

## أثر بدائل التوقيف في تخفيف بطلان التوقيف وفقاً لقانون اصول المحاكمات الجزائية

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### الملخص

يعتبر التوقيف من الاجراءات القسرية السالبة للحرية، فهو من التدابير الاستثنائية التي تلجأ لها سلطة التحقيق ضمن إطار قانوني محفوف بشروط ومبررات معينة. إلا ان الواقع العملي يشير الى وجود استخدام مفرط في اللجوء الى التوقيف. الأمر الذي دفع المشرع الى البحث عن بدائل للتوقيف لتجنب الاجراءات القسرية السالبة للحرية. إذ أن استخدام البدائل قد يكون أقرب للعدالة، بذات الوقت يراعي مصلحة التحقيق ويحمي قرينة البراءة. إضافة لذلك تساعد البدائل في تخفيف الأعباء الناجمة عن اكتظاظ مراكز الإصلاح والتأهيل. تناولت الدراسة موضوع التوقيف، ضوابطه وشروطه، وتوصلت الى انه ليس عقوبة، إنما عبارة عن اجراء يجب أن يتم في إطار من المشروعية بحدود الغاية التي شرع لأجلها. كما بينت أن البدائل المستحدثة قد تساهم في تجنب بطلان التوقيف كإجراء تحقيقي حمايةً للدعوى الجزائية. لذا فقد أوصت الدراسة المشرع أن يقوم بتنظيم إطار واضح لبطلان التوقيف وربط بطلانه بالبطلان المتعلق بالنظام العام.

الكلمات الدالة: بدائل التوقيف، قانون الاجراءات الجزائية، التوقيف، الموقوفين.

## The Effect of Pre-trial Detention Alternatives in Reducing its Invalidation in Accordance with the Jordanian Code of Criminal Procedure

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### Abstract

Pre-trial detention is an exceptional measure that investigators resort to under certain conditions. However, the reality indicates that there is an excessive use of pre-trial detention, and this prompted the legislator towards alternatives to avoid measures that affect the justice system. As a result, these alternatives ensure justice, maintain the interest of the investigation, and presumption of innocence. In addition, they would help reduce rehabilitation centres' overcrowding. This study dealt with pre-trial detention measures and conditions, and concluded that this detention is not a mere punishment, but also a procedure that must be carried out within the legal framework and the purpose for which it was prescribed. It also showed that the new alternatives may contribute to avoiding the invalidity of pre-trial detention as an investigative measure to protect the criminal case. Therefore, the study recommended the legislator to set a clear framework for the invalidity of arrest as an aspect of public order.

**Keywords:** Alternative to pre-trial detention, Criminal Procedures Law, pre-trial detention,

## Introduction

The investigation process is seen as a tool for establishing the legal truth and a weapon for the Public Prosecution Office in its demand for the criminal's punishment. This process goes through various steps, some of which may be risky steps that could violate individuals' freedom or have the potential to take it away, like pre-trial detention.

Like other procedural acts, pre-trial detention poses a danger to the accused's physical, mental, and social well-being; thus, it must be carried out under controlled circumstances. Moreover, it is considered a part of the investigation process with legal justifications because it furthers the investigation's goals. Still, it may also conflict with other legal rules, including the constitutional guarantees of personal freedom, such as the presumption of innocence and the origin of human freedom, which requires the imposition of restrictions and guarantees to assure the validity of its procedures. Since the accused is presumed innocent until proven guilty, the concern with the custody process stems from the fear of an unjustifiable violation of personal freedom. An accused person who may be declared innocent may also lose his liberty due to detention (Abu Issa, H. and Al Shibli, M, 2022, p113).

However, specific justifications require the accused to be subject to the so-called arrest, custody, or pre-trial detention. This triggers doubt about how these justifications can be accepted, given the concern that imprisonment will infringe on personal freedom. Another empirical concern is that, given the volume of cases and the Public Prosecution preoccupation, we might discover that there is an excessive use of pre-trial detention procedures. This has raised concerns about the reversed burden of proof, as it violates the presumption of innocence. This matter appeared the need to search for legal alternatives to the judicial need for pre-trial detention to avoid nullity.

Therefore, pre-trial detention will be defined in the first section of this research. The second section will address invalidation as a procedural penalty for pre-trial detention which its conditions are violated. The third section deals with alternatives to pre-trial detention to avoid nullity and achieve the purpose of pre-trial detention and completion of the investigation process.

## Section One: Pre-trial Detention as a procedural measure

### *The concept of Pre-Trial Detention or Remand*

Pre-Trial Detention or Remand is the deprivation of the accused's liberty for a period determined by the requirements of the investigation and its interest in accordance with the rules established by law (Al-Husseini, 1993, p. 42). And we can say that it is one of the investigation procedures that may include elements of coercion as it aims to find the truth (Brik, 2008, p. 50). But on the other hand, it seeks to ensure the integrity of the investigation by placing the accused under the investigator's supervision and not enabling him to escape, tamper with the evidence of the case, or influence witnesses (Khaled, 2000, P125).

Pre-trial detention is defined as a procedural measure of deprivation of liberty of the suspect or the accused, determined by a court before or during the criminal proceedings under prescribed legal conditions consisting of temporary detention to achieve a particular aim prescribed by criminal procedural law (Krapac, 2014, p. 381).

It is noteworthy that pre-trial detention differs from actual imprisonment in this case since imprisonment is regarded as a penalty established following the conclusion of all investigation and prosecution processes by a judgment from the competent court (Saleh, 1985, p. 44). And it is guaranteed by the constitution. Therefore, the legislator has given it protection (Al Jokhdar, 1992, p.421). For example, the Jordanian constitution guarantees individual liberty in

Article (7), which stipulates that: "*Personal freedom shall be guaranteed; every infringement on rights and public freedom or the inviolability of the private life of Jordanians is a crime punishable by law.*" Furthermore, article (8) specifies, "*No one shall be arrested, imprisoned, or has his freedom restricted, except in accordance with the provisions of the law*".

### ***Conditions of pre-trial detention***

Pre-trial detention procedures should be performed under some conditions. These conditions can be substantive or procedural conditions. The objective conditions include the following:

#### **1. The authority entitled to issue the arrest writ:**

According to Jordanian law, two authorities are entitled to detain, namely, the Public Prosecution and the trial court:

##### **a) Pre-trial Detention by the Public Prosecution:**

Detention is the prerogative of the Public Prosecution, as the first paragraph of Article (111) of the Criminal Procedures Law stipulates that: "*The public prosecutor in felony and misdemeanour cases might only issue a request for appearance warrant which can be replaced by an arrest warrant after interrogating the defendant, and the investigation required taking this measure.*" Article (114) paragraph (1) states that: "*After interrogating the defendant, the public prosecutor might issue an arrest warrant against him.*" Article (2) of the same law states that: "*Despite what is stated in paragraph (1), the public prosecutor might issue an arrest warrant against the defendant in the following instances....*"

It should be noted that the authority of the public prosecutor to detain is optional or permissive according to the circumstances of the case (Al Jokhdar, 1992, p.421), because detention is a sort of deprivation of liberty, the public prosecutor issues the arrest decision based on his discretionary authority and the circumstances of the case, and this is inferred from the first paragraph of Article (114) of the Criminal Procedures Law: "*After interrogating the defendant the public prosecutor might issue an arrest warrant....*"

##### **b) Pre-trial Detention by the trial court:**

*The judge* may also exercise this authority after the case file is referred to him. Paragraph 4 of Article 114 of the Criminal Procedures Law declares that: "*If the interest of the investigation requires the continuing detention of the defendant after the end of the periods stated in paragraph (1) of this Article, the public prosecutor has to submit the case file to the court competent to hear the case. The court, after reviewing the public prosecutor's request; hearing the defendant or their representative and reviewing the investigation documents, might extend the detention period for another term ....*"

**2. The justifications for the pre-trial detention:** The detention reasons are included in three aspects: **2. The justifications for the pre-trial detention:** The detention reasons are included in three aspects:

##### **a) The seriousness of the crime**

The general rule of detention is that it is permissible if the defendant's actions are punishable by a sentence of more than two years imprisonment or a temporary criminal penalty <sup>(1)</sup>. Therefore, the legislator restricted detention to serious crimes because of its danger (Al-Alimi, 1998, p.43). However, the public prosecutor may issue an arrest warrant against the defendant if the act was punishable by a penalty other than the preceding and, in some cases, which includes the following (Paragraph three (a and b) of Article 114 of the Jordanian Code of Criminal Procedure):

<sup>1</sup> The first paragraph of Article 114 of the Jordanian Code of Criminal Procedure. On the other hand, the public prosecutor may retrieve the arrest warrant for misdemeanour crimes if this does not affect the proper conduct of the preliminary investigation procedures, provided that the complainant appoints a place of residence for him within the public prosecutor's work area in order to inform him of the procedures that may be issued by him (Saleh, 1997, p.299).

- a. *If the act attributed to him is a misdemeanor of theft, intentional harm, or unintentional harm resulting from traffic accidents, if the perpetrator violates the provisions of the applicable traffic law in terms of: driving without a license, or driving under the influence of alcoholic beverages, drugs or psychotropic substances.*
- B. *If the defendant does not have a fixed and known place of residence in the Kingdom, provided that he is released if he presents a guarantor approved by the Public Prosecutor who bails or guarantees his presence whenever requested.*

#### **b) Justifications for pre-trial detention**

The use of pre-trial detention may be justified for a number of reasons, including concerns about obscuring justice, tampering with the evidence, and pressuring witnesses to recant their statements (Saleh, 1997, p.49), and worries that the accused would flee. In addition, this can protect the accused or the defendant, especially in murder crimes, as leaving him at large until his trial may lead to retaliation against the victim's family. Therefore, it is left to the competent authority to decide the availability of these justifications (Abdel Moneim, 1997, p. 212). All these justifications follow the investigation's interest and reveal the truth of the crimes.

Generally, the Jordanian legislator did not explicitly state the concept of justifications. Instead, he included it in the interests of the investigation and maintained the progress of the investigation, trial and public security justifications for pre-trial detention (Samih Majali, 2006, p. 398). The interest of the investigation is referred to in the first and the second paragraph of Article 114 of the Criminal Procedures Law when referring to the public prosecutor's authority to issue a memorandum against the defendant after interrogating him for a period and permitting him to renew this period for investigation purposes.

The Court of Cassation can also take this procedure, although it did not mention it in its rulings. The Court of Cassation emphasised the concept of justification when commenting on the decisions of the Court of Appeal that the Court of Appeal may issue an interim decision to remand the accused, whom the High Criminal Court released on bail, to detention. Since the offence is an honour crime that has not been reconciled or waived, releasing the accused on bail may lead to a public security breach. Then the Court of Appeal rescinded the decision to arrest him, released him on bail two days after his arrest, and returned to detention. All of this is conditional on the justification, and if there is no justification, the court's decision loses its legitimacy (Court of Cassation decision No. 754/1997 dated 24/1/1998, published on page No. 1033 of the Bar Association magazine issue 1998).

As for the investigation process, trial and public security, Article 123 of the Criminal Procedures Law, paragraph (2), specify that any defendant charged with a crime punishable with the death penalty or life with hard labour or life detention shall not be released from detention. However, the competent court has the power to release such a defendant, provided that such release would not affect the investigation or the trial process and shall not affect public security.

In one of its verdicts, the Court of Cassation relied on a decision issued by the High Criminal Court, which dismissed the defendant's request for release on bail, that the rejection decision is misplaced as long as the circumstances of the case do not require the continued detention of the defendant (The third paragraph of Penalty decision No. 765/1997, dated 12/24/1997, Adalah Publications).

#### **c) Availability of evidence.**

Article (114), Paragraph (1) of the Criminal Procedures Law clarifies that if the charge entails a crime punishable by imprisonment for two years or less or by a temporary criminal penalty, the public prosecutor may issue an arrest warrant against the defendant after interrogating him provided that there is sufficient evidence linking the defendant to the crime

committed. This denotes that the power of the public prosecutor to issue arrest warrants is associated with the availability of adequate evidence that proves the causal relationship between the defendant and the act attributed to him. The evidence supporting the issuance of arrest warrants is predicated on the apparent facts and the likelihood that the offender had actually committed the crime (Habashneh, 2006, p.53).

**d) Issuance of an arrest warrant after the interrogation:**

The arrest warrant shall be issued against the defendant after his interrogation. If he is not interrogated, or his interrogation is invalid, then the detention will be invalid accordingly (Awad, 1999, p. 433). The first paragraph of Article 114 of the Criminal Procedures Law stipulates, "*After interrogating the defendant, the public prosecutor might issue an arrest warrant against the defendants.*"

It should be noted that this Article did not require hearing the statements of the victim or the civil plaintiff, in this case, only the defendant. Nevertheless, the reason for this provision is that the public prosecutor, who has discretion over whether to arrest, must first listen to the statements of any interested parties to gather relevant information for the case assessment (Al-Husseini, 1993, p.288). Additionally, the arrest doesn't have to proceed immediately following the interrogation; there may be a delay.

The purpose of the interrogation before the arrest is to evaluate the accusation evidence and determine whether it is sufficient to warrant an arrest. It also allows the accused to challenge the evidence and persuade the investigator that he is innocent (Abu Amer, 2005, p.578). Accordingly, pre-trial detention should not take place until after the interrogation. Since there was a deprivation of liberty without interrogation, the error must be corrected by considering the period of such detention as part of the penalty period after considering it as legal detention (Alshible, M, 2020, p721).

This fact confirms that pre-trial detention is not lawful if there is no interrogation and is considered void if it takes place without interrogation. In contrast, if the accused escapes, an arrest warrant can be issued without the suspect being questioned. In this instance, the arrest writ is issued without interrogation, and the questioning is postponed until after his arrest. The Syrian Court of Cassation confirmed this procedure does not entail the invalidity of the arrest warrant (Al-Alusi, 2002, p.791). Another example is the accused's refusal to answer the investigator's questions during the investigation due to the impossibility of interrogation in both cases. However, in the previous two cases, the accused's refusal to answer shall have no excuse. The arrest, in this case, is invalid if there was a valid justification for it, such as the accused's insistence on the attendance of his lawyers, whom he had appointed (Awad, 1999, p.433).

**e) The period of pre-trial detention:**

The period of pre-trial detention varies according to the authority issuing the arrest. , If the public prosecutor issues the arrest warrant, it includes two cases:

The first case: Paragraph (1) of Article (114) of the Criminal Procedures Law states that: "*The period of detention shall not exceed fifteen days, ..... the public prosecutor can renew the detention period whenever he finds that such extension will serve the interest of the investigation provided that such extension does not exceed six months in felonies and two in misdemeanours.*"

The second case: Paragraph (3) of the same law stipulates that: "*If the defendant is charged with an act punishable by the death penalty or life with hard labour or life detention and there was sufficient evidence that connects him with the act, the public prosecutor and after interrogating the defendant shall issue an arrest warrant against him for a period of fifteen days renewable for a similar period for investigation purposes.*"

From those (paragraph 3 of Article 114 of the Jordanian Code of Criminal Procedure), as mentioned earlier, we realise that Paragraphs (2, 4 , 5) of Article (114) of the Criminal Procedures Law explicitly explain the cases when the pre-trial detention can be determined or extended by the public prosecutor.

Issuing the pre-trial detention warrant by the court: Unlike what was stated in the two previous cases, the defendant is released unless the period of detention is renewed in other cases required by the interest of the investigation. This is done by obligating the public prosecutor to submit the case file to the competent court. If the interest of the investigation in a criminal case before the expiration of the periods indicated in Paragraph (2) of Article 114 requires the continuation of the detention of the defendant, the public prosecutor must present the case file to the court to hear the case, the case in case of case, after the public prosecutor has reviewed the statements of the defendant or his attorney. Regarding the justifications for continuing the detention or not, reviewing the investigation papers, the expiration of the period, the extension of the detention period that exceeds each time months in felonies, provided that the sum of the detention and extension in all cases exceeds one year at the same time, or that the detainee is released on bail or less than the other. The act attributed to the defendant is punishable by a temporary penalty. The period of detention and extension in the criminal court and the trial may not exceed a quarter of the maximum penalty for the crime. (the fourth and fifth paragraph of Article 114 of the Jordanian Code of Criminal Procedure).

#### **f) The detained**

It means the arrested person. Under the law, some people shall not be taken into custody; if so, it is considered an invalid procedure. For instance, specific laws prohibit the juvenile's arrest<sup>(1)</sup>.

However, the Jordanian Juvenile Law No. 24 of 1968 restricted the authority to arrest juveniles to the judiciary alone. Therefore, the investigation authority does not have the right to charge a juvenile because the detention of the juvenile without a judicial decision is deemed a violation of the law. Moreover, it represents an unjustified deprivation of liberty that requires legal accountability. Therefore, it is noteworthy that being put into custody should not be resorted to except as a last resort.

#### ***The formal conditions of the pre-trial detention warrant***

According to the Jordanian Criminal Procedure Law, the pre-trial detention warrant shall contain the accused's name, nickname, profession, place of residence, the charge's type, the date of the order, the signature of the person who issued it, and the official seal. Furthermore, based on Article 15 of the same law, we conclude the following formal conditions:

##### **1. Notifying the defendant**

Following Article (117) of the same law, the defendant shall be notified of all requests for attendance, summons and pre-trial detention warrants and shall be given a copy of each warrant issued against him.

- 2. In terms of the form of the pre-trial detention warrant:** The legislator stipulated a specific formality of the pre-trial detention warrant issued by the competent authority, represented by several conditions: It shall be signed by the public prosecutor who issued them and shall be stamped with his department's stamp, in addition to and including the name of the dependent, his nickname, his distinguishing marks in addition to the charge's type (Article 115 of the Jordanian Criminal Procedure Law). Furthermore, it shall contain the crime which led to its issuance, in addition to the incriminating Article and the detention period (Article 116 of the Jordanian Criminal Procedure Law).

## **Section Two: Invalidity in the Jordanian Criminal Procedure Law**

<sup>1</sup> Journalists also, as some laws do not allow arrests in issues of the press, publications and publishing, such as the Jordanian Press and Publication Law No. 8 of 1998, where paragraphs and Article 42 stipulate that it is not permissible to arrest as a result of expressing an opinion verbally, in writing, and other means of expression.

### *The nullity of procedures*

Invalidation is a procedural sanction that responds to a procedural action that violates some or all of the conditions of its validity and takes away its legal effects under the law (Hosni, 1988, p.337. Also Najm, 2000, p.373). It is a procedural sanction because the procedural law regulates it for the failure of one or more of the procedural action that the legislator explicitly or implicitly requested. This is because of whether it is related to the content of the procedure or the form in which it is formulated and whether the procedure provisions are stipulated in the Criminal Procedure Code or the Penal Code (Najm, 2000, p.374).

The term "invalidation" refers to the legal judgement having no effect as specified by the procedural rule because it prevents the procedural work from meeting the requirements for its legality, form, formula, or manner. In other words, the procedure and its consequences have no legal value (Hosni, 1998, p. 354).

Invalidity is divided into two types: absolute invalidity and relative invalidity. Absolute is the invalidity that results from violating the rules of essential procedures related to public order. In contrast, relative invalidity is the penalty for violating fundamental rules unrelated to public order (Maqabla, 2003, p.212-214), but it is related to the interests of the litigants (Al-Tarisi, 2017, p.501).

There is a difference between fundamental and insubstantial procedures (Alshible, M., Abu Issa, H., & Al-Billeh, T, 2023, p26), the failure of the fundamental procedural action results in the inability to achieve its purpose. On the other hand, failure in insubstantial procedure does not lead to the inability to achieve its purpose, or the law does not require it to be observed but instead made it permissible to perform it. Note that the legislator does not usually set a criterion that distinguishes between both procedures but leaves it to the judge depending on the reason for the legislation. So that if the purpose of the procedure was to protect the public interest or the interest of the accused or other litigants, it was essential, and its violation would result in a nullity.

In short, invalidity presupposes a fundamental procedure that violates the provisions of the law related to it. If the procedure is insubstantial, it shall valid (Bin Abdul-Aziz, 2022, p1813-1872).

This is confirmed by Article 7 of the Criminal Procedural Law that nullity is a procedure taken due to failure to adhere to the provisions of the law related to any substantive procedure. But if the purpose of the procedure is merely guidance and direction, then it is insubstantial , then the failure to adhere to it does not entail nullity (Najm, 2000, p.388-390).

Article 7 of the Jordanian Criminal Procedural Law of 2001 is the legal basis for invalidity, which stipulates the following:

1. "A taken procedure shall be declared void and null if the law expressly stated such effect or if it was affected by a major defect because of which the objective of the procedure was not realized.
2. If the invalidation of the procedures is due to failure to adhere to the provisions of the law related to the composition of the court, its competency to hear the case, its subject matter jurisdiction, or any other similar reason, which is related to the public order, then it is permitted to present such an argument (that the procedures are null and void) at any stage of the trial. The court might rule that the procedure is null and void on its own without receiving a request to this end."

By reviewing the text of the Article above and under the judicial jurisprudence, we find that the Jordanian legislator confirmed the following:

1. Legal invalidity or expressly stipulating invalidity in some cases.
2. If the act violates a fundamental text or is related to public order.
3. The Jordanian legislator did not expressly distinguish between relative invalidity cases involving public order and relative invalidity cases affecting private interests.

However, the Jordanian Court of Cassation adopted subjective invalidity, except that there was no specific source in the court's conduct to adopt a particular criterion that could be relied upon to distinguish the fundamental from the non-substantial acts to determine invalidity (Hawamdeh, 2008, p. 44-45, and for expansion, see the same reference, pp. 44-48). Nevertheless, it can be said that the court adopted the criterion of obligation that characterises the law; if it is obligatory or peremptory, the rule shall be considered fundamental (Al-Saeed, 2008, p.805).

Regarding the invalidity of the pre-trial detention, we did not find that the decisions of the Court of Cassation cases directly indicate the invalidity of the arrest. However, this can be deduced from one of its decisions regarding Article (63) of the Criminal Procedural Law, which mandated that the public prosecutor interrogate the defendant after (24 hours) following the date of the arrest.

Article (100) of the same law mandated the public prosecutor to interrogate the defendant within (24) hours of putting him into custody by the judicial police official, who is obliged to question him within (48) hours (the old text and current law 24 hours) of his arrest. Therefore, failing to adhere to this procedure by the judicial police official or the public prosecutor who issued an arrest warrant for a month is actually an illegal act because it is not stipulated in the Criminal Procedure law. Since the detainee was denied his freedom from the time he was placed in custody by the public prosecutor until the day of his arrest, this deprivation of liberty must be included in the punishment meted out to the accused as a result of his arrest to uphold the principle of justice, protect him from an error he did not cause, and fix a mistake in the investigation process (Court of Cassation decision No. 148/1995, dated 30/4/1995, published on page No. 2841 of the Bar Association Journal 1995).

The Court of Cassation also stated in one of its rulings that the public prosecutor has the option to issue a decision to arrest the defendant who is accused of a criminal offence based on a complaint in a case that has not been referred to the court, for a period not exceeding fifteen days, or not to arrest him. Furthermore, he shall also be given a choice after the expiry of the pre-trial detention period between renewing the pre-trial detention for a period not exceeding fifteen days when required or not renewing it and releasing the detainee without bail (Paragraph (2) Court of Cassation decision No. 156/1982, published on page No. 1722 of the Bar Association Journal 1982). In conclusion, the Court of Cassation decided that when the court issued the arrest, the judge may not delay the defendant's release by one day after the expiry of the period of his detention (Court of Cassation decision No. 91/1965, published on page No. 288 of the Bar Association Journal, 1966). This implies that detention is legally limited to periods that may not be exceeded. If exceeded, the procedures will lack the assumed legal value and thus are considered void.

It should be noted that the plea for the invalidity of the pre-trial detention must be made before the trial court to which the case was referred, and it may not be raised first before the Court of Cassation. One of the Egyptian Court of Cassation's rulings stated that failure to invalidate the pre-trial interrogations does not justify the plea to invalidate the interrogations of the Public Prosecution for the first time before the Court of Cassation (Court of Cassation decision 29/4/1973, s. 24, 106, p. 510), from: Abdel-Tawab, 1987, p. 768). The appeal for the invalidity of the pre-trial detention is the same as for the defences (The plea is the objective or legal defences that the opponent raises to achieve his goal of litigation in the criminal case: Abdel Tawab, 1996, p. 12) related to the interest of the victim, such as the pre-trial detention, so it is a plea to the trial court to which the case was referred. However, it may not be raised first before the Court of Cassation (Hawamdeh, 2008, p.118).

On the other hand, the pre-trial detention may be nullified due to the invalidity of the interrogation. Detention should be enforced following the questioning; therefore, if the interrogation is found invalid, the procedures that led to it and had a natural effect are also deemed invalid. The interrogation's two most significant consequences are the confession made by the defendant during the illegal questioning and the pre-trial detention orders issued by the public prosecutor due to the void interrogation (Al-Saeed, 2008, p.494).

Accordingly, when the pre-trial detention is considered null and void, the following effects will be produced:

1. Invalidation of measures taken during invalid pre-trial detention
2. Mandatory release (Habashneh, 2006, p.73. and court of Cassation in its decisions: Cassation Penalty No. 91/1965, published on page No. 288 of the Bar Journal, 1966).
3. Considering the period of invalid pre-trial detention within the imprisonment sentence (Court of Cassation decision No. 148/1995 dated 30/4/1995 published on page No. 2841 of the issue of the Bar Association Journal 1995).
4. Prosecuting the one who issues the arrest warrant for the crime of deprivation of personal liberty (Al-Auji, 2002, p.201). For example, if the suspect is detained based on a summon warrant and stayed in the holding cell for more than 24 hours without being interrogated or brought before the public prosecutor, according to what is stated in Article (113) of the same law, his detention shall be considered an arbitrary act, and the official responsible shall be prosecuted for the commission of the crime of illegal pre-trial detention stated in the Penal Code (Article 113 of Criminal Procedural Law).

The Court of Cassation upheld this, as previously mentioned in one of the court's decisions which considered seizing the accused's statement after the lapse of fifty days from the date of his pre-trial detention and placing him under custody by the public security violates the provisions of Article (100) of the Code of Criminal Procedure. Additionally, it is considered an arbitrary act according to the provisions of Article (113) of the same law, and it raises doubts about the validity and integrity of the measures taken during that period.

5. Nullity of the procedures subsequent to the pre-trial detention or resulting from it. If it is determined that a procedure is invalid and cannot be remedied, it must be annulled, losing all legal effect along with the evidence it was based on. In other words, invalidating its legal effects nullifies all later actions based on it. Since what is based on falsehood is false itself (Al-Saeed, 2008. P.807).

### Section Three: Alternatives to Pre-trial Detention

Criminal proceedings aim to prove the crime was committed and identify its perpetrator. This goal achieves the public interest in enabling competent authorities to detect crimes and their perpetrators and bring them to justice. However, this goal must be reached within a framework of legitimacy, as the criminal justice system requires achieving the most significant possible degree of justice in the course of punishment and retribution. Therefore, criminal law is no longer limited to the mere idea of punishment but has become concerned with developments where human rights must be respected, and trials ensure justice, deterrence and the perpetrator's integration into society after executing the penalty.

Therefore, the concept of the alternative to imprisonment has emerged in the criminal field, whether as a punishment or precautionary custody (Mohamad Alshible, 2023, p22).

These alternatives to punishment aim to avoid custodial sentences as much as possible and achieve the public interest in all its forms. In the field of procedures, it becomes more crucial to protect the presumption of innocence and avoid custodial sentence measures such as pre-trial detention by substituting it with alternatives that achieve the public interest. One of the benefits of these alternatives is solving the problem of the overcrowding of reform centres, as ensures the execution of the penalty and the issue of detention at the same time. Prison overcrowding is a global phenomenon linked to the increase in the number of prisoners compared to the rise in population numbers in various countries. Hardly any centre or prison is free of overcrowding, negatively affecting inmates' conditions from different aspects of life and their freedoms (Al-Malik, 2010, p.29).

Adopting these procedures deepens the sense of responsibility and enhances social solidarity towards the accused, as he is a member of society who needs, according to modern theories of criminal liability, to rehabilitate and be integrated into society. Therefore, the researcher believes in this regard that there has become an urgent need to look at alternatives to pre-trial detention in accordance with the societal view towards alternatives to penalties, in order to avoid the disadvantages that may result from the use of pre-trial detention, and thus not to affect the accused, whose innocence may be revealed later.

### ***Alternatives to reform or alternative measures for the pre-trial detention***

These measures include what the Jordanian legislator has established in its last amendment of 2017. The Jordanian Criminal Procedure Law added to the original Article 114 bis an addition concerning detention. It granted the public prosecutor and the court - in case of misdemeanors only - the power to replace pre-trial detention with one or more of the following measures: a. Electronic monitoring, b. Preventing travel, c. House arrest or restriction to a geographic area for a period determined by the public prosecutor or the court, d. Posting bail or a judicial guarantee in an amount to be determined by both the public prosecutor and the court, such as prohibiting the defendant from going to specific places.

The measures provided for in this Article shall be subject to the following provisions:

- A. The public prosecutor or the court may automatically or at the request of the Public Prosecution or the accused terminate, add or modify one or more of the measures stipulated in the previous paragraph.
- B. If the defendant violates any of the measures entailed by him under the provisions of this Article, the public prosecutor or the court may arrest the defendant and confiscate the bail bond for the benefit of the treasury.
- C. Except in the instance stated for the special provisions mentioned in this paragraph, the provisions and methods of appeal that apply to pre-trial detention shall apply to these measures, as stipulated in this law.

Based on this text, we find that the alternatives to pre-trial detention are as follows:

#### 1. Electronic monitoring

Electronic monitoring is one of the modern methods and a form of digital incarceration using electronic bracelets for monitoring the offender's behaviours without deprivation of his freedom. This system was introduced into the American penal legislation for the first time in 1971. However, it was first applied in 1987 in Florida and Mexico (Otani, 2009, p.132). It is carried out by using electronic means (GPS) to identify the location of the convict within the areas where he is allowed to roam and to know the extent of his commitment and adherence to rules.

In Jordan, this system was applied at the beginning of 2022. Accordingly, 1,500 detainees were immediately released to spend the period of arrest in home detention, which is also an alternative to imprisonment to avoid custodial sentence measures.

#### 2. Preventing travel

It is applied by circulating the prevention order to the border posts to forbid the detainee from leaving the country. Hence, he remains outside the penal institution within the borders of the country, but at the same time, he is prohibited from departing to another country.

3. House arrest or restriction to a geographic area for a period determined by the public prosecutor or the court (Al-Zaini, 2005, p.4).

It involves placing the detainee under police supervision as a preventive measure to confront cases of criminal danger for some categories of criminals, and the Crime Prevention Law No. 07 of 1954 included this case.

4. Posting bail or a judicial guarantee in an amount to be determined by both the public prosecutor and the court. For example, prohibiting the defendant from going to specific places.

Generally speaking, these alternatives can be considered alternatives to pre-trial detention. Even though pre-trial detention is a procedural act in the preliminary investigation stage, it still includes a precautionary measure, as it is called in some legislation pre-trial detention. Moreover, a well-known traditional justification indicates that it is a punitive measure that satisfies the victim of some crimes. It can also be deemed as a form of a pre-trial custodial sentence.

## Conclusion and Recommendations

The study concluded that pre-trial detention has its procedures. It is not viewed as a punishment or an uncontrolled measure, nevertheless. Instead, it provides protections and controls that ensure fair trial guarantees. The concern is that if this procedure is misapplied or applied without sufficient justification, it could have a detrimental procedural impact and possibly result in nullifying all criminal punishments.

Therefore, the study recommended the following:

1. Inviting the legislator to regulate the concept of pre-trial detention nullity and associate its invalidity with the invalidity stipulated in public order.
2. Training the Public Prosecution and the judicial authorities to consider pre-trial detention as a procedure enforced under controls and standards and that it is not a punishment.
3. Activating the legal texts that devote alternatives to custody and working to implement them whenever their conditions are met.
4. Extending the use of non-custodial alternatives and implementing a just system depending on the nature of the offence, the accused, and his occupation to avoid having their lives and employment significantly impacted by being detained for extended periods prior to sentencing owing to accusations of a crime where their innocence may later be proven.

## References

- Al Jokhdar, Hassan(1992), Explanation of the Law of Partial Procedures, House of Culture for Publishing and Distribution, Amman, 1st Edition.
- Abdel Moneim, Suleiman(1997), the Origins of Criminal Procedures, Glory of the University Foundation for Studies, Publishing and Distribution, Beirut.
- Abu Issa, H. and Al Shibli, M. (2022). The Avenge as a Motive of Homicide Crimes in Jordan for the Period (2017-2021). Pakistan Journal of Criminology, Vol.14, No.1, 112-127.
- Al-Majali, Samih(2006), the Impact of the False Criminal Procedure on the Accused's Legal Status, Wael Publishing House, Amman, 1st Edition.
- Kamel, Sherif(2004), the Right to Speed up Criminal Procedures, Dar Al-Nahda Al-Arabiya, Cairo 1st Edition.
- Adel Al-Alimi(1998), New Provisions in the Code of Criminal Procedure in the Light of Law 174 of 1998, New Knowledge House, Alexandria.
- Abdul Qadir Al-Alusi(2002). Collection of Cassation Provisions in the Code of Criminal Procedure (Part 2). Legal Library, Damascus, 1st Edition.
- Abdel Hakam Fouda(1996). The invalidity in the Criminal Procedure Law, University Press, Alexandria.
- Abdel-Raouf Mahdi(2006). Explanation of the General Rules of Criminal Procedure, Dar Al-Nahda Al-Arabiya, Cairo.
- Adly Amir Khaled(2000), Provisions of the Code of Criminal Procedure, New University Publishing House, Alexandria.
- Amr Wasef Al-Sharif(2004). The General Theory of Pretrial Detention, presented by: Samir Alia, Al-Halabi Human Rights Publications, Beirut, 1st Edition.
- Awad Muhammad Awad(1999), General Principles in the Code of Criminal Procedure, University Press, Alexandria.
- Kamel Al-Saeed(2008). Explanation of the Code of Criminal Procedure, House of Culture, Amman, 1st Edition.
- Muhammad Ali Al-Halabi(2005). Al-Wajeez in Criminal Procedures. House of Culture, Amman, 1st edition.
- Mahmoud Najib Hosni(1988). Dar Al-Nahda Al-Arabiya, Cairo, 2nd edition.
- Medhat Muhammad Al-Husseini(1993). The invalidity in Criminal Matters, University Press, Alexandria.

- Mustafa Al-Auji(2002). Lessons in Criminal Procedure, Al-Halabi Human Rights Publications, Beirut, 1st Edition.
- Moawad Abdel-Tawab(1987). Code of Criminal Procedure, Manshayat Al-Maaref, Alexandria.
- Nael Abdul Rahman Saleh(1985). Temporary Detention and Judicial Control, University of Jordan, Amman/
- Muhammad Zaki Abu Amer(2005). Criminal Procedures. New University House, Alexandria.
- Hassan Maqabla(2003). Legality in Criminal Procedures, Master's Thesis, International Scientific Publishing House and Culture House for Publishing and Distribution, Amman, 1st Edition.
- Abdul-Ilah Habashneh(2006). Arrest and Release in Jordanian Law and International Human Rights Conventions, Master's Thesis at Amman Arab University.
- Lawrence Hawamdeh(2008). Defences in the Jordanian Code of Criminal Procedure, PhD thesis, Amman Arab University for Graduate Studies, Amman.
- Louay Haddadin(2000). The Theory of Invalidity in the Code of Criminal Procedure, Amman, 1st Edition.
- Mohamad Alshible. (2023). Legislative Confrontation of Cyberbullying in Jordanian Law. Pakistan Journal of Criminology, Vol.15, No.01, January-March 2023 (17-30).
- Muhammad Ali Swailem(2007). Guarantees of Pretrial Detention. Mansha'at Al-Maaref, Alexandria, 1st Edition.
- The amended Jordanian Code of Criminal Procedure No. 9 of 1961 with all its amendments.
- Jordanian Press and Publication Law No. 8 of 1998
- The amended Jordanian Penal Code No. 16 of 1960.
- The Public Prosecutor's Circular No. 10 of 2006 regarding guarantees of pre-trial detention directed from the Egyptian Public Prosecutor to members of the Public Prosecution Office.
- Journal of the Lawyers Purification, Issues: 1966, 1982, 1995, 1998.
- Muhammad Subhi Najm(2000), Code of Criminal Procedure, House of Culture for Publishing and Distribution, Amman.
- Fahd bin Nayef Al-Tarisi(2017), Invalidity in the Saudi Criminal Procedure law, Journal of Legal and Economic Research, y 63, August.

- Bin Abdul-Aziz, T. B. A. A. B., & Diab, M. F. S. (2022). Invalidity Conditions of Invalid Arrest in Flagrante Delicto Cases Comparative Applied Study. V. 12 (7) pp 1813-187
- Alshible, M., Abu Issa, H., & Al-Billeh, T. (2023). The extent of considering environmental crimes as a manifestation of economic crimes. *Journal of Environmental Management and Tourism*, 14(1), 23-31. doi:10.14505/jemt.v14.1(65).03
- Alshible, M. (2020). Social media rumors in time of corona pandemic, why & how is criminalized? (comparative study). *Journal of Advanced Research in Law and Economics*, 11(3), 719-725. doi:10.14505/jarle.v11.3(49).03