

GUARANTEES OF TEMPORARY CONFINEMENT IN ALGERIAN CRIMINAL LAW

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Abstract— The aim of this study is to reveal the legal conditions of temporary confinement which restrict the personal liberty of the accused during investigation. These guarantees determine the legal protection of individuals from abuse of judicial power. We find that the Algerian Criminal Law stipulated restrictions and controls abide by investigating authority to legitimize the temporary confinement. On the other hand, protect the human rights and respect the principal of presumption of innocence.

Index Terms— Temporary confinement, Guarantees of accused, Elementary investigation, Algerian Criminal Law.

I. INTRODUCTION

The origin in human is innocence until proved guilty by a final judgment. The meaning of this rule is that an individual shall not be imprisoned for an act (accused of doing it) only by final judgment from competent authority [1]. So, this procedure is abnormal because it contradicts with the principal of presumption of innocence [2]. Therefore, this dangerous procedure is contoured by guarantees to non-infringement of personal freedom. Without these guarantees, preventive detention becomes a means of pressure on the accused and that's what makes him losing of legitimacy.

II. THE CONCEPT OF TEMPORARY CONFINEMENT

Conventionally defined as: "one of the investigation orders issued from who has been granted the right from the legislator. This procedure involves placing the accused in detention for some or all the period of investigation or until the trial, in order to secure the conduct of investigation" [3]. It was defined Preventive Confinement in Algerian Law before its replacement by Temporary Confinement cited in Article 123 (Algerian Code of Criminal Procedures: ACCP) modified by the law 01-08 dated on 26/6/2001.

III. THE NATURE AND IMPORTANCE OF TEMPORARY CONFINEMENT

The temporary confinement is a precautionary procedure taken before proving of accused guilt. So, it's not a punishment but just a preventive way during investigation, to prevent the accused escape or influence on investigation [4].

The importance of temporary confinement as a measure prescribed by law for the investigation benefit. For this reason, this law authorized the deprivation of liberty to facilitate the procedures and secure evidence [5]. Because it's often that the accused try to circumvent which may prevent access to the truth by the investigating judge; either by tampering or obliterating or loss of it if the accused remained free. In order to not affect the witnesses [6].

On another level, the temporary confinement may be beneficial to the accused himself, because the latter may receive threats from the victim or his family. Therefore, the temporary confinement is the best protection for him. It's also a

guarantee against the escape of the accused from the judgment execution [7].

IV. GUARANTEES OF TEMPORARY CONFINEMENT

The Algerian legislator was keen to develop the guarantees of temporary confinement according to the evolution of society and compared to modern legislations [8]. These guarantees those were approved and capable to ensure the protection of personal freedom are:

A. Order of Temporary Confinement must be from the Competent Authority with causation

The Algerian law gives the right to investigating judge in issuing the temporary confinement order, because the investigating judge is the competent authority during the elementary investigation. The aim is to give the judicial nature to investigating judge's decision [6].

As for the addition of causation to investigating judge order for temporary confinement, the Article 123 (duplicated) paragraph 1 stipulates that: "The order of temporary confinement must be established on the basis of reasons cited in Article 123 of this law". The causation of temporary confinement order gives to it a legal legitimacy because this causation provides an opportunity to observe and appeal this order. In addition, restrict the judge power to provide strong evidence to justify the confinement order, which is confirmed by the Article 195 ACCP.

B. Necessity to Inform the Accused about the Confinement Order

The Algerian legislator gives importance to inform the accused about confinement order (117/02 ACCP); this must be cited in the interrogation minutes which is necessary before issuing the order of temporary confinement.

Article 123 (duplicated) paragraph 2, stipulates the need to alert the accused for three days for the resumption of temporary confinement order. This procedure was absent before this amendment, so the Algerian legislator wanted to devote the right of defense during criminal procedures.

C. The Right of the Accused to Communicate with his Family and Lawyer

Articles 66 and 67 (law 05-04 concerning the organization of prisons and social reintegration of cooped) indicate that the cooped has the right to be visited by his assets or branches up to the fourth degree, and by his wife and his relatives by marriage up to the third degree. In all cases, the visit takes place under the license granted by the judicial authorities represented by the judge of investigation for accused temporary cooped or by public prosecution in case of cassation of appeal (Article 68, the last paragraph).

Concerning the communication between the accused and his lawyer, the law 05-04 included a fifth category, which can visit the temporary cooped inside the prison. This is confirmed

by the Article 102 (ACCP): “The cooped accused can communicate freely with his lawyer once remanded...”. Also, the same law (in Article 68 duplicated) gave the right to the accused lawyer to have access to the case file and to get copy of it to prepare his defense. According to the text of Article 68 duplicated: “A copy of procedures must be edited according to conditions cited in Article 68, and specially placed on the disposal of the lawyers and they can get a copy of it”.

D. Restriction of Temporary Confinement by Specific crimes and Specific Period of Time

The Algerian legislators go along with the rest of comparative legislation to the necessary restriction of temporary confinement for specific crimes (misdemeanors and felonies), and for specific period of time. This emphasizes the exceptional and temporary character of this procedure.

The duration of temporary confinement in misdemeanors is dependent to the penalty prescribed. If this penalty is less than two years of confinement, the temporary confinement should not exceed twenty days from the first day of interrogation by the investigation judge [3]. This is stipulated by the Article 124 (ACCP): “In misdemeanors, if the maximum penalty prescribed is less or equal to two years of confinement the temporary confinement should not exceed twenty days since the first interrogation by investigation judge...”. For other cases not cited in this article, the period of temporary confinement may exceed twenty days but not more than four months (Article 125/01 ACCP). For misdemeanors penalty of three years or more, the period of temporary confinement is four months and can be prolonged one time after the opinion of public prosecutor.

The period of temporary confinement in felonies is four months as cited in Article 125-1/01 (ACCP) and can be prolonged according to the crime nature (Public Law Crimes or Special Crimes).

Concerning the **Public Law Crimes**,

Felonies punishable by imprisonment for 5 to 10 years permit a two times of prolongation, then the temporary confinement period reaches 12 months. The extension of temporary confinement is permissible for three times to reach 16 months in case of felonies punishable by 20 years of imprisonment or life imprisonment or execution (Article 125-1 ACCP).

In case of **Special Crimes**,

Felonies described as terrorist or sabotage acts permit a prolongation for five times of temporary confinement to reach 24 months. The extension of temporary confinement for eleventh times (reaches 48 months) in case of transnational felonies (Article 125 duplicated ACCP).

V. CONCLUSION

Despite the important guarantees stipulated by the Algerian law to protect the rights of the accused during the application of temporary confinement procedures. However, the duration in some cases can reach four years, which constitutes an infringing on personal liberty. So, the Algerian legislator must amend the duration of temporary confinement in line with requirements of investigation and with respect of the accused rights.

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