

The supervision of the criminal judge over pre-trial detention

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Abstract

Pre-trial detention is considered one of the most serious investigative procedures managed by the public prosecution, which is considered the competent investigation aspect or that is managed by the court. This high consideration for this procedure because it touches one of the most important human rights, the right of freedom that is surrounded by considerable attention of the interior laws, like the basic Palestinian law. It stipulates this in item 2/11, including the international agreements on human rights in order to protect the individuals and not restrict their freedoms unless there is a judicial order allows this within a limited duration by the law as the suspected person is entitled to have period of time for pleading not guilty until he is formally indicted under a fair trial, which guarantees the right to defending himself. The Palestinian legislature stipulated for disabling pre-trial procedure in the criminal procedure law without clarifying the legal regulations and the determining judicial control over this serious procedure, which guarantees the effectiveness of this control in order to restrain the arbitrariness of the legal executive aspects in applying it in a way drifts it out of the goal that was set up for. Therefore, in this study, I will highlight the control of the criminal judge over pre-trial detention according to the comparative descriptive-analytical approach. Through this, I will highlight the control determinants of the judge who is in charge of detention, the second-degree courts, and the head of the high court over pre-trial detention according to Palestinian criminal regulations to address what are these regulations that ensure the protection of individuals' freedoms without the arbitrary of the investigation aspects and courts in applying this right to answer the question whether there is practically a real and effective judicial control over pre-trial detention without violating it arbitrarily by the legal execution aspects or not.

To implement this, this study will be divided into two chapters. The first chapter addresses pre-trial detention within legal limitations and situational imperatives through two sections. The first section clarifies the situational and nominal determinants of pre-trial detention. The second section clarifies the priority of the suspected individual's freedom and the exceptionality in pre-trial detention. The second chapter addresses judicial control over pre-trial detention, which is highlighted in two sections. The first section captures judicial control over pre-trial detention during the evidence-finding phase and the primary investigation. The second section addresses control over pre-trial detention by contesting it.