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Pledged Freedom

Administrative detention of Migrant workers

This publication has been produced with the financial assistance of the Heinrich Böll Stiftung – Palestine and Jordan. The views expressed herein are those of the author(s) and therefore do not necessarily reflect the opinion of the Heinrich Böll Stiftung.

2023

Contents

Introduction

Personal freedom is one of the most important basic human rights that must be protected and preserved. Therefore, the freedom of individuals is guaranteed. No person may be arrested or imprisoned except in accordance with the law. For the importance of this, the Jordanian Constitution, in its seventh article, affirms that personal freedom is protected.[1] And in the eighth article, it was confirmed that a person may not be stopped or imprisoned except in accordance with the provisions of the law.[2] The Universal Declaration of Human Rights, in its seventh article, states that all people are equal before the law and have the right to equal protection without any discrimination. Article 9 states that no one shall be subjected to arbitrary arrest, detention, or exile. The International Covenant on Civil and Political Rights guarantees this right, stating that everyone has the right to liberty and security of person, and that no one shall be deprived of his liberty except on grounds and in accordance with a procedure prescribed by law.[3]

All of the above confirms the importance of personal freedom, but the reality on the ground shows the opposite, as there is a trend towards using administrative detention on a widespread and arbitrary basis. After reviewing the number of administrative detainees and administrative detainees issued by the Administration of Correctional and Rehabilitation Centers / Public Security Directorate, we find that the number of administrative detainees for the year 2021 reached 2,258 administrative detainees, while in 2020 it reached 21,322 administrative detainees, in 2019 it reached 37,853 administrative detainees, and in 2018 their number reached 37,683.[4]

In the context of deliberating on personal liberty and the administrative detention of non-Jordanian individuals, it is crucial to be informed about the presence of migrant workers in Jordan. As per data from the Ministry of Labor, the estimated count of registered migrant workers in Jordan as of 2022 stands at around 292,271. Among these, there are approximately 143,877 Egyptian nationals, 40,455 Bangladeshi nationals, 16,134 Indian nationals, 11,964 Filipino nationals, and 33,251 individuals hailing from various African and other nationalities.[5]

Migrant workers in Jordan can face arrest and administrative detention for various reasons. This includes situations where their employer neglects to renew their residency and work permits, when employers report them as missing, or when

1 Article 7 of the Jordanian Constitution

2 Article 8 of the Jordanian Constitution

3 Article 9 of the International Covenant on Civil and Political Rights

4 Number of administrative detainees and administrative detainees/ Statistics of the Administration of Correctional and Rehabilitation Center-shttps://bit.ly/3th03yK

5 National labor market indicators (2018-2022), a report issued by the Jordanian Ministry of Labor, can be viewed at the following website: National labor market indicators (2018-2022) The National Labour Market Figures (mol.gov.jo) Last viewed on 22/8/2023

they commit any violations. During the evaluation of their case, they are held in administrative detention with the intention of facilitating deportation. Furthermore, they may be detained for a month on misdemeanor charges, after which they remain in administrative detention until a verdict of acquittal or conviction is issued, followed by deportation.

It is worth noting that in September 2023, migrant workers were subjected to administrative detention without clear legal justifications, primarily because they were found in public areas during inspection campaigns, for instance.

The administrative detention of migrant workers is based on the following laws:

- The Prevention of Crimes Act of 1954
- The Residence and Foreigners Affairs Law No. 24 of 1973 and its amendments
- The Labor Law No. 8 of 1996

The primary concern regarding the administrative detention of migrant workers is the absence of a defined timeframe for such detention. The decision lies within the discretion of the administrative governor, who makes determinations on a case-by-case basis. As a result, the duration of detention can extend for several months or even years, and these decisions made by the administrative governor lack specific justification. It's essential to emphasize that the Prevention of Crimes Act, nevertheless, imposes a maximum detention period of one year.

Considering the information presented, this research will delve into the following topics:

- The international framework for the administrative detention of migrant workers
- Local legislation for the administrative detention of migrant workers
- The cases in which migrant workers are detained
- Statistics and numbers of administrative detention cases

The study will additionally explore the areas of contesting administrative detention, the ruling of the Constitutional Court on the constitutionality of the Prevention of Crimes Act, and the proposal of a set of suggestions aimed at mitigating the instances of administrative detention of migrant workers.

The objective of the study

The primary objective of this study is to scrutinize the laws and procedures surrounding the administrative detention of migrant workers in Jordan. It seeks to accomplish this by presenting several case studies that shed light on the perils of administrative detention and its tangible consequences. Ultimately, the study aspires to offer pertinent recommendations for diminishing the use of administrative detention for migrant workers.

The importance of the study

The escalating occurrences of administrative detention involving migrant workers, combined with Jordan's role as a recipient of such workers, and the growing discourse on safeguarding the rights of this demographic, particularly concerning their freedom being curtailed through administrative detention, necessitated a comprehensive examination of administrative detention for migrant workers both from a legislative and practical perspective. Furthermore, the dearth of extensive literature and references dedicated to this subject further underscores the imperative nature of conducting this study.

Methodology of the study

In the course of conducting this study, we will employ a descriptive analytical approach to assess the regulations, policies, and domestic procedures, taking into account Jordan's obligations under international treaties and laws concerning administrative detention. This will be achieved through the following means:

1. Presenting the national legislation and relevant international standards.
2. Demonstrating the real-world implementation of the law and practices through the illustration of cases and instances.

The international framework for the administrative detention of migrant workers

The Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948, stands as the inaugural legal instrument delineating fundamental human rights to be safeguarded universally. Article 1 of the Declaration asserts that "All individuals are inherently free and possess equal dignity and rights." Article 7 proclaims that "All are equally subject to the law and are entitled, without any discrimination, to uniform legal protection." Article 9 stipulates that "No person should endure unfounded arrests, detentions, or exiles."

Conversely, the International Covenant on Civil and Political Rights, as articulated in Article 6, affirms that "Every individual possesses an innate right to life, and this right should be upheld under the law. Nobody should be arbitrarily stripped of their life." This unequivocally underscores the supreme significance of the right to life above all other rights. When a person's life is extinguished, the need to protect any other rights becomes redundant. The right to life is a sacred and inviolable entitlement that must be protected by all possible means.

Article 9 of the International Covenant on Civil and Political Rights stipulates that "Every individual is entitled to the right of freedom and security of their person. No one should undergo unwarranted arrest or detention. Deprivation of liberty can only occur based on lawful grounds and following procedures prescribed by law." This article explicitly bars the unjust curtailment of an individual's freedom, unless done for reasons outlined in the law and conducted in accordance with legal procedures. Moreover, any person taken into custody should be promptly informed of the grounds for their arrest at the time of apprehension and should also receive timely notification of any charges against them. Furthermore, anyone who has been a victim of an unlawful arrest or detention possesses the right to seek compensation.

In conclusion, the international framework governing the administrative detention of migrant workers rest on the fundamental tenet that nobody should be subjected to arbitrary deprivation of their freedom. The detention of migrant workers necessitates a transparent legal foundation and adherence to just procedures. Furthermore, detained migrant workers should be duly apprised of the causes behind their detention and should possess the right to contest their confinement in a court of law.

It's crucial to emphasize that Jordan, in accordance with its commitments through ratified conventions, extends their applicability to all individuals residing within the state, encompassing non-citizens.

The Human Rights Committee's General Comment[6] 35 of 2014 articulated that the right to personal liberty pertains to "protection from physical confinement" rather than merely unrestricted general actions. The notion of liberty deprivation encompasses various forms of restraint, encompassing constraints on movement and mobility, such as administrative detention and house arrest. Furthermore, it is imperative that all legally established reasons for arrest or detention be well-defined and specific to prevent overly broad interpretations or arbitrary enforcement.[7]

According to the Human Rights Committee's commentary, an arrest or detention could be lawful under domestic legislation and yet still be considered arbitrary. The notion of arbitrariness should not be conflated with illegitimacy; instead, it should be understood more broadly to encompass aspects of breaching customary legal norms, injustice, unpredictability, absence of due process, in conjunction with elements of unreasonableness, needless action, and disproportionality.[8]

The Committee further clarified that States Parties must establish a legal structure for granting compensation to victims of arbitrary detention. The Committee views compensation as a right enforceable by law, rather than a gesture of goodwill or discretion. Additionally, compensation should be disbursed within a reasonable timeframe.[9]

The United Nations General Assembly endorsed the Principles on the Protection of All Persons under Any Form of Detention or Imprisonment in 1988. These 39 principles focus on international standards for detention.[10] Principle 2 asserts that "Individuals must not be stripped of their freedom except on the grounds and procedures established by legal authority." Principle 4 maintains that "Deprivation of liberty should only occur through the mandate of a judicial or lawful entity designated by statute."

6 he Human Rights Committee is a treaty body mandated to monitor the implementation of the provisions of the International Covenant on Civil and Political Rights

7 Paragraph 22 of General Comment No. 35 of 2014 CCPR/C/GC/35 (un.org)

8 General Comment No. 35 of the Human Rights Committee of 2014, paragraph 12, CCPR/C/GC/35 (un.org)

9 Paragraph 50 of General Comment No. 35 of 2014 CCPR/C/GC/35 (un.org)

10 Principles on the Protection of All Persons under Any Form of Detention or Imprisonment CCPR/C/GC/35 (un.org)

National legislation related to the administrative detention of migrant workers

Administrative detention is an administrative and legal process carried out by administrative governors (referred to as muhafid or mudir). Its objective is to safeguard public security against the potential threat posed by individuals with prior convictions, dangerous individuals, criminals, and recurrent offenders. In essence, administrative detention serves as a preemptive measure, occurring prior to the commission of any crime.

Numerous domestic laws have incorporated provisions for administrative detention. In the context of migrant workers, the implementation of administrative detention is executed in accordance with the subsequent legislations:

- The Crime Prevention Law No. 7 of 1954, which granted the administrative governor broad powers in the administrative detention process.
- The Residence and Foreigners Affairs Law No. 24 of 1973, which is widely applied to migrant workers.
- The Labor Law No. 8 of 1996.

The Crime Prevention Law No. 7 of 1954

The Crime Prevention Law No. 7 of 1954 has not been amended since its enactment on April 1, 1954. This legislation replaced both the Jordanian Crime Prevention Law of 1927 and the Palestinian Crime Prevention Law of 1933. The law grants extensive authority to the administrative governor, who, in turn, relies on Article 3 of the law for the issuance of detention orders. Article 3 of the law stipulates:

"If the governor is contacted or has reason to believe that there is a individual within his jurisdiction falling into any of the categories described below, and he deems there are valid justifications for taking action, he has the authority to issue a summons to the individual concerned in the form set out in the first annex to this law, requiring him to appear before him to explain if he has any reasons to prevent him from being bound by a pledge, either with bail or without it, in the form set out in the second annex to this law, in which he undertakes to be of good conduct during the period that the governor deems appropriate to be no more than one year."

1. The person must be found in a place where the administrative governor believes that the person is about to commit a crime or assist in the commission of a crime.

2. The person must be a habitual offender, such as a thief, robber, or receiver of stolen goods.

3. The person must be in a state that makes their presence a danger to the public.

Based on the preceding article, there are prerequisites that the governor must consider when issuing an administrative detention order. These conditions encompass:

1. The governor must believe that a person in his jurisdiction is about to commit a crime or assist in the commission of a crime, or is a habitual offender, such as a thief, robber, or receiver of stolen goods, or is in a state that makes their presence a danger to the public.

2. There must be "sufficient grounds for taking action." This means that the governor must have reasonable evidence to believe that the person is a threat to public security.

3. The person must appear before the governor to explain if they have any reasons to prevent them from being bound by a pledge.

Administrative detention, as prescribed by the law, is of a transient nature, primarily serving as a preventive measure to forestall potential criminal activities. The instances highlighted earlier are associated with the presence of substantial suspicions regarding the inclination to engage in criminal actions, forming the primary direct justification for the application of this law in such scenarios. Article 12 of the law states:

"If an individual presents themselves or is brought before the governor in accordance with Article (4) and the governor deems it necessary to demand a pledge of good conduct as per the stipulations of this law, he can instruct that the person be subjected to police or gendarmerie supervision for a duration not exceeding one year in lieu of, or in addition to, requiring a pledge."

The text above signifies that the longest allowable duration for administrative detention is one year. The law does not contain any other clause that prescribes the timeframe for administrative detention.

Regarding the guarantees, Article 5 of the same legislation stipulates that the governor, following an inquiry into the individual's situation, can direct the person to furnish a pledge, whether it's in the form of personal commitment or a financial guarantee, when there are valid grounds for such a request. The law does not establish an upper limit for the value of the pledge or guarantee.

The Crime Prevention Law No. 7 of 1954 contradicts the tenets of the Jordanian Constitution, the Universal Declaration of Human Rights, and the international agreements and accords to which Jordan is a signatory.

This law enables the administrative detention of any individual in Jordan for any cause, without justification, and without any time limit. It confers upon the governor unrestricted detention authority, relying on justifications such as "if the governor deems it necessary" or "under circumstances that raise suspicion."

The law's most alarming facet is that it doesn't demand the governor to substantiate that the accused has carried out a particular action or actions. Furthermore, the law doesn't outline any explicit criteria that the governor must adhere to when shaping his suspicions or forming conclusions based on suspicion.

The Residence and Foreigners Affairs Law No. 24 of 1973

The Residence and Foreigners Affairs Law offers a definition for the administrative governor as "the governor, the mukhtar, or the director of justice." Additionally, it confers upon the administrative governor the authority to issue an administrative detention order for foreign individuals in situations involving deportation. Article 37 of the law states:

"The minister, upon the recommendation of the director, has the right to deport foreigners, and he may order the temporary detention of those who have been decided to be deported until the deportation procedures are completed. A foreigner who has previously been deported is not allowed to return to the Kingdom's territory except with the special permission of the minister."

Article 39 of the Residence and Foreigners Affairs Law stipulates:

"The minister may delegate all or some of his authorities, as outlined in this law, to any qualified personnel."

In its ruling No. 150/2023, the Jordanian High Administrative Court affirmed that[11]:

It is evident from the provisions of the aforementioned articles that the legislator

11 Decision No. 150/2023 of the High Court of Justice - Five-Member Board

has vested the Minister of Interior, upon the recommendation of the Director of Public Security, a discretionary power to deport foreigners from the Kingdom without necessitating the specification of precise grounds. Moreover, the minister holds the right to delegate his authorities to any of the competent employees. Similarly, the Director of Public Security is granted the authority to assign his powers to any officer holding a rank of at least a major, unless otherwise stated. When the defendant (the governor of the capital) issued the contested decision (the subject of the complaint) under the authority granted to him by the Minister of Interior and within his discretionary jurisdiction, based on the director of police in southern Amman's recommendation, for the purpose of deporting the plaintiff from the country and prohibiting his future reentry to uphold public security and safety, this validates the contested decision (the subject of the complaint) a valid administrative decision that is in accordance with the facts and the law is issued by an authorized and competent entity."

The preceding decision indicates that, in accordance with the Residence and Foreigners Affairs Law, the administrative governor has absolute discretionary power to detain and deport foreigners without stating the reasons for doing so. He can also delegate these powers to any competent employee. The law does not specify a maximum period of detention, and it only states that it should be "temporary" without specifying a duration. This can lead to a person remaining in administrative detention without review for a period of time that may extend for several months or even years, even if there is no actual reason to justify his detention or the deprivation of his freedom.

Labor Law No. 8 of 1996

Regarding migrant workers, the violation of the foreign worker to the Labor Law is considered to be of a dual nature due to the association of the issuance of the work permit, which falls within the competence of the Minister of Labor, with the residence permit, which falls within the powers of the Minister of Interior or his delegate. Article 12/p of the Labor Law, which came into force on June 15, 2023, stipulated:

p1. The Minister shall issue a decision to deport the non-Jordanian worker to outside the Kingdom in any of the following cases:

a. Violation of the provisions of this article, including the worker who has been proven by the ministry to have left work with the employer.

b. Anyone who works without obtaining a license or permit in accordance with the applicable legislation.

2. The deportation decision shall be implemented by the competent authorities at the expense of the violator who was caught with the worker, and it is not permissible to re-recruit or employ the non-Jordanian worker who is deported before the lapse of at least five years from the date of implementation of the deportation decision.

3. If the violator does not pay the travel expenses stipulated in Clause (2) of this paragraph, they shall be collected from him in accordance with the provisions of the Public Money Collection Law.

As per the aforementioned provision, when a worker fails to secure a work permit, specifically, if the employer neglects to obtain or renew the worker's permit, or if the worker voluntarily leaves their job, the Minister of Labor holds the authority to issue a decision for the worker's deportation. The worker will undergo administrative detention until the deportation measures are finalized, and they will be barred from reentering the country for a minimum of 5 years.

** One common feature between the Labor Law and the Residence and Foreigners Affairs Law is the provision granting administrative authorities the right to prohibit migrant workers from leaving the country. However, the broader authority lies within the Residence and Foreigners Affairs Law, which may explain the preference for its application in cases of labor infractions. Notably, Article 12 of the Labor Law, which confers the Minister with the power to deport workers for violations of its provisions, does not include certain conditions present in the Residence and Foreigners Affairs Law. These conditions, although not necessarily tied to the worker, introduce constraints specific to the Labor Law.

In compliance with the previously mentioned regulations, administrative detention of migrant workers can occur under the following circumstances:

1. When a migrant worker is apprehended for violating the Labor Law.
2. When a migrant worker is apprehended for breaching the Residence and Foreigners Affairs Law.
3. When a migrant worker faces allegations of a misdemeanor and is initially detained by the judicial authorities, followed by administrative detention until a final ruling is made by the competent court.

1. **In the event that the migrant worker is caught violating the Labor Law:**

According to the Labor Law, it is the Ministry of Labor's duty to oversee labor standards, and individuals tasked with inspection responsibilities are required to carry out their duties with honesty and integrity. In accordance with Article 7 of the Labor Law, the Labor Inspectors System for the Year 1996 and its subsequent revisions were issued. This system outlines the objectives of inspections as follows:

a. To ascertain the adherence to legal regulations concerning working conditions and worker protection during their work.

b. To offer technical guidance and counsel to employers and employees regarding compliance with legal mandates.

c. To promote collaboration between employers and their associations, as well as workers and their unions, aiming to enhance human relations and support economic development.

d. To prioritize the maintenance of occupational safety and health conditions in the workplace.

e. To compile data pertaining to labor market organization, encompassing worker numbers, job categories, training requirements, and other employment-related aspects.

In accordance with the Labor Inspectors System for the Year 1996 and its amendments, the responsibilities of labor inspectors are confined to the following:

Conducting comprehensive visits to workplaces at any time of the day, whether alone or in the company of another qualified government employee. The labor inspector is obligated to inform the employer or their representative of their presence on the premises, unless they believe that such notification would hinder a proper assessment of the establishment's conditions.

They have the authority to access and review any work-related records, lists, or documents, with the option to take photographs, make copies, or extract relevant portions from them. Additionally, labor inspectors may collect samples of materials used and produced in the workplace, analyzing them to determine their potential impact on the health and safety of the employees. The inspector is also responsible for communicating the results of these analyses to the establishment owner.

If shortcomings in the facilities, planning, or work methods are identified that may jeopardize the health and safety of workers, the labor inspector has the right to request that the employer rectify these issues. This may involve making adjustments to machinery, equipment, installations, or work methods within a timeframe deemed appropriate by the inspector.

Furthermore, the labor inspector is tasked with preparing a detailed report following these visits. This report includes any violations of legal provisions and procedures, as well as any other relevant information concerning the conditions of the establishments visited and the actions taken during the inspection.[12]

In accordance with both the legal framework and the established system, the instances in which migrant workers may be identified are as outlined below:

1. The migrant worker should be apprehended while at their place of employment.
2. The migrant worker should lack a valid work permit, indicating that their employer either failed to obtain one for them or did not renew the existing permit.
3. The migrant worker should be apprehended while departing from their designated workplace and engaging in work activities at another location.

Nonetheless, there have been instances of non-compliance with the Labor Law and the Labor Inspectors System. To illustrate, starting from July 2023, the Ministries of Labor and Interior jointly announced an intensified security and inspection drive targeting migrant workers in the Jordanian labor market who either lacked valid work permits, residence permits, or were engaged in unauthorized professions. Regrettably, these campaigns were conducted in an arbitrary manner, contravening established legal regulations.

A significant number of migrant workers were apprehended in locations beyond their workplaces, including domestic workers possessing valid work and residence permits who were on their scheduled weekly breaks. Throughout these operations, numerous workers were placed in administrative detention and subsequently relocated to Nizarah in central Amman, north Amman, and Nizarah al-Jawaida with the intention of deportation.

12 Labor Inspectors System for the Year 1996 and its amendments, Article 5

It's worth noting that, as per Article 12, the Minister of Labor is solely authorized to issue a decision for the deportation of a non-compliant worker. In contrast, the Minister of Interior or their representative holds the authority to both issue a deportation order and order the administrative detention of the non-compliant worker. This application is also in accordance with the Residence and Foreigners Affairs Law, where the administrative governor is responsible for making the decision to detain and deport the migrant worker.

In spite of the fact that numerous employers bear responsibility for failing to issue or renew a work permit for migrant workers, Article 12 of the Labor Law dictates that the worker faces penalties in the form of deportation and expulsion. It's important to highlight that subsequent to the amendment of Article 12 in the Labor Law, which took effect in June 2023, the duration of both deportation and expulsion has been standardized to 5 years. Previously, the deportation duration was set at 3 years. This adjustment may have been made to facilitate the application of the laws and provide legal justification for administrative detention.

2. In the event that the migrant worker is caught violating the Residence and Foreigners Affairs Law:

According to Article 24 of the Residence and Foreigners Affairs Law, any foreigner who has legally entered the Kingdom but fails to secure a temporary residence permit, exceeds the allotted duration of their granted residence, or neglects to submit a renewal application for their annual residence permit within one month of its expiration will incur a fine. This fine amounts to forty-five dinars for each month of the violation or a proportionate rate of one and a half dinars for each day of that duration.

In line with the previously mentioned Article 37, which grants the governor the authority to deport foreigners and to instruct the temporary detention of those whose deportation has been determined until the deportation process is finalized, the governor possesses the discretion, without being obligated to provide any justifications, to administratively detain a migrant worker when the security forces apprehend them due to a lack of a valid residence permit or a failure to renew it. Likewise, in situations where a migrant worker departs from their workplace without the reasons being ascertained or in cases where there is doubt about the validity of the employer's notification submitted to the security center, the migrant worker can be subjected to administrative detention and subsequent deportation.

The Residence and Foreigners Affairs Law does not specify a definite timeframe for the completion of administrative detention in order to finalize deportation procedures. It is conceivable that this duration could extend over several months or even years before the migrant worker can eventually return to their home country.

The issue at hand pertains to the extensive power granted to the administrative governor under legal provisions to issue an administrative detention order, often without the individual being physically present and without any explicit reasons being provided. This is problematic because numerous workers leave their workplaces as a response to the injustices they have endured, non-payment of their wages, a series of violations, or malicious accusations by the employer aimed at avoiding wage payments and fines for overstaying their visa. Consequently, these workers are arrested and subjected to indefinite administrative detention without being granted an opportunity to present their side of the story.

3. In the event that the migrant worker is accused of a misdemeanor and arrested by the judiciary, then administratively arrested until a final decision is issued by the competent court:

Following the revision of Article (114) in the Code of Criminal Procedures No. 9 of 1961 and its subsequent amendments, effective from February 26, 2018, it was clearly stipulated that detention should be considered as an exceptional measure. Detention is only permissible when it becomes the sole method to preserve crucial evidence or physical crime-related elements or to prevent witness or victim coercion. Furthermore, it was established that the duration of detention for misdemeanor cases should not exceed one month.

In the sequence of events, after this one-month judicial detention period, the administrative governor steps in and utilizes their authority to impose administrative detention. What raises concerns is that the duration of administrative detention does not incorporate the time already spent in judicial detention.

Numerous instances of administrative detention have been observed where administrative governors intervene, particularly because the court's power to detain in theft-related misdemeanor cases, for instance, ones brought forth by employers against migrant workers, is now capped at a maximum of one month in all scenarios.

It's important to highlight that in some cases involving theft allegations against domestic workers, they are acquitted of the charges due to insufficient evidence to establish their culpability. The evidence presented is often subjective and not deemed reliable, with the primary motivation for the complaint being the worker's departure from their job.

Numerous issues come to the forefront in this context. For instance, the duration of administrative detention can extend to the length of the prescribed penalty, and in some cases, even longer, all without the issuance of a court verdict. Moreover, the time spent in judicial detention does not get credited towards the period of administrative

detention. Even if the court decides to acquit the migrant worker, this does not exempt them from administrative detention and eventual deportation. They remain in detention until the court's decision becomes legally binding, and arrangements are made for their travel.

Case (1):

Summary of the facts:

Sarita, a Nepali national working as a domestic worker, arrived in Jordan on December 9, 2019. Unfortunately, during her period of employment, she did not receive her wages for a substantial period, totaling one year and two months. When Sarita approached her employer to request payment of her outstanding wages, he refused. Consequently, Sarita left her employer's residence and returned to the recruitment office.

In response, the employer filed a missing person report and reported theft, including allegations of stolen money and gold jewelry, to the local security center.

The recruitment office then assisted Sarita in filing a formal complaint against her employer. However, it came as a surprise to discover that a theft complaint had been filed against Sarita as well. Subsequently, the judicial authorities detained Sarita in Al-Juwaydah prison on July 5, 2021, and the case was under consideration for one month.

Her initial arrest was later converted into administrative detention, which extended until August 17, 2023, when a decision was finally reached, acquitting Sarita of the theft charges. This acquittal decision was subsequently ratified and became legally binding.

In the aforementioned case, the worker experienced over two years of administrative detention and one month of judicial detention before an acquittal decision was finally issued.

Case (2):

Summary of the facts:

Diana, a domestic worker from Uganda, arrived in Jordan on December 11, 2018. While working for an employer, the employer's wife filed a theft report against her at the security center.

On July 17, 2022, Diana was apprehended and transferred to the public prosecutor, who decided to detain her and transfer the case to the relevant court. By July 20, 2022,

the competent court had issued a decision to release her and convert her detention to administrative status.

However, as of the time of this report, September 4, 2023, a decision acquitting Diana had been issued. Nevertheless, she remains in detention, awaiting the finalization of the decision and assistance in securing her return ticket to her home country.

As of the time of composing this study, the worker has been held in administrative detention for one year and two months and remains in detention.

Case (3):

Summary of the facts:

Augustina, hailing from Ghana, arrived in Jordan to pursue employment as a domestic worker. She served various employers during her tenure, with her final employment lasting for a period of five months. However, due to the mistreatment and violations she experienced in her last job, she decided to leave her employment, leading her employer to file a complaint against her, alleging theft of clothing and a mobile phone.

The worker underwent a one-month judicial detention period, following which her detention status was altered to administrative for a duration of 8 months, and the case is presently pending review.

case (4):

Summary of the facts:

A Bangladeshi domestic worker, in the absence of her employer, provided leftover food and water to the Egyptian security guard employed in the same building. Upon discovering this, the employer lodged a theft complaint with the security center against both the domestic worker and the Egyptian guard.

Duration of the worker's detention: one year and four months of investigative processes.

- The complainant visited the security center to officially file a complaint against both the worker and the guard.
- Subsequently, the public prosecutor conducted interviews with the complainant, the domestic worker, and the guard.
- The worker's detention persisted for a total of one year and four months, during the course of the investigative procedures.

- During the session held on February 27, 2018, the court made a decision to release the suspect. This decision was based on the newly revised Criminal Procedure Code that became effective on the same date, February 27, 2018. The amendment introduced changes to the regulations governing judicial detention for misdemeanor cases, ensuring that it does not exceed one month, as specified in Article 114 of the law.

- Following her release through a judicial decision, she was transferred to the administrative governor, who subsequently detained her through an administrative order. She remained in detention until the ultimate ruling was delivered on July 22, 2018, in which the worker was found guilty of theft under the stipulations of Article 406. She received a one-year prison sentence. Notably, only the time spent in judicial detention, spanning from May 26, 2017, to February 27, 2018, was taken into account. Remarkably, the duration of her detention extended to one year and four months in both periods, exceeding the prescribed and sentenced penalty.

Numbers and statistics

In the context of statistics concerning the count of administrative detainees, it's crucial to emphasize that these figures are officially provided by law enforcement agencies. Specifically, they are reported on an annual basis by the Administration of Rehabilitation and Rehabilitation Centers, a division within the Public Security Directorate. These reported statistics encompass the total count of administrative detainees distributed across 17 centers, among which one is designated for women.

Before delving into the figures, it's crucial to acknowledge that they may lack precision and might not portray the true count of arrests. These statistics are based on the number of decisions rather than the actual number of individuals arrested, as many people experience multiple arrests within a single year.

Hence, based on the 2021 statistics, the count of administrative detainees amounted to 2,258 individuals, reflecting a noticeable and substantial decline in the number of administrative detainees in comparison to 2020 when the figure had reached 21,322 administrative detainees. We attribute this decline to the impact of the COVID-19 pandemic, particularly when considering that the count of administrative detainees in the years preceding the pandemic was considerably higher.

Number of administrative detainees:

The year	Number of individuals held in administrative detention and administrative detainees' data, as reported by the Administration of Rehabilitation and Rehabilitation Centers.
2021	2,258
2020	21,322
2019	37,853
2018	37,683
2017	34,952
2016	30,138
2015	19,860
2014	20,216
2013	12,766

Furthermore, it's important to note that up to the date of this study, official data regarding the number of administrative detainees in 2022 has not been released. Nonetheless, the Jordanian Minister of Interior has highlighted a significant increase in prison occupancy rates. By the conclusion of January 2023, the Correction and Rehabilitation Centers had provided accommodation for 21,500 inmates, resulting in an occupancy rate of 109%, which exceeded the centers' original capacity, set at approximately 13,500 inmates. Among this inmate population, there were 6,214 judicial detainees, 1,772 administrative detainees, with roughly 300 of them involved in extortion cases, and 800 who have been granted release. Additionally, there were 13,245 individuals categorized as correctional detainees[13].

It is of utmost importance to underscore that the heightened occupancy rates in rehabilitation centers, exceeding their intended capacity, may raise concerns about potential violations of detainees' rights. This situation has implications for maintaining adequate prison conditions, which encompass access to fresh air, sanitation services, provisions of food and beverages, and also poses risks related to the spread of skin and respiratory diseases, among various other concerns.

Concerning the administrative detention of migrant workers, the Tamkeen Center undertakes visits to rehabilitation centers in order to engage with administratively detained workers. The total count of interviews conducted from 2012 through June 2023 has reached 409.

During interviews with 409 administratively detained migrant workers, they expressed their lack of knowledge regarding the reasons for their arrest and their right to legal representation. Additionally, there were no translation services available during these interviews. In terms of the treatment of detainees, there were no reports of inhumane treatment or instances of torture within the detention facilities. Nevertheless, a few migrant women mentioned being obliged to perform cleaning duties within the security centers during their period of detention. As for the duration of detention, it ranged from as short as one month to well exceeding two years.

13 Plans to build a new rehabilitation center in Al-Azraq and expand Al-Muqor and Suwayqah | East and West | Ammon News Agency (ammonnews.net)

period of detention:

period of detention	number of detainees	percentage
One day- 4 months	259	63%
5 months-11 months	85	21%
One year- two years	32	8%
more than two years	4	1%
unknown	29	7%
total	409	100%

The phenomenon of detaining migrants, including domestic workers, and curtailing their freedom is on the rise, seemingly without any sound legal or legitimate justification. Security centers have developed a habit of detaining any migrant worker when their employer reports that the worker has abandoned their job and ceased attending work. This practice involves arbitrary and unlawful deprivation of liberty, culminating in deportation and expulsion without thorough scrutiny of the criteria specified in Article 3 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Consequently, this practice has the potential to inflict pain and harm on the affected individuals, constituting a risk as outlined in Article 16 of the same convention.

The aforementioned practice has transformed into a routine and reflexive conduct by police stations, devoid of any legal foundation or rationale under Jordanian law. The act of an employee leaving their job before the agreed-upon term concludes does not amount to a criminal offense and does not necessitate the detention of the individual under any circumstance. It essentially equates to a labor dispute between the migrant worker and their Jordanian employer, akin to the situation when a Jordanian worker decides to leave their job.

Police stations may assume the role of judicial authorities, a responsibility that does not fall under their official purview, particularly in situations involving domestic workers. In certain instances, workers are coerced into returning to their employers, under the threat of being confined to a detention center, with little regard for their rights. This practice effectively obstructs workers' access to justice.

The Economic Cost of Inmates in Correctional and Rehabilitation Centers

In terms of the economic cost associated with one inmate in correctional and rehabilitation centers, it becomes evident that it amounts to approximately 750 Jordanian dinars per month (equivalent to about 1,057 USD) or approximately 9,000 Jordanian dinars annually (around 12,686 USD), as per information from the Public Security Directorate. Consequently, this implies that the daily cost of administrative detention for a detainee is estimated at roughly 25 Jordanian dinars (approximately 37 USD).

As an illustration, sustaining the expenses for 21,000 detainees amounts to roughly 15.7 million Jordanian dinars each month (equivalent to 22.428 million USD), or a yearly total of 189 million Jordanian dinars (around 266 million USD). Nevertheless, the practice of administrative detentions persists without transparent justifications. Consequently, an escalation in the number of administrative detention cases will inevitably result in an upsurge in public expenditures on prison facilities.

Appeal against administrative detention

The constitutional amendments of 2011, specified in Article 100, mandated the establishment of a two-tier administrative judiciary system, replacing the former single-tier system which was under the jurisdiction of the Supreme Court. In accordance with Article 3 of Administrative Judiciary Law No. 27 of 2014, the administrative judiciary system was subsequently created. It comprises the Administrative Court, functioning as a primary-level court, and the Administrative Court of Appeal, responsible for reviewing appeals filed against judgments issued by the Administrative Court.

The Administrative Court possesses the authority to adjudicate all appeals connected to conclusive administrative decisions, as prescribed by Article 5 of the Administrative Judiciary Law of 2014.[14]

14 Article (5) of the Administrative Judiciary Law of 2014 provides that the Administrative Court has jurisdiction to hear the following types of appeals:

Appeals against the results of elections for the councils of the chambers of industry, commerce, unions, associations, and clubs registered in the Kingdom, and appeals in elections conducted in accordance with the laws and regulations in force, unless a law provides otherwise.
Appeals filed by interested parties against final administrative decisions relating to appointment to public office, promotion, transfer, assignment, loan, assignment, or confirmation in service, or classification.
Appeals by public employees relating to the cancellation of final administrative decisions relating to the termination of their services or their suspension from work.
Appeals by public employees relating to the cancellation of final decisions issued against them by disciplinary authorities.
Appeals relating to salaries, allowances, bonuses, annual increases, and pension rights due to public employees, retirees, or their heirs under the applicable legislation.
Appeals filed by any person who has been harmed to request the cancellation of any system, instructions, or decision, on the basis of the violation of the system by the law issued under it, or the violation of the instructions by the law or the system issued under it, or the violation of the decision by the law, the system, or the instructions issued on the basis of it.
Appeals filed by any person who has been harmed relating to the cancellation of final administrative decisions, even if they are protected by the law issued under it.
Appeals against any final decisions issued by administrative bodies with judicial jurisdiction, except for decisions issued by conciliation and arbitration bodies in labor disputes.
Appeals that are considered to be within the jurisdiction of the Administrative Court under any other law.

The acceptance criteria for an administrative lawsuit include the following:[15]

- The lawsuit must be initiated by an individual with a personal stake in the case's outcome.
- The decision in question should have been issued by an authority lacking the authorization to do so, or it must contravene the Constitution, laws, or regulations, or involve an erroneous application or interpretation of the law.
- The decision or the steps leading to its issuance must exhibit a formal flaw or represent an instance of abuse of authority.

Specifically concerning migrant workers, there are challenges related to the feasibility of appealing an administrative detention. These challenges impact the extent to which the judiciary can oversee decisions made in this manner. Not everyone has the option to appeal an administrative detention,

First due to the high financial expenses associated with administrative lawsuit fees.

Second, the requirement to retain a lawyer poses a significant hurdle, as the Administrative Court Law mandates that individuals must be represented by an attorney who has practiced law for at least five years. It's important to highlight that the judicial and legislative system has yet to establish the essential safeguards ensuring access to legal assistance in cases of this nature.[16]

Third, the Administrative Court Law specifies that the timeframe for lodging an appeal against an administrative decision is 60 days from the date of notification. Nevertheless, the majority of migrant workers neither receive notification of the decision nor possess knowledge of the applicable appeal period**.**[17]

Fourthly, migrant workers often hesitate to initiate an appeal against these decisions. Their reluctance stems from the unwillingness to engage in legal action against a government authority within the host country, as they fear the potential repercussions, including deportation, for instance**.**

Regarding the rulings of the Administrative Court and the Higher Administrative Court concerning the administrative detention and deportation of migrant workers, they consistently rely on Decision No. 150/2023 as their foundation. In this decision, the Higher Administrative Court affirmed that the legislator has conferred upon the Minister of Interior, with the endorsement of the Director General of Public Security, broad discretionary authority to expel foreigners from the Kingdom without

15 The above requirements are set forth in Article 7 of the Administrative Judiciary Law of 2014.

16 The previous reference, Article 9

17 The previous reference, Article 8

necessitating the specification of a particular cause. Furthermore, this decision granted the Minister of Interior the right to delegate these powers to any qualified staff member. Additionally, the Director General of Public Security was also vested with the authority to delegate these powers to any officer holding at least the rank of a lieutenant, unless otherwise stipulated.

"While the defendant, the Governor of Amman, issued the decision under question based on the authority vested in him by the Minister of Interior and in exercise of his discretionary powers, upon the recommendation of the Director of Police of South Amman, to deport the appellant from the country and bar their future return for the purpose of upholding public security requirements, this renders the challenged decision a legally sound administrative decision. It aligns with both the factual circumstances and the applicable legal framework, being issued by a duly authorized and competent individual."

Based on the preceding decision and others of its kind, it becomes evident that there is a lack of scrutiny in connection to decisions concerning the administrative detention of migrant workers. The legal framework does not expressly mandate the governor to provide justifications for the decision. Consequently, the governor holds absolute authority in making these decisions, even if they are arbitrary in nature.

Administrative detention compensation

Article 48 of Civil Code No. 43 of 1976 stipulates: "An individual who becomes a target of an unjustified infringement on a right inherent to their personality may seek the cessation of such infringement, along with compensation for any resulting harm." This legal code also recognizes the entitlement to compensation for the misuse of a right. Furthermore, Article 66 of Civil Code No. 43 of 1976 elucidates that the responsibility for guarantee lies with the party who unlawfully exercises their right, specifying various circumstances in which the exercise of a right is deemed unlawful:

1. When there is a deliberate intent to commit a wrongdoing.
2. When the desired outcome of the action is illicit.
3. When the advantages obtained do not align with the detriment inflicted upon others.
4. When it surpasses the bounds of what is typical and customary.

The legal provisions also establish an obligation to ensure the prevention of harm to third parties[18]. The conditions of this guarantee are as follows:

1. The harm can either be immediate or consequential.

2. If it is immediate, no guarantee condition applies. In cases of consequential harm, either intent or negligence is necessary, or the act must have the potential to cause harm.

*In accordance with this principle, the individual accountable for the harm must provide reparation to the affected party for all the losses suffered, be they material or emotional. The primary objective of compensation is to redress the harm in an impartial, thorough, and just manner.

Hence, it becomes evident that the individual tasked with providing compensation for the harm sustained by someone who has been arbitrarily administratively detained is the individual possessing the decision-making authority. This typically pertains to the administrative governor, and individuals who may hold responsibility over the governor, including the Minister of Interior and the Director General of Public Security.

Case (1)

Case number 8706/2020, Amman Court of First Instance for Civil Rights

During a visit by Tamkeen Center to the Rehabilitation and Correction Center, an Indonesian laborer was interviewed, and she expressed her confusion about being incarcerated for three and a half years without understanding the reasons behind her detention.

Summary of the facts:

In 2007, the plaintiff encountered a man named Basel Abdul Hamid, who conveyed his intention to marry her. They initiated marriage proceedings at the Sharia Court, although they were left incomplete. The plaintiff (the victim) assumed that a legally binding marriage contract had been formalized between them. Basel rented an apartment for the plaintiff in the Bayader area, where she later gave birth to a son named Adi as a result of their relationship. However, Adi's birth was not officially registered with the Civil Status Department.

Subsequently, Basel encountered legal troubles and was apprehended on theft charges. During his absence, a man named Hussein began visiting the plaintiff and took her to the Sharia Court. He deceived her into believing that he had divorced her from her previous spouse and entered into a new marriage with her. Through this

18 Civil Code Article 256

relationship, they also became parents to two daughters, Dunia and Iman. It was only later that the plaintiff realized the absence of any formal documentation concerning these marriages.

Considering the aforementioned details, a criminal case, numbered 713/2012, was established at the Grand Criminal Court. Subsequently, a court ruling was issued on April 29, 2013, to detain both Basil and Hussein on charges of sexual assault.

The worker's two daughters were placed under the care of a childcare facility. On April 9, 2012, the Mafraq governor decided to subject the plaintiff to administrative detention to ensure proper conduct and security, citing the Crime Prevention Law. Subsequently, the plaintiff was released on October 7, 2015, and custody was transferred to a representative from the Indonesian embassy.

The Right to Compensation:

The attorney submitted a claim for compensation for the worker's physical and emotional suffering resulting from her administrative detention. The claim was directed against the following individuals and entities:

1. The Prime Minister, in his official capacity.
2. The Ministry of Interior and the Minister of Interior, in his official capacity.
3. The Public Security Directorate and the Director of the Public Security Directorate, in his official capacity.
4. The Directorate of Correctional and Rehabilitation Centers, the Director of the Juwaydah Correctional and Rehabilitation Center, and the Director of the Umm Al-Lulu Correctional and Rehabilitation Center, in their official capacities.
5. The Governor of Mafraq, in his official capacity.

Expertise report:

Throughout the legal proceedings, multiple experts were appointed by the court to assess the compensation, and their expert report calculated the following:

The compensation for the harm suffered by the worker and the loss of income was calculated based on the prevailing minimum wage from 2012 to the end of 2015, as follows:

- From May 8, 2012, to December 1, 2012, the minimum wage was 150 dinars.

150 dinars × 7 months = 1050 dinars.

- For the period from December 1, 2012, to October 7, 2015, which covers 43 months, with a minimum wage of 190 dinars:

43 months × 190 dinars = 9220 dinars.

In addition, the expert determined the moral damages at 8,000 dinars, which resulted from the infringement on the plaintiff's freedom and social standing during her administrative detention over this period.

The plaintiff is eligible for a total compensation of 17,220 dinars, which includes 1,050 dinars, 9,220 dinars, and 8,000 dinars.

Decision of the Amman First Court:

The court's decision rested on the premise that the worker did not represent a threat to public safety or public order. Additionally, the court emphasized that, according to the Crime Prevention Law, the duration of administrative detention should not exceed one year. The court stated: "In the application of the law to the established facts, the court concludes:

"The governor, when he identifies an individual within his jurisdiction who, due to their circumstances, poses a potential risk to public safety, is authorized to issue an arrest warrant requiring the person to post bail or provide a guarantee that they will maintain good conduct for a period not exceeding one year. Failure to post bail or provide the guarantee on the specified date will result in incarceration, and the individual will remain in detention until the required guarantee is presented. Alternatively, the governor may opt to place the individual under police or gendarmerie supervision (forced residence) for a period not exceeding one year in lieu of providing the guarantee, or combine both measures, as outlined in Article 3 of the Crime Prevention Law, subject to the specified regulations and conditions."

"Hence, the governor's decision to detain the plaintiff with the intention of maintaining public order and upholding public safety goes beyond the bounds of authority granted by the law. Furthermore, the plaintiff, as ruled by the Grand Criminal Court, was the victim of two incidents of rape. The defendant failed to present any substantiated evidence supporting the claim that the plaintiff posed a risk to public safety or public order. Consequently, considering the plaintiff's demand for compensation due to the injury she endured due to the flawed administrative detention decision, which exhibits a significant legal flaw tantamount to an abuse of authority, her claim is well-founded. Her detention exceeding a period of three years inflicted both material and moral damage upon the plaintiff."

The Court also concluded that, concerning the first defendant, the Prime Minister, in his official capacity, an extensive review of all the evidence provided by the plaintiff's representative and the representative of the State's Case Administration revealed that no decision was issued by the first defendant, the Prime Minister, relating to the plaintiff in this case. Hence, the lawsuit against him should be dismissed.

Regarding the remaining defendants, which include the Ministry of Interior, the Public Security Directorate, the Directorate of Correctional and Rehabilitation Centers, and the Governor of Mafraq, it's important to note that the state is accountable for the actions of its employees according to the principle of vicarious liability, as outlined in Article 288 of the Civil Code. Hence, they all share the responsibility for compensation.

As a result, the Court makes the following decisions:

1. Dismissing the lawsuit against the Prime Minister, in addition to his position.
2. Under the regulations of Article 3 of the Criminal Code and Articles 256, 267, and 288 of the Civil Code, mandating that the defendants, represented by the agent of the State's Case Administration, must compensate the plaintiff with the sum of 17,220 dinars.

Case (2)

Decision No. 14292 of 2013, Salt Rights, Amman

Summary of the Facts:

1. The plaintiff, bearing the Egyptian citizenship with passport number 630205, commenced employment in the Hashemite Kingdom of Jordan on December 28, 2004.

2. The plaintiff continued renewing his work permit from 2004 to 2009, until a dispute arose between him and his employer. Subsequently, the employer prematurely revoked the plaintiff's work permit.

3. On September 20, 2009, inspectors from the Ministry of Labor arrested the plaintiff for violating Labor Law provisions. He was subsequently transferred to the custody of the South Amman Police Directorate, where he was detained from the day of his arrest until February 28, 2009.

4. A decision issued by the Governor of the Capital ordered the plaintiff's deportation, expulsion from the country, and banned his return. He was also detained until the deportation process was finalized.

5. Commencing on December 28, 2009, the plaintiff was subject to administrative detention at the Jweideh Correctional and Rehabilitation Center until the deportation order against him was executed. This detention period persisted until January 19, 2011, when he was eventually released following a hunger strike.

The Right to Compensation:

The plaintiff's legal team initiated a lawsuit seeking both material and moral damages on behalf of the plaintiff due to his administrative detention. This lawsuit was brought against the following defendants:

1. The Minister of Interior, along with his official role.

2. The Director of Public Security, along with his official capacity.

3. The Director of the Jweideh Correctional and Rehabilitation Center, alongside his official position.

4. The Governor of the Capital, alongside his official role.

Expert Report:

A technical assessment was carried out to calculate the compensation amount for the material, moral, and lost income damages incurred by the plaintiff, contingent on the establishment of the facts. The plaintiff's legal representative was instructed to deposit 80 dinars in the court's funds to cover the expert's fees, and to furnish the expert with a copy of the case dossier. Both parties were inquired about their consent regarding the appointment of an expert, and it was agreed to leave the selection of the expert to the court's discretion. Subsequently, the court opted to appoint Mr. A as the technical expert.

Next, he was requested to comprehend the responsibility assigned to him. Subsequently, the technical expert attended the session and comprehended the responsibility delegated to him, as detailed during the court meeting on 2/17/2014. He conveyed his readiness to fulfill the entrusted task and took the legal oath, vowing to carry out his duty with complete honesty and integrity. The expert's report was presented, along with proof of expert fees payment, and was placed on the right side of the case file. He assessed the compensation value at 2,000 Jordanian dinars.

Court's Decision:

The court determined that the actions carried out by the defendants constituted an abuse of legal rights, as defined in Article 66 of the Civil Code. Consequently, the defendants are held responsible for the harm sustained by the plaintiff, which was assessed at 2,000 Jordanian dinars, relying on the expert report that the court decided to endorse in accordance with established principles and laws. This solidifies the plaintiff's lawsuit as being well-founded in both fact and law, warranting a favorable judgment.

Consequently, and in light of the preceding information, the court hereby rules as follows:

The defendants are instructed to remit a sum of 2,000 Jordanian dinars to the plaintiff, encompassing associated fees and expenses, totaling 100 dinars for legal costs, and with legal interest accruing from the date of the claim until the entire amount is settled.

Ending:

The lawsuit was entirely dismissed during the subsequent phases of the legal proceedings.

Constitutionality of the Prevention of Crimes Act

In the previously cited case number (1), the Court of Cassation is currently reviewing the case at the time of this study's composition. A petition has been submitted challenging the constitutionality of the Prevention of Crimes Act No. 7 of 1954, which was the legal basis for the administrative detention of the worker. The court decided to refer the petition to the Constitutional Court for a judgment, taking into account the factors that influenced this decision:

The challenge to the constitutionality of Article (3)(3), Article (5)(2), and Article (8) of the Prevention of Crimes Act, No. 7 of 1954, was based on the assertion that these articles contravene the stipulations set forth in Articles 8, 27, 101, 102, 103, and 128 of the Constitution.

In accordance with Article (3) of the Prevention of Crimes Act No. (7) of 1954, it stipulates the following:

"If the governor, after contacting or upon obtaining information that a person within his jurisdiction falls within any of the categories listed below and he deems that there are valid grounds to take action, he is authorized to issue a summons to the aforementioned individual. This summons is presented in the format detailed in the first annex to this law, and it obliges the person to appear before the governor. During this appearance, the individual must explain whether there are any reasons preventing them from adhering to a pledge, with or without bail, as defined in the format found in the second annex to this law. In this pledge, the individual commits to maintaining good behavior for a duration determined by the governor, not exceeding one year."

1. Anyone discovered in a public or private location under circumstances that lead the observer to believe they were on the verge of engaging in or aiding in the commission of a crime.

2. Any individual with a habitual inclination toward theft, robbery, or the possession of stolen funds, or who is accustomed to providing refuge or assistance to thieves, concealing stolen funds, or participating in their disposal.

3. Any individual whose condition makes their unrestrained presence a potential hazard to the safety of others, thus rendering their release without bail problematic.

Article (2/5) of the same law states as follows:

"Should the governor, subsequent to the inquiry, deem that there are substantial grounds necessitating the summoning of the individual to provide a pledge, he will issue a corresponding decision. This pledge should be consistent with the matter delineated in the initial summons or arrest warrant and must not surpass the specified amount or duration found in either of them."

Thirdly Article (8) of the same law states as follows:

"If an individual, who has been instructed to provide a pledge according to the conditions described in paragraph (2) of Article (5), neglects to furnish the pledge on the commencement date specified in the pledge decision, they will be subject to imprisonment. If incarcerated, they will remain detained until they provide the necessary pledge or until the period delineated in the pledge decision concludes."

Article (7) of the Jordanian Constitution states:

1. Individual liberty is sacrosanct.
2. Any infringement upon the public rights and freedoms, or the intrusion into the private lives of Jordanian citizens, constitutes a criminal offense subject to legal penalties.

Article (1/8) states:

"No one may be arrested, stopped, imprisoned, or have his freedom restricted except in accordance with the provisions of the law."

Article (27) of the Jordanian Constitution states:

"The judiciary operates independently and is carried out by courts at various levels and types. All rulings are made in conformity with the law and are issued in the name of the King."

Article (4/101) of the Jordanian Constitution states:

"The presumption of innocence is maintained for the accused until proven guilty through a definitive verdict."

Given that legislative acts established by the legislative and executive branches in the form of laws and regulations are enacted with the presumption of constitutionality, it follows that a clear conflict between the challenged provision and the constitutional provision must exist before the constitutionality of the challenged provision can be determined.

Court ruling:

The Constitutional Court determined that the assessment of the constitutionality of legislative provisions, which are claimed to breach the Constitution, is not contingent on their practical application or the interpretation adopted by those responsible for their implementation. Instead, the decisive factor in ascertaining their alignment with the Constitution is the adherence to the constitutional standards imposed on all legislative enactments.

Furthermore, any misapplication of the law's provisions or an error in their interpretation, even if they were to happen, doesn't render them unconstitutional as long as these provisions are fundamentally correct. The Court clarified that constitutional jurisdiction primarily involves overseeing the constitutionality of legislative provisions, with the goal of safeguarding the Constitution's provisions, rather than evaluating the appropriateness of legislative provisions sanctioned by the legislative body.

The jurisdiction of constitutional courts is primarily focused on ensuring the legality and legitimacy of laws, rather than evaluating their appropriateness, and it does not encompass the evaluation of legislative policies.

Therefore, the oversight conducted by the Constitutional Court is confined to assessing the degree to which existing laws and regulations are consistent with the Constitution and its underlying principles, particularly the principle of the separation of powers. Since the Prevention of Crimes Act is a preventive law designed to avert criminal activities, and its application is restricted to cases specified in Article 3 of the Act, it can be inferred that the legislature selected from various options provided by this law with the aim of upholding public security and social harmony. The precautionary measures outlined in Articles (1/3, 5, 8, and 10) are measures designed to further the Act's objectives of prevention and deterrence against potential threats.

As for the clauses within the Prevention of Crimes Act No. (7) of 1954, they secure fundamental rights for all relevant parties to challenge the decision made by the governor or their deputy. This decision falls under administrative jurisdiction and is appealable according to the stipulations outlined in Article (5/a) of the Administrative Judiciary Law No. (27) of 2014. Both the Supreme Administrative Court and the Supreme Court have, on prior occasions, rendered judgments nullifying several unlawful detention decisions. Moreover, the law authorizes the Minister of Interior to exercise oversight over the validity and legality of the governor's decision, as the Minister holds a presidential authority in this matter.

Article (10) of the legislation stipulates that "The Minister of Interior is empowered to revoke or modify any pledge made under this law at any time, if it serves the best interests of the pledging individual."

This authority serves as a safeguard to verify the adherence of administrative bodies to legal constraints, thereby guaranteeing the law's effective and purposeful implementation.

In consideration of the aforementioned, the legal provisions under scrutiny in this appeal are devoid of any constitutional doubts. The provisions challenged for their alleged unconstitutionality were crafted in accordance with the legislative intent and remained faithful to the constitutional text. They did not transgress its boundaries, nor did they infringe upon judicial authority or infringe upon the fundamental rights and freedoms safeguarded by the Constitution. Consequently, this appeal is eligible for dismissal.

Challenge to the constitutionality of the Prevention of Crimes Act in Palestine coincides with Jordan

On January 25, 2023, the Palestinian Supreme Constitutional Court rendered a ruling, proclaiming the unconstitutional nature of certain sections of the Jordanian Prevention of Crimes Act (specifically Articles 4 to 8). These provisions had continued to apply in Palestine following the decision to sever legal and administrative connections between Jordan and Palestine in 1988.

he decision of the Palestinian Constitutional Court explicitly recognized that the Prevention of Crimes Act conflicted with a range of rights and freedoms guaranteed by the Palestinian Basic Law. Among the most significant of these rights and freedoms are: (1) Personal freedom, which can only be curtailed by a judicial decree. (2) Freedom of movement. (3) The right to the presumption of innocence within the framework of criminal justice. (4) The individualized nature of punishment. (5) The entitlement to a fair trial.

The Palestinian Constitutional Court concluded that these rights and freedoms were being encroached upon because the law bestowed upon the governor extensive and unrestricted powers, including judicial authority, enabling the governor to detain citizens, curtail their freedom, and restrict their movement without a judicial order, solely on the grounds of suspicion or the governor's belief in the necessity of such measures, without judicial oversight. The ruling stressed that limitations on these freedoms are only permissible within the constraints of necessity and without undermining their core principles. Credit for contesting these provisions goes to the Independent Commission for Human Rights and the "Court of Grievances" in Palestine, which were granted a timeframe by the Ramallah District Court to review the Constitutional Court's decision on this matter.[19]

19 The Palestinian Constitutional Court's decision to declare the unconstitutionality of some provisions of the Jordanian Prevention of Crimes Act is a landmark decision that has far-reaching implications for the rights of migrant workers in Palestine. | Legal Agenda (legal-agenda.com)

Results:

1. Administrative detention, as stipulated in the Prevention of Crimes Law No. 7 of 1954, is of a limited duration, given that it serves as a preventive action to forestall potential criminal acts. The Prevention of Crimes Law implies that the longest permissible detention period should not surpass one year.

2. The executive authority wields extensive authority related to administrative detention, facilitated by the administrative governors and their decisions. This authority is grounded in the Prevention of Crimes Law and the Law on Residence and Foreigners Affairs. This situation has been reinforced by the Constitutional Court, even though it contradicts both the Constitution and international agreements that exclusively grant the judiciary the authority to order arrests.

3. As per the provisions outlined in the Prevention of Crimes Law No. 7 of 1954, it is stipulated that an individual should present themselves before the administrative governor. However, in practice, migrant workers are not afforded the opportunity to appear before the administrative governor, and their apprehension occurs without their presence or the opportunity to be heard.

4. The Residence and Foreigners Affairs Law No. 24 of 1973 grants the administrative governor the authority to detain and expel foreign nationals without the obligation to provide any rationale.

5. In accordance with the Labor Law, the Minister or their representative possesses the capability to issue a deportation order for a worker in violation, but they lack the authority to detain the worker. Consequently, the Residence and Foreigners Affairs Law is utilized to render an administrative detention decision concerning workers, leading to an overlap in the application of these two laws.

6. The dominance of executive authority decisions made by administrative governors over judicial judgments is evident, as seen in instances where a migrant worker undergoes a one-month judicial detention and, following their release, they are subjected to administrative detention. Importantly, the period of administrative detention is not considered as part of the earlier judicial sentence.

7. Administrative detention of migrant workers occurs without providing them with information about the grounds for detention or its duration, primarily due to the absence of specific provisions in the legislation outlining these details.

8. Some migrant workers have experienced administrative detention exceeding one year and occasionally extending to two years, all without any discernible justifications.

9. Challenging administrative detention through an appeal is subject to several prerequisites, rendering it inaccessible to a broad spectrum of individuals. The process can be prohibitively expensive and necessitates the engagement of a lawyer with a minimum of five years of professional experience.

10. In accordance with the Administrative Judicial Law, the timeframe for initiating an appeal against administrative detention rulings spans 60 days from the notification date, a fact that many migrant workers may not be aware of.

11. An injured migrant worker possesses the entitlement to seek compensation for the duration of their administrative detention through the civil courts.

Recommendations:

1. Halt the enforcement of the Prevention of Crimes Law and limit detention to the judicial authorities exclusively.
2. Revise and amend the Residence and Foreigners Affairs Law to clearly define the scope of authority of the administrative governor by providing comprehensive justifications for their decisions.
3. Grant exclusive detention authority to the judiciary to protect the integrity of the judicial system.
4. Enable access to the Administrative Court for appeals, removing restrictions based on specific categories, and activate the role of legal assistance for such cases.
5. Upon the issuance of a release order by the competent court, refrain from transferring the individual to administrative detention, and consider the period of administrative detention as part of the sentence for those who had been under administrative detention.
6. In instances where decisions regarding the entitlement to compensation for administrative detention reach the Court of Cassation, avoid dismissing the case.
7. The administrative decision to detain should be comprehensive and transparently reasoned, aiding the subsequent oversight by the administrative judiciary.

E-mail: Media@tamkeen-jo.org
Al-Madina Al-Munwra St,
Building #197 | 3rd Floor
Tel:+ 962 5539501
Mobile: + 962 797847997