

”

”

”

”

.

**2007**

”

”

”

”

. 2007/ 7 /7

.....	( )	-1
.....	( )	-2
.....	( )	-3

# الإهداء

إلى روح الغالية العزيزة ..... " والدتي "

إلى والدي الغالي

إلى اخوتي الأعزاء

إلى حبيبتي وزوجتي

إلى أصدقائي

إلى فلسطين وكل الشهداء والأسرى والجرحى



---

---

.....

.....

1..... :

4..... :

5..... :

6.....:( ) :

6..... :

6..... :

7..... :

7..... :

9..... :

9..... :

9..... :

10..... :

11..... :

12..... :

13..... :

13..... :

14..... :

15..... :

15..... :

16..... :

16..... :

1717..... :

1817..... :

201..... :

23 .....	:	
24 .....	:	
24 .....	:	
24 .....	:	
26 .....	:	
26 .....	:	
28 .....	:	
29 .....	:	
31 .....	:	
32 .....	:	
39 .....	:	
39 .....	:	
39 .....	:	
40 .....	:	
42 .....	:	
44 .....	:	
50 .....	:	
53 .....	:	
54 .....	:	
56.....	:	
61 .....	:	
62.....	:	
62.....		:1
65.....		:2
66.....	:	
6765 .....	:	
69.....	:	
70 .....	:	

	:	
71.....	70:	
<b>76</b> .....	:	
77 .....	:	
775 .....	:	
77 .....	:	:
78 .....	:	:
81 .....	:	
81 .....	:	:
86 .....	:	:
89 .....	:	:
90 .....	:	:
91 .....	:	:
93 .....	:	
93 .....	:	:
95 .....	:	:
95 .....	:	:
96 .....	:	:
101 .....	:	
101 .....	:	:
106.....	—	
108.....	:	
108.....	:	
108.....	:	:
109.....	:	:
110.....	:	:
111 .....	:	
115.....	:	
118.....	:	

121..... :  
124..... :



( )

.

( )

.

.

.

.





:

.

(1)

)                   <sup>(2)</sup>2001           (3)

(

---

:                   (1)  
.212           2002  
                  (2)  
                  .(2001)

( )

2006 (8)





" 1789

"

.(1)1948

(2)

:

:

1989

. 1973 p 15 paris themis Rivero j: les libertes publiques .25 2004

: (1)

: (2)

.135



.

:

:( ) :

.

: :

(1)

(2)

: .

: :

"

(3)"

"

(4) "

: ( (1)

.45 1992

.360 (2)

.623 1985 : (3)

.13 2003 : (4)

"

(1)"

:

:

(3)

(2)

(4)

:

:

(9)

.4  
 .206 1980  
 .440 1990

---

: (1)  
 : (2)  
 : (3)  
 : (4)

1/144 1961 <sup>(1)</sup>

(3)

(2)

(4)

(5)

1950

(150)

(6)

.13

:

(1)

.14

:

(2)

.5

:

(3)

"petention preventive"

(4)

petention provisoire

1970

Francois

15 14

:

.clerc: cp. Cit.p63 zirill genvieve

1961 ((9

(5)

1950 ( (150

(6)

.

.

:

:

.

:

.

:

:

.

:

:

"

(1)\*

(2)

(34)

(3)

:

:

		50.	2006				:	(1)
218	20	1969/6/9	614	110	17	1966/5/16		
								.853
							:	(2)
								.35 2004
							:	(3)
							.17	1996

31 30

38

: :

.(1)

.40

11

---

: (1)

(32)

:

.

)

.

(

.

:

:

.(

31 )

(1)

:

:

(1)

(2)

(3)

:

:

)

(

)

(

.239 1977

.36 1985

.245

.16

:

(1)

:

(1)

:

(2)

:

(3)



(1)

2005

112

: 1-

2-

(2)

2007/6/15

:

:

.22

:

((1

( 2

.36

:

:

:

(1)

:

:

(2)

(3)

(4)

:

18.

::

(1)

47

:

(2)

Le Monde 1/2/1962. Marcel Babriel: De quell droit? Libres opinions

.48

:

(3)

47

:

(4)

Le Monde 1/2/1962. Marcel Babriel: De quell droit? Libres opinions



:

:

(1)

:

(2)

:

:

(3)

:"

“(4)

.43

:

(1)

p. 10 et es. 1910 L. Belp: La détention preventive these Montpellier

.14 1994

:

(2)

.95

:

(3)

:

95.

:

(4)

.102 1983

(1)

(2)

(3)

(4)

.204 1983 -  
: 120.

.81 1990

.98

.98

18

---

: (1)

: (2)

3

: (3)

: (4)

:

:

:

.(1)

:

:

.(2)

-

-

.(3)

:

:

.(4)

.27

:

(1)

.121

:

(2)

:

.121

:

(3)

.7 6

:

(4)

.30

:

.

(1)

:"

: :

".

.

.

:

:

(2)

(3)

.122

.134 :

\_\_\_\_\_ : (1)

: (2)

: (3)

.26 1998

.(1)

10/12/1948

"

" (2)

16/12/1966

..

"

"

"

"

"

"

---

.26	.29	:	(1)
		:	(2)
	21		



1950

9 2

1953

.(1)

5/1

(2)

.(3)

20 18

1979

(4)

.27  
.136  
.27  
.137

\_\_\_\_\_  
:  
:  
:  
:  
(1)  
(2)  
(3)  
(4)

15/9/1992.



(1)

( )

.20

24

:

(1)

" (1) )

"

(2)

2 14

.(3)

" 16/12/1966

" (14) 2005

...."

1971 (4)

(67)

1952

"

(7)

"

.(5)

---

	.5	(1)
.42	:	(2)
.46	:	(3)
.7	:	(4)
.176	:	(5)

⋮

⋮

.

(1)

⋮

⋮

.

.8

26

⋮

(1)

(1)

(2)

(3)

.30	1998		:	(1)
		.125	:	(2)
	.295		:	(3)

(1)

:

:

(2)

(3)

(4)

.9

.32-31

:

.26

:

:

:

.444

1997

(1)

(2)

(3)

(4)

⋮

⋮

⋮

⋮

-1

(1)

⋮

-2

(2)

⋮

-3

.14

⋮

(1)

.15

⋮

(2)



(1)

:

-4

(2)

:

-5

(3)

.449 1990.

---

:

(1)

.27

:

(2)

.14

:

(3)

(1)

(2)

:

:

:

16

:

(1)

.262

.50 1983

:

(2)

(1)

"

(1)

30.

31.

:"

32

".

30

.194

33

---

:

(1)

(1)

:

117

-1

-2

(2)

137

(3)

134

"

---

.281 .58 2003 : (1)  
 : (2)  
 .48 : (3)

"

:

(1)

-1

-2

(2)

114/1

1961 9

(3)

---

(1)

:

(2)

.298 2005 1 .92 :

(3)

(1)

123/1

114

2001 16

:

-1

-2

)

(

-3

.203

36

:

(1)

(1)

65/91

(2)

:

:

/1 117

"

134/2

1961 9 114 /2

2001 16

.204

:

.306 1984

37

//

: (1)

65/91 (2)



.(1)

.

.

.

:

(2)

---

: (1)

.170 1981

: (2)

.27

.

:

:

.

:

:

(1)

(2)

:

:

- -

---

:

(1)

::

(2)

.273 1976.

(1)

"

2 31

"

(2)

:

:

-

-

.211

:

(1)

((1 34

(2)

114

"

..

"(1)

- -

"

(2)

1999

:

(1)

.8

301. 31  
.446

27/2/1980

49 1445

2) . )

:

(1)

(2)

(3)

:

" "

112. 25 1  
.260

27/1/1959 1) . )

1989.

:  
(2)

.284

:  
.226  
(3)

(1)

(2)

:

(3)

(4)

(5)

120

"

"

. 139

.219

.202

.202

.202

: (1)

: (2)

: (3)

: (4)

: (5)

(1)

:

:

:

115/2

120

---

)2006 8 (1)  
(

(119)

(105)

108

107/1

107/2



51

"

51

(1)

.123

46

:

(1)

:

.

.

(1)

(2)

.

.

12/7/2004

26/2004

:

(1)

.20

15/10 /2005

110/ 2005

:

(2)

30/10 /2005

125/2005

47

168

115-129

((1)

28

- -

30/10/2005

120/2005

---

168

:

(1)

126 35 34

(1)

201 130

1961 9

111

114

"

114

"

( )

(2)

2001  
9

16  
114

20

1961 9

1961

.82

\_\_\_\_\_ : (1)

.233

: (2)

(1)

:

:

(119)

120/1

15

45

45

.234

50

---

:

(1)

(121)

(121)

(121)

121

120/5

121

(1)

- 2007/6/11

-

120

(2)

302

120/1

302

302

4/3/2006.

48/2005

:

(1)

(2)

2006

8

121

.2001

3

2001

3

52

---

:

(1)

119

120

119

120

152

(2)

:

:

120/2

120

(1)

---

.126

:

(1)

5/10/2005

110/2005

152

:

(2)



(1)

:

:

11/2/2006

55/2005

:

---

(1)

120/4.

(1)

:

(108)

12/2/2005.

6

6/2005

---

(1)

55

(94)

(1)

(2)

(3)

(4)

---

:	222	168		1931	25	(1)
			.98			
		.49		:		(2)
1995				:		(3)
					.61	
		.98		:		(4)

:

23 22 19

(55)

(127)

:

:

:

:

:

(55)

(95)

(55) (95)

:

(97)

(98)

(1)

.101

\_\_\_\_\_ : (1)

(1)

(3 /103)

:

:

(1 /97)

(2)

:

:

( )

.53

:

(1)

.57

:

(2)

(1)

:

:

:

:

:

:

:

:

:

:1

:

:

(2)

.259

:

(1)

.18

:

(2)

60

: :

(1)

(2)

(3)

.145

.19

.19

61

---

: (1)

: (2)

: (3)



(1)

: :

(2)

(3)

(4)

: :

---

.147		:	(1)
.148		:	(2)
	.20	:	(3)
.150		:	(4)

:

.

(1)

.

.

:

:2

.

.22

63

---

:

(1)

.

.

:

.

.

:

:

.(1)

.260

64

---

:

(1)

(1)

:

:

11/5/1875

"

(2)

30/10/2005

112/2005

169

:

(1)

.28 1946

:

(2)

( )

14/1

" 2001 5

( )

...."

"

.(1)

131.

12/7/2004

26/2004

:

(1)

23/10/2005

46/2005

20.

2006 8

7

5

(120)

:

:

27/9/1953

(1)

244. 2005

---

:

(1)

67

.

(1)

(2)

"

"

"

.

(3)

12

.

---

.125	:	(1)
.90	:	(2)
.92	:	(3)

139

:

:

" 109

. 2-

".

1954 16

1954

(1)

.34 1999

:

(1)



: :

.(1)

110

"

:

-1

-2

-3

:

:

-1

.107

70

:

(1)

: -2

110/1

(1)

: -3

(2)

(3)

: -4

---

.109 : (1)  
.220 : (2)  
.172 : (3)

: -5

125.

.(1)

: -6

/

.

: -7

) (

122

.

.

.222

72

---

: (1)



" " " 1959

(1)

385.

\_\_\_\_\_  
: (1)

.4

. :  
 : :  
 :  
 . :  
 . :  
 . :  
 : (1) :  
 : :

.(2)

.(3)

---

(1)

.167

: (2)

: (3)

.174

.(1)

148 130

.(2)

:

:

.(3)

		.458		:	(1)
.92				:	(2)
		.33		:	(3)

---





(1)

(2)

(3)

18/2/2004

---

55/2004

(1)

55/2004

(2)

" 47/2005

(3)

21/11/2005

47/2005

:

: :

(1)

: :

·  
: -

278

(2)

(3)

\_\_\_\_\_

304/1

.457 : (1)

238 (2)

.171 : (3)

79

(1)

274

-1

. 2-

"

.482

80

:

(1)

:

278

396

\_\_\_\_\_

(396)

: \_\_\_\_\_ :

(1)

149/2

...

(2)

: \_\_\_\_\_ :

.( 6/1 )

.177

.301

82

\_\_\_\_\_  
: (1)  
: (2)

: \_\_\_\_\_ :

120/5

.

(1)

: \_\_\_\_\_ :

120/4

6/2005 <sup>(2)</sup>

30/6/2005      30/2005      :      (1)

12/2/2005      6/2005      :      (2)

120

.

.

.

:

:

.(1)

/

.

:

:

.178

84

---

:

(1)

119 "

...."

120/1

(1)

:

:

.514 2003

:

(1)



(132).

(1)

:

-1

-2

-3

-4

2006 8

120/1

....

.(1)

: :

:

-1

.

-2

.

:

-3

-

(2)

-

.

(3)

-

.

.

.180

: (1)

.458

: (2)

.92

: (3)

: -

139/2.

: :

-1

(1)

-2

146.

-3

130.

(2)

.183

: (1)

(91) (2)

(1)

-4

145). (

-5

:

:

139/1.

(2)

(3)

.440

:

(1)

.271

:

(2)

.211

:

(3)

90

140

:

:

:

:

108

108

(1)

.10

91

---

:

(1)

2001 30

.(1)

131

.

.(2)

.(3)

"

119

"

.

.10

---

: (1)

.12

: (2)

.13

: (3)

1961 9

121/1

204

(1)

(2)

:

:

120/1.

.214 .138

: (1)  
: (2)



.

:

:

120/2

.

120/2

131

.

:

:

(1)

(2)

(3)

---

		.146	:	(1)	
			:	(2)	
				.290	
2006	9	-	-	6	(3)

:

.(1)

: 2001 16

: 1-

123/2

-

-

-

.(2)

122

2001 16

: -2

:

-

.423

.421

: (1)

: (2)

16

121

(1)

" 2001

"

:

:

-1

204

.422

97

:

(1)

-2

(202)

(144)

-3

202

143

144

.(151)

.(1)

.143

:

(1)

98

:

" "

.(1)

(2)

.(3)

:

:

.

.6	:	<hr/>	(1)
.29	:		(2)
365.	:		(3)

.

:

-1

(1)

(2)

-2

-3

.494 .365 : (1)  
: (2)

---

.(1)

(2)

(3)

(4)

.497

.375

.376

.72

101

---

:

:

:

:

(1)

(2)

(3)

(4)



(1)

481

397

(2)

41

482

"

"

:

498.

:

(1)

.282 1954

:

(2)

.515

.(1)

.(2)

481

.(3)

---

.127	:	:	(1)
.380	:	:	(2)
		:	(3)
		.74	1932

:

:

401

481

481 401

1960 16

22/1

22

27

104

400

(401).

105

:

.

:

:

.

.

.(1)

:

:

.(2)

.

.793

:

(1)

(2)

.(1)

120/1

:

:

324

347. 324

:

:

.335

107

---

:

(1)

(1)

(2)

- -

347 346

(3)

(324)

.17

: (1)

(2)

2006/3/29

2006/4

2006/6/4

2006/18

(3)

.2006/3/29

2006/4

:

:

- -

.(1)

1955

1962

.(2)

1966

1955

1957

.(3)

.165

.2005

.55 2004

:

---

:

(1)

:

(2)

(3)



-1

.(86 )

125

-2

.(87 )

-3

.(88 )

-4

)

.(89

-5

.(90 )

-6

.(91 )

-7

.(92 )

(93 ) -8

123

1966

(1) ...

:

(10)

-1

-

-

-2

(2)

:

:

.2005

:

(1)

.2005

:

(2)

(29)

29 -1

103 -2

:

-

-

-

-

124

125 -3

( )

126

-4

126

399

-5

399

:

:

134

143/2

147/1

113

.

.

.

:

:

:

-1

.

:

-2

.

.

.

:

:

:

.(1)

:

134

.(2)

.160 159

.161

---

:

(1)

:

(2)

115

46/2005

(1)

: :

(2)

475

476

---

.17 1999 23/10/2005 46/2005 : (1)  
: (2)





:

.

.

.

.

.

.



:

:

:

:

:

: :

**.2005**

.2001 (3)

.1960 (16)

.1950 **(150)**

: :

:

.1998

.2005

:

:

.2004

.2003

:

:

.1985

:

.2006

:



.2005 :  
.1990 :  
.1985 :  
.1946 :  
.1983 :  
.1990 :  
: .1997  
: .1997  
.1990 :  
: .1976  
: .1932  
.1999 :  
: .1989

.1991  
:  
.2003  
:  
.2005 1  
:  
:  
.2002  
:  
.1985  
:  
.1999  
:  
:  
.1998  
:  
.1996  
:  
.1988  
:  
.1984

:  
.1995

: :

:

.2005

:

.2004

:

.16

.

.

.

:

Rivero j: **les libertes publiques**, themis, paris, 1973.p 1

Francois clerc: **cp. Cit.**p63 zirill genvieve

Marcel Babriel: **De quell droit?** Libres opinions, Le Monde 1/2/1962

L. Belp: **La détention preventive these Montpellier**, 1910, p. 10 et es



**An-Najah National University**  
**Faculty of Graduate Studies**

# **Detention in Palestinian Criminal Procedure**

**By**  
**Mohammad N. Weld Ali**

**Advisor**  
**Na'el Taha**

*Submitted in Partial Fulfillment of the Requirements for the Degree of Masters  
in Law, Faculty of Graduate Studies, at An-Najah National University, Nablus,  
Palestine.*

*2007*

# **Detention in Palestinian Criminal Procedure**

**By**

**Mohammad N. Weld Ali**

**Advisor**

**Na'el Tahoa**

## **Abstract**

This study deals with the preventive Detention (Detention) in the light of the Code of Palestinian Criminal Procedure and its modified articles including the articles of Remand procedure. The study discussed many subjects are contacted the main topic of this thesis. The study introduced the definition of Remand according the linguistic, scholarly, religiously and legally, despite of the differences between all of the scholarly definitions but they agreed that the main concept of Remand is: Arrest the accused person for a period of time until the end of investigation under the conditions and controls that established by the law.

But because the law used the expressions of remand and arrests, the study used the Remand as the meaning of arresting the accused person for a period of time until the end of investigation under the conditions and controls that established by the law. It is preferable to use one and specific legal terminology to unify the legal procedures between Gaza Strip and West Bank.

This study distinguished between the Remand and the similar procedures such as, the distinct between the administrative detention and Remand in related with the definition, authorized authority and the period. The study talked about the historical developments of the concept of

Remand during the ancient Egyptian era, Roman era and Islamic law (Sharea'a) which was and still the most important legislative resource in Palestine. In addition to the international treaties and legitimacy.

In the chapter tow, the study discussed the legal adaptation of Remand through discussion the principle of presumption of innocence which suppose the innocence of the person until proven otherwise, by final pronounced judgment that the person is guilty, then conciliation between all of this and Remand, and the distinct between the Remand and punishment.

The study introduced the justification to arrests some person without final condemnation judgment, some of these justifications are: To calm the public opinion, preventing the accused fleeing, and the preservation of evidences which it might be destroyed or covered by the accused person if he/she stayed free. In addition to the preservation of the accused from the retaliation and to implement the punishment against the accused in case of guilty. In the second part the study discussed the objective conditions of arrest which are: the Crimes that allow executing the arrest against the accused according two categories, first one takes magnitude penalty if the Crime committed a felony or a misdemeanour punishable by more than six months, the criterion of residence which allows the arrest of the offender with unknown residence. The second condition, Presented by the need for a sufficient indications and reasonable reasons for the issuance of arrest warrant. Presented in the third requirement which is the arrest period it

shown the standards that explained the length of stay (Remand or arrest) In terms of setting a maximum of arrest, it indicated how long can the jurisdiction Law enforcement and The Public Prosecutor arrest the accused person, The term can Magistrate issues an order as well as the Court of first instance.

It presented at third subsection the Formal conditions to issue the decision of arrest and which authorised authority can issue the warrant of arrest and the necessity of question before the arrests, causing a decision of arrests and the implementation arrest warrant during a certain period, the evidences that contained in the arrest warrant which is The name and description or the position of the issuer of the arrest warrant, the endorsement on the decision by the formal stamp, The details of the accused, The charge that attributed against the accused, The specific article of the legal charge, the period of arrests, the accused address and the Commissioning of The superintendent of the prison to imprison the accused person.

In the third chapter, it presented the end of the arrests or remand by the releasing as shown the definition of release and its considerations, the specialized authority, the types of release which contains, the mandatory release that enforced by law, The Jawazi release which issues by the public prosecutor or the court upon the self initiative or upon the accused request. It explained the Suspension release with guarantee, in addition to the definition of it and its conditions and how could be evaluated. At another

subsection, it presented the effects of arrests which including the Counted of arrest period from the final judgement and the opinions of scholars about this. It discussed Re-arrest the accused again but it should be conditioned with causing decision and new situations.

At third subsection, it talked about Control over the legality of the arrest decision that will be by the jurisdiction initiative or upon of the accused request. It presented how the detainee treatment should be and what the rights that should be given for the detainee according the international, Palestinian principles and laws.

At the conclusion, it reached for general conclusions about all this research with some proposals to modify some formulation of some Palestinian articles in the Criminal Procedure law to afford more guaranties for the human beings and individual freedom.