

## **Constitutionality Use of Arrest Powers at the Pre-Charge Stage in Jordanian Criminal Procedure: Critical Analysis**

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### **Abstract**

Only in exceptional circumstances should one use a detention decision, as it is a serious matter. Authorized bodies such as the primary investigation authority and the relevant court issue detention decisions. While there are justifications for detaining someone, it does restrict the defendant's freedom and goes against the presumption of innocence. This study examined the purposes and justifications for detention, along with how the Jordanian Code of Criminal Procedure handles it. The study discovered specific reasons and justifications for detention, despite it being a temporary restriction on the freedom of an accused person without proven guilt. The Jordanian legislator outlines these in Article (114) of the Code. The study also found no conflict between detention and the presumption of innocence. The presumption of innocence is a principle of proof, meaning the burden of proving guilt lies with the prosecution. It doesn't guarantee that a detained person is innocent.

**Keywords:** Arrest powers, detention, pre-charge stage, criminal procedure system, Jordan.

### **Introduction**

Arrest, also known as preventive detention or pre-trial detention, is a far-reaching measure in the early stages of an investigation, often within the powers of the public prosecutor and the court concerned (Justice & Meares, 2014). Although arrest does not point to the guilt of a person, it is a precautionary measure where, through judicial order, the accused must remain in custody for specific periods, guided by public interest but constrained by legal limits (Sanders et al., 2010).

An arrest, because of the serious violation of liberty, must be safeguarded to protect the rights of the suspect and ensure that detention is in harmony with the justification on which it was initially based (Justice & Meares, 2014). The spirit of justice has meant that detention can only be justified through the pronouncement of a competent court, supported by the Constitution and statute on the right of any suspect to be presumed innocent until proven otherwise. Article 9 of the International Covenant on Civil and Political Rights ensures that everyone is entitled to liberty, security of person, and protection against arbitrary arrest or detention, reinforcing such thinking (United Nations, 1966). Lawyers and human rights activists often highlight the saying, "It is better for a thousand criminals to escape punishment than for one innocent to be convicted" (Justice & Meares, 2014).

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National legislation, such as Jordanian law, seeks to define when an arrest can be justified, aiming to prevent its overuse, even when justified by public safety concerns. This aims to balance the protection of the public with the rights of the detainee, reflecting the legal principle of presumed innocence (Purshouse, 2015).

This research examines the arrest process, which is critical as it highly restricts a suspect's liberty and could conflict with the fundamental tenet of assumed innocence, ensuring treatment as innocent until proven guilty (Sanders et al., 2010; Justice & Meares, 2014). This principle is upheld according to the law's provisions and the Jordanian Constitution in respect to the United Nations' 1966 covenant.

This research is significant because an arrest has a serious impact on human freedom. Investigating authorities should be very cautious and have solid grounds before issuing an arrest warrant. The justification must adhere to legal time limits and be based on lawful reasons as prescribed by law. According to Purshouse (2015), the approach should strike a balance, allowing arrest only when necessary and when aligned with the law.

### **Problem statement**

International and regional conventions on human rights, in addition to national laws, attempt to regulate arrest through a series of restrictions and controls. The safeguards prevent the investigating authorities from using arbitrary arrest while at the same time protecting the suspect from this coercive measure.

This study embodies the potential conflict between the purposes and justifications for arrest as laid down by the Jordanian legislator in Article of the Jordanian Code of Criminal Procedure and the basic principles of human freedom with the presumption of innocence. Such a presumption gives a guarantee that the accused person is innocent until proven guilty. This represents the challenge of finding a balance between these interdependent concepts in arriving at a clear legal stand on arrest and making sure that proper justification and application take place.

### **The Legal Framework Governing Arrest**

Arrest is a serious decision, and an act vested for mere reasons and causes only. It was strong weaponry in the hands of capable authorities, the main investigator, and the court of justice for maintaining equilibrium between protection to the societal interests on one side and the preservation of rights of the accused on the other side. Any detention in Jordan is strictly based on the rule of law, which in fact exists to prevent discretionary detention and ensure the principle of presumed innocence (Qudah et al., 2023a.)

In this respect, any person being arrested has a specific legal frame ensuring personal grounds and elements on which the arrest is supported by evidence. In this manner, it preserves the allowance of justice principles within the context of rights protection and the public order (Alqudah et al., 2023b). Jordanian legislation also provides an opportunity to file an objection against wrongful arrest through various

means that ensure the protection of the rights of the accused by means of action in court (Al-Qudah et al., 2022).

Therefore, the compatibility of arrest procedures with the principle of presumed innocence presumes the commitment to international human rights standards. Jordanian legal provisions require the threshold of evidence to be high before making an arrest; this creates again in law a balance between an individual's right to be considered innocent until proven guilty and is critical to maintaining integrity in the process of justice, protection of human dignity (Alqudah et al., 2023b).

While setting clear legal grounds for detention, the Jordanian legal framework also stands out with its focus on protection both of social interests and those of free individuals. It is also basically required in the prevention of abuses of power besides preserving fairness and justice in criminal procedures.

Arrest is a critical term carrying immense legal and procedural implications; it has, therefore, been understood at times as an extreme measure because the individual's body is being restrained. The legal experts have defined it in various ways; they refer to an arrest as a process where people are kept in custody before a trial so that they can be eventually presented before the courts without any opportunity to escape their due processes (Kirchengast & Kirchengast 2016, Purshouse 2020). Jordanian and Iraqi lawmakers view arrest or, in the case of Egyptian law pre-trial detention, as a measure of last resort. While this procedure is necessary, it contradicts the principle of the presumption of innocence. This is evident because detention is being imposed on an individual assumed to be innocent until proven otherwise. Hungerford-Welch (2019) describes arrest as the deprivation of liberty based on the investigating authority needs, while legal formalities are observed (Kirchengast & Kirchengast, 2016)

The authorities who have the power to arrest initiate a criminal investigation by arresting the accused, who are detained in prison until either being released during investigation or until the disposal of the case by trial or sentence, whichever comes first (Conte & Conte, 2010). At this point, although "arrest" is not defined by the Jordanian legal system, Article 111/1 of the Jordanian Code of Criminal Procedure comes handy. It enables the prosecutor general, after questioning the complainant, to ask if that is necessary for the investigation. Article 114 also qualifies arrest as a temporary and exceptional measure, intended to serve the public interest in ensuring that evidence is preserved, not tampered with, and that the accused is protected (Nelson et al., 2015; Qudah et al., 2023).

According to the researcher, arrest is the temporary deprivation of the accused's freedom allowed by the judicial authority within the period. The procedure shall be undertaken for safeguarding social interest or maintaining evidence as well as achieving Justice (Justice & Meares, 2014). According to Dušek, 2015 an arrest's intensity is growing with its length, which is determined according to special reasons by the competent judicial authority. Arrest is one of the most critical investigative measures, particularly in respect of its impact on the

suspect's freedom (Qudah et al., 2023b). Usually ordered by the prosecutor in very important cases, following grave legal grounds to be sure of its necessity and proportionality.

In the entirety of criminal procedures, the principle of innocence dictates that the basic right of the accused be accorded all rights under the Constitution and legislated in law to protect their interest in confronting issues affecting their freedom. This requires a balancing between the interest of the accused and public interest without compromising either side (Qudah et al., 2024a). Others argue in jurisprudence that arrest does not deny a person a right under the presumption of innocence but levies the burden of proof of the charge against him to the charging authority. The arrested person is therefore not regarded as innocent but reflects failure to be convicted on legal grounds permitting treatment as a convict (Kirchengast and Kirchengast 2016; Abdo et al. 2023).

What Jordanian law considers to constitute a non-arbitrary, hence respectful, arrest of a person's freedom is interrogation of the accused with evidence. In fact, under Article 113 of the Jordanian Criminal Procedure Code, an arrest without interrogation under a previously issued subpoena makes it arbitrary, with perpetrators prosecuted for illegal deprivation of liberty (Conte & Conte, 2010). Jordanian legislation, while in development with international treaties, focuses on the priority of personal freedom and the principles of a fair trial and regulates controls regarding the duration of arrest in both criminal and non-criminal cases to balance between the interests of investigations and individual rights. The Jordanian legislator allows the defendant to object to the decisions of arrest and provides guarantees that warrant his position in accordance with the principle of the presumption of innocence. The detention's illegality could be raised as an appeal granted by article 124 of the criminal procedure code in defense of the rights of the accused (Nelson et al., 2015; Alqudah et al., 2024).

In this perspective, arrest serves both investigative needs and public interest in preserving evidence integrity and crime revelation as a precautionary measure against those presumed innocent. At the end of an investigation, be it through witnesses or by examining evidence, the detention should be removed to restore the principle of innocence until proven guilty. In instances of compensation for illegal detention, international conventions hold states liable in cases of judicial error; therefore, a person who suffered from illegal detention can seek justice and compensation in a civil court. Conversely, most times, the legislatures view arrest as a precaution within the prosecutor's discretion and claims of compensation may not easily be entertained (Ducek 2015; Abu Orabi et al., 2024).

These legislative principles essentially express a commitment to the need for balance between the rights of the individual and the imperatives of the legal system-a theme on which several scholars, including Hungerford-Welch (2019) and Kirchengast & Kirchengast (2016), have elaborated, while placing it within a wider Jordanian legal framework illustrated through numerous studies.

### **Beyond Arrest: Alternatives in Jordanian Law**

The detention of the accused is one of the dangerous measures of preliminary investigation procedures initiated by public prosecution. Detention is a precautionary measure that arrests the detainee's freedom with temporary actions in favor of public interest and the investigation, in order not to lose criminal evidence and to ensure security and safety for the accused, according to Hungerford-Welch (2019, p. 127), and Qudah et al. (2023). The arrest process, therefore, needs to be restricted by several securities to avoid arbitrary decisions of arrest, as debated in the first prerequisite, while alternatives regarding anything about an arrest as per Jordanian law will be elaborated on in the second prerequisite. The rationale behind this is that it is important to develop arrest alternatives considering Jordanian law.

Jordanian law establishes that a formal and objective set of conditions should be set by the legislator in regulating the arrest warrant. Such provisions are necessary to ensure that procedural controls have taken place and, as such, that the rights of the accused are indeed protected while still allowing for an effective prosecution. This, therefore, includes Hungerford-Welch (2019); Kirchengast & Kirchengast (2016); Conte & Conte (2010); Purshouse (2020); Abdo et al. (2021). Formal conditions guarantee the arrest of the accused is a fundamental procedural safeguard in protecting the rights of the same. Violation of these conditions renders the arrest null, and it is against the freedom and personal rights of the accused as cited by Nelson et al., 2015, Justice & Meares, 2014, Dušek, 2015, and Al Karabsheh et al. 2021. The law, on the first condition, empowers a competent authority to issue an arrest warrant for individuals. The authority, by virtue of Jordanian law, rests with investigative bodies that include the Public Prosecution and the Judicial Authorities. These authorities include primary investigating authorities and courts, depending on the nature of the case in point, as indicated by Walsh (2018), Rakhmadzhonzoda (2022), and Magboul et al. (2024). The Jordanian Legislator gathered the competence of preliminary investigation and indictment in the hand of public prosecution and gave them the prerogative to issue an arrest warrant on specific conditions without referring to the court. In this respect, Article 114 of the Jordanian Code of Criminal Procedure gives a warrant for the arrest by the public prosecutor for a period of seven days in certain offenses or up to fifteen days, provided the offense is graver and the evidence links the accused with it (Simmler et al., 2023; Al Karabsheh et al., 2024).

Also, some legislations, such as the Jordanian Customs Law, empower non-prosecutors to issue an arrest order in certain circumstances. Another competent body to order detention is the judiciary body. Pursuant to Article 114 of the Code of Criminal Procedure, if the interest of the investigation requires further detention, the case shall be brought before the competent court by the public prosecutor. The court may afterward, if necessary, grant an arrest warrant with due process and oversight (White, 2020; Abu Huson et al., 2024). Besides, the granting of an arrest warrant falls into the discretion of the court in circumstances relative to the arrest

of a released defendant who fails to appear for trial or commits any offense during a session within the court (Phillips, 1981; Brewczyńska, 2021).

Justices of the peace have equal powers with the prosecutor in issuing arrest warrants, but their scope is limited to their jurisdictional area. On the second count, it is the legal requirement in Jordan that the detainee be informed of the cause of his arrest. This makes everything open and gives the detainee an opportunity to know on what grounds he has been arrested. In fact, Yelnur et al. (2021) assert that Article 117 of the Code of Criminal Procedure insists on intimating the detainees about the reason for their arrest; detainees therefore have the right to question the grounds of their arrest and request legal representation. The law may not be overtly clear in insisting on a reasoned or evidence-based decision at the time of arrest. However, Kitson-Boyce & Athwal-Kooner (2024) and Al Qudah et al. (2023) suggest that legal provisions insist on furnishing the grounds of arrest to the detainee. It is a fundamental protection of detainees that there should be a valid arrest warrant, detailing therein the name of the accused, the offense committed, and the signature of the issuing authority. This would be a written guarantee of legality and accountability in the arrest.

Given the seriousness of an arrest procedure, Jordanian legislation applies strict objective criteria to prevent discretionary detentions and protect the principle of being considered innocent until proven guilty (Johnston, 2020; Dixon, 2009). The first among the criteria considered within the procedure of an arrest warrant is the nature of the crime and the sentence handed down. We typically allow arrest for felonies and misdemeanors punishable by imprisonment of more than one year, as this reflects the seriousness of the offense committed. The second basis for arrest, as Williams (2021) and Al Karabsheh et al. (2024) note, is on probable cause or reasonable suspicion to have an arrest warrant issued. That the Jordanian legislator stipulates that there must be sufficient causes and probable grounds attached to the individual who is being arrested and linking him to the purported crime, in a way that any arrest is evidenced with valid and reasonable grounds. Thirdly, duration of arrest is limited, differing based on the nature of the offense and the nature of the authority issuing it. It is the Code of Criminal Procedure, particularly Article 114, that has stipulated time frames for detention to forestall illegal prolongation of arrest. In other words, Jordanian law has formal and objective grounds that allow the issuance of arrest warrants in the balancing of the use of police powers against individual rights and the protection of due process (Zedner, 2014; Abu Orabi et al., 2024).

## **Methodology**

This research adopted a critical legal approach to the constitutionality and practice of arrest powers at the pre-charge stage in Jordanian criminal procedure. The doctrinal approach adopted for the most part in this research focused on analysis of Jordanian legislation, precisely Article 114 of the Jordanian Code of Criminal Procedure, for the legal grounds that warrant detention before charge. It

involved an in-depth analysis of legislative provisions, relevant case law, and determination of how such laws stand in relation to constitutional principles, such as the principle of the presumption of innocence and individual rights. Such a study also used comparative analysis in contrasting Jordanian legal practices against international standards and human rights frameworks. The research also employed a literature review of scholarly writings, judicial opinions, and legal comments to gain a general appreciation of constitutional issues pertinent to the exercise of arrest powers in the pre-charge phase.

### **Findings**

Arrest has always been taken to be among the harshest investigative techniques, as it determines the extent to which an accused is harmed concerning his or her liberty; the arrest holds the person temporarily in custody, and the intensity of the incident rates higher based on the time span one dwells in the prison. Hungerford-Welch (2019), and Kirchengast & Kirchengast (2016) describe the reasons that account for such a situation, which, of course, do show just why events take place accordingly. Whereas it is true that the detention has temporarily restricted the freedom of the accused and that there is no final proof against the suspect, yet there must have been certain grounds and reasons for the detention to have been affected in the first instance. It is against international charters and national laws, which say that this freedom of individuals is unconstitutional. Its violation would be legal. Failure to do so will be taken as a non-compliance under the law. Article 114 of the Code of Criminal Procedure probably contains reasons and explanations most befitting this situation provided by the Jordanian legislature. This aspect must be given importance. This class includes reasons and justifications such as evidence preservation, executions of punishments, and safety and security of the suspect involved. In this case, many arguments and justifications arise, and the ones mentioned above are just a few. The subject brings about many arguments and justifications, of which the above-mentioned are just a few.

The findings of the research have established that there is no conflict between the presumption of innocence and an action associated with the detention of the person. To be specific, this is because the presumption of innocence hypothesis is just a way of determining that the power which is tasked with charging the person has the burden of proof associated with the charge. This explains why the issue occurs the way that it does. This is because the principle of innocence does not mean that the suspect arrested has the feeling or impression that he is innocent. This is the reason why it is the way it is, and that is why the Jordanian legislative has come up with several assurances meant to regulate the procedures for securing a warrant of arrest, ensuring that it is applied within the legation. These assurances list the things that should be met in the process of having an arrest warrant. Considering this view, we took the relevant steps to follow the law. Among the most salient objective elements is sufficient proof of suspicion or accusation, the length of time the prisoner has been detained since arrest, the

seriousness of the punishment, and the kind of offense committed (Walsh, 2018; Rakhmadzhonzoda, 2022). All these conditions include several other objective elements as well. Of these, the most important is the issuing, by competent authority, of an arrest warrant, further including the informing of the prisoner of the motives for his custody. Several additional formal conditions complete these requirements. Formal conditions of several different types are descriptive of these cases.

According to Wahl (2013), the Code of Criminal Procedure in Jordan does not have a law explaining the grounds of its decision regarding issuing an order for the execution of the arrest warrant. In this regard, the Jordanian legislature has deliberately excluded the same from its law book. Likewise, the Act does not contain any prerequisites indicating that the Public Prosecutor must give grounds for the judgment pronounced. The law in no shape, form, or fashion requires this responsibility (Azam & Airout, 2024; Mustafa Airout et al. 2024). Alternative measures to arrests are several special regulations approved by the Jordanian legislative body. These have been laws embraced. We classify this type of legislation as an alternative to arrest. As such, some forms of electronic monitoring, travel bans, and the requirement to stay at home or their geographic region for a certain period may be instituted by the Prosecutor General or court, according to Turgumbayev et al. (2022) and Simmler et al. (2023). Such restrictions can come in many forms, and what has been listed above is only but a few examples. Valid reasons for these laws to take effect included the severity of the arrest and what comes with it, such as the deprivation of liberty for the detained person. This aspect is very important since the court has not yet convicted either the accused or the arrested complainant.

## **Conclusion**

For this reason, the competent authorities are of the opinion-that is, the main investigation body and the competent court-that such an arrest order is an exceptional measure issued for a specific purpose and based on specific grounds that balance the needs of society with those of the accused. In this respect, international and regional conventions for the protection of human rights, as well as domestic laws, have placed limits and controls regarding arrest. Investigative authorities seek to avoid the arbitrary use of such a coercive measure while taking into consideration the protection of the rights of the accused. This research has addressed the purposes and grounds that the Jordanian legislator has prescribed for arrest under Article 114 of the Law of Criminal Procedure. It has focused on how the system is based on the basics of human freedom and on the principle of innocence, with an absolute principle where the accused is considered innocent until proven otherwise. As the research has shown, such an approach, based on the interaction of these interrelated issues, proves that they are mutually compatible and play a significant role in the protection of justice.



### **Recommendations**

1. The Jordanian legislature is encouraged to amend the Criminal Procedure Code to include provisions that will make the granting authority give full reasons for issuing an arrest warrant and refusing to release. This will make such decisions be upon clear and valid grounds, hence cementing the act of arrest and bail denial.
2. There must at least be an amount of validity toward the denial of bail or issuance of an arrest order. Where the authorities must clearly justify their actions, there would likely be a further reduced amount of arbitrary or unjust issuance of arrest warrants.
3. In the course of obtaining arrest warrants, arrests must be carried out with much care and specificity on the part of the arresting powers. Each detention must also be grounded on a separate legal basis, so as not to apply measures which are arbitrary and undermine the rule of law.
4. The study calls for the building of an effective mechanism for the exercise of alternatives to arrest that would decrease the rate of imprisonment without easing the financial burden off the Jordanian state, with a view to maintaining basic rights and the principle of the presumption of innocence for the person.
5. With the aim in view, a scheme must be worked out for the purpose of achieving the goals of minimizing imprisonment rates and upholding the rights of citizens. It should weigh public safety and the liberties of citizens in a manner that arrest would only be made as a rule absolutely in the last resort and only in those situations where arrest is highly necessary.

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