

A GUIDEBOOK FOR DETAINEES AND PRISONERS

Q & A



A Guidebook for Detainees and Prisoners

Q & A for everything related to pretrial detention

What does pretrial detention mean?

- The Egyptian law doesn't expressly define what is meant by "pretrial detention", but it refers to the term as a precautionary measure and one of the investigation's guarantees. Also, the Court of Cassation describes it as an abhorrent practice that contradicts the presumption of innocence which is an inherent and a non-derogable human right. By virtue of this procedure, the person accused is put in prison during all, or some of, the investigation period which may reach two years, which is the maximum period of preventive detention in accordance with the provisions of the **Criminal Procedure Code- Articles 142 and 143** thereof- or may exceed the two-year limit in violation of the law.

Does pretrial detention have rules or conditions?

- Yes. Pretrial detention cannot be deemed permissible unless it meet a set of precise rules and conditions:
 - 1- If the crime is a felony or misdemeanor that is punishable with imprisonment for a period no less than a year, and if the evidence is sufficient.
 - 2- When crimes are committed in flagrante delicto (when the suspect was caught in the act of committing the offense), and when the crime is either a misdemeanor or a felony, and the judgment is enforceable; in case of theft or drugs misdemeanors and other cases stipulated by law.
 - 3- When there is a fear of the suspect fleeing or absconding.
 - 4- When there is a fear that the interests of the investigation will be compromised either by influencing the victim or witnesses or tampering with evidence or by reaching agreements with the remaining accused to distort the truth.
 - 5- When it is necessary to prevent grossly compromising security and public order as a result of the magnitude of the crime.
 - 6- If the accused does not have a known address or place of residence in Egypt.
 - 7- The remand order or one of the alternative measures for him must be issued by a member of the prosecution with the rank of deputy attorney at least; i.e. it is not permissible to issue the remand order from an assistant prosecutor.
 - 8- Prosecutors must also consider the circumstances of the cases presented to them and to look closely at the extent of the necessity of pretrial detention, in addition to taking into account the defendant's social circumstances, family and financial ties and the extent of the seriousness of the crime, and this is up to their discernment and appreciation.

(Article 134 of the Criminal Procedure Code)

What are the guarantees of pretrial detention?

- Pretrial detainees' guarantees as stipulated in the Criminal Procedure Code and the Constitution:

- 1- It is not permissible to issue a pretrial detention order without interrogating or questioning the accused
- 2- It is obligatory to hear the Public Prosecution and the defense's statements before issuing a pretrial detention order
- 3- It is obligatory to inform the accused of the reasons behind his remand detention
- 4- The pretrial detention order must be reasoned
- 5- The detention order must be presented to the Public Prosecutor
- 6- To allow lodging an appeal against decisions to order a pretrial detention or to extend its period

(Articles 134, 136, 139, 143, 166, 167 of the Criminal Procedure Code and Article 54 of the Egyptian Constitution)

Do pretrial detainees have legal rights?

Of course, detainees held on remand have several legal rights from the moment they got arrested to the investigation process and detention. These rights are represented in the following lines:

- 1- It is not permissible to arrest, search, detain, or restrict the freedom of anyone in any way except by virtue of a reasoned judicial order that was required in the context of an investigation
- 2- Every person whose freedom is restricted shall be immediately notified of the reasons therefore; shall be informed of his/her rights in writing
- 3- He shall be immediately enabled to contact his/her relatives and lawyer; and shall be brought before the investigation authority within twenty four (24) hours as of the time of restricting his/her freedom.
- 4- Investigation may not start with the accused unless his/her lawyer is present. A lawyer shall be seconded for persons who do not have one. Necessary assistance shall be rendered to people with disability, according to procedures prescribed by Law.
- 5- Every person who is either arrested, detained, or his freedom is restricted shall be treated in a manner that maintains his dignity. He/she may not be tortured, intimidated, coerced, or physically or morally harmed.
- 6- He may not be seized or detained except in places designated for that purpose, which shall be adequate on human and health levels. The State shall cater for the needs of people with disability. Any violation of the above is a crime and the perpetrator shall be punished under the law.
- 7- The accused possesses the right to remain silent. Any statement that is proven to have been given by the detainee under pressure of any of that which is stated above, or the threat of such, shall be considered null and void.

(Articles 54 and 55 of the Egyptian Constitution)

What are the other legal rights guaranteed for pretrial detainees?

Those held in preventive detention have the right to appeal against their detention renewal orders every 30 days.

What does that mean? Is it not supposed that he is entitled to appeal against every detention renewal order issued against him?

- Yes, according to the law, a person held in remand has the right to appeal his detention order at any time, but if this appeal is rejected, he is not entitled to submit a new appeal except after 30 days as of the date of submitting the last rejected appeal, whereas the period of time for an appeal to be filed shall be twenty four hours.

(Articles 166 and 167 of the Criminal Procedure Code)

Do pretrial detainees have legal rights throughout their detention period?

- Yes, according to prison laws and regulations, there are several rights that should be guaranteed for all those held in pretrial detention, as stipulated in the Prison Regulation Law No. **396 of 1956** and its (Internal) Regulations/bylaws, along with its amendment by Presidential Decree No. 106 of 2015. These rights include:
- Persons in preventive custody shall be kept in places separate from other prisoners. A person in preventive custody may be allowed to stay in a furnished room for an amount not exceeding fifteen pounds per day, within the capacity of places and facilities in the prison according to the prison regulations. **(Article 14)**
- Persons in preventive custody have the right to wear their private clothes, unless the prison administration decides, for reasons of health, cleanliness or in the interest of security, that they should wear the same clothes intended for other prisoners. **(Article 15)**
- Persons in preventive custody may bring the food they need from outside the prison or buy it in the prison at the specified price. If they do not so want or can, they shall receive the determined food. **(Article 16)**
- Persons in preventive custody or sentenced to simple imprisonment may not work, unless they so wish. **(Article 24)**
- According to the provisions of the Criminal Procedure Law, every convicted person has the right to correspond or telephone their family twice a month for a fee, and to be visited by his family twice a month, under the supervision of the prison's administration and in accordance to the procedures determined by the internal regulations. **(Article 38)**.
- And those held in remand are entitled to the same right, unless a decision is issued by the competent public prosecutor or the competent investigative judge otherwise, in accordance with the procedures established by the internal regulations.
- Persons in preventive detention are allowed to have sporting queues for two hours per day (one hour in the morning and one hour in the evening) during the period of their detention. **(Article 85 bis 3)**.
- The period of regular and private visits in accordance with the law is sixty minutes, and the prison warden may extend the period if necessary. **(Article 71)**

- **(Article 83)** lists in detail the items that pretrial detainees can have in their prison rooms including; "a bed, a mattress, a pillow, a wool blanket (and two in winter), a mat, a wood chair, and iron bracket, an iron dish, a soap (in case there is no sink or faucet in the room), a small table, a mirror, a bowl and dish for drinking water, hair brush, a comb, a fork and spoon, a cup and a small metal plate."
- **The right to bring basic amenities from outside the prison**
- **Article 8:** "... It is permissible to bring, at their own expense, from outside the prison: a bed, a mattress, a pillow, and a bathrobe, or to possess family photos, books, journals and magazines, or tools of lightening...Cigarettes, fruit, candy, and different foods are also allowed to be brought in visitation."
- **The right to possess books, newspapers and magazines**
- **Article 15:** "Persons in preventive detention have the right to bring whatever books, newspapers and magazines they are authorized to have..."
- **The right to a medical examination**
- **Article 27:** "The prison's physician shall examine every prisoner immediately upon his admission to prison, but no later than the morning of the following day, and shall register his health condition and the type of work he is able to perform...He shall visit every prisoner in solitary confinement daily..."
- **The right to healthy food**
- **Article 45** specifies the daily diet that prison administration distributes on detainees based on a predefined schedule- amended in 2001- which includes: bread, beans, cheese, and eggs for breakfast- meat, rice, and vegetables for lunch- and cheese and beans for dinner.
- **Article 46** also stipulates that food should be served hot and cooked well.
- **The right for those held in solitary confinement to a daily medical follow-up**
- **Article 31:** If the prison's physician determines that the health of a prisoner is at risk because of the period that he spends in solitary confinement, he shall inform the prison's director or superintendent in writing of the means that in his opinion will eliminate this risk. The prison's director or superintendent shall implement the recommendations of the prison's physician".
- **The right to keep up a correspondence**
- **Article 60:** "Persons in preventive custody have the right to keep (send or receive) a correspondence at any time. The prison administration shall transfer the papers and all implements that are necessary for writing letters."

- **The right to use writing implements/instruments**
- Article 67: "The prison administration allows persons in preventive detention to use papers and all other necessary writing implements/instruments".
- **The right to carry on the religious duties**
- Article 74: "A priest is allowed to visit members of his Congregations and to eat the Eucharist"
- **The right to meet his lawyer individually**
- Article 39: The lawyer of a prisoner shall be allowed to meet with him alone, provided a written permission is obtained from the Public Prosecution, and from the investigating judge in cases he is entrusted with investigating, whether the meeting is at the request of the prisoner or the lawyer.
- **The right to prevent the authorities to contact him**
- Article 79: None of the Authority's men shall be allowed to communicate with a person in preventive custody without a written authorization from the Public Prosecution. The prison's director or superintendent shall register in the record of daily prison events the name of the person so authorized, the time of the meeting and the date and content of the authorization.

Are there alternatives for pretrial detention?

- Yes, there are several alternatives for preventive detention that are permitted by law for the public prosecution or courts that consider the detention of pretrial detainees. These alternatives, which are known as precautionary measures, are:
 - 1- Compelling the accused person not to leave his home or country
 - 2- Compelling the accused person to present himself/herself at the police station at specific times
 - 3- Prohibiting the accused person from going to certain places.

What would be the legal procedure in case the accused violates such obligations?

- If the accused person doesn't comply with the aforementioned obligations imposed by any of the precautionary measures, he may be remanded in custody again upon a substantiated order by the competent authorities.

Are there rules that regulate these precautionary measures?

- Of course, the same rules prescribed with regard to pretrial detention shall also be applicable to precautionary measures; in terms of the duration of the measure, its extension, and its maximum limit, and the right to appeal against the decision. Hence, in case the competent public prosecutor orders any of the precautionary measures against the accused instead of pretrial detention, he must guarantee for

the accused that the duration period of the measure and its extension go in accordance with the same rules established for preventive detention.

Are there rules or regulations for disciplining pretrial detainees?

- Yes, Article 48 of the Prison Regulation Law No. 396 of 1956 and its (Internal) Regulations/bylaws, along with its amendment by Presidential Decree No. 106 of 2015 states that: " Persons in preventive custody shall be treated, as far as the disciplinary system is concerned, like persons who are sentenced to incarceration or prison. Nevertheless, they shall not be subjected to the punishment of transfer to a penitentiary."

Is it permissible to compensate pretrial detainees for the period served in prison in case he is acquitted?

- Yes, Article 312 bis of the Criminal Procedure Code stipulated that: The Public Prosecution is obligated to publish every ruling of acquittal handed down for any pretrial detainee, as well as any order that rules the indictment against the defendant should be dismissed. The ruling should be published in two daily widely-circulated newspapers at the government's expense and at the request of the Public Prosecution or the accused person or any of his heirs.
- However, in case of the dismissal of the case, the Prosecution has to approve the publishing of the acquittal ruling if it is at the request of the accused or one of his heirs.
- Moreover, the person whose freedom is restricted by prevailing the society's right over his right to liberty and is later ordered to be released is entitled to be fairly compensated by the state. Therefore, we believe that this article paves the way for the constitutional approach embodied in Article 54 of the Egyptian Constitution, which provides for fair compensation to be paid by the state for the person whose freedom is infringed upon.