal institution within ten days from the date of its submission, has the right to notify the judge applying the penalty directly. And who can meet them without the presence of the staff of the penal institution¹.

In order to activate this right, every detainee should be provided upon entering the place designated for his temporary detention with the systems prescribed for the treatment of detainees of his category and the authorized methods for obtaining information, submitting complaints and all other matters that he must be aware of in order to know his rights and obligations, and to adjust his behavior in accordance with the requirements of life in the penal institution². It is required that he be provided with all these issues in a language he understands, and it is preferable that this be in writing, if this is not possible due to the necessity of what was communicated orally.

Accordingly, if the temporarily imprisoned person submits his complaint, which may be written or verbal, to the authority competent to look into it, the latter must give it the necessary care it deserves by responding to it within a reasonable period and without delay. The complaint may relate to the subject of temporary detention, if it turns out that the accused is imprisoned on the occasion of a crime punishable by a fine only, or it may relate to his treatment in violation of the provisions of the law, and on the grounds that the Algerian legislator has granted the right to consider the grievance to the director of the penal institution as a general asset, which is also the case in French legislation, while The Egyptian legislator granted it to the Public Prosecution - as a general principle - we see that the jurisdiction to decide on the complaint submitted by the temporarily imprisoned is determined according to its subject matter in itself, meaning more precisely that if its subject is related to the temporary detention of the accused, as in the situation in which he is imprisoned without a document or in a crime It does not, by its nature, require this procedure to be taken. In this case, the jurisdiction is held by the authority that issued the temporary detention order, given that it is the most familiar with the facts of the case. If the grievance is related to the treatment within the penal institution, then the institution's director is responsible for deciding on it.

¹ The third paragraph of Article 79 of Law No. 05/04 of the aforementioned law.

² Article 44 of the aforementioned Algerian Law No. 05/04.

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Thus, we conclude that deciding on petitions and complaints should be by the closest possible point of their origin rather than passing them to the highest level in the management ladder, provided that the point of origin is impartial and impartial, so that the complaint is not taken as a means of retaliation against its owner, and in this regard and with the intent of Achieving the greatest degree of justice and independence in the consideration of grievances, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment recommends that systems for expressing grievances consist of two levels, one within the penal institution and the other from outside it¹.

Conclusion :

Through our study, we have tried to clarify the extent to which the temporary prisoner enjoys special punitive treatment, by exposing the most important rights that the temporary prisoner must enjoy during the period of execution of the imprisonment order issued against him, and these rights reflect the specificity of the treatment that must be provided to this category of prisoners, so that they are Their lives in places of detention are closer to normal life, which ensures that the wisdom of temporary detention is achieved.

However, we find that the practical reality shows that the previous provisions and rules are not applied in most countries, especially the poor ones, due to several considerations, perhaps the most important of which is the argument of lack or absence, if true, of technical resources, mainly represented in the lack of qualified and qualified people to enable them to Dealing with temporarily imprisoned, as well as denying the financial means to build special places for detention, so the state finds no solution but to put them with convicted prisoners, i.e. those against whom judicial rulings of conviction have been issued. It often reaches the point of humiliating and cruel treatment, as well as the spread of infectious diseases among prisoners of all kinds due to the poor health conditions, especially those related to the ventilation of places prepared for imprisonment.

Accordingly, we believe that although this miserable situation is justified, these reasons should not be taken as an excuse to justify the denigration of human dignity, and therefore it is the responsibility of states to ensure that every individual deprived of his liberty has the right to be treated in accordance with what is recognized by international texts, and to ensure To his person the respect

¹ Human Rights and Prisons, Prison Staff Training Manual, visit the website on November 22, 2019, published on the following website: <http://hrlibrary.umn.edu/arabic/TR-OHCHR13.html>

inherent in him by virtue of his belonging to the human family¹, and not to expose him to abuse or torture, whatever its form, whether moral or material².

It is also important for those in charge of penal institutions and places of detention to bear in mind that the life of a temporary prisoner inside the institutions must be commensurate with his position as a person who has not yet been proven guilty and has not yet been convicted, meaning that his life must be closer to ordinary life than to the life of a prisoner, nor This can only be done by constantly invoking the nature of temporary detention as an exceptional measure, which is not resorted to unless legally defined reasons and conditions exist for the accused who is to be imprisoned.

Finally, we point out that the treatment of the temporary prisoner is not limited to the positive side only, which appears through his enjoyment of the rights assigned to him, but also falls on him to abide by the duties imposed on him by the prison administration - under penalty of discipline - which is the negative side of the treatment related mainly to the obligation to respect the prisoner Temporarily all prison internal rules and regulations related to public security, hygiene, health and obedience necessary for guards and penal institution employees during the performance of their duties.³

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¹ Article 5 of the Universal Declaration of Human Rights and Article 6 of the International Covenant on Civil and Political Rights.

² See the first paragraph of Article 10 of the International Covenant on Civil and Political Rights

³ See Articles 41, 42, 66 and beyond of the Algerian Prison Organization Law.

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