Hume Studies,
ISSN / eISSN 0319-7336 / 1947-9921
Publisher HUME SOCIETY, OCCIDENTAL COLLEGE
Volume 26-Issue 1-(2026)
DOI: https://doi-0004.org/6812/17949426311105

The legal framework governing pretrial detention and judicial supervision under Ordinance No. 25-14, which contains the Algerian Code of Criminal Procedure.

Dr. Benaouda Mostafa[1*], Pr. Zerbani Mohamed Mustatapha[2], Pr. Kaihoul Bouzid[3]

[1]Lecturer A, University of Ghardaia, Faculty of Law and Political Science, Department of Law, Laboratory of Law and Society in the Digital Space, (Algeria), E-mail: benaouda.mostafa@univ-ghardaia.edu.dz
[2]Lecturer A, University of Ghardaia, Faculty of Law and Political Science, Department of Law, Laboratory of Heritage and Memory Researching the Algerian Desert and the Islamic West, (Algeria), E-mail: zerbani.mohammedmustapha@univ-ghardaia.edu.dz
[3]Lecturer A, University of Ghardaia, Faculty of Law and Political Science, Department of Law, Laboratory of The Algerian South Researching Islamic History and Civilization, (Algeria), E-mail: kaihoul.bouzid@univ-ghardaia.edu.dz

Received: 20/03/2026; Accepted: 24/07/2026; Published: 05/11/2026

Abstract:
Pretrial detention is one of the most serious investigative measures, significantly infringing upon individual liberty. Indeed, it is the only point of intersection between liberty and criminal proceedings. Perhaps its connection with individual liberty explains why it is so controversial, as it is applied everywhere and is constantly criticised and debated.

The importance of this topic is therefore apparent due to its connection with individual liberty and the problems it raises. On the one hand, it is harmful because it undermines the presumption of innocence that the accused should enjoy. On the other hand, it is harmful because it damages the individual's reputation and causes them material and moral suffering at family, professional and social levels.

Keywords: Pretrial detention, judicial supervision, preliminary investigation, investigating judge, indictment chamber.

Introduction

Proper application of the Code of Criminal Procedure requires balancing two interests: society's interest in punishing perpetrators and ensuring they are not free from punishment, and protecting individual rights and preserving human dignity. This must be ensured

throughout all stages of public criminal proceedings: the prosecution stage; the preliminary investigation stage; and the trial stage.

The stage that concerns us most is the investigation stage, during which the fate of the accused is determined by referral to trial or a decision that there are no grounds for prosecution. This highlights the great importance of the investigation stage, just as the trial stage determines the final outcome regarding the accused's liberty, through either acquittal or conviction. During the investigation stage, evidence of both guilt and innocence is sought through all means established and permitted by law. This includes hearing the various parties and witnesses involved in the proceedings, conducting confrontations, carrying out expert examinations, visiting and inspecting locations, and conducting searches.

The most significant, serious and psychologically influential measures for the accused are perhaps pretrial detention and judicial supervision. Despite the seriousness of pretrial detention, which no criminal law researcher can deny, most legislation affirms its inevitability and necessity for serious crimes, particularly felonies and aggravated misdemeanours. Due to the gravity of these offences, the accused is usually ordered to be detained pending trial. In rare cases, however, the accused may be placed under judicial supervision pending trial and the final determination of their fate with regard to the crime or crimes for which they are being prosecuted.

Although most legislation, including Algerian procedural law, stipulates that pre-trial detention is an exceptional measure and that the presumption of innocence applies until a competent judicial authority definitively establishes the charge against the accused in compliance with all legal guarantees, the practical application of these procedures reveals that investigating judges resort to this measure excessively. This creates a negative impression of the accused, who may subsequently be found innocent. Some specialists in the field have therefore called for alternative solutions to be developed, limiting the use of pretrial detention to felony cases and requiring it to be subject to supervision by the Indictment Chamber or higher authorities.

The Algerian legislator introduced judicial supervision as a measure under Law No. 86/05 of 4 March 1986, amending and supplementing the Criminal Procedure Code No. 66/155 of 8 June 1966. According to some practitioners and academics, the introduction of this measure represents an important development towards strengthening and protecting individual liberties, following a period in which the law was primarily repressive and aimed at protecting societal interests. Judicial supervision restricts the liberty of the accused without depriving them of it.

This article addresses the following problem: Have the Algerian procedural provisions succeeded in preserving the exceptional nature of pretrial detention and judicial supervision, which are measures prescribed to meet the needs of the investigation, and consequently ensuring the protection of the accused's human liberty and dignity?

To answer this question, it is necessary to discuss two important issues. The first concerns the provisions relating to pre-trial detention in terms of its legal nature, necessity, conditions and effects (Section One). The second issue highlights the important role of judicial supervision as an alternative to pretrial detention. This begins with a definition of the measure, followed by

an examination of its obligations and the conditions for imposing it. Finally, the investigating judge's authority to modify this measure is considered (Section Two).

Section One: The Concept of Pretrial Detention and Its Legal Nature

In this section, we will first define the concept of pretrial detention, then explain its legal nature. We will then discuss the reasons for its use and finally outline its formal and substantive conditions.

First Requirement: The Concept of Pretrial Detention

Detention is defined as the deprivation of a person's liberty for a period of time while they are investigated for a crime, during which time they are held in prison. In principle, as a deprivation of liberty, detention constitutes a penalty and should therefore only be imposed by a judicial ruling following a fair trial, in which the accused is afforded the right to defend themselves. This applies the general principle of criminal proceedings and human rights that everyone is presumed innocent.

Nevertheless, the legislator has authorised the investigating judge to order pre-trial detention as a precautionary measure during the preliminary investigation stage, either when the investigation begins or while it is ongoing. Pretrial detention is therefore an investigative measure that conflicts with the presumption of innocence enjoyed by every individual. It is an extremely serious measure that must be accompanied by substantial legal safeguards, and the investigating authority should only resort to it when there is urgent necessity[1].

Second Requirement: The Legal Nature of Pretrial Detention

Pretrial detention is an exceptional judicial measure necessitated by the requirements of the investigation to uncover the truth. Although it deprives a person of their liberty, it cannot be considered premature punishment, as the restriction of liberty in this case is temporary and unavoidable[2].

By contrast, a custodial sentence is a criminal penalty imposed by the trial court on a person whose guilt has been proven. However, some argue that pretrial detention is, by its very nature, a criminal penalty and that considering it an investigative measure constitutes a departure from this principle. This view can be refuted, however, because, legally, pretrial detention remains a purely investigative measure imposed by the investigating judge on an accused person whose guilt has not yet been established by a judicial ruling[3].

Referring to Article 141 of the new Code of Criminal Procedure No. 25-14, which states that the investigating judge shall undertake all investigative measures deemed necessary to uncover the truth in accordance with the law, we find that it is the investigating judge who assesses the importance and necessity of the measures taken to establish the truth. This means that the law grants the investigating judge the authority to take measures that assist in performing the investigative task, without obliging them to adopt one measure rather than another. As pretrial detention is one of these measures, the investigating judge has the discretionary authority to decide whether or not to order it.

Furthermore, Article 197 of the Code of Criminal Procedure stipulates that, if judicial supervision measures are insufficient, pretrial detention may be ordered on an exceptional

basis. This demonstrates that this measure is not mandatory for the investigating judge, but rather optional, over which the judge has full discretionary authority, regardless of the nature of the offence or the status of the offender[4].

Third Requirement: The necessity of resorting to pretrial detention

According to the third paragraph of Article 197 of the Code of Criminal Procedure, the investigating judge's authority to order pretrial detention is not absolute. Rather, it must be justified. The most important of these are that judicial supervision measures must be insufficient, and that pretrial detention must be the only means of preserving evidence and material exhibits, preventing pressure on witnesses or victims, and avoiding collusion between the accused and their accomplices, which could hinder the uncovering of the truth[5].

Pretrial detention is sometimes necessary to protect the accused from retaliation in certain crimes, such as murder and similar offences, or crimes involving honour and reputation.

Given the seriousness of the crime and the extent of harm caused to the victim or public order by the accused, pretrial detention may be the only preventive measure capable of limiting such harm. This is particularly the case when the accused has a history of crime, making them a danger not only to the victim, but to society as a whole. In such cases, their detention becomes an indispensable necessity, as there is no alternative if they voluntarily breach the judicial supervision obligations imposed by the investigating judge.

It is worth noting that the investigating judge must provide reasons for ordering pretrial detention, based on the aforementioned justifications. This implies that once the cause or justification ceases to exist, the detention must be terminated. According to Dr Mahmoud Najib Hosni, such detention must be terminated in these circumstances since it is a judicial order characterised by its temporary and exceptional nature, not an administrative order. Accordingly, it may only be ordered when the relevant substantive and formal conditions are met, and is only valid if these conditions are satisfied[6].

Fourth Requirement: The legal conditions for pretrial detention

These conditions are divided into two categories: procedural conditions (first subsection) and substantive conditions (second subsection).

1.4.1 Substantive Conditions for Pretrial Detention

The substantive conditions for pretrial detention are one of the most important legal safeguards, ensuring that pretrial detention is imposed within the framework of the presumption of innocence enjoyed by the accused throughout investigation proceedings, until a final judgement is issued on the merits of the criminal case[7]. The judiciary guarantees the preservation of everyone's fundamental freedoms, and every citizen must respect the freedom and dignity of others. No person may be prosecuted, detained or arrested except in cases provided for by law[8].

The Code of Criminal Procedure incorporates the principle of appropriateness, whereby the investigating judge has broad discretionary powers to order pre-trial detention or not. If the judge decides to release the accused, the Indictment Chamber does not require them to issue

an arrest warrant or detention order. If the judge decides to detain the accused, however, the law imposes certain legal restrictions on the issuance of such an order.

These can be classified into three categories: offences for which the accused may be detained prior to trial; sufficient evidence supporting the charge; and the necessity of pretrial detention[1].

1. Offences for Which Pretrial Detention Is Permissible:

Most procedural systems do not limit the prohibition of pretrial detention to contraventions; they also prohibit it in minor offences. Under Algerian legislation, the general rule is that pretrial detention may only be ordered if the offence is a misdemeanour or felony punishable by a prison sentence of more than three months. Accordingly, detention may not be ordered in cases involving contraventions.

If the accused is domiciled in Algeria and has committed an offence for which the prescribed prison sentence is less than two years, they may not be detained for more than twenty days from their first appearance before the investigating judge. This is due to the possibility that the accused may be unlocatable by the time the case comes to trial[9]. Likewise, a minor under the age of thirteen may not be placed in pretrial detention.

2. The existence of evidence supporting the charge:

Procedural rules are not enough to simply identify the offences for which the accused may be placed in pretrial detention; sufficient evidence supporting the charge is also required. While they differ in the terminology used to designate it, most legislations have stipulated this fundamental or necessary condition for ordering pretrial detention.

The Code of Criminal Procedure addresses this issue in two articles. Article 201 of the Code makes pretrial detention conditional upon the existence of strong and consistent evidence. It is well established that there can be no detention without a charge. Accordingly, detention may only be ordered when there is sufficient, strong and consistent evidence to support the charge. If strong evidence is required to place a person under supervision for a short period, then such evidence must certainly be available in cases of pretrial detention, which is more serious[10].

In this context, the legislator means by ‘sufficient evidence’ facts that indicate the presence of elements sufficient to support the issuance of an arrest or detention warrant, or suspicions based on the circumstances of the incident that lead to the belief that the accused committed the crime.

There may be sufficient evidence or circumstantial indications without the accused’s detention being necessary in the interests of public or private parties. Therefore, the existence of such evidence is an indispensable condition for ordering pretrial detention; however, the order must also include justifications demonstrating the clear necessity for such detention.

3. The necessity of pretrial detention:

A review of the provisions of the Algerian Code of Criminal Procedure reveals that, unlike legislation in other jurisdictions, the Algerian legislator has not specified the criteria on which orders and decisions for pretrial detention must be based. Article 197 merely establishes the exceptional nature of pretrial detention. This provision corresponds to Article 137 of the aforementioned French Code of Criminal Procedure.

Consequently, an order for pretrial detention may only be issued for the purposes of the investigation, to maintain public security or to enforce the judgment. These purposes were advocated long ago by the jurist Hélie and are set out in Article 137 of the French Code of Criminal Procedure. The Algerian legislator has recently responded to this provision[11].

4. Duration of pretrial detention:

According to Article 204 of the Code of Criminal Procedure No. 25-14, an accused person residing in Algeria may not be placed in pretrial detention for a misdemeanour if the prescribed maximum penalty is imprisonment for a term of three years or less, unless the offence resulted in death or caused a disturbance to public order. In such cases, the duration of pretrial detention may not exceed one month and cannot be extended.

Article 204 also stipulates that pretrial detention in misdemeanour cases may not exceed four months. If it becomes apparent that it is necessary to keep the accused in detention, the investigating judge may issue a reasoned order extending the pretrial detention of the accused for a further period of four months, on one occasion only, after seeking the reasoned opinion of the Public Prosecutor.

It can be inferred from this article that the Algerian legislator has established a maximum duration for pretrial detention in both felony and misdemeanour cases.

The duration of pretrial detention when the conditions stipulated in the aforementioned article are met is: The duration of pretrial detention may not exceed one month, and this period cannot be extended. Once this period expires, the accused must be released by operation of law.

- Where the maximum penalty prescribed for the misdemeanour is imprisonment for three years or less: If the conditions set out in Article 201 of the Algerian Code of Criminal Procedure No. 25-14 are not met and the prescribed maximum penalty is imprisonment for three years or less, the duration of pre-trial detention shall be four months and cannot be extended. The accused must be released by operation of law upon the expiry of this period.

- Where the maximum penalty prescribed for the offence exceeds three years' imprisonment: In this case, the duration of pre-trial detention shall be four months, renewable once. The rules governing extension and calculation of the detention period referred to above shall apply[12].

We note that the Algerian legislator has set a maximum limit on the duration of pre-trial detention for misdemeanours, depending on the severity of the offence. For less serious misdemeanours, pretrial detention may not exceed four months under any circumstances, whereas for more serious cases, this period may extend to eight months. However, setting eight months as the maximum duration of pre-trial detention for misdemeanours is excessive compared to the provisions of certain other legal systems and international conferences. At the Second Conference of the Egyptian Association of Criminal Law in Alexandria from 9 to 12 April 1988, it was recommended that pretrial detention during the investigation and trial stages should not exceed three months for misdemeanours punishable by mandatory imprisonment or six months for felonies.

As for pretrial detention in felony cases, the maximum duration is four months, renewable twice by the investigating judge. Each extension may not exceed four months. After one year

has elapsed (4 + 4 + 4), the investigating judge may request that the Indictment Chamber extend pretrial detention within one month of the detention period expiring. If the Indictment Chamber decides to extend pretrial detention, the extension cannot exceed four months and cannot be renewed. It should be noted that the maximum duration of pre-trial detention in felony cases may reach sixteen months.

In cases involving misdemeanours relating to drugs and psychotropic substances, transnational organised crime, offences relating to information and communication technologies, money laundering, terrorism, crimes against state security, offences relating to legislation governing foreign exchange and the movement of capital to and from abroad, corruption, migrant smuggling, organ trafficking and kidnapping, the investigating judge may extend pretrial detention up to four times.

The investigating judge's order for the pretrial detention of the accused is enforced once it has been signed and stamped. The person held in pre-trial detention is handed over to the head of the correctional institution under an official order, which the head signs and dates to acknowledge receipt of the accused. Those held in pretrial detention are treated differently from ordinary prisoners and are kept separate from them. They may communicate with public authorities or their relatives inside the prison, including their lawyer, after obtaining prior written authorisation from the Public Prosecutor's Office or the investigating judge. The investigating judge may prohibit any person from visiting or communicating with the accused, except their lawyer, whenever they consider it necessary for the purposes of the investigation[13].

1.4.2 Procedural Conditions for Pre-Trial Detention

Restricting the implementation of measures affecting personal liberty to specific formal procedures protects the accused, and any violation of these procedures constitutes an infringement of that liberty. As pretrial detention is the investigative measure that most seriously affects individual liberty, it must be subject to safeguards, carried out in accordance with the prescribed formalities and used within the limits of its established purpose. Otherwise, individual liberties may be undermined.

Here, we will focus on three specific aspects. First, we will identify the authority competent to issue a pretrial detention order. Second, we will address the procedures for issuing such an order. Finally, we will examine the review of its legality.

The authority competent to issue a pretrial detention order:

As a general rule, the investigating judge is competent to issue a pretrial detention order, being the authority responsible for conducting the preliminary investigation. However, such an order may also be issued by other judicial authorities, such as trial judges and members of the Public Prosecution Service.

With regard to the investigating judge, Article 201 of the Code of Criminal Procedure stipulates that, as circumstances require, the investigating judge may issue an order to bring the accused before them, commit them to prison or arrest them. However, it should be noted that the investigating judge's authority to order pretrial detention is not absolute, but rather depends on the type and seriousness of the offence, as well as the prescribed penalty. The investigating judge may always issue a pretrial detention order in felony cases but not in cases involving

contraventions. In misdemeanour cases, a distinction must be made between ordinary-law and press misdemeanours. As a general rule, a pretrial detention order may only be issued for the latter as an exception, for specifically enumerated offences only. In the case of misdemeanours, the judge may only order detention if the offence is punishable by a term of imprisonment of at least two years under the law.

A child under the age of thirteen may not be placed in a correctional institution, even temporarily. A minor aged between thirteen and eighteen may only be placed in a correctional institution temporarily if this measure is deemed necessary, or if it is not possible to implement any other alternative. In such cases, the accused minor shall be held in a separate wing of the institution. If this is not possible, they shall be held in a separate area and, as far as possible, be subject to solitary confinement at night[14].

In addition to supervising the powers of the investigating judge, the Indictment Chamber may order the pretrial detention of an accused person who has been released, or their release if they are being held in pretrial detention. The Chamber refers the case to the Criminal Court or the Misdemeanour Court, depending on the nature of the offence. The Indictment Chamber also acts as an appellate authority, ruling on appeals lodged against decisions of the investigating judge and conducting supplementary investigations or delegating one of the investigating judges to carry them out. Furthermore, it may decide not to place the accused in pretrial detention and must issue a detention order itself, without requiring the investigating judge to do so[15].

In the case of trial courts, both the court and the Judicial Council have the authority to issue pretrial detention orders in the following cases:

The first case is: Disturbing the order during a hearing. According to Article 495 of the Code of Criminal Procedure, if any person present at a hearing disturbs the order in any way, the presiding judge may order their removal from the courtroom. If the person fails to comply or causes a disturbance during the enforcement of this order, the presiding judge shall immediately issue an order committing them to prison. The same provisions apply to the accused.

Second case: Failure of the accused to comply after being released. If the accused is summoned to appear after having been provisionally released and fails to comply, or if new or serious circumstances arise that make detention necessary, the investigating judge or the trial court before which the case is pending may issue a new order committing the accused to prison.

Third case: The commission of an offence during a hearing before a court, a judicial council or a criminal court. According to Article 732 of the Code of Criminal Procedure, if a misdemeanour or contravention is committed during a hearing before a judicial council, the presiding judge shall order a report concerning the incident to be drawn up and forwarded to the Public Prosecutor. If the offence carries a prison sentence of more than six months, the judge may order the arrest of the accused and their immediate transfer to the Public Prosecutor.

However, if a misdemeanour or contravention is committed during a hearing before a court hearing misdemeanour or contravention cases, or during a hearing before a criminal court, the presiding judge shall order a report to be drawn up and adjudicate the matter immediately after

hearing the statements of the accused, witnesses, the public prosecution and the defence where appropriate.

If a felony is committed during a hearing before a court or a judicial council, the judicial authority shall draw up a report, question the accused and forward the case file to the relevant Public Prosecutor, who shall request the initiation of a judicial investigation[16].

The fourth case concerns situations in which the accused is sentenced to imprisonment for a term of one year or more in absentia, for an offence that would be considered a misdemeanour under ordinary law. In such cases, the court may, by reasoned decision, order the accused to be imprisoned or arrested. This order shall remain in effect even if the court or the judicial council reduces the prison sentence to less than one year upon opposition proceedings or on appeal (Article 508 of the Code of Criminal Procedure).

The fifth case concerns the reclassification of the offence and the declaration of lack of jurisdiction. According to Article 512 of the Code of Criminal Procedure, if the court deems that the act or acts brought before it warrant the imposition of a felony penalty despite being classified as a misdemeanour, it shall refer the matter to the Public Prosecution for consideration as it deems appropriate. After hearing the Public Prosecution's statement, the court may issue an order committing the accused to pretrial detention or ordering their arrest[17].

Third Section: Procedures for issuing an order for pretrial detention

In order to protect the accused and provide all legal safeguards, it is not sufficient for an authority empowered by law to order their pretrial detention. Other formal safeguards must also be in place to protect their right to liberty and to defend themselves. These safeguards can be established through two fundamental guarantees: first, informing the accused of the charges brought against them and the reasons for them; and second, providing reasons for the order placing them in pretrial detention.

Informing the Accused of the Charge Brought Against Them:

This safeguard is given considerable attention in international conventions and treaties. For example, Article 9(2) of the 1966 International Covenant on Civil and Political Rights states that 'anyone who is arrested shall be informed, at the time of arrest, of the reasons for their arrest and shall be promptly informed of any charges against them'. Similarly, Article 5(2) of the European Convention on Human Rights stipulates that 'anyone who is arrested shall be promptly informed, in a language he understands, of the reasons for his arrest and of any charge against him'.

In order to comply with the aforementioned articles, Mr Velu believes that it is sufficient to inform the arrested person in detail of the facts attributed to them and their legal classification.

According to this legal scholar, the reasons for arrest and the charges referred to in the Convention and the International Covenant, of which the accused must be notified, must specify the evidence supporting the charges brought against them and the legal classification assigned to the facts attributed to them. He does not consider it necessary to inform the accused of the reasons for their arrest.

Legal scholars generally agree that Mr Velu's interpretation concerns one of the rights set out in Article 5(2), which is available to every accused person. In other words, informing the accused of the facts attributed to them and their legal classification solely relates to the right of defence. The purpose of this notification is to enable the accused, who is presumed innocent, to prepare their defence, whether they are held in pretrial detention or released.

Conversely, notifying a detained or arrested person of the reasons for their detention or arrest is a safeguard relating to individual liberty and the full scope of the presumption of innocence enjoyed by the accused until a conviction is issued. This presumption is not limited to the burden of proof, which lies with the prosecution, or to the safeguards of the defence; it also extends to the protection of the accused's individual liberty[18].

Providing reasons for the order of pretrial detention:

A statement of reasons means that a judgement contains the factual and legal grounds that led to its issuance. Procedural legislation in various countries generally requires judgments and, in particular cases, decisions issued by investigating authorities to state their reasons for important considerations. As the jurist Garraud expressed it, these reasons act as a safeguard against subjective perceptions on the part of the judge, preventing them from ruling on the basis of personal whims or inclinations. Furthermore, stating the reasons enables individuals to verify that the measure taken by the judge does not violate the right to defence, and it allows the Supreme Court to fulfil its supervisory role and ensure respect for this right.

For these reasons, procedural legislation in various legal systems requires judgments, orders and decisions to include the reasons on which they are based as a guarantee of their seriousness and to inspire confidence in the justice system. This is what the Algerian legislator provided for in Article 250 of the Code of Criminal Procedure.

In the legislator's view, requiring reasons for an order placing the accused in pretrial detention is the most effective way to restrict the powers of the investigating judge. This prevents the judge from issuing such an order without verifying the grounds on which this serious measure is based, while also enabling the actions of the judge to be subject to judicial supervision. This is because a statement of reasons necessarily involves judicial supervision and meets a logical requirement of justice, making it incompatible with arbitrary decision-making[19].

The Algerian legislator has stipulated that an order extending pretrial detention must state its reasons in light of the case's circumstances, after obtaining the reasoned opinion of the Public Prosecutor. However, the legislator has not specified the nature of the grounds on which the judge must base the issuance of an order to extend pretrial detention. This is another example of the broad discretionary powers granted to the investigating judge[20].

The first paragraph of Article 268 of the Code of Criminal Procedure states that the accused has the right to appeal to the Indictment Chamber against all orders set out in Articles 104 and 240–250. This means that the accused has the right to appeal an order issued by the investigating judge to extend their pretrial detention. The appeal must be submitted to the chief clerk of the court or the head of the penal institution within three days of proper legal notification of the order, either verbally or in writing by the accused or their lawyer[21].

Second chapter: The Concept of Judicial Supervision, Its Nature, and the Extent to Which It Is Considered an Alternative to Pretrial Detention

The idea of using alternative measures to pretrial detention that interfere less with individual liberty is not a recent one. In the Roman era, for example, the accused would often be entrusted to guarantors who would ensure their appearance at the appointed time for trial and, where necessary, pay a sum of money in the event of their failing to fulfil this obligation. This feature was also characteristic of Babylonian and Chinese legislation[22].

First Section: The Concept of Judicial Supervision

Public opinion in France and other European countries was opposed to the use of bail as an alternative to pre-trial detention. At the beginning of the 20th century, some legal scholars criticised the French legislator for failing to provide measures equivalent to bail that did not completely deprive the accused of their liberty, but rather imposed restrictions that did not amount to this. The application of such measures was intended to achieve the objectives sought through pre-trial detention. Examples include requiring the accused to remain under the supervision of the judicial police or to remain at home.

This type of house arrest during the preliminary investigation stage appears to be less severe than pretrial detention, and judges do not hesitate to release the accused if they provide guarantees that they will appear at trial.

Other measures may also be considered, such as withdrawing the accused's passport or identity documents, or requiring them to spend the night in prison after work so that they do not become detached from their professional environment.

At the international level, the European Convention for the Protection of Human Rights and Fundamental Freedoms long ago proposed the introduction of alternative measures to arrest and detention orders. Recommendation No. 65 of the Committee of Ministers of the Council of Europe drew Member States' attention to the potential benefits of using such measures instead of pretrial detention in certain cases. These measures include the obligation not to leave the national territory without prior judicial permission, the obligation to appear periodically before the relevant authorities, and the withdrawal of passports or identity documents, as practised in Denmark, Norway and the Netherlands[23].

With reference to the Code of Criminal Procedure, the Algerian legislator has not defined judicial supervision as an investigative measure, perhaps considering it to be a matter for legal scholarship. Upon consulting certain specialised references, we find that the jurist Philippe Léger defines it as a measure that authorises the investigating judge to leave the accused at liberty while subjecting them to protective and supervisory measures in his book Report on the French Investigation[24].

In his work Judicial Supervision, the French jurist Etienne Péloche defined judicial supervision as a security measure whereby the investigating judge or any competent authority imposes an obligation on the accused to perform or refrain from performing an act, in order to ensure their availability for legal proceedings[25].

Second Section: The Legal Nature of Judicial Supervision

Legal scholars have expressed differing opinions regarding the legal nature of judicial supervision. Some have considered it to be a type of preventive measure. However, this view has been rejected by some scholars because, although judicial supervision shares the same objective as preventive measures of protecting and reforming the accused, it differs in that a preventive measure constitutes a judicial sanction intended to address the criminal dangerousness of individuals and protect society from it. In other words, it is designed to avert the risks associated with punishment. By contrast, judicial supervision is essentially an investigative measure similar to pretrial detention. It is imposed by the investigating judge or the Indictment Chamber on an accused person who is subject to criminal proceedings, but against whom no criminal conviction has yet been issued[26].

Other legal scholars, such as Professor Pierre Chambon, have likened it to the suspension of a sentence. The latter system spares the accused from entering prison and acquiring a criminal record. This is the same objective pursued by judicial supervision, whereby the accused remains at liberty while being subject to certain obligations, such as signing in weekly at the registry of the investigating judge, informing the investigating judge of their movements or surrendering their passport.

However, this view has been refuted on the grounds that a person subject to the suspension of a sentence has been convicted and is serving their sentence under probation, whereas judicial supervision is an investigative measure imposed before trial. During this period, the accused enjoys all legal safeguards, the most important of which is the presumption of innocence, which can only be overturned by a definitive conviction[27].

In her commentary on the law promulgated on 28/12/1970, Professor Isabel Salo considered that this law regards judicial supervision as a contract between the judge and the accused. However, this opinion has not escaped criticism itself, since the obligations imposed under judicial supervision reveal a lack of trust between the accused and the investigating judge. Genuine trust consists of leaving the accused at liberty without restrictions[28].

Given the variety of opinions and legal classifications, can judicial supervision be considered an alternative to pretrial detention?

Both pretrial detention and judicial supervision are investigative measures, each provided for independently in the Code of Criminal Procedure. Pretrial detention predates judicial supervision in terms of application and practice. The Algerian legislator introduced pretrial detention pursuant to Law No. 86-05 dated 04/03/1970. With the introduction of this measure, adopted from the French legal system, the investigating judge or the Indictment Chamber was able to either order the detention of the accused if they deemed it necessary for the purposes of the investigation and the accused had not provided sufficient guarantees to avoid pretrial detention, or order that the accused be placed under judicial supervision if the investigating authority deemed the supervision measures alone sufficient, provided the facts were not serious and the accused had provided sufficient guarantees and there was no actual necessity to commit them to pretrial detention.

However, it should be noted that these two investigative measures are exceptions to the general principle that the accused is presumed innocent until a competent judicial authority issues a final conviction.

Third Section: Obligations under Judicial Supervision

The French legislator has stipulated these obligations, whereas the Algerian legislator has omitted them. The Algerian legislator has drawn on experience and expertise acquired in executing sentences in an open environment, in the form of release and suspension of sentence with probation.

These obligations are determined separately by the investigating judge in each case, and there is no common obligation applicable to all accused persons. In accordance with the principle of legality, the investigating judge may only impose the obligations set out in Article 138 of the French Code of Criminal Procedure. These obligations consist of prohibiting the accused from performing a specific act or requiring them to perform certain acts. Accordingly, these obligations may be either positive or negative.

First Subsection: Positive Obligations

Article 138 of the French Code of Criminal Procedure sets out these obligations, which include requiring the accused to inform the investigating judge of their movements and to appear before the designated authorities or services at regular intervals.

Some consider this to be one of the most common and appropriate obligations for ensuring that the accused remains at the disposal of the legal system by determining their place of residence. While some have expressed concern that this obligation may be merely formal, given the opportunity it provides for the accused to abscond in view of the speed and ease of modern-day travel, it nevertheless contributes to the prompt identification of the accused, at the very least.

However, neither the Algerian nor the French legislator has specified the authorities before which the accused must appear at regular intervals[29].

Another positive obligation is the payment of a bail amount set by the investigating judge. This bail may be ordered for a detained or released accused person. The investigating judge sets the payment deadlines, taking particular account of the accused's sources of wealth. The amount is paid to the registry of the relevant court.

Another obligation is the surrender of identity documents, which restricts the accused's freedom of movement and reduces the likelihood of them fleeing abroad. The investigating judge has the power to require the accused to surrender all identity documents, particularly their passport, in exchange for a receipt with equal evidentiary value for establishing identity within the national territory. These documents may be submitted to the court registry, the police or a National Gendarmerie unit.

This obligation was met with strong opposition in the French Parliament during the drafting of the law, which was enacted on 17 July 1970. It would be advisable to limit this obligation to the withdrawal of the passport by the competent authority, without requiring the surrender of other identity documents.

It is possible to cross various territorial boundaries by presenting an identity card. However, consideration must be given to the difficulties that the accused may encounter in their daily lives.

The receipt issued to an accused person who is required to surrender their personal documents must include their first name, surname, date and place of birth. The receipt must also include the accused's photograph and indicate that it has the same evidentiary value as the identity documents themselves[30].

Second subsection: Negative Obligations

The most significant of these is the obligation not to leave a specific territorial area, as set out in Article 138, paragraph 2, of the French Code of Criminal Procedure. This obligation is one of the most common, and aims to ensure that the accused remains at the disposal of the investigating authority. This obligation did not give rise to any objection during the discussion of the 17 July 1970 draft law, either in the National Assembly or the Senate.

A second negative obligation is that the accused must not leave their place of residence. Prior to the amendment of 17 July 1970, Article 142, paragraphs five and six, of the French Code of Criminal Procedure stipulated that the judicial authority granting or temporarily ordering the release of an accused person of foreign nationality or an accused person charged with committing a crime against state security was the sole authority competent to determine the place of residence from which the accused was prohibited from leaving without authorisation.

Article 138, paragraph 2, extends the scope of application of the preceding provision to include all persons subject to criminal prosecution. It grants the investigating judge the authority to determine the accused's place of residence if it is deemed insufficient to ensure the accused remains at the disposal of justice for them to be released or to give an undertaking not to leave the national territory, or even the city, municipality, or wilaya. A person whose residence has been specified is prohibited from leaving their home except in accordance with conditions determined by the investigating judge and for reasons approved by them.

They are also obliged not to frequent certain places, or to frequent only the places specified by the investigating judge. This provision is inspired by Article 59, paragraph 2, of the French Code of Criminal Procedure concerning the suspension of a probationary sentence. Under this obligation, the accused is prohibited from frequenting certain places, such as gambling establishments and bars, as well as the place where the crime was committed.

Other negative obligations include prohibiting the accused from communicating with third parties, particularly accomplices or witnesses, and requiring them to refrain from receiving or meeting certain persons, or interfering in any way with their relationships with those persons.

If the crime was committed during the exercise of, or as a result of, certain professional or social activities, the accused must also refrain from engaging in those activities if there is a risk that they may commit further offences. In this case, the investigating judge must establish the relationship between the prohibited professional activities and the crime that led to the prosecution. However, this prohibition does not apply to electoral or trade union activities.

Conclusion:

A judicial investigation is a set of procedures aimed at finding and collecting evidence of a crime that has been committed, and at assessing whether there is enough evidence to put the accused on trial. To protect society's interests in establishing the truth, criminal legislation provides for procedures involving restrictions on individual freedoms. One such procedure recognised by most criminal legislations is pretrial detention, whereby the accused is placed in a penal institution before being tried.

Although pretrial detention is considered an exceptional and serious measure, most comparative legislations have agreed on its inevitability and necessity alongside the inevitability of criminality. However, the Algerian legislator, like other foreign legislators, has established a legal framework governing this measure and recognises it as an exceptional procedure. This is the substance of Article 197, which states: 'Pretrial detention may exceptionally be ordered.' Consequently, the Algerian legislator has subjected it to a set of substantive and formal restrictions, as previously explained, in response to many judges resorting to this measure excessively, even in the absence of serious grounds, due to the flexibility of the legal provisions governing it.

It is also undeniable that placing an accused person in pretrial detention when they may subsequently be found innocent causes considerable harm. They are isolated from their family and the outside world, they may lose their job and their reputation within society may be damaged. Furthermore, the accused and their family suffer psychological distress.

The negative consequences of adopting the pretrial detention system (formerly known as remand detention) and changing the terminology to indicate its exceptional nature and necessity as an investigative measure led some legal scholars to call for its use to be limited and for effective alternatives to be sought that would achieve its purpose while reducing its negative aspects as an arbitrary measure. One such alternative is to apply it only to offences classified as felonies.

However, these solutions were insufficient and did not prevent the arbitrary use of pretrial detention by certain judges. This prompted the French legislator to adopt a highly effective approach known as Le Contrôle Judiciaire, or judicial supervision. This system was adopted under Law No. 70-346 of 17 July 1970 as part of efforts to strengthen individual rights and freedoms, and it came into force at the beginning of 1971. It was subsequently amended by numerous legislative texts to strengthen the Code of Criminal Procedure, the latest of which was the Law of 08/07/1983.

Although the Algerian legislator acted wisely in benefiting from the achievements of the French legislator, the adoption of the judicial supervision system was somewhat delayed. Algeria waited until 1986, when Law No. 86-05 amending the Code of Criminal Procedure (Law No. 66-155) was enacted. However, Law No. 86-05 was criticised for failing to define judicial supervision or specify its obligations, creating considerable practical difficulties for the judiciary in its implementation.

The adoption of the judicial supervision system by the Algerian legislator and its benefit from the achievements of French legislation represent a qualitative leap in the safeguarding of individual rights and freedoms, which are constitutionally guaranteed, and deserve recognition

in this field. Recognising the negative consequences and arbitrary treatment to which an innocent person may be subjected as a result of pretrial detention, a situation in which societal interests are prioritised over individual ones, the legislator introduced the judicial supervision system, which considers both interests simultaneously. In addition to safeguarding societal interests by preventing offenders from evading justice through the imposition of obligations that restrict individual freedom and place the accused under supervision, judicial supervision spares the accused the suffering associated with detention while not entirely depriving them of their freedom.

The most important findings and recommendations that we conclude with and advocate on this subject are as follows:

First, We propose that orders placing the accused in pretrial detention or under judicial supervision should be adequately justified to ensure the legality of these measures, especially pretrial detention, in line with modern criminal policy developments. It should not be sufficient to complete a pre-prepared form adopted by investigating judges containing repeatedly used expressions and consider this a statement of reasons for an order of pretrial detention.

Second, we propose reducing the maximum duration of pretrial detention to four months for misdemeanour cases and eight months for felony cases. Investigating judges should be reminded of the need to expedite investigative procedures, particularly in cases that do not require in-depth investigation, and to refer such cases to the trial court as soon as possible.

Thirdly, we propose that whenever the investigating judge or the Indictment Chamber deems it necessary to place the accused in pre-trial detention, a separate section or wing should be allocated within penal institutions. If possible, dedicated institutions should be established for persons held in pre-trial detention, separating them from prisoners who have been finally convicted.

Fourthly, pretrial detention of juveniles accused of non-serious offences should be avoided wherever possible, given the psychological and social harm it causes to them and their families. If it is necessary to restrict their freedom, judicial supervision should be used instead of detention, taking into account their young age and the aim of their rehabilitation. In the event that a juvenile must be placed in pretrial detention due to the seriousness of the case, educational centres managed by specialised and qualified personnel should be established for this purpose.

Fifthly, judges should receive special training on the application of procedures restricting individual freedoms during the prosecution and investigation stages. They should also be made aware of the risks of pretrial detention for innocent persons and of the consequences that may expose them to liability, even when such consequences result from an error.

Sixthly, Article 61 of the Constitution concerning compensation for judicial error should be implemented more effectively. Those harmed by pretrial detention whose innocence has been definitively proven should be able to obtain fair and equitable compensation within a reasonable timeframe through simplified procedures. Those who deliberately cause such errors should be held accountable and subjected to disciplinary proceedings.

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Footnotes:

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[3]- Mohamed Zaki Abu Amer, Criminal Procedures, Dar Al-Jami'a Al-Jadida for Publishing, Alexandria, 2014, p. 667.
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[7]- Lakhdar Boukhel, ibid., p. 92.
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[10]- See Article 89 of the Code of Criminal Procedure, which stipulates: 'Any person summoned by an officer of the public force to give testimony must appear, take the oath where required and give testimony; otherwise they shall be punished pursuant to Article 97.' However, a person against whom a complaint accompanied by a civil-party claim has been filed may not refuse to be heard as a witness. The investigating judge must inform that person of this after notifying them of the complaint, and this must be recorded in the minutes. If the person refuses, the investigating judge may question them only in the capacity of an accused person. Neither the investigating judge conducting an investigation, nor judicial officers or judicial police officers entrusted with carrying out an act pursuant to a judicial commission, may hear as witnesses persons against whom strong and consistent evidence exists indicating their implication in an accusation, with the aim of undermining the rights of the defence.
[11]- See Article 137 of the French Code of Criminal Procedure, as amended by the decree dated 23/12/1970.
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