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PRETRIAL DETENTION UNDER LAW NO. 25-14 ESTABLISHING THE ALGERIAN CODE OF CRIMINAL PROCEDURE

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Abstract

This study examines the legal framework governing pretrial detention under Algerian Law No. 25-14, with particular emphasis on the balance between the requirements of criminal investigation and the protection of individual liberty. Employing a descriptive and analytical methodology, supplemented by comparative analysis where appropriate, the study investigates the exceptional nature of pretrial detention, its relationship with the presumption of innocence, and the substantive and procedural safeguards governing its application. The analysis addresses the legal grounds for detention, judicial competence, statutory time limits, extension procedures, release mechanisms, judicial review, and compensation for unjustified detention. The findings indicate that the legislation reinforces the exceptional character of pretrial detention by prioritising individual liberty, establishing judicial supervision as a less restrictive alternative, and requiring legally reasoned detention orders. Nevertheless, the effectiveness of these safeguards remains dependent on judicial practice, particularly the interpretation of detention grounds, the assessment of alternative measures, and the scrutiny of exceptional extensions. The study concludes that achieving an appropriate balance between investigative necessity and fundamental rights requires rigorous judicial oversight, individualised assessments of necessity and proportionality, effective procedural remedies, and accessible compensation mechanisms.

Keywords: Pretrial Detention; Algerian Criminal Procedure; Presumption of Innocence; Judicial Review; Alternatives to Detention; Compensation for Unjustified Detention.

JEL Classification: K14; K41; K38; K42.

Introduction

Pretrial detention is among the most legally and human-rights-sensitive measures in criminal proceedings, as it restricts an accused person's personal liberty before a final judicial determination of guilt. It therefore occupies a particularly delicate position between the requirements of protecting society and ensuring the proper conduct of judicial investigations, on the one hand, and safeguarding fundamental rights and freedoms, foremost among them the presumption of innocence, on the other. The legal regulation of this measure in Algeria has undergone successive legislative developments intended to restrict recourse to detention and establish safeguards against its use as anticipatory punishment or a means of exerting pressure on the accused. These reforms culminated in Law No. 25-14 of 3 August 2025 establishing the Code of Criminal Procedure, which reorganised several provisions governing judicial investigation, judicial supervision and pretrial detention, thereby underscoring the importance of reconciling the effectiveness of criminal justice with the protection of individual liberty.¹ The significance of this subject derives from the fact that, although pretrial detention may sometimes be justified by procedural necessities, such as preserving evidence, securing the accused's appearance and preventing interference with witnesses or victims, it remains an exception to the general principle that an accused person should remain at liberty throughout the investigation. It must therefore be subject to precise substantive and formal requirements, effective judicial oversight, defined time limits and available remedies, including appeals, release and compensation for

¹ Law No. 25-14 of 3 August 2025 Establishing the Code of Criminal Procedure, Official Gazette of the People's Democratic Republic of Algeria, No. 54, 13 August 2025, p. 7.

harm caused by unjustified detention.¹ Against this background, the present study examines the legal provisions governing pretrial detention under Law No. 25-14, identifies the legislative changes it introduced and assesses whether the prescribed safeguards adequately protect accused persons against arbitrary exercises of judicial authority. It employs a descriptive and analytical approach to legislative provisions and legal scholarship, supplemented where necessary by a comparative approach to trace the development of the Algerian regulatory framework.

Accordingly, the central research question is: To what extent has Law No. 25-14 achieved a balance between the necessities of pretrial detention and the safeguards protecting the accused's individual liberty? To address this question, the study is divided into two parts. The first examines the conceptual and legal framework of pretrial detention, while the second addresses its procedural regime and the legal safeguards established to protect the rights of the accused.²

Part One: The Conceptual and Legal Framework of Pretrial Detention under Law No. 25-14

Defining the conceptual and legal framework of pretrial detention is essential to understanding the foundations of this measure and its place within Algeria's criminal justice system. Its lawfulness cannot be assessed without examining its legal nature, objectives and the limits imposed by the legislature on its use.³ Law No. 25-14 reaffirmed the exceptional character of pretrial detention, making its use contingent upon the inadequacy of measures that interfere less severely with liberty and requiring detention orders to be justified by specified grounds derived from the criminal case file.⁴ This Part accordingly examines, first, the concept and legal nature of pretrial detention and its relationship with the presumption of innocence; and, second, the legal regime governing detention orders, including substantive conditions, competent authorities and formal procedures.⁵

Section One: The Concept and Legal Nature of Pretrial Detention

Examining the nature of pretrial detention is particularly important because it combines a precautionary function with consequences that restrict liberty. Although it resembles a criminal sanction in that it entails deprivation of liberty and placement in a custodial institution, it is not a criminal punishment in the strict legal sense.⁶ A proper understanding of the concept requires distinguishing its doctrinal definition from its statutory regulation and identifying the legal characteristics that account for its exceptional and temporary status.⁷ It also requires consideration of its relationship with the presumption of innocence and of the distinction between detention, judicial supervision and other measures capable of meeting investigative objectives without depriving the accused of liberty.⁸

Subsection One: The Concept of Pretrial Detention and Its Doctrinal and Statutory Definitions

In legal scholarship, pretrial detention refers to a judicial measure whereby an accused person is committed to a custodial institution for a period prescribed by law, prior to a final judgment on the merits, in pursuit of procedural objectives connected with the proper conduct of the investigation and the accused's appearance before the courts. The concept comprises several interrelated elements: the measure must be ordered by a competent authority, arise in the context of pending criminal proceedings, be limited in duration and rest upon specific legal grounds.⁹ Criminal-law scholarship considers detention one of the most intrusive precautionary measures because of its direct effect on personal liberty. The mere bringing of charges is therefore insufficient to justify its use; an objective necessity connected with the interests of the investigation or the protection of the legal order must exist, subject throughout to judicial oversight.¹⁰ Pretrial detention is consequently not an automatic consequence of instituting public criminal proceedings, but an exceptional procedural instrument distinct from punishment. Its provisions must therefore be construed so as to prevent their extension beyond the circumstances expressly authorised by the legislature.¹¹

From the legislative perspective, Law No. 25-14 sets out the conditions and safeguards governing recourse to pretrial detention rather than providing a single comprehensive theoretical definition. Article 197 begins by stating that 'the

¹ Toumi, Oum El Djilali, and Abbassa, Taher, "Pretrial Detention under Law No. 25-14 Establishing the Code of Criminal Procedure", *Journal of Legal Studies*, Abdelhamid Ibn Badis University, Mostaganem, vol. 12, no. 1, 2025, pp. 557–559. (In Arabic).

²² Mekki, Ben Serhan, "Pretrial Detention and Its Impact on the Right to Be Presumed Innocent", *Journal of Law and Political Sciences*, Saïda University, vol. 4, no. 2, 2018, pp. 586–588. (In Arabic).

³ Article 197 of Law No. 25-14 of 3 August 2025 Establishing the Code of Criminal Procedure, *Official Gazette of the People's Democratic Republic of Algeria*, No. 54, 13 August 2025, p. 33.

⁴ Ben Bouabdallah, Noura, and Ben Bouabdallah, Warda, "Recent Developments in the Legal Regulation of Pretrial Detention: Issuing Authorities and Safeguards under Code of Criminal Procedure Law No. 25-14", *Journal of Rights and Human Sciences*, vol. 19, no. 2, 2026, pp. 380–382. (In Arabic).

⁵ Hamlaoui, Sanaa, "The Problem of Applying the Presumption of Innocence at the Investigation and Trial Stages", *Al-Mouhami Journal*, vol. 22, no. 1, 2026, pp. 41–43. (In Arabic).

⁶ Toumi, Oum El Djilali, and Abbassa, Taher, *op. cit.*, pp. 559–561.

⁷ Ben Bouabdallah, Noura, and Ben Bouabdallah, Warda, *op. cit.*, pp. 380–384.

⁸ Mekki, Ben Serhan, *op. cit.*, pp. 590–592.

⁹ Mekki, Ben Serhan, *op. cit.*, pp. 588–590.

¹⁰ Toumi, Oum El Djilali, and Abbassa, Taher, *op. cit.*, pp. 560–561.

¹¹ Article 197 of Law No. 25-14, *op. cit.*, p. 33.

accused shall remain at liberty during judicial investigation proceedings'; it then permits judicial supervision where necessary and authorises pretrial detention only exceptionally, where those measures prove insufficient.¹ This formulation establishes a graduated approach to restrictions on liberty: continued liberty is the default, judicial supervision constitutes an intermediate measure, and pretrial detention is the most severe option, available only where legally prescribed grounds are established.² Moreover, the term 'pretrial detention' emphasises the measure's temporal character and, in principle, distinguishes it from a custodial sentence. That distinction is consistent with the requirement to treat the accused as innocent until guilt has been established by a final judicial decision.³

Subsection Two: The Legal Nature and Exceptional Characteristics of Pretrial Detention

Pretrial detention is legally characterised as a precautionary judicial measure intended not to punish the accused but to secure the requirements of the investigation, preserve evidence and ensure the orderly conduct of criminal proceedings. Its legality thus rests not on the seriousness of the charge alone, but on a genuine procedural necessity justifying the restriction of liberty. This distinguishes it from a penalty, which may be imposed only following a judicial conviction.⁴ Article 197 of Law No. 25-14 embodies this approach, providing: 'Where these measures prove insufficient, pretrial detention may exceptionally be ordered by a reasoned decision in accordance with Article 201 below.' Two related principles govern detention under this provision. The first is necessity: detention should not be used where less restrictive measures can achieve the procedural purpose. The second is proportionality: the degree of interference with the accused's liberty must correspond to the procedural risk to be averted.⁵ The obligation to give reasons also moves the law beyond the mere exercise of discretion, requiring the competent authority to disclose the factual and legal basis of its decision so that the decision can be reviewed and detention cannot be used for purposes extraneous to the investigation.⁶

Pretrial detention is exceptional, temporary, personal and subject to judicial review. It cannot be imposed automatically merely because an offence is serious or widespread, nor may it continue without regard to statutory time limits and procedures. Its personal character requires individual assessment of each accused person's circumstances and the grounds for detention; the presence of several defendants in the same case does not, in itself, warrant the same measure against all of them.⁷ Its temporary character is reflected in the initial periods prescribed by law and the regulation of permissible extensions, as well as the investigating judge's obligation to reconsider the necessity of detention once its original justification ceases to exist. Article 197 provides that, 'where pretrial detention is no longer justified by at least one of the grounds set out in Article 201 below, the investigating judge must either release the accused or place the accused under judicial supervision', subject to the remaining statutory conditions.⁸ Thus, the lawfulness of detention is not established once and for all when the order is issued; it must be continuously justified by grounds that subsist throughout the detention period. Otherwise, continued detention ceases to serve the purpose for which the legislature authorised it.⁹

Subsection Three: Pretrial Detention, the Presumption of Innocence and Alternative Measures

The presumption of innocence is a fundamental principle of criminal procedure, requiring an accused person to be treated as innocent until guilt is established by a final judicial judgment and precluding the treatment of pretrial measures as punishment. The apparent tension between this principle and pretrial detention arises because the accused is in fact deprived of liberty before criminal liability has been established. It is therefore necessary to identify the legal justification for such interference without impairing the substance of the right to be presumed innocent.¹⁰ The Algerian legislature has sought to resolve this tension by making liberty the rule and detention the exception, while requiring the judicial authority to assess the necessity and suitability of the measure.

Analytically, detention does not in itself amount to an advance finding of guilt; however, detention without objective justification, or its disproportionate prolongation, may in practice deprive the presumption of innocence of its protective function.¹¹ The practical significance of that presumption lies not merely in its formal recognition, but in its effect on

¹ Article 197 of Law No. 25-14, op. cit., p. 33.

² Toumi, Oum El Djilali, and Abbassa, Taher, op. cit., pp. 561–562.

³ Hamlaoui, Sanaa, op. cit., pp. 44–46.

⁴ Brahimi, Djamel, "Innovations Introduced by Code of Criminal Procedure Law No. 25-14 in the Field of Investigation", *Academic Journal of Legal and Political Research*, Mouloud Mammeri University, Tizi Ouzou, vol. 10, no. 1, 2026, pp. 1520–1523. (In Arabic).

⁵ Article 197 of Law No. 25-14, op. cit., p. 33.

⁶ Toumi, Oum El Djilali, and Abbassa, Taher, op. cit., pp. 561–563.

⁷ Kahoul, Roumaïssa, and Bouhouche, Hicham, "Review of the Legality of Pretrial Detention", *Al-Mi'yar Journal*, Mentouri Brothers University Constantine 1, vol. 26, no. 5, 2022, pp. 319–321. (In Arabic).

⁸ Article 197 of Law No. 25-14, op. cit., p. 33.

⁹ Ben Bouabdallah, Noura, and Ben Bouabdallah, Warda, op. cit., pp. 389–392.

¹⁰ Aoun, Fatima Zahra, "Procedural Safeguards during Judicial Investigation under Law No. 25-14: An Analytical Study of the Protection of Rights and Freedoms", *Journal of Human Rights and Public Freedoms*, Abdelhamid Ibn Badis University, Mostaganem, vol. 11, no. 1, 2026, pp. 454–458. (In Arabic).

¹¹ Mekki, Ben Serhan, op. cit., pp. 592–595.

judicial decisions concerning personal liberty and the requirement that exceptions be construed narrowly so as to balance society's interests with the rights of the accused.¹

The distinction between pretrial detention and alternative measures is apparent from Article 198 of Law No. 25-14, which provides that 'the investigating judge may order judicial supervision where the acts attributed to the accused expose that person to a custodial sentence or a more severe penalty'. The provision then specifies possible obligations, including remaining within designated territorial boundaries, reporting periodically to the competent authorities, refraining from contacting specified persons, and, in the cases permitted by law, complying with electronic monitoring arrangements.² Unlike pretrial detention, judicial supervision allows the accused to remain outside a custodial institution while imposing specific restrictions on movement or activity, thereby serving certain investigative objectives without wholly depriving the individual of liberty.

Legislative development is also reflected in the possibility of requiring residence in protected accommodation, subject to the conditions set out in the same Article, expanding the range of measures available to the investigating judge.³ The effectiveness of alternatives therefore depends not merely on their statutory existence but on their actual use before a detention order is made and on the judge's ability to explain, in the circumstances of the case, why they would be inadequate. The progression from liberty to judicial supervision and only then to detention is one of the principal practical safeguards of the presumption of innocence.⁴

Section Two: The Legal Framework Governing Pretrial Detention Orders

The legality of pretrial detention depends not only on its exceptional character but also on compliance with the rules governing the issuance and execution of detention orders. Deprivation of liberty is lawful only where prescribed substantive and formal conditions are satisfied.⁵ Under Law No. 25-14, the legislature specified the grounds on which such an order may be based, required those grounds to derive from the case file, and regulated the jurisdiction of the relevant judicial authorities and the procedures for notification and appeal.⁶ An examination of this legal framework must therefore consider the conditions justifying detention, identify the authorities empowered to order it, and explain the procedures designed to ensure the validity of the order and facilitate review of its lawfulness.⁷

Subsection One: Substantive Conditions and Legal Grounds for Ordering Pretrial Detention

The substantive conditions for pretrial detention require serious legal grounds making detention necessary for a legitimate purpose; mere suspicion or the formulation of a criminal charge does not suffice to justify deprivation of liberty. Article 201 of Law No. 25-14 establishes the relevant framework, providing at the outset that 'an order for pretrial detention must be based solely on information derived from the case file indicating' one of the circumstances specified thereafter.⁸ These include: '(1) that the accused has no fixed residence, has failed to provide sufficient guarantees of appearance before the courts, or that the acts are exceptionally serious'; and '(2) that pretrial detention is the only means of preserving exhibits or material evidence, preventing pressure upon witnesses, victims or civil parties, or avoiding collusion among accused persons and accomplices that could obstruct the establishment of the truth'. The legislature thus tied pretrial detention to particular procedural risks, especially the risk of non-appearance, interference with evidence or improper influence on persons involved in the investigation.⁹ Proper application of these grounds requires identification of facts demonstrating the existence of the relevant risk in the individual case. Merely reproducing statutory formulae without relating them to the case file does not fulfil the purpose of the duty to give reasons.¹⁰

Article 201 further permits detention where '(3) detention is necessary to protect the accused, bring the offence to an end or prevent its recurrence' or '(4) the accused has failed to comply with obligations imposed under judicial supervision without serious justification'. These grounds reflect the varied functions of pretrial detention: protecting the investigation against interference, safeguarding the accused, preventing continuing criminal conduct or securing compliance with judicial-supervision obligations.¹¹ Nevertheless, the breadth of certain expressions, notably the description of acts as 'exceptionally serious', raises questions about the limits of judicial discretion. Seriousness must be assessed against objective circumstances particular to the case, not treated as an abstract label authorising detention automatically.

Equally, breach of a judicial-supervision obligation is insufficient where there was a serious reason for non-compliance, since the statutory condition expressly requires the absence of such justification.¹² Effective judicial review must therefore

¹ Hamlaoui, Sanaa, op. cit., pp. 44–48.

² Article 198 of Law No. 25-14, op. cit., pp. 33–34.

³ Brahimi, Djamel, op. cit., pp. 1526–1528.

⁴ Aoun, Fatima Zahra, op. cit., pp. 471–474.

⁵ Toumi, Oum El Djilali, and Abbassa, Taher, op. cit., pp. 562–564.

⁶ Articles 197 and 201 of Law No. 25-14, op. cit., pp. 33–34.

⁷ Ben Bouabdallah, Noura, and Ben Bouabdallah, Warda, op. cit., pp. 382–386.

⁸ Article 201 of Law No. 25-14, op. cit., p. 34.

⁹ Toumi, Oum El Djilali, and Abbassa, Taher, op. cit., pp. 561–562.

¹⁰ Ben Bouabdallah, Noura, and Ben Bouabdallah, Warda, op. cit., pp. 389–391.

¹¹ Article 201 of Law No. 25-14, op. cit., p. 34.

¹² Toumi, Oum El Djilali, and Abbassa, Taher, op. cit., pp. 561–562.

determine whether the stated grounds actually exist, whether they relate to the interests of the investigation and whether lawful alternatives could address the same risks. Necessity thereby becomes an objective criterion for evaluating the lawfulness of a detention order.¹

Subsection Two: Judicial Authorities Competent to Order Pretrial Detention

Identifying the authority empowered to order pretrial detention is a fundamental safeguard of individual liberty. A measure depriving an accused person of liberty must fall within a clearly established statutory jurisdiction and cannot be imposed by an authority to which the law has not conferred that power. The investigating judge occupies the central position because that judge is responsible for examining the facts, gathering evidence and taking measures necessary for the proper conduct of criminal proceedings, including ordering pretrial detention when the legal conditions are met.² This competence, however, does not confer unfettered discretion. The investigating judge must respect the graduated approach established in Article 197, determine that judicial supervision would be insufficient and issue a reasoned order based on one of the grounds set out in Article 201.

The Indictment Chamber also has powers to consider and review orders of the investigating judge and to authorise extensions of pretrial detention in the circumstances prescribed by law.³ This division of powers between the investigating authority and the reviewing judicial body permits reconsideration of decisions affecting personal liberty and prevents the accused's fate from being left solely to an individual judicial assessment without recourse.⁴

Measures restricting liberty are not confined to the judicial investigation stage. The law allows trial courts to intervene in specified situations, notably under immediate-appearance proceedings. Article 483 of Law No. 25-14 provides that, when a court adjourns a case, it may, after hearing the prosecution, the accused and defence counsel, adopt one of the measures authorised by law, including leaving the accused at liberty, placing the accused under judicial supervision or ordering pretrial detention.⁵

The Code also establishes special rules for certain flagrante delicto misdemeanours under Article 486, together with procedures concerning appearance following a prior acknowledgment of guilt under Article 539 et seq. It is essential to distinguish the investigating judge's powers during judicial investigation from the exceptional powers exercised by trial courts or the public prosecution under procedures specifically established by the legislature.⁶ The allocation of powers to restrict liberty among different judicial authorities makes compliance with jurisdictional limits indispensable and requires every decision to be subject to the review and appeal procedures appropriate to its legal character and procedural stage.⁷

Subsection Three: Formal and Procedural Requirements for Issuing and Executing Pretrial Detention Orders

The formal conditions governing pretrial detention consist of procedures that must be observed when the decision is made, principally the competence of the issuing authority, clear legal reasoning, notification to the accused and access to the objections and appeals permitted by law. The duty to state reasons is particularly important because it discloses the facts that led the judge to consider detention necessary and enables the reviewing authority to determine whether those facts correspond to statutory grounds.⁸ Article 201 of Law No. 25-14 provides: 'The investigating judge shall notify the accused orally of the pretrial detention order and inform the accused that an appeal may be brought within three (3) days of such notification. The notification shall be recorded in the official report.' Notification is therefore not a mere formality: it is directly connected to the exercise of the right of appeal and the commencement of the applicable time limit. Recording it permits verification of compliance with the safeguards attached to the order.⁹ The rights of the defence also require that the accused be informed of the legal and factual grounds for detention so that those grounds can be contested and evidence may be presented showing either that they are absent or that alternative measures would be adequate.¹⁰

Execution of a pretrial detention order must comply with legally prescribed requirements, including safeguards against unlawful continuation of deprivation of liberty. This issue is particularly important in the execution of arrest warrants. Article 194 of Law No. 25-14 regulates the presentation and questioning of an arrested person and requires questioning within forty-eight hours where it cannot take place on the same day, with provision for release if the applicable conditions are not respected.¹¹ Under that Article, an accused person who remains in a custodial institution for more than forty-eight

¹ Hamlaoui, Sanaa, op. cit., pp. 46–49.

² Boujellal, Ahmed Abdelrahim, and Nougui, Nabil, "Powers of the Algerian Investigating Judge in the Preliminary Investigation", *Journal of Legal and Political Thought*, Ammar Thelidji University, Laghouat, vol. 9, no. 2, 2025, pp. 1249–1253. (In Arabic).

³ Ben Bouabdallah, Noura, and Ben Bouabdallah, Warda, op. cit., pp. 382–385.

⁴ Brahimi, Djamel, op. cit., pp. 1525–1529.

⁵ Article 483 of Law No. 25-14, op. cit., p. 65.

⁶ Articles 486 and 539 et seq. of Law No. 25-14, op. cit.

⁷ Toumi, Oum El Djilali, and Abbassa, Taher, op. cit., pp. 563–565.

⁸ Ben Bouabdallah, Noura, and Ben Bouabdallah, Warda, op. cit., pp. 388–391.

⁹ Article 201 of Law No. 25-14, op. cit., p. 34.

¹⁰ Aoun, Fatima Zahra, op. cit., pp. 470–475.

¹¹ Article 194 of Law No. 25-14, op. cit., p. 33.

hours without being questioned is deemed to be arbitrarily detained, with legal responsibility arising in the circumstances specified by law.

This confirms that the legality of deprivation of liberty depends not merely on the existence of a judicial order but also on compliance with time limits and safeguards governing its execution.¹ The relationship between the validity of the order and the lawfulness of its execution prevents an artificial separation between safeguards at the decision-making stage and those governing implementation. Judicial review must extend across the entire detention process, from the initial assessment of necessity to execution, continuation or termination.²

Part Two: The Procedural Regime of Pretrial Detention and Safeguards for the Rights of the Accused under Law No. 25-14

Substantive and formal restrictions on pretrial detention cannot, by themselves, adequately protect individual liberty unless accompanied by a procedural regime specifying its duration, regulating its extension and termination, and allowing the accused to challenge decisions affecting their legal position.³ Law No. 25-14 accordingly contains provisions governing the duration of pretrial detention according to the category of offence, the procedures for extension and release, and the respective powers of the investigating judge, the Indictment Chamber and the trial courts.⁴ It also establishes safeguards concerning appeals against detention orders, review of continued detention and compensation for harm arising from unjustified pretrial detention. This Part therefore examines, first, temporal limits and procedures for terminating detention and, second, legal safeguards, judicial review and compensation.⁵

Section One: Statutory Time Limits and Procedures for Terminating Pretrial Detention

Statutory limits on the duration of pretrial detention are among the most important guarantees of its exceptional character. Indefinite deprivation of liberty risks transforming a precautionary measure into punishment imposed before trial. The legislature has therefore established a temporal regime that takes account of the nature and seriousness of offences and the complexity of their investigation, while defining the conditions for extending detention and the competent authorities.⁶ Articles 202–205 of Law No. 25-14 regulate these matters, while subsequent provisions govern release and reconsideration of continued detention, thereby linking the measure to demonstrable necessity rather than allowing it to continue automatically.⁷ Analysis of the temporal safeguards consequently requires an examination of the periods prescribed for misdemeanours and felonies, the conditions governing extensions, and the procedures for terminating detention, securing release and replacing detention with judicial supervision.⁸

Subsection One: Statutory Periods of Pretrial Detention According to the Nature of the Offence

The Algerian legislature regulates the duration of pretrial detention by distinguishing between misdemeanours and felonies, while recognising situations in which the prescribed penalty warrants enhanced protection of individual liberty. Article 202 of Law No. 25-14 provides: 'In misdemeanour cases, an accused person residing in Algeria may not be held in pretrial detention where the maximum penalty prescribed by law is imprisonment for a term of three (3) years or less, except for offences resulting in a person's death or causing a manifest disturbance of public order; in such cases, the period of pretrial detention may not exceed one (1) month and may not be renewed.'⁹ This provision uses the statutory maximum sentence and the accused's residence in Algeria as relevant criteria, while recognising exceptions relating to the consequences of the offence or its effect on public order. Its protective significance lies in excluding detention for certain offences carrying relatively limited penalties and restricting the exception to a non-renewable one-month period.¹⁰ The legislature thus sought to achieve proportionality between the seriousness of the offence and permissible restrictions before judgment. Courts must nonetheless carefully establish that the conditions for the exception are satisfied, particularly the requirement of a manifest disturbance of public order.¹¹

For misdemeanours outside the special rule in Article 202, Article 203 limits the initial detention period to four months, with a single extension for a further four months subject to statutory conditions. Detention may therefore reach eight months where a lawful extension is granted.¹² In felony proceedings, Article 204 provides that 'the duration of pretrial detention in felony cases shall be four (4) months', while establishing a distinct extension regime depending on the offence and applicable penalty. A common initial period of four months does not mean that misdemeanours and felonies are

¹ Article 194 of Law No. 25-14, op. cit.

² Boujellal, Ahmed Abdelrahim, and Nougui, Nabil, op. cit., pp. 1254–1257.

³ Kahoul, Roumaissa, and Bouhouche, Hicham, op. cit., pp. 321–324.

⁴ Articles 202 to 209 of Law No. 25-14, op. cit., pp. 34–36.

⁵ Ben Bouabdallah, Noura, and Ben Bouabdallah, Warda, op. cit., pp. 388–394.

⁶ Choukri, Amel, "Time Limits on Pretrial Detention under Amendments to the Algerian Code of Criminal Procedure", *Journal of Legal and Economic Studies*, University of Algiers 1, vol. 5, no. 1, 2022, pp. 340–343. (In Arabic).

⁷ Articles 202 to 209 of Law No. 25-14, op. cit., pp. 34–36.

⁸ Brahimi, Djamel, op. cit., pp. 1526–1529.

⁹ Article 202 of Law No. 25-14, op. cit., p. 34.

¹⁰ Toumi, Oum El Djilali, and Abbassa, Taher, op. cit., pp. 565–567.

¹¹ Choukri, Amel, op. cit., pp. 343–346.

¹² Article 203 of Law No. 25-14, op. cit., p. 35.

treated identically, since the legislature differentiates them by the number of permissible extensions and the possible involvement of the Indictment Chamber.¹ These time limits must consequently be understood in conjunction with the complete extension regime. Nor does the mere availability of a maximum statutory period justify continued detention: at least one of the substantive grounds set out in Article 201 must continue to exist.²

Subsection Two: Extensions of Pretrial Detention and Their Regulation under Recent Legislative Amendments

Extending pretrial detention is particularly sensitive because it prolongs the deprivation of liberty beyond the initial period and must therefore be subject to strict conditions preventing automatic renewal. For misdemeanours, Article 203 provides: 'Where it appears necessary to maintain the accused in detention, the investigating judge may, after obtaining the reasoned opinion of the Public Prosecutor, issue a reasoned order extending pretrial detention on one occasion only for a further four (4) months.'³ For felonies, Article 204 permits two extensions of four months each on the basis of the case file and after obtaining the Public Prosecutor's reasoned opinion. It permits three extensions where the felony is punishable by a determinate custodial sentence of twenty years or more, life imprisonment or death, subject to the conditions established by the provision.⁴ The same Article also allows the investigating judge to request an additional extension from the Indictment Chamber before the maximum period expires, subject to requirements concerning reasons, transmission of the file, notification of the parties and defence access to the materials. These rules establish both temporal and procedural controls over continuing detention, requiring renewed assessment of its necessity at each stage rather than reliance solely on the reasons supporting the original order.⁵

Article 205 introduces a further development concerning certain cases in which expert examinations or procedural steps outside Algerian territory are required to obtain evidence or take testimony. It applies to felonies and specified misdemeanours, including drug-related offences, organised crime, offences involving information and communication technologies, money laundering, corruption, smuggling and trafficking in persons. Where the statutory requirements are met, the investigating judge may request an extension from the Indictment Chamber. The provision states that 'the Indictment Chamber may extend pretrial detention for a period of four (4) months, renewable four (4) times in accordance with the same formalities specified in the first paragraph'.⁶ This provision should not be construed as general authorisation to prolong detention in every offence listed: its application also depends on the nature of the investigative steps required, their importance in establishing the truth and compliance with statutory procedures and deadlines. Exceptional extensions raise questions of proportionality, particularly when judicial cooperation or expert examinations require lengthy periods.⁷ Each extension should therefore be based on a genuine assessment of progress in the investigation, the reasons why the necessary steps could not be completed during the preceding period and the persistence of the risks originally justifying detention. Investigative complexity must not become an independent justification for prolonged deprivation of liberty.⁸

Subsection Three: Termination of Pretrial Detention, Release and the Possibility of Judicial Supervision

Pretrial detention ends when the legal basis for its continuation ceases to exist or when a statutory ground for release arises. This may occur upon expiry of the authorised period without lawful extension, disappearance of the substantive grounds for detention or issuance of a judicial decision requiring the accused's release. Article 207 of Law No. 25-14 authorises the investigating judge to order release on the judge's own initiative, after seeking the opinion of the Public Prosecutor, provided that the accused undertakes to attend investigative proceedings and inform the judge of movements.⁹ The Article also permits the Public Prosecutor to request release at any time and requires the investigating judge to determine the request within forty-eight hours. Where the deadline expires without a decision, the prosecution must secure release in accordance with the statutory conditions. These provisions confirm that continuing detention must remain open to review and that the judge's responsibility extends beyond ordering detention to terminating it when its legal necessity has disappeared.¹⁰ Release is not an exceptional procedure opposed to detention but a return to the ordinary presumption of liberty; reasons for refusing it must accordingly remain specific, substantiated and amenable to review.¹¹

Article 208 entitles the accused or defence counsel to request release from the investigating judge at any time. It opens by providing that 'the accused or their lawyer may at any time request release from the investigating judge, subject to the obligations set out in Article 207 above'. The investigating judge must transmit the case file to the Public Prosecutor for submissions within five days and decide the application by reasoned order within a period not exceeding eight days from

¹ Article 204 of Law No. 25-14, op. cit., p. 35.

² Ben Bouabdallah, Noura, and Ben Bouabdallah, Warda, op. cit., pp. 389–392.

³ Article 203 of Law No. 25-14, op. cit., p. 35.

⁴ Article 204 of Law No. 25-14, op. cit., p. 35.

⁵ Choukri, Amel, op. cit., pp. 347–352.

⁶ Article 205 of Law No. 25-14, op. cit., p. 35.

⁷ Brahimi, Djamel, op. cit., pp. 1527–1529.

⁸ Aoun, Fatima Zahra, op. cit., pp. 473–478.

⁹ Article 207 of Law No. 25-14, op. cit., p. 35.

¹⁰ Article 207 of Law No. 25-14, op. cit.

¹¹ Toumi, Oum El Djilali, and Abbassa, Taher, op. cit., pp. 566–568.

transmission.¹ If no decision is made within that period, the accused may apply directly to the Indictment Chamber. The Article fixes a period for determining the application, provides for automatic release where statutory requirements are fulfilled and restricts renewed applications until one month has elapsed since rejection of the preceding request. These provisions prevent applications for release from remaining unresolved indefinitely and permit another judicial body to intervene when the investigating judge fails to act.² Release may be accompanied by judicial-supervision obligations where necessary. This approach is consistent with the graduated framework established by Article 197: it maintains the accused's connection with the investigation while avoiding the harm associated with continued confinement where alternative measures suffice to achieve the legitimate procedural aim.³

Section Two: Legal Safeguards and Judicial Review of the Lawfulness of Pretrial Detention

Legal safeguards and judicial review complement the substantive and temporal requirements governing pretrial detention. Merely declaring detention exceptional does not afford adequate protection unless effective procedures are available to review decisions affecting the accused's liberty.⁴ Algerian legislation establishes mechanisms for appealing detention orders and reviewing continued confinement, recognises procedural rights enforceable against the competent judicial authorities and regulates compensation for unjustified pretrial detention.⁵ These mechanisms seek both to prevent arbitrariness through oversight, reasoned decisions and appeals, and to remedy certain consequences through release and compensation. Judicial review, the accused's rights and mechanisms of reparation must therefore be considered together.⁶

Subsection One: Judicial Review of Pretrial Detention Orders and Available Appeals

The legality of pretrial detention is subject to judicial review intended to ensure compliance with the conditions governing both its imposition and continuation and to verify the existence of factual grounds justifying the restriction of liberty. The Indictment Chamber plays a central role as the body competent to hear appeals arising from investigative acts and to exercise the statutory powers of review over decisions and measures taken in criminal proceedings.⁷ Article 201 establishes the accused's right to appeal a pretrial detention order within three days of notification, allowing another judicial authority to reassess its legality. The appeal is not confined to questions of jurisdiction and form; it also permits scrutiny of the substantive grounds relied upon by the investigating judge, their foundation in the case file and their proportionality to the risk sought to be prevented.⁸ The Indictment Chamber should additionally examine the adequacy of lawful alternatives, since identifying a ground under Article 201 does not dispense with the requirement to respect the exceptional character of detention under Article 197. The effectiveness of review therefore depends on an independent and rigorous examination of the grounds for detention, rather than an unreasoned affirmation of the contested decision.⁹ Judicial oversight also involves reviewing the continuation of detention when applications for release or extension are determined. The Indictment Chamber is especially important where the investigating judge fails to decide an application within the prescribed deadline. Article 209 of Law No. 25-14 provides that 'where proceedings have been referred to a judicial authority, that authority shall have jurisdiction to decide an application for release'. It also regulates the Indictment Chamber's jurisdiction in specified circumstances and requires a hearing at least once a month to examine the continuation of detention in the cases indicated by law.¹⁰ These provisions recognise the importance of periodic review, which does not necessarily depend on an initiative by the accused but allows the competent authority to reassess the need for continued confinement. Such review is particularly valuable during lengthy investigations or trials, when the circumstances underpinning the initial order may change or new evidence may reduce the risks associated with release.¹¹ Judicial scrutiny should consequently encompass the overall duration of detention, progress of the investigation, reasons for delay, any contribution of the accused's conduct to prolonged proceedings and the possibility of judicial supervision as an alternative to continued confinement.¹²

Subsection Two: Safeguards and Rights of Persons Held in Pretrial Detention and the Consequences of Procedural Violations

An accused person held in pretrial detention retains safeguards grounded in the presumption of innocence, the rights of the defence and the principle of procedural legality. Restriction of liberty does not extinguish that person's legal status as an accused who has not been convicted. These safeguards include the right to know the grounds for detention, access legal representation, appeal the order, seek release and avoid detention beyond statutory limits, together with observance

¹ Article 208 of Law No. 25-14, op. cit., p. 36.

² Article 208 of Law No. 25-14, op. cit.

³ Aoun, Fatima Zahra, op. cit., pp. 471–476.

⁴ Kahoul, Roumaissa, and Bouhouche, Hicham, op. cit., pp. 319–322.

⁵ Articles 201 and 208 and 219 of Law No. 25-14, op. cit., pp. 34–37.

⁶ Ben Bouabdallah, Noura, and Ben Bouabdallah, Warda, op. cit., pp. 390–395.

⁷ Brahimi, Djamel, op. cit., pp. 1528–1531.

⁸ Article 201 of Law No. 25-14, op. cit., p. 34.

⁹ Kahoul, Roumaissa, and Bouhouche, Hicham, op. cit., pp. 327–332.

¹⁰ Article 209 of Law No. 25-14, op. cit., p. 36.

¹¹ Aoun, Fatima Zahra, op. cit., pp. 479–485.

¹² Kahoul, Roumaissa, and Bouhouche, Hicham, op. cit., pp. 330–334.

of procedures governing questioning and participation in the investigation.¹ Article 175 of Law No. 25-14 establishes safeguards applicable to the accused's first appearance before the investigating judge, including information about the alleged acts and charges, in accordance with the conditions laid down by law. The provisions on pretrial detention likewise emphasise reasoned decisions, notification and control of time limits. Together, these requirements establish a system intended to protect individual liberty against unjustified decisions.² Effective implementation requires that the accused and defence counsel be able to exercise these rights in practice. Statutory guarantees lose much of their effectiveness when delay, lack of information, defective notification or inadequate reasons prevent their meaningful exercise.³

Violations of the legal requirements governing pretrial detention may entail consequences that depend on the nature of the breach and the applicable statutory provision. These may include annulment of a decision, termination of detention, release of the accused or legal responsibility in specified cases. It should not be assumed that every formal irregularity automatically produces nullity; the applicable procedural consequence depends on the rule violated and the effect of the breach on the validity of the measure.⁴ Nevertheless, infringements of safeguards essential to liberty, particularly detention beyond statutory limits or detention lacking a valid legal basis, require intervention by the competent judicial authority. Article 194 illustrates enhanced statutory protection by treating an accused person detained for more than forty-eight hours without questioning, in the circumstances it specifies, as arbitrarily detained.⁵ Compliance with procedural rules is therefore more than an administrative duty of judicial authorities: it constitutes a substantive human-rights safeguard. Review must be effective and prompt, since the harm occasioned by unlawful deprivation of liberty increases with its duration.⁶

Subsection Three: Compensation for Unjustified Pretrial Detention and Mechanisms of Reparation

Compensation for unjustified pretrial detention is an ex post safeguard designed to redress harm suffered by a person deprived of liberty during criminal proceedings that conclude without a conviction, subject to statutory conditions. Article 219 of Law No. 25-14 provides: 'Compensation may be granted to a person subjected to unjustified pretrial detention during criminal proceedings that ended with a final decision of no grounds for prosecution or an acquittal, where that detention caused established and distinct harm.'⁷ Compensation does not therefore follow automatically from every acquittal or decision not to prosecute. The statutory requirements concerning the nature of the detention, the outcome of proceedings and the resulting damage must be satisfied. The same Article places the obligation to compensate on the public treasury, which retains a right of recourse against a person who made a report in bad faith or a witness who gave false testimony and thereby caused the detention.⁸ Depending on the facts proved in the individual case, compensable harm may encompass material loss relating to work and income, as well as non-pecuniary harm such as psychological suffering and injury to reputation, family relationships and social ties, subject to the applicable evidentiary and assessment rules.⁹

Procedurally, the Code entrusts compensation claims to a special committee established at the Supreme Court. Article 220 provides: 'The compensation referred to in Article 219 above shall be awarded by decision of a committee established at the Supreme Court, known as the "Compensation Committee" and referred to in this Code as "the Committee".' Subsequent provisions regulate the Committee's composition, judicial character and applicable procedure, allowing a competent body to determine whether compensation is warranted and in what amount.¹⁰ Article 223 prescribes a six-month period for filing an application, calculated from the date on which the decision not to prosecute or the acquittal becomes final and acquires the force of *res judicata*. It permits filing with the Committee's secretary or electronically against acknowledgment of receipt and specifies the information that the application must contain.¹¹ The importance of this regime lies in recognising the State's obligation to remedy harm arising from unjustified detention within the statutory framework. Its practical effectiveness nevertheless depends on claimants' access to the Committee, their ability to establish harm and the award of fair compensation within a reasonable time. Compensation complements preventive and supervisory safeguards but does not eliminate the need to minimise unjustified detention: recovery of liberty and financial redress cannot invariably undo all the human and social consequences of confinement.¹²

¹ Mekki, Ben Serhan, op. cit., pp. 594–598.

² Article 175 of Law No. 25-14, op. cit., p. 30.

³ Hamlaoui, Sanaa, op. cit., pp. 47–52.

⁴ Brahimi, Djamel, op. cit., pp. 1528–1532.

⁵ Article 194 of Law No. 25-14, op. cit., p. 33.

⁶ Kahoul, Roumaïssa, and Bouhouche, Hicham, op. cit., pp. 331–335.

⁷ Article 219 of Law No. 25-14, op. cit., p. 37.

⁸ Article 219 of Law No. 25-14, op. cit.

⁹ Fergani, Kouider Nour El Islam, "Compensation for Unjustified Pretrial Detention in Algerian Legislation", *Journal of Legal and Political Research and Studies*, Morsli Abdallah University Centre, Tipaza, vol. 9, no. 1, 2025, pp. 48–56. (In Arabic).

¹⁰ Articles 220 to 222 of Law No. 25-14, op. cit., p. 38.

¹¹ Article 223 of Law No. 25-14, op. cit., p. 38.

¹² Fergani, Kouider Nour El Islam, op. cit., pp. 54–60.

Conclusion

This examination of pretrial detention under Algeria's Code of Criminal Procedure, Law No. 25-14, shows that the legislature sought to establish a legal framework balancing the needs of criminal investigation against the protection of individual rights and freedoms. It did so by affirming the exceptional nature of pretrial detention, establishing liberty as the general rule during investigation and giving priority to judicial supervision as a less restrictive alternative. The legislature also specified the substantive grounds for detention, required reasoned decisions and notification, and regulated statutory periods, extension procedures and means of challenge, reflecting an effort to strengthen judicial oversight of liberty-restricting measures.¹ The analysis nonetheless demonstrates that the effectiveness of these safeguards depends principally on their practical application, particularly the interpretation of detention grounds, assessment of the inadequacy of alternatives and scrutiny of exceptional extensions that may result in prolonged confinement. Periodic judicial review is essential to preventing detention from continuing after its necessity has ceased, while the compensation regime offers a means of addressing harm arising from unjustified pretrial detention.² Law No. 25-14 thus provides an important legislative framework for the protection of individual liberty, but achieving the intended balance requires judicial practice grounded in specific, individualised reasons, greater use of alternatives where sufficient, more expeditious investigations, effective monitoring of statutory time limits and accessible compensation procedures. Specialised judicial training on necessity and proportionality would further consolidate the principle that pretrial detention is an exceptional measure to be used only within the limits required by justice, public protection and human rights.³

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¹ Toumi, Oum El Djilali, and Abbassa, Taher, op. cit., pp. 567–570.

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³ Aoun, Fatima Zahra, op. cit., pp. 485–491.